

# Strategic Framework

for the Corporate Law Reform Programme  
of Companies Commission of Malaysia



SURUHANJAYA SYARIKAT MALAYSIA  
COMPANIES COMMISSION OF MALAYSIA



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## Minister's Foreword

The liberalisation of world trade, the advent of infrastructures in the information communication technology and the complexity of the legal and regulatory structure of corporate law have created changes in the economic sector. In order to enable Malaysian businesses to be competitive and better equipped in dealing with future challenges in the local and global business environment, a comprehensive revamp to the corporate law is timely and welcomed.

The Companies Commission of Malaysia (CCM) as a regulatory body of companies and businesses in Malaysia, has initiated the establishment of the Corporate Law Reform Committee (CLRC) to undertake a review of the legislation, statutory policies and standards in order to maintain and enhance the viability of doing business in Malaysia. This is part of the strategic plan of the CCM to provide a comprehensive, competitive, and business friendly regulatory framework to ensure that the corporate sector is fully prepared to face the evolution of business practices brought about by the ever-changing global business environment.

This Strategic Framework paper, I believe, will be a useful reference for the business community to assess the scope and process of the review and will be a guide for the members of the CLRC in achieving the objectives of this review in a consistent and comprehensive manner.

It is the Government's hope that the corporate regulatory framework in Malaysia would promote enterprise and competitiveness and that the reform programme will represent a comprehensive, modern and balanced views of the industry.

I would like to record my sincere appreciation to the Companies Commission of Malaysia for steering this corporate law reform effort, and my deepest gratitude to the Members of the CLRC for their kind support, commitment and contribution to this exercise. This exercise will indeed contribute towards achieving the Government's aspiration in building a strong and vibrant economy.

Thank you.

A handwritten signature in black ink, consisting of several strokes that form a stylized name.

**Datuk Hj Mohd Shafie Apdal**

Minister of Domestic Trade  
and Consumer Affairs

11 August 2004

# Chief Executive Officer of Companies Commission of Malaysia Message

The establishment of the Corporate Law Reform Committee (CLRC) on 17 December 2003 forms an integral part of the strategic direction of the Companies Commission Malaysia towards providing a regulatory framework which is conducive for companies and businesses to operate.

The Companies Commission recognises the need to review the Companies Act 1965 to reflect the current and future needs of the business environment. Accordingly, the CLRC has been established to undertake a fundamental review of the current legislative policies on corporate law in order to propose amendments that are necessary for corporate and business activities to function in a cost effective, consistent, transparent and competitive business environment in line with international standards of good corporate governance.

Therefore, the Companies Commission is fully committed to ensure that the objectives of the CLRC are fully achieved. In this relation, it is anticipated that in depth study will be conducted to consider the existing corporate law and practices in Malaysia as well as other similar concluded international practices. The findings of the review will then be translated into recommendations for reforms in modernizing corporate laws in Malaysia.

As the regulatory authority administering the Companies Act 1965, the Companies Commission is sensitive on the need to strike a balance in ensuring that public interests are

protected whilst, at the same time, ensuring that the interests of the business and corporate sector continue to be served. To this end and in view of the colossal tasks ahead, the Companies Commission has set up a secretariat to fully support all activities and projects to be undertaken by the CLRC and is also providing the necessary resources for the CLRC to achieve its terms of reference.

This corporate law reform programme is part of our strategic plan to facilitate the development of a conducive and dynamic business regulatory environment for Malaysia. It is therefore our hope that other government agencies, co-regulators, professional associations and particularly, the private sector will support our law reform programme by contributing constructive views, feedback and comments on this consultative paper and thereafter, the various consultative documents to be issued by the CLRC from time to time.



**Abdul Alim Abdullah**

Chief Executive Officer

Companies Commission of Malaysia

11 August 2004

## Chairman's Statement

I am indeed honored and privileged to be appointed by the Companies Commission of Malaysia as the Chairman of the Corporate Law Reform Committee (CLRC). The CLRC will undertake a significant, if not the most important, task of reviewing, formulating and recommending legal reforms with a view to modernize the existing corporate laws in Malaysia.

I take solace that sixteen other Committee members have been appointed to the CLRC, all of whom are experts in their respective fields. Together, I strongly believe that their expertise and wealth of experience will greatly benefit the law reform initiatives towards the recommendations of well-balanced legal and regulatory reforms.

