

## **AN INSIGHT TO CORPORATE LAW REFORM IN MALAYSIA**

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### **Purpose of this article**

It has been more than seven months since the Corporate Law Reform Committee ('CLRC') was established by the Companies Commission of Malaysia. Questions such as why, what, who and how are being asked in respect of the CLRC. This article in its little way seeks to answer the above questions and is the precursor of other articles to come in the near future.

The task of reviewing the Companies Act 1965 (hereinafter referred to as the 'Act') shouldered by the members of the CLRC is by no means a simple task. This is because to date no comprehensive study has been undertaken on the Act since its enactment in 1965. The CLRC therefore has no local reports to rely and build upon. Yet despite these shortcomings, the members of the CLRC are committed in reviewing the Act and to make the necessary recommendations to the government.

The government on its part supports the review exercise that is being conducted by the CLRC as it is committed towards ensuring that the corporate regulatory framework in Malaysia continues to promote enterprise and competitiveness and the

exercise represents a comprehensive, modern and balanced view for corporate reform in Malaysia.

## **CCM COMMITTED TO CORPORATE LAW REFORM**

Regulation of registered companies in Malaysia is a joint responsibility of three (3) separate regulatory bodies that comprises the Companies Commission of Malaysia ('CCM'), the Securities Commission and Bursa Malaysia Securities Berhad.

CCM, by virtue of the Companies Commission of Malaysia Act 2001 ('CCMA'), is however responsible for the administration of the Companies Act 1965 which is the principal legislation that enables any two or more persons to register a company for a lawful purpose.<sup>1</sup>

The Companies Act 1965, together with its accompanying regulations and schedules, provides a basic structure as to how companies are registered, managed and terminated.

CCMA, among other things, sets out the functions of CCM and it is provided that CCM shall among other things:

- Carry out research and commission studies on any matter relating to corporate and business activity; and

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<sup>1</sup> S 14(1) of the Act. Further, it should also be noted that a company registered pursuant to the Act will be deemed to be a corporation by virtue of s 16 (5) of the Act.

- Advise the Minister on matters relating to corporations, companies and business in relation to the laws that CCM administers.<sup>2</sup>

CCM being the primary regulator for registered companies took the initiative to set up the Corporate Law Reform Committee ('CLRC') by virtue of the powers bestowed upon it by the CCMA<sup>3</sup> on 17 December 2003.

It should be pointed out that the setting up of the CLRC by CCM is part of CCM's strategic direction in facilitating the development of a conducive and dynamic business and regulatory environment for this country.

Encik Abdul Alim Abdullah, CEO of CCM in his speech delivered at the launch of the consultative document titled 'Strategic Framework for Corporate Law Reform Programme' explained the purpose of the CLRC as follows<sup>4</sup>:

*CCM being the regulatory body in administering the Companies Act 1965 is committed to provide Malaysian companies with more modern forward looking legal and regulatory framework within which, companies can operate and sustain its businesses and it is with that objective in mind that the CLRC was established.*

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<sup>2</sup> S 17 CCMA 2001.

<sup>3</sup> S 19 of CCMA 2001.

<sup>4</sup> The official launch of this document was held on 1 September 2004 at Mutiara Hotel Kuala Lumpur and was officiated by the Honourable Minister of Domestic Trade and Consumer Affairs YB Datuk Haji Mohd Shafie bin Haji Apdal.

To ensure that the CLRC can effectively carry out its function CCM has also set up a full time Secretariat to assist the CLRC and together with the necessary resources<sup>5</sup>.

### **WHY NOW A COMPREHENSIVE REVIEW OF THE ACT.**

The Act since its enactment in 1965 has been amended some 30 times<sup>6</sup>. An analysis of these amendments highlights that the amendments were made on a ‘when there was a need to basis’ and on a ‘piece meal’ approach. Despite numerous amendments made to the Act the basic structure or framework of the Act as originally enacted in 1965 remains intact. To date there has been no co-coherent review of the Act till now.

Despite the fact that the Act is modelled upon the Australian Uniform Companies Act 1961 many of its provisions are influenced by English company law principles and policies that are over 150 years old which may now no longer be in tandem with how businesses are done in the present day<sup>7</sup>.

Commonwealth countries that once placed great reliance on the traditional English company law model have also chosen to abandon some aspects of the English

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<sup>5</sup> The practice of a government agency being responsible for corporate law reform is not a novel idea as it has also been practiced in other jurisdictions. For instance, in the United Kingdom the Company Law Review Steering Group that is responsible for putting forth recommendations to reform English Company law was set up by the Department of Trade and Industry. This practice has also been emulated by the South African Department of Trade and Industry.

