

# Chartered Secretaries Malaysia



Date: 26 October 2006

Nor Azimah Abdul Aziz  
Corporate Policy, Planning and Development Department  
Companies Commission of Malaysia  
17<sup>th</sup> Floor, Putra Place  
100 Jalan Putra  
50622 Kuala Lumpur

Dear Madam

## **Comments to the Strategic Framework for Corporate Law Reform Programme**

We at The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) are supportive of the Companies Commission of Malaysia's (CCM) move to establish the Corporate Law Reform Committee (CLRC) to undertake a review of the Companies Act, 1965 to reflect the current and future needs of the Malaysian business environment.

We agree with CCM's view that this is an important move towards developing businesses which are equipped to face the challenges in the current dynamic global business environment, where companies are moving away from just focusing on their financial bottom line and are focusing also on their social and environmental bottom lines.

To this end, we are appreciative of the fact that CCM has invited the public to comment on the Strategic Framework for the Corporate Law Reform Programme and we understand the amount of time and care taken in formulating and developing this Framework.

The comments from the Institute on the Strategic Framework are as listed below:

## 1. Overall Comments

The setting up of the Working Groups represents a focused approach to the revamp of the Companies Act 1965, wherein each Group will be able to delve into a specific area requiring revamp in the company law.

Whilst we agree that there should be some legal framework, the Groups should thoroughly understand the following principles:-

- (i) Company law should be designed to be “consumer friendly” and not be overburdened with a rigid and stifling set of rules;
- (ii) Company law must assist in business development and be less prescriptive;
- (iii) Certain minimum but necessary and essential legal framework of company law should be maintained, however this has to be in line with the Malaysian culture, level of civil literacy and habits.
- (iv) Company law should be in harmony with other business and regulatory requirements.

## 2. International perspective

In Malaysia, we are privileged, as we are able to draw on the research conducted by other jurisdictions that have revamped their laws and regulations relating to companies.

Whilst we are in agreement with the concept of making reference to law reform initiatives that have been undertaken by other jurisdictions as a guide, we believe that it is also necessary to study the effects of those reforms. It may also be necessary to ponder if initiatives taken by other jurisdictions would be applicable to the Malaysian context. We feel that by maintaining a different stand on certain issues would separate us from our peers.

For example, several jurisdictions have removed the mandatory requirement for private companies to appoint Company Secretaries. New Zealand has done away with the requirement for Company Secretaries entirely and although this was done with the view to reduce the cost of doing business, proper research should be carried out to determine if that objective was achieved in that jurisdiction, and whether similar results could be achieved in Malaysia.

## 3. Developments on Corporate Governance

We agree with the CLRC taking into account domestic and international developments in the Corporate Governance arena.

We recommend that Corporate Governance reports such as the Higgs Report and the Kings Report and Kings Report II be considered in the CLRC's review of the Companies Act, 1965. As extensive research has been conducted on current governance issues when developing these Reports, we believe that a wealth of information may be drawn on from these documents.

#### **4. The Reform Programme Process**

We are in agreement with the process of separating the review of the Companies Act, 1965 into four working groups and this would allow for greater focus into the issues concerned.

However, where “smaller working groups” or “sub-groups” are to be established as referred to on page 24 of the consultative document, we strongly believe that representatives from professional bodies should be invited to form part of these “smaller working groups” or “sub-groups”.

Out stand stems from the close proximity that professional bodies have with those whom the Companies Act, 1965 will ultimately affect.

For example, at MAICSA, we constantly receive feedback from our members on the application of the various provisions contained in the Companies Act, 1965. These view are evidence of whether the provisions contained in the Companies Act, 1965 may realistically be carried out.

At the same time, professional bodies, such as MAICSA, would also be able to provide Secretariat support to these “smaller working groups” or “sub-groups”, ensuring that processes are carried out effectively and expediently.

#### **5. Working Group on Company's Formation, Private Company and Alternative Forms of Business Vehicles.**

It is noted that Working Group A will review current law, practices and procedure for formation and incorporation of company and simplification of the compliance requirements to ease the administrative burdens imposed upon private companies e.g., the elimination of the requirement of audit and company secretary, holding AGM etc.