The law reform program is structured to achieve the following objectives:

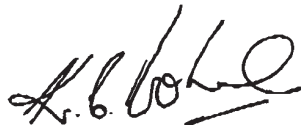
- the creation of a legal and regulatory structure that will facilitate business; and
- the promotion of accountability and protection of corporate directors and members taking into account the interest of other stakeholders to be in line with international standards.

To achieve the above objectives, the CLRC will take a holistic approach in reviewing the core company law governing the formation, management and termination of companies including corporate governance initiatives and the ever changing trends in information and communications technology that will have an impact on the conduct of businesses. The review will also

consider other similar reform exercises that are being conducted internationally. The outcome of the reviews will be formulated into recommendations to cater to the current and future needs of corporate and business activities in Malaysia including cost effectiveness, competitiveness and compliance aspects.

In view of the exciting yet highly challenging undertakings, the CLRC will be forming several working groups and sub-committees to ensure that all aspects of reform initiatives are dealt with sufficiently. I foresee that regular consultation documents will be issued for continuous feedback to ensure that the actual needs of the corporate and business sector are taken into consideration.

The CLRC welcome any comments and feedback from industry players and participants to ensure the success of the law reform programme.



**Dato' K.C Vohrah**

Chairman

Corporate Law Reform Committee

11 July 2004

# Members of Corporate Law Reform Committee (CLRC)

Dato' K.C. Vohrah  
*Chairman*

Datuk Dr. Abdul Samad Hj. Alias  
*Commission Member*  
*Companies Commission of Malaysia*

Cheong Kee Fong  
*Commission Member*  
*Companies Commission of Malaysia*

Abdul Alim Abdullah  
*Chief Executive Officer*  
*Companies Commission of Malaysia*

Hue Siew Kheng  
*Representative of the*  
*Attorney General's Chambers*

Dr. Nik Ramlah Nik Mahmood  
*Representative of the*  
*Securities Commission*

Selvarany Rasiah  
*Representative of*  
*Bursa Malaysia*

Philip Koh Tong Ngee  
*Advocate & Solicitor*

Charon Wardini Mokhzani  
*Advocate & Solicitor*

Peter Lee Siew Choong  
*Advocate & Solicitor*

Eric Kang Shew Meng  
*Company Secretary Practitioner*

Jeswant Singh  
*Representative of the*  
*Prime Minister's Dept.*

Aslam Zainuddin  
*Representative of the*  
*Prime Minister's Dept.*

Dato' Loh Siew Cheang  
*Advocate & Solicitor*

Lim Tian Huat  
*Chartered Accountant*

Prof. Dr. Khaw Lake Tee  
*Universiti Malaya*

Assoc. Prof. Aishah Bidin  
*Universiti Kebangsaan Malaysia*

## Management Representative of the Companies Commission of Malaysia

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Khoo Beng Chit  
*Director, Company & Business Services Division*

Muhammad Redzuan Abdullah  
*General Manager, Legal Department*

## Consultant

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Assoc. Prof. Dr. Aiman Nariman Sulaiman  
*International Islamic University Malaysia*

## Secretariat

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Nor Azimah Abd. Aziz  
*General Manager*  
*Corporate Policy, Planning and Development Dept.*

Norhaslinda Salleh  
*Senior Manager*  
*Corporate Policy, Planning and Development Dept.*

Anil Joshi  
*Senior Research Manager*

Norhaiza Jemon  
*Research Manager*

Sapiah Ambo  
*Research Manager*

Marina Nathan  
*Assistant Research Manager*

# Members of Working Groups

## **Working Group A – Company’s Formation and Private Companies & The Alternative Forms of Business Vehicles**

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Charon Wardini Mokhzani - **Chairman**  
*Advocate & Solicitor*

Datuk Dr. Abdul Samad Alias  
*Commission Member*  
*Companies Commission of Malaysia*

Cheong Kee Fong  
*Commission Member*  
*Companies Commission of Malaysia*

Abdul Alim Abdullah  
*Chief Executive Officer*  
*Companies Commission of Malaysia*

