

Chartered Secretaries Malaysia



14 September 2007

Puan Nor Azimah Abdul Aziz
Corporate Law Reform Committee (CLRC)
Companies Commission of Malaysia
17th Floor, Putra Place
100 Jalan Putra
50622 Kuala Lumpur

Dear Madam,

Comments on the Consultative Document No. 9: Review of Provisions Regulating Substantial Property Transactions, Disclosure Obligations and Loans to Directors

We refer to the Consultative Document titled “Review of Provisions Regulating Substantial Property Transactions, Disclosure Obligations and Loans to Directors ” released for consultation by the Corporate Law Reform Committee (CLRC) in July 2007

The Institute generally, after extensive deliberation based on the rationale provided by the CLRC, welcomes the proposed recommendations, with the exception of few issues which we will address specifically below based on the questions that were posted.

Question 3:

Do you agree that the meaning of 'controlling interest' in section 122A(3)(b) should be clarified by introducing a new subsection as follows:

‘A person is deemed to have control or have a controlling interest in a body corporate if the person or persons connected to him or the person together with persons connected to him-

- (a) holds more than 50 per cent of the issued share capital of the body corporate; or**
- (b) controls more than 50 per cent of the voting power of the body corporate; or**
- (c) is able to control the composition of the board of directors of the body corporate?**

We are agreeable to the recommendation to clarify the meaning of “controlling interest” by introducing a new subsection under Section 122A(3)(b). However we are of the opinion that item (c) should be rephrased to include the word “more than 50% control of the composition of the board of directors of the body corporate”, for the sake of clarity. The word “control” by itself invites subjective assessment therefore by adding 50 % will actually assist stakeholders in determining whether there is control over the board

Question 10:

Do you agree that the triggering figure that should be specified in the company legislation is if the transaction:

(i) exceeds 10 per cent of the company's net assets value and is more than RM50,000; or

(ii) exceeds RM500,000?

If not, what would be the appropriate threshold?

We recommend that the triggering effect should be only (i) above, ie “exceed 10 percent of the company’s net asset value and is more than RM50,000”, in order not to impede commercial transactions involving large companies.

Question 11:

Do you agree that the 'net assets test' should be adopted? If yes, do you agree that the net assets is to be determined by reference to the most recent financial statements?

We are in full agreement to adopt the “net assets test”. However, the net asset should be determined by reference to the recent audited financial statement to be in line with best corporate governance practices.

Question 13:

Do you agree that the company's right to avoid a transaction entered into in contravention of section 132E of the Companies Act 1965 should be qualified? If so would the CLRC's recommendation be sufficient?

We wish to seek clarification on the word “qualified” before considering the question that has been posed.

Question 19:

Do you agree that the section should not apply to the acquisition of an undertaking or property of a substantial value or the disposal of a substantial portion of the company's Undertaking or property undertaken by any or with a banking corporation pursuant to an Islamic transaction involving the contemporaneous acquisition and disposal of the same undertaking or property?

We request CLRC to provide more information on the workings of Islamic transaction in order for us to make a decision on the exception.

Question 23:

Do you agree that the Companies Act should contain a provision stating that there is no need to formally declare a director's interests in situations where the director proves that the other directors are aware of the interest?

We disagree with the recommendation that the Companies Act 1965 should contain a provision stating that a director need not declare interest in situation where the director proves that the other directors are aware of the interest. We are of the opinion that a director should declare his or her interest immaterial if other directors are aware of the interest to ensure good governance.

Question 24:

What are your views on the appropriate method of disclosure by a director who wants to disclose his interests? For example, do you agree that disclosure may be made in any one of the following manner:

- (i) at a meeting of the board of directors;**
- (ii) by notice in writing, or**
- (iii) by giving a general notice of future conflict of interest**

We are of the opinion that general notice of future conflict of interest pursuant to section 131(4) of the Companies Act 1965 is a preferred method of disclosure by director.

Question 28:

Do you agree that the current timeline of seven (7) days for giving the required notice to the company pursuant to sections 68E, 69F and 69G of the Companies Act 1965 should be retained?

The current time line of 7 days though appropriate, sometimes causes hardship to the business community as Saturday and Sunday is included into the calculation of 7 days. We are of the opinion that that the time line should be 7 **market** days for giving the company notice pursuant to section 68E, 69F and 69G whereby the Bursa Malaysia Listing Requirement defines “market days” as day on which the stock exchange is open for trading in securities.

We are in agreement with the other questions raised in the CD9 and have no further comments on those questions.

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
Chief Technical Officer