We are of the opinion that the audit to be carried out on such small companies, may not be in the current format but comprise a new set of mechanism to certify the correctness and integrity of the financial position of a small private company, may need to be considered. This would allow for a proper check and balance in relation to the filing of tax returns, providing information to third parties who may have an interest with the company.

Whilst it is necessary to simplify compliance requirements imposed on private companies, the elimination of the requirement of audit and named Company Secretary by a certain category of small companies, currently viewed as an administrative burden, may in the long-term be detrimental to such small companies especially since in an era of k-economy and globalisation there is a global move to share information that is reliable globally.

MAICSA is of the view that requirement of the Company Secretary is not an administrative burden at all. If anything, it is an investment by a Small and Medium-Sized Enterprise (SME) business owner in educating himself on what good governance is all about – which may prevent his own business failure at a later stage if he is being cheated at every turn by an environment that supports it to happen. Imagine the following:

*A manufacturer supplies goods to Trader A on cash terms. After a few deals the manufacturer is persuaded to supply goods on credit terms. After a few more deals the Trader A ceases its business. A search at the SSM reveals only Trader A's name, a false business address, as well as a false registered office address. Imagine if the trader had been allowed to file in his own particulars – the manufacturer will not even have the name of Trader A's Company Secretary for contact!*

SSM should also dialogue with the Economic Crime Division of the Police, the Anti-Corruption Agency and other relevant Government agencies to understand the extent of the economic crime described above.

Therefore, we urge the Government to strengthen the existing role of the Company Secretary. The Companies Act should not only state that a Company Secretaries are required, they must also be qualified professionals. In doing so, we believe that the Government will, among others:

- a. save itself a foreseeable huge social bill if small business owners can operate in a “clean” business environment;
- b. be seen worldwide as an attractive destination, regardless of the business size, simply because Malaysians as an Institution is well guided by trained & qualified professionals who will act as the social conscience of the business community. This could become our country's U S P [Unique Selling Proposition]; and
- c. give “bite” to the beautiful philosophies underlying Malaysia's National Integrity Plan (“PIN”) which will require the involvement of professionals during implementation.

MAICSA is able lend our support to build more business scenarios on how the Company Secretary could be positioned by the Government to prevent fraudulent

business intention from actualising. Our Secretariat stands prepared to help the the CLRC think through the competing issues involved.

In considering whether or not a Company Secretary is required for all types of businesses, the CLRC focus may also want to turn to the following factors:

1. SME entrepreneurs should be encouraged to use ALL of their time on how to capture a bigger market share rather than spend a substantial part of their time learning how to complete statutory forms etc. This is because the market share of the small individual Malaysian is also the market share of Malaysia the country.
2. SMEs should be nurtured on a diet of good governance even from the cradle and this can be best done by appointing qualified Company Secretaries to provide proper advise.
3. Strengthen the role of the Company Secretaries to equip them, not merely with a strong advisory role, but also an enforcement role as they invariably “vet” the information provided by business owners prior submission the Government should consider how else to empower them & mobilize them.

The review of the corporate law should also instead consider a new legal framework in the company law to distinguish the company secretary who is an external service provider from a company secretary who is employed by a company as an employee, and to ensure their respective duties and responsibilities are clearly defined. In Malaysia there are many professionally qualified company secretaries who have set up firms to provide corporate secretarial services to small private companies and such services are certainly very affordable and effective in ensuring that the company complies with the regulations and laws.

To this end, we stress that to eliminate the requirement and need for a named company secretary in small companies, without a proper research and understanding of the way private companies conduct their business and meet with the compliance requirements, would result in more companies not complying with the regulations in their lodgement of documents no matter how simple the forms may be, because directors of companies band together to search for new business and cannot change their focus to ensuring the forms are lodged. The compliance aspects are then left to the professionals, such as the Company Secretaries. We are of the opinion that **the requirement to appoint Company Secretaries in private companies should be maintained**. It is, after all, the Company Secretary who assists in ensuring the company adheres to the compliance requirements.

We hope that our comments above have been useful in contributing to the overall effectiveness of the review of the Companies Act, 1965. We look forward to our continuous partnership in enhancing the level of Corporate Governance in Malaysia.

Thank you.

Yours faithfully,

Kulwant Kaur FCIS  
Operations Director