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Companies Commission of Malaysia  
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Dear Sir,

**Comments on the Corporate Law Reform Committee's (CLRC) Final Report Titled "Review of the Companies Act 1965-Final Report"**

We refer to the Corporate Law Reform Committee's (CLRC) Final Report Titled "Review of the Companies Act 1965-Final Report" which was released on 7 November 2008.

The Institute after extensive deliberation based on the rationale provided by the CLRC, welcomes the 188 recommendations, with the exception of few issues which we will address specifically below based on the recommendations.

**Recommendation 1.1**

*The CLRC recommends that there should be a single statute that will apply to companies irrespective of whether the companies are small or large (in terms of ownership structure or economic size, etc)*

We propose that SSM clearly define "small or large companies" to enable implementation of the new Companies Act on these categories be more conducive.

**Recommendation 1.6**

*The CLRC recommends the retention of mandatory audit rules for all companies but the regulator should be given power to exempt the application of the audit provision for certain types of companies based on certain criteria.*

We agree to CLRC's recommendation to retain mandatory audit for all companies. However, CLRC should have clarified on the criteria that the Registrar will follow when they decide to exempt audit for companies.

**Recommendation 1.8**

*The CLRC recommends that the mandatory appointment of company secretaries for all types of companies be retained.*

The Institute welcomes CLRC's recommendation to retain the mandatory appointment of company secretary for all types of company. CLRC in its Final Report reasoned that presence of company secretary in a company enhances the standard of compliance and corporate governance of companies in general. This statement reaffirms the important roles played by company secretary in an organization.

The role of company secretary has changed beyond recognition over the last 10 years. Beginning 20<sup>th</sup> century, their roles have further expanded whereby company secretaries are looked upon to provide advisory role to Board of Directors on good governance practices and policies.

Company Secretaries are responsible for ensuring that their company's compliance requirements and board conduct are properly carried out with a sense of responsibility, accountability and transparency on a timely, efficient, well-organized manner.

To maintain effectiveness in a constantly changing business and regulatory environment, Company Secretaries have to keep abreast of developments in a variety of fields. These called for an alert mind to absorb and analyze the impact of changes in company law, corporate governance principles and practices, risk management and other business processes.

This requires a well trained professional like the Chartered Secretaries to play important role as an advisor and gate keeper to the board members and the company; therefore, we fully support CLRC's concern on appointment of non professionally qualified company secretaries and urge SSM to consider revamping the licensing requirement or delete section 139A (b) of the Companies Act 1965 altogether and have a single qualification criteria instead of a dual system.

Apart from that, MAICSA would like to also propose that new Companies Act to legally distinguish the scope of duties and responsibilities between an in-house company secretary and an external company secretary, who runs a professional corporate services firm. Currently, the scope of the duties and responsibilities of in-house and external company secretary is the same. This has caused great concerns to external company secretaries, because authorities like the Immigrations, Royal Malaysian Customs, The EPF and Inland Revenue Board in carrying out their enforcement powers could detain and penalise the external company secretaries, who have no powers in making decisions of running the company's business. As an external company secretary he has no knowledge of the internal financial and administrative processes of the clients.

We propose that SSM consider section 64 of the Langkawi International Yachting Companies Act 2005 in differentiating between in- house and external company secretary and liability of an external company secretary.

**Recommendation 1.9**

*The CLRC recommends that there should be a register of company secretaries to be managed and controlled by SSM.*

We agree to the recommendation that SSM set up a register of company secretary only if it's for statistical purposes only. We are of the view that CLRC should not have used the word "controlled" as it too wide. What is SSM going to control? Number of company secretaries? Misdemeanor of company secretaries? CLRC should have clearly defined the word "control". Professional bodies like MAICSA is self regulated in a sense that we have our own rules, policy and disciplinary proceedings. Other jurisdictions for example Singapore, United Kingdom and Australia do not have such provision in their respective Companies Act.

We urge SSM not to adopt this recommendation. Instead, SSM should consider to adopt the following wordings "a register of company secretaries to be kept and maintained by SSM".

**Recommendation 1.15**

*The CLRC recommends that companies be allowed to incorporate with only a single member who can be the director who must be a natural person of full age and who has his principal place of residence within Malaysia.*

"Principal place of residence within Malaysia" should be clearly defined in the Act. We propose that SSM refer to the definition under Malaysian Pension Act.