Prof. Dr. Khaw Lake Tee  
*University Malaya*

Eric Kang Shew Meng  
*Company Secretarial Practitioner*

## **Working Group B – Capital Raising & Capital Maintenance Rules**

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Peter Lee Siew Choong – **Chairman**  
*Advocate & Solicitor*

Dato’ K.C. Vohrah  
*Chairman of CLRC*

Dato’ Loh Siew Cheang  
*Advocate & Solicitor*

Selvarany Rasiah  
*Representative from Bursa Malaysia*

Eric Kang Shew Meng  
*Company Secretarial Practitioner*

Pushpa Rajadurai  
*Investment Banker*  
*Am Merchant Bankers Bhd.*

Lim Tiang Siew  
*Investment Banker*  
*Commerce International Merchant Bankers Bhd.*

Geetha Sivapathasundram  
*Legal Advisor*  
*Alliance Merchant Bank Berhad*

Dr. Nik Ramlah Nik Mahmood  
*Representative from the Securities Commission*

Andy Tan Chee Kiong  
*Chartered Accountant*

## **Working Group C – Corporate Governance & Shareholders’ Rights**

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Dr. Nik Ramlah Nik Mahmood  
**Chairperson**

*Representative from the  
Securities Commission*

Dato’ K.C. Vohrah  
*Advocate & Solicitor*

Assoc. Prof. Aishah Bidin  
*University Kebangsaan Malaysia*

Hue Siew Kheng  
*Representative from the Attorney General’s  
Chamber*

Selvarany Rasiah  
*Representative from Bursa Malaysia*

Philip Koh  
*Advocate & Solicitor*

Peter Lee Siew Choong  
*Advocate & Solicitor*

Dato’ Loh Siew Cheang  
*Advocate & Solicitor*

Eric Kang Shew Meng  
*Company Secretarial Practitioner*

Peter Ling  
*Advocate & Solicitor*

## **Working Group D- Insolvency & Corporate Securities**

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Lim Tian Huat - **Chairman**  
*Chartered Accountant*

Y. Bhg. Dato’ Loh Siew Cheang  
*Advocate & Solicitor*

Assoc. Prof. Aishah Bidin  
*University Kebangsaan Malaysia*

Aslam Zainuddin  
*Representative from the Prime Minister’s  
Department*

Yap Wai Fun  
*Chartered Accountant*

Ng Chih Kaye  
*Malayan Banking Berhad*

Ng Pyak Yeow  
*Chartered Accountant*

Jimmy Ng  
*Chartered Accountant*

Jeswant Singh  
*Representative from the Prime Minister’s  
Department*

# Strategic Framework for the

Corporate Law Reform Programme  
of Companies Commission of Malaysia

# Strategic Framework for the Corporate Law Reform Programme

## Introduction

The Companies Commission of Malaysia has taken the initiative to review Malaysian corporate law under its Corporate Law Reform Programme. To ensure that the reform programme will be conducted effectively and objectively, CCM has established a committee called the Corporate Law Reform Committee (CLRC) pursuant to sections 17 and 19 of the Companies Commission of Malaysia Act 2001.

## Historical Background

Historically, company law in Malaysia was shaped by English law through the Royal Charter of Justice of 1807, which introduced and applied English law to all areas within England's administrative jurisdiction in so far as it was suitable to local conditions and circumstances<sup>1</sup>. The Straits Settlements, comprising Penang, Singapore and Malacca, originally applied the Indian Companies Ordinance 1866<sup>2</sup>. This Ordinance was repealed and replaced by the Straits Settlements Companies Ordinance 1889 which was the first local company law statute<sup>3</sup>. This Ordinance was repealed and replaced by the Companies Ordinance 1915 which was subsequently repealed and replaced by the Companies Ordinance 1923. The 1923 Ordinance was replaced by the Companies Ordinance 1940 for the Straits Settlements. The Companies Enactment 1897 was applicable to the Federated Malay States (FMS), comprising Selangor, Pahang, Negri Sembilan and Perak. This Enactment was subsequently repealed by the Companies Enactment 1917. The Unfederated Malay States (UFMS), comprising Johor, Kedah and Kelantan, had separate but similar Company Enactments: Enactment No. 128 of Johor, Enactment No. 41 of Kedah and Enactment No. 14 of 1931 of Kelantan. The FMS and UFMS statutes reflected the equivalent existing company law as existing in England during the period. Due to the different administrative structure of the FMS, the UFMS and Straits Settlements prior to World War II, there was no single company law statute in Malaya.