<sup>6</sup> The Annotated Statutes of Malaysia Desk Edition 2 Companies, MLJ 2002 provides readers with a list of the amendments made to the Act.

<sup>7</sup> The English authorities themselves have recognized this fact and in March 1998 the then Secretary for Trade and Industry Margaret Beckett when launching English corporate law reform programme described the task of the Company Law Review Steering Group to create a modern company law for a modern world instead of the “present complex outdated, patchwork”.

company law when reforming their respective corporate law. Canada, Australia, New Zealand and Singapore can be cited as examples.

Further, as was rightly pointed out by Dato' KC Vohrah, Chairman of the CLRC<sup>8</sup>:

*The Companies Act 1965 comprises 374 numbing sections lost in a wilderness of obscure subsections and nine accompanying schedules. Even lawyers get lost in the wilderness, what more the men and women who run the companies.*

The Act is not a code and therefore many of the rules regulating corporations will be found in voluminous and confusing case law which makes our current company law inaccessible to the lay person<sup>9</sup>.

The government recognises the importance of companies as an engine for economic growth. It is widely acknowledged that companies (corporations) have become the centre of or even the driving force behind the modern global economy. Therefore, to ensure that companies in Malaysia continue to be an engine for economic growth, it is vital that the Act be reviewed as this will ensure that corporate activities in Malaysia function within a modern, forward looking legal and regulatory framework that supports and sustains companies.

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<sup>8</sup> In his speech that he delivered on 1 September 2004 at the launching event of the CLRC's 'Strategic Framework For Corporate Law Reform Programme' document.

<sup>9</sup> The New Zealand Law Commission Report no 9 titled 'Company law Reform and Restatement' specifically highlighted that a good company law system should among other things provide better accessibility to company law by setting up the Act as the restatement of the first recourse in identifying rights and duties within the company.

## **THE LAUNCHING OF THE ‘STRATEGIC FRAMEWORK FOR CORPORATE LAW REFORM PROGRAMME’ DOCUMENT**

On 1 September 2004, the Honourable Minister of Domestic Trade and Consumer Affairs, YB Datuk Haji Mohd Shafie bin Haji Apdal launched a consultative document titled ‘Strategic Framework for Corporate Law Reform Programme’ at Mutiara Hotel for public consultation purposes.

This consultative document was prepared by the CLRC and it sets out among other things:

- The objectives of the review process;
- The parameters in which the CLRC operates;
- How the corporate law reform programme shall be undertaken in Malaysia; and
- The terms of reference of the CLRC’s Steering Committee and its four working groups.

Further, the document states that when reviewing and recommending changes to the Act, the CLRC shall focus its attention on:

- Modernizing the law by taking into account advances made in ICT ( information and communication technology);
- Reducing compliance cost;

- Reducing duplications and conflicts that exist between the various corporate regulatory bodies;
- Simplifying the existing processes used in operating a company; and
- Simplifying the current legislative language as used in the Act.

## **CORPORATE LAW REVIEW PROCESS**

### **Role and function of the CLRC**

The members of the CLRC are referred to as Steering Committee. Currently, the Steering committee comprises seventeen members of various backgrounds<sup>10</sup>. They include representatives from the various regulatory bodies, corporate law academicians, prominent lawyers, accountants and company secretarial practitioners.

This mixture in composition ensures that the Steering Committee shall have the necessary credibility to carry out the review work, bringing in the views and comments from all sections of the corporate world.

The Steering Committee is chaired by the Dato' KC Vohrah, who had served on the bench as a Justice of the Court of Appeal. His appointment as chairman of the CLRC ensures that the CLRC functions independently although it was set up by CCM.

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<sup>10</sup> The accompanying appendix to this article sets out the names of the members of the Steering Committee, working groups and the CLRC Secretariat.

The Steering Committee is empowered to establish specialised working groups that will conduct detailed review on core areas of company law as directed by the Steering Committee.

The working groups upon conducting their respective reviews shall report their findings and recommendations to the Steering Committee whereby these findings and recommendations will be reviewed and a final report shall be prepared by CLRC and submitted to CCM for approval.

On receiving the final report CCM will then through the Ministry of Domestic Trade and Consumer Affairs table the report for the Cabinet's consideration for legislation purposes.

To co-ordinate the review process the Steering Committee meets at least once every month. It should be pointed out that at the time of writing this article the Steering Committee had already met seven (7) times. Its first inaugural meeting was held on 27 February 2004.

These meetings were primarily concerned with the strategic stage of the review. Discussions were centred upon themes such as:

- Identifying the purpose of the review;
- Identifying the objectives of the review; and



- Deciding how the review process is to be conducted.