**Recommendation 2.2**

*The CLRC recommends that in private companies member(s) holding at least 5% of the total voting shares may demand for an annual general meeting to be held.*

We are agreeable to this recommendation. However, we propose that SSM consider amending the requirement of "quorum" under section 147 of the Companies Act 1965 to facilitate member(s) who satisfy the proposed provision to convene an annual general meeting. Failing which, the proposed provision is of no meaning.

**Recommendation 2.29**

*The CLRC recommends the introduction of a statutory provision that requires the remuneration of directors of public companies to be approved specifically by shareholders at general meeting. Shareholders and members of a company should be given inspection rights of the directors' contracts of service if requested by (a) members with not less than 5% shareholding or (b) at least 100 members who are entitled to vote at a general meeting.*

We suggest that SSM clearly define the term "remuneration" that is required to be approved by shareholders in the new Companies Act.

### **Recommendation 2.3**

*The CLRC recommends that section 152A of the Companies Act 1965 be clarified to state that the written resolution procedure is not applicable in certain circumstances where special notice is required and that the written resolution procedures should be available to private companies only.*

We are of the opinion that written resolution procedure should be also made available for non-listed public companies including company limited by guarantee without restricting to private companies only.

### **Recommendation 2.4**

*The CLRC recommends the removal of the unanimity rule for passing of written resolutions so that written resolutions may be passed by the same majority as required for a similar resolution at a duly convened meeting.*

We are of the view that CLRC should have clearly defined whether majority in number of the members having the right to attend and vote at the meeting or majority in nominal value of the shares or in the case of a company not having a share capital, majority of the total voting rights for passing of written resolution.

### **Recommendation 2.52**

*The CLRC recommends that section 172(14) and (15) of the Companies Act 1965 be amended to the following effect. In the case of the resignation of auditors, the effective date of resignation would be at the end of 21 days from the time the notice is deposited with the company. The directors must proceed duly within the 21 days to convene a meeting on a day not more than 28 days after the date on which the notice convening the meeting is given. Every director who fails to take all reasonable steps to secure that a meeting is convened as mentioned above shall be guilty of an offence and liable to a fine.*

We wish to seek clarification on the timeline of “within 21 days to convene a meeting”. We recommend that the directors must proceed to convene a meeting after lapse of 21 days upon depositing of letter of resignation by the auditors. Also, we propose not to confine meeting to be convened on a day not more than 28 days after the date on which the notice convening the meeting is given. However, notice shall be given in accordance with the provision of the Articles. This is to facilitate an earlier general meeting has been called or general meeting scheduled to be held in the near future that enable tabling of the change of auditors as agenda of the meeting.

**Recommendation 2.60**

*The CLRC recommends that the threshold of substantial value under sections 132C and 132E of the Companies Act 1965 in respect of a transaction in relation to non-public listed companies should be as follows-*

- (a) If the transaction exceeds 10% of the company's net asset value and is more than RM50,000; or*
- (b) If the transaction exceeds RM250,000, and that the net assets are to be determined by reference to the most recent financial statements.*

CLRC should have defined “the most recent financial statement”. If SSM takes this recommendation in whole without any amendment, there will be bound to be confusion on what recent financial statement is and whether the same are audited and laid at the annual general meeting.

Further, we seek clarification whether there will be provision for exemption for Section 132C eg in ordinary course of business similar to the exemption found under Section 132E.

**Recommendation 2.66**

*The CLRC recommends no changes to the ambit and scope of sections 133 and 133A of the Companies Act 1965. The CLRC also recommends not to extend sections 133 and 133A to “substantial shareholders” or “person connected to shareholders”.*

To avoid confusion, we propose that SSM clearly define S133A (2)(a) on the sentence of “subsidiary or holding company or a subsidiary of its holding company” and clarify whether Sections 5, 5A, 5B and 6 fall under such exemptions.

**Recommendation 4.37**

*The CLRC recommends that a company secretary should not be exempted from the duty to submit the statement of affairs to the judicial manager.*

We are not agreeable to the recommendation as company secretary (external) has no knowledge or access to the accounts when a judicial manager is appointed. We suggest that the responsibility be given to accountants.

**Recommendation 4.57**

*The CLRC recommends deletion of section 108(9) of the Companies Act 1965.*

We are agreeable to this recommendation. However, we urge SSM to consider simplify the procedure for discharge of charge under S113 of the Act.

We are agreeable to other recommendations by CLRC and have no further comments.

We hope that our comments above will be useful in contributing to the drafting of the new Companies Act .We look forward to our continuous partnership in enhancing the level of corporate governance in Malaysia.

Thank you.

Yours faithfully,

Akbar Moidunny  
President