The early 1940s was marked by the Second World War. Malaya was under Japanese Occupation for four years. After the War, the British Government proposed a unified administrative and political structure for the Straits Settlements, the FMS and the UFMS under the name of Malayan Union. In 1946, the Companies Ordinance 1946 (MU No. 13 of 1946) was enacted. It extended the application of the Straits Settlement Companies Ordinance 1940 throughout Malaya and replaced the company law statutes applicable to the FMS and the UFMS. The Malayan Union did not last long and was soon replaced by the Federation of

<sup>1</sup> *Kamoo v. Basset* (1808) 1 Ky. 1.

<sup>2</sup> The Indian Companies Ordinance 1866 was enacted for all the British colonies in the East.

<sup>3</sup> Local statutes here refer to legislation enacted by the local legislative council applicable within the territory.

Malaya in 1957<sup>4</sup>. However, the applicable company law statute for Malaya was still the Companies Ordinance 1946.

After the establishment of Malaysia in 1963, the Government through the Ministry of Commerce and Industry, formed a committee on 30th October 1963 to consider a new legislation to replace the existing Companies Ordinance 1946 (for the Federation of Malaya) and the other existing statutes on company law for Sabah and Sarawak which became part of Malaysia. The committee included representatives from the legal, accounting and company secretarial professions and worked closely with the Attorney General's Chambers and the Ministry of Commerce and Industry. The Committee considered the following in preparing its submission to the Government: the English Companies Act 1948, the Australian Uniform Companies Act 1961, the Cohen's Report, the Jenkins' Report, the Report and Draft Code prepared for Ghana by Professor Gower and the submissions of interested persons and bodies within Malaysia.

In the speech introducing the Companies Bill 1965, the Minister of Commerce and Industry stated that the reasons for the reform were: firstly, the fact that the Companies Act of 1929 of the United Kingdom which was the basis of Malaysia's existing company law statute was outdated and no longer capable of keeping up with the speed in which companies were developing; and secondly, that there was a need to consider whether there was adequate protection given to the investors in view of the policy of the Government to promote a healthy investment climate and prevent fraudulent and undesirable practices<sup>5</sup>. It was also obvious that the proposed Companies Bill 1965 was much influenced by reforms in various jurisdictions throughout the Commonwealth<sup>6</sup>. The Companies Act 1965 replaced the Companies Ordinance 1946, including the Companies Ordinance 1953 of Sabah and Companies Ordinance 1958 of Sarawak.

Since its enactment in 1965, the Companies Act 1965 has been amended several times. Some of the amendments were the result of changes in the regulatory structure. The changes in the regulatory structure occurred because of the enactment of a new securities legislation which was the Securities Industry Act 1973 (SIA 1973) and the establishment of the Capital Issues Committee (CIC) and of the Kuala Lumpur Stock Exchange, now renamed Bursa Malaysia Berhad (Bursa Malaysia). The SIA 1973 was subsequently repealed by the Securities Industry Act 1983 (SIA 1983). The corporate regulatory authority during this period was the Registrar of Companies and the minister in charge was the Minister of Finance whilst the CIC was to be consulted in the administration and implementation of the SIA 1983. In 1992 the SIA 1983 and

<sup>4</sup> The Federation of Malaya consisted of the states formerly known as the Federated Malay States, the Unfederated Malay States and the Settlements of Penang and Malacca. Singapore remained a separate British Colony.

<sup>5</sup> Malaysia, Parliament, Dewan Negara, Parliamentary Debates (Hansard) 19/8/1965, col. 768.

<sup>6</sup> Gower, Company Law Reform (1962) 4 Malaya LR 36, at 36-37 mentioned the wave of reforms which were taking place during this period: "The United Kingdom, Northern Ireland, The Irish Republic, the Australian States, Ghana, Nigeria, Israel, the Federation of Rhodesia and Nyasaland, France and West Germany are at the moment all in the process of reforming their company law. India, after a root and branch reform as recently as 1957, is revising all over again. Kenya, Uganda and Tanganyika adopted new Companies Ordinances in 1959".

the regulatory structure established by that Act were reviewed. The review resulted in the tabling of the Securities Commission bill in the Malaysian Parliament, which when it became the Securities Commission Act 1993, led to the establishment of the Securities Commission (SC). Thus due to these changes, various amendments to the Companies Act 1965 were made during this period to rationalize the regulatory structure in relation to capital raising exercises by public companies.