These meetings led to the publication of the document titled 'Strategic Framework for Corporate Law Reform Programme' as was noted above.

### **Role and function of the working groups**

At this point of time the Steering Committee has identified four core areas of company law that require immediate review and has established four (4) separate working groups that are now currently conducting its review work. The table below sets out the various working groups and their respective areas of review.

Working Group	Review Scope
A	<i>Company Formation and Private Companies and Alternative Forms of Business Vehicles</i>
B	<i>Capital Raising and Capital Maintenance</i>
C	<i>Corporate Governance and Shareholders Rights</i>
D	<i>Corporate Securities and Insolvency'</i>

The members of these respective working groups, includes members of the Steering Committee, as well as persons who have been co-opted into the working group. Each working group is chaired by a member of the Steering Committee. Again this practice ensures that there is a broad base representation within the working group. Further, invitations to join the working groups have also been extended to the private sector and this has been well received. This practice ensures that the recommendations put forth by the respective working groups, will be market driven and consonant with the current commercial needs and expectations of Malaysian businesses.

The chairman of the respective working groups are free to determine how their working groups shall operate save that they must report their progress to the Steering Committee once every month. This in itself ensures that the working group must at the very least meet once a month. Despite having said this it must also be pointed out that there are some working groups that meet more than once in a month.

Lastly, it must also be mentioned that in carrying out its review work some working groups have set up clusters or sub-working groups. An example of this is working group D that has seven (7) sub working groups.

## **Role and function of the CLRC Secretariat**

The responsibility for law reform within CCM is shouldered by the department of Corporate Policy, Planning and Development. It is also this department, which is responsible in providing a full time secretariat team to support CLRC'S activities.

The secretariat comprises of one consultant and five full time staff. The key function of the secretariat is to prepare the ground work study through extensive and up to date research on core principles and current issues relating to company law.

The approach used in identifying issues also necessitates the secretariat at times to conduct informal consultations with professional bodies and also to conduct cross jurisdictional studies.

## **The importance of cross jurisdictional studies**

The Steering Committee has emphasised the need to conduct cross jurisdictional studies as such studies will aid the respective working groups to identify international corporate law reform initiatives and trends that may be relevant to their respective review work. This practise also ensures that reforms if any recommended by the respective working group will be in tandem with the global scene.

However, the Steering Committee has also stressed that recommendations put forth by the working committee must take into account the local corporate and business environment and should also include recommendations that enable Malaysian businesses to compete internationally.

## **Consultation**

An integral aspect of the review exercise involves the reviewing of information from the various consultees who will be affected directly or indirectly by the reforms, if any, proposed by the CLRC.

Consultation is therefore an important aspect of the review exercise as it will ensure the success of the task undertaken. The chairman of the CLRC emphasised this point when he said:<sup>11</sup>

*I firmly believe that this task of looking afresh at matters in the light of changes in other jurisdictions and the discernible trends in the patterns of competitive trading will be made easier and, more importantly, achievable, through a series of public consultation exercises with the principal stakeholders. The CLRC intends to integrate into its corporate law reform programme consultations with the private sector, the professional bodies, the Ministry, CCM and other regulatory bodies and the press.*

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<sup>11</sup> In his speech that he had delivered on 1 September 2004 at Mutiara Hotel Kuala Lumpur

## **Implementing the final recommendations**

As was pointed out by the Dato' KC Vohrah in his inaugural speech as chairman of the CLRC at the launching of the 'Strategic Framework for Corporate Law Reform Programme':

*The CLRC may only provide advice and recommendations but implementation is a matter for others.*

He further pointed out that:

*The extent in which CLRC can influence policy, and maintain the confidence of the stakeholders including the government, will depend substantially upon its ability to craft recommendations that are practical and susceptible to ready implementation.*

## **Conclusion**

The CLRC has already commenced its review work on the Act and as the first stage of its review exercise the CLRC has made available to the public its first consultative document titled 'Strategic Framework for Corporate Law Reform Programme' which can be found at the website of CCM ([www.ssm.com.my](http://www.ssm.com.my)). The CLRC is deeply appreciative

of the time and effort contributed by individuals, organisations and companies in responding to the document.

**Members of Corporate Law Reform Committee**

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Datuk Dr. Abdul Samad Hj. Alias

Cheong Kee Fong

Abdul Alim Abdullah

Hue Siew Kheng

Dr. Nik Ramlah Nik Mahmood

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Lim Tiang Siew

Geetha Sivapathasundram

Dr. Nik Ramlah Nik Mahmood

Andy Tan Chee Kiong

### **Working Group C**



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Assoc. Prof. Aishah Bidin

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Peter Lee Siew Choong

Dato' Loh Siew Cheang

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