



PRESS RELEASE

AMENDMENTS TO COMPANIES ACT MARKS NEW ERA IN CORPORATE GOVERNANCE IN MALAYSIA

In fulfilling its mandate under the Companies Commission of Malaysia Act 2001, the Companies Commission of Malaysia (SSM) has taken the lead in enhancing the corporate governance framework in Malaysia. This is reflected in the amendments to be implemented under the Companies (Amendment) Act 2007 [*Act 1299*]. The aim of SSM in introducing the amendments is to ensure that corporate governance in Malaysia flourishes and investor confidence in Malaysian companies is enhanced says Abdul Karim Abdul Jalil, Chief Executive Officer of SSM. He is confident that the implementation of these amendments will further enhance SSM's role as a regulator towards developing a dynamic and robust corporate business environment. He believes that the amendments are vital to further propel Malaysia in the global business map.

The initiative to incorporate the amendments in relation to corporate governance started with comparative studies made on the laws and regulations of various jurisdictions as well as analysis of the local corporate framework. In addition, the amendments also took heed of the lessons learnt during the 1997 Asian financial crisis. The amendments are also the manifestation of the findings and recommendations made

by the High Level Committee for Corporate Governance towards enhancing board effectiveness and strengthening directors' capabilities. Among the landmark amendments include the introduction of the mandatory obligation upon auditors of a public company to report any fraud and dishonesty committed by any officer of the company. Such obligation is further complemented with the protection accorded for auditors when reporting such incidences. Upon the introduction of this provision in the Companies Act the auditors will not be liable to be sued or subject to any criminal or disciplinary proceedings for reports done in good faith or during the course of doing their business. At the same time, once an auditor ceases to act (i.e. after he has either been removed or has resigned) for a company, he is obligated to serve on the Registrar or in the case of a listed company, the Stock Exchange his written representation in relation to his removal or his written explanation of his resignation.

Equally interesting to note is that officers of a company will be accorded protection for whistle-blowing on breaches by the company of provisions under the Companies Act 1965 unearthed during the performance of his duties. Under the Amendment Act, companies are now under an obligation to ensure that officers of the company are not discriminated against and the lawful employment or livelihood of such officers will not be interfered by reason of the submission of a report regarding such non-observance.

The law has always required that directors carry out their duties and responsibilities accordingly and reasonably. The amendments to be made in the Companies Act will impose an objective standard in the performance of the directors' duties and responsibilities. One of the

major components in the amendments would be apart from the minimum standard of reasonable care, skill and diligence, directors are also expected to perform their functions according to their actual skill and experience. This standard of performance expected from directors will contribute towards the positive growth of the business of companies as well as safeguarding shareholders interests. Coupled with the new requirements of having to disclose their interest in a contract and to abstain from voting in the contract, SSM is confident that the level of transparency and accountability amongst directors will be greatly improved. This move is also important to ensure the interests of the investing shareholders and other stakeholders are appropriately protected.

The rights of the minority shareholders will be further augmented by the amendments with the introduction of the codification of the common law derivative action. This codification is a major step in enhancing the protection for the minority shareholders' and other complainants' interests as it will help to ease the setbacks face under the common law derivative actions especially in relation to the costs of proceedings which have to be borne by individual shareholders who had initiated such an action. The codification will promote transparency and accountability on the part of directors and this in turn will improve and enhance the way business is carried out in Malaysia.

The much awaited amendment to repeal section 132G as announced by the Honourable Prime Minister in his budget speech 2005 is also included. The prohibition under this section was seen as an impediment on genuine business transactions of a company. In preventing unscrupulous individuals from taking undue advantage on the deletion of

section 132G, SSM has inserted a provision requiring prior approval at a general meeting to be obtained where a director or substantial shareholder is involved in the acquisition or disposal of the assets of a company. This amendment will provide enhanced safeguard measures against abuses on related party transactions and at the same time does not impede bona fide transactions.

The initiative to enhance the role and responsibility of directors by the introduction of the business judgement rule should be welcomed and embraced by directors as it finally provides them with the certainty to take their business further. Such reform will further strengthen and promote market freedom and investment protection.

The Minister of Domestic Trade and Consumer Affairs, Y.B. Datuk Hj. Mohd Shafie Bin Hj. Apdal says that the amendments are indeed timely and consistent with the Government's efforts to enhance corporate governance and at the same time, spur the spirit of entrepreneurship and responsible risk taking amongst the business community and will make Malaysia a preferable destination for doing business.

Abdul Karim Abdul Jalil is positive that the amendments will be well received as they provide a balance in facilitating and encouraging companies to prosper on one hand, whilst on the other, provide sufficient mechanisms to discipline businessmen to observe the rules of law.

The set of amendments is currently pending Royal Assent and the announcement of the effective date will