There were also amendments to the Companies Act 1965 which addressed some of the weaknesses and inadequacies in the then current corporate law and practice. The most recent amendments to the Companies Act 1965 were as a result of the financial crisis in 1997-1998 when the Government embarked on several measures to resuscitate or revive the economy, strengthen the share market and build investor confidence. Legislative amendments made to the Companies Act 1965 and securities laws were intended to complement these measures. One of the measures was the establishment of the Finance Committee on Corporate Governance in 1997. The Finance Committee published its report in 1999 and the Malaysian Code on Corporate Governance was promulgated, as part of the recommendations of the Finance Committee. However, the Finance Committee focused on corporate governance issues specifically and not corporate law generally. In addition, the recommendations of the Finance Committee were not in the form of legislative texts and more work needs to be done to realize the recommendations into statutory provisions.

Most of the amendments made to the Companies Act 1965 were thus on a piece-meal basis and lacked a systematic and coherent review of current corporate law and practice. It is thus timely for Malaysia to carry out a systematic and coherent corporate law reform program. A corporate law reform program will enable Malaysian businesses to be competitive and to be better equipped in dealing with future challenges in the business environment. It would also enable modernisation and rationalisation of company law and to move away from the 'piece-meal' approach of company law reform. In addition, much of the underlying philosophy and fundamentals of company law as originated from UK and Australia which were once the basis for the Companies Act 1965 are being or have been reviewed in their respective jurisdictions.

To ensure that the reform program will be conducted effectively and objectively, the CLRC has been established. The reform program has been entrusted to a group comprising businessmen, legal and accounting practitioners and corporate secretarial practitioners. The members of the CLRC are to be referred to as the Steering Committee with powers conferred, amongst others, to establish working groups.

Establishment of the  
Corporate Law Reform  
Committee and  
its Powers

# Establishment of the Corporate Law Reform Committee and its Powers.

The terms of reference of the CLRC are as follows -

1. To undertake a fundamental review of core company law governing the formation, management and termination of companies with a view of recommending legal reforms and/or amendments to the Companies Act 1965;
2. To consider any legal and regulatory changes that need to be made in order to modernize company law so as to accommodate changes in information and communications technology and to enable company law to meet current and future needs of business;
3. To consider the relationship between company law and non-statutory standards of corporate behaviour;
4. To consider the relationship between the Companies Commission of Malaysia (CCM) and other regulatory authorities regulating the corporate and business activities with a view to a reallocation of jurisdiction to the most suitable regulatory authority in order to reduce duplication and conflict in enforcement of the legal and regulatory framework affecting corporate and business activities;
5. To consider the need for a reformulation of the role of CCM in enforcement actions and sanction in particular to determine the appropriate mix of civil and criminal sanction;
6. To undertake a comprehensive review of the legal and regulatory framework that affects the business activities of a company that has implication for company law, including but not confined to review of other laws that CCM administers;
7. To consider whether the existing legal forms of business vehicles i.e. the partnership and the corporate forms are able to provide alternative and adequate choice of establishing legal forms of business entities; and
8. To make any other recommendations as the committee deems fit.

The powers exercisable by the CLRC are conferred upon it under section 20 of the Companies Commission of Malaysia Act 2001. Section 20 provides that CCM may delegate any of its powers conferred upon it pursuant to section 19 of the Companies Commission of Malaysia Act 2001 and CCM has delegated to CLRC such powers to carry out such activities and do all such things that are necessary and advantageous and proper to enable the CLRC to meet the objectives of the review and effectively perform its terms of reference. The powers exercisable by CLRC include the following:

- (a) to appoint working groups entrusted with the task of formulating and/or drafting detailed contents of proposed amendments to existing legislation or proposing new legislations;
- (b) to carry out consultations with professional bodies, industry groups, experts, regulatory authorities and other persons in relation to proposed legislations and recommendations of new rules and/or amendments to existing legislations;
- (c) to publish key documents and exposure drafts for consultation and comments; and
- (d) to propose and develop corporate law policies for consideration.



# The Scope of the Corporate Law Reform Programme

# The Scope of the Corporate Law Reform Programme.

## Objectives of the reform program

1. The objectives of the corporate law reform programme in Malaysia are:
  - the creation of a legal and regulatory structure that will facilitate business; and
  - the promotion of accountability and protection of corporate directors and members taking into account the interest of other stakeholders, in line with international standards.

## The Scope of Review

2. The scope of review of the corporate law reform programme is to carry out an extensive review of core company law governing the formation, management and termination of companies.
3. Although there are various laws and statutes that may affect a company's business operations, the primary source of company law and the main statute on company law that determines the company's formation, the rules governing the relationship between participants in companies (shareholders, directors and other officers of the company, and sometimes employees) and between the company and its participants (in particular, rules relating to share capital, members rights, directors' duties and other matters relating to the management of companies) and termination of a company is the Companies Act 1965. As legal entities, albeit with artificial legal personalities, companies are subject to the law in the same way as a legal person. This means that laws such as contract law, tort law, environmental law etc, apply to companies, sometimes with such necessary modification to take account of the fact that companies are artificial persons. These laws are applicable because a company does not operate in a vacuum and must rely on other external relationships to carry on business. The fact that these laws apply to companies does not make them part of what is generally considered as "company law". Therefore, although such laws are important for a company's business, they will not be the main focus of the review.
4. The review will consider law reform initiatives that are being conducted internationally, notably the UK Company Law Review "Modern Company Law for a Competitive Economy". The approach is to adapt and refine these international initiatives to suit the Malaysian corporate and business environment.

5. The scope of review will cover the current law and practice on core company law issues with the aim of reducing compliance cost in general and in particular for private companies. This approach will be adopted by all the working groups particularly in relation to company formation and simplification of the reporting obligations to ease the administrative burdens imposed upon companies. It is anticipated that there may be recommendations or draft legislative texts that will provide rules for private companies with additional or different provisions for public companies. This was the approach of the UK Company Law Review and the Singapore Company Legislation and Regulatory Framework Committee (CLRFC).
6. The focus given to reduction of compliance cost for companies will necessarily require a review of the administrative structure of CCM as the current regulatory authority administering the Companies Act 1965. The review will also consider the existing forms of business organisations in Malaysia and whether these are adequate to enable Malaysian companies and businesses to be competitive. It is anticipated that the outcome of the review will enable corporate and business activities in Malaysia to function in a cost-effective, consistent and competitive business environment.
7. An important aspect of core company law is corporate governance. The current law and practice on corporate governance focus on the relationship between various corporate participants and directors' accountability. However the two main approaches in the corporate governance debate on the issue of directors' accountability are the shareholder theory and the stakeholder theory. The shareholder theory considers that directors have a duty to consider shareholders' interests in company's management whilst the stakeholder theory allows, or requires directors to consider the interests of other persons who are involved in a company's management for example creditors and employees. We take note of these theories in our review but will be guided by the shareholder theory whilst taking account of the interests of other stakeholders. The scope of the review will include, amongst others, the domestic and international developments on corporate governance and its impact on the appropriate legal and regulatory structure for company law. The corporate governance debate also considers the link between statutory and non-statutory standards of corporate conduct. In Malaysia, the Report of the Finance Committee on Corporate Governance and the Malaysian Code on Corporate Governance are the two authoritative documents which will also be considered in the review.

8. Codes of conduct and codes of best practices as well as self-regulation are now considered as complementary to statutory regulation. The review will take this into account to determine and ascertain the boundary of the law and self-regulation on company operations and decision-making in general and on corporate governance in particular. The question of the boundary between law and self-regulation will also relate to the issue of sanctions and enforcement, particularly in determining the appropriate mix of enforcement action.
9. When the Companies Act 1965 was first enacted, the only corporate regulatory authority was the Registrar of Companies. Presently, the main corporate regulators in Malaysia are the CCM, the SC and Bursa Malaysia. However, the current enforcement and investigation powers given to the three regulators often overlap since there has never been a systematic and coherent revision of the overlaps, conflicts and duplication. Because of this, the scope of review will consider identifying the activities of the regulatory authorities, the overlaps in the current enforcement and investigation powers and determining whether enforcement actions and rule making authority may be reallocated especially in relation to the appropriate mix of legal and self-regulatory rules to secure compliance.
10. The focus on modernisation of core company law would not be complete without reviewing the impact of Information and Communication Technology (ICT) on company law. Company law, to a large extent, relies on dissemination of and access to information. The review of the development in ICT will form an integral part of the reform process. The scope of the review includes the recognition of the new technologies in business, its use and potential abuses and the safeguards that need to be built into the legal and regulatory structure to accommodate the new technologies. The impact of ICT on company law will be considered by all Working Groups based on the approach that the legal and regulatory structure should facilitate the use of new technologies, be flexible to changes in technology and maintain integrity and security of information.

# The Reform Programme Process

# The Reform Programme Process

1. The Steering Committee will supervise the review process to ensure that the scope of the review is observed and that the final outcome of the review is in compliance with the specified scope.
2. Working Groups have been established to consider specific areas for review. The respective Working Groups will also undertake detailed work in relation to the recommendations and draft legislative texts. The Steering Committee also envisages the possibility of creating 'smaller working groups' or 'sub-groups', if and when the need arises. The members of the Steering Committee will also sit in the Working Groups to ensure there is coherence and continuity in the approach adopted by the Working Groups and in the reporting of each Working Group's work progress to the Steering Committee.
3. The Working Groups consist of at least one member of the Steering Committee and may include experts from the academic circle, industry and business community and the professions. The review will take into consideration the needs of the private sectors and industry practitioners. The review will also obtain the views from experts, legal practitioners and academicians since the review will involve a revision of existing legal and theoretical concepts.
4. The Steering Committee has identified several core company law issues for immediate consideration by the first four Working Groups. These issues are chosen because of their immediate impact on core company law and/or the immediate need for review or reform of existing principles on these issues.
5. These Working Groups are:
  - a. Working Group A on Company's Formation and Private Companies and Alternative Forms of Business Vehicles;
  - b. Working Group B on Capital Raising & Capital Maintenance Rules;
  - c. Working Group C on Corporate Governance and Shareholders' Rights;
  - d. Working Group D on Corporate Securities and Insolvency.
6. The first four Working Groups will undertake a review of the matters referred to each Working Group by the Steering Committee, in particular on the following areas:

- a. Working Group A on Company's Formation, Private Companies and Alternative Forms of Business Vehicles -
  - i. to review whether the existing legal forms of business vehicles i.e., the partnership and the corporate forms, are able to provide alternative and adequate choice of establishing legal forms of business entities and to make recommendations on the new forms of business vehicles, if any;
  - ii. to review current law, practice 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 of Annual General Meeting to present accounts before members and the possibility of having simplified accounts, the relevance of the ultra vires doctrine, company's capacity, the reporting obligations and reporting standards and the impact of ICT on company's formation and reporting obligations.
  
- b. Working Group B on Capital Raising & Capital Maintenance Rules-
  - i. to review current law and practice on capital raising and capital maintenance rules, including, but not limited to the changing structure of assets and capital, share buy back, financial assistance, reduction of capital, no par value shares, authorized share capital, nominal share value, shares issued at a discount, shares issued at a premium, and prescribed interest scheme;
  - ii. to review the impact of ICT on capital raising.
  
- c. Working Group C on Corporate Governance and Shareholders' Rights-
  - i. to review the current law and practice relevant to directors and boards of all companies incorporated or registered in Malaysia with the objective of enhancing accountability, disclosure and transparency;
  - ii. to review the current law and practice of shareholders' involvement in decision-making and proper protection and enhancement of shareholders' rights;
  - iii. to review the impact of ICT on meetings procedures and corporate communications.

The scope of work includes but is not limited to the following issues: company management, role of other stakeholders, rights and duties of directors and shareholders, accessibility of

company's records and documents to shareholders and directors, provisions relating to members' remedies and controlling shareholders, the relevance of voluntary codes of conduct. the impact of corporate groups and intra-group transactions on directors' duties and members' remedies.

d. Working Group D on Corporate Securities and Insolvency-

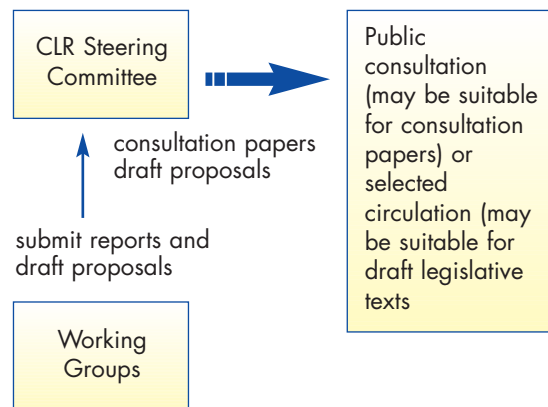
- i. to review the current law and practice relevant to corporate securities and insolvency, including but not limited to the following issues: creation of charges, registration and priority of debts, winding up process, administrative and judicial receivership and corporate rescue mechanisms;
- ii. to review the impact of ICT on the creation and registration of securities.

7. The Steering Committee realises that there are some other issues covered by the terms of reference of the CLRC that are not dealt with by the Working Groups. These include enforcement, sanctions, remedies and duplication of roles and functions of corporate regulators, international issues, cross-border insolvency and regulation of corporate groups which are of relevance to core company law. This is not to say that the issues are not important or will not be considered. It is anticipated that subsequent Working Groups will be established. For example, it is envisaged that the issues relating to sanctions and remedies will be discussed at a later stage by one Working Group by drawing upon the draft proposals of earlier Working Groups. This will enable a coherent and consistent approach throughout.
8. The Steering Committee wants to ensure a widely based consultation process. A diversity of consultation processes may need to be utilized:
  - consultation at preliminary stages on specific issues as well as on the documents containing the draft proposals;
  - informal consultation via restricted circulation of documents; and
  - public consultation through the publication of consultation papers, and exposure drafts of proposed legislative text.

It is envisaged that some consultees may wish to reserve confidentiality of their responses. This should be allowed and respected. It is anticipated that consultation on the more technical details especially in relation to draft legislative texts will be carried out by way of selected circulation.

9. It is anticipated that some Working Groups will be able to finalise their work early and may be able to provide draft proposals earlier than others. The Working Groups should be able to make partial submission of some issues which are within the Working Groups' scope of review to the Steering Committee which in turn will deliberate on these proposals and publish them for consultation. The merit of this phased approach is that this will enable some proposals to be processed and implemented at an earlier stage than others. This phased approach will also enable the Steering Committee to accommodate other issues not dealt with by the first four Working Groups.

**Flow chart 1**



10. It is anticipated that the proposals from the Working Groups will be published for exposure and consultation. Each Working Groups' proposals will contain as far as possible the following: -
- i. a comparison of the existing Malaysian law and other jurisdictions;
  - ii. questions that require public comments;
  - iii. recommendations on the respective issues;
  - iv. draft legislative texts.
11. The Working Groups' proposals will be presented to the Steering Committee for deliberation. This will enable a coherent framework to emerge out of the efforts of all Working Groups. After considering all the feedback on the proposals, a final report will be prepared based on the recommendations and draft legislative texts, if any, of each Working Groups' work. It is anticipated that the CLRC will submit the final report to the government, by end 2006.

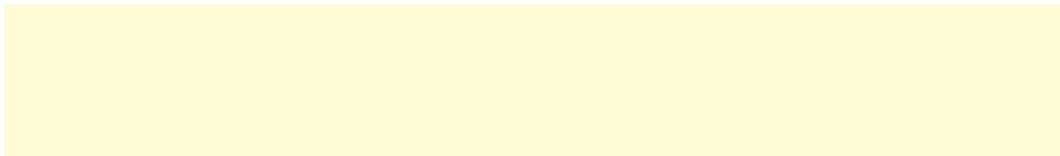
## Summary

The Strategic Framework paper is the result of extensive discussion amongst the members of the CLRC and reflects the objectives, the scope and process for the review. It should be considered as setting the parameters within which the CLRC will perform its functions. It is therefore, a very relevant document as it clarifies the way forward as far as the Corporate Law Reform programme is concerned.

As the review will have far reaching impact on the business community, the CLRC welcomes any comments, views and participation from the industry, professionals, practitioners and legal experts, academics and other interested parties on this paper. This paper is also available online at [www.ssm.com.my](http://www.ssm.com.my)

Responses and comments to this Consultation Paper should be submitted by 31 October 2004 to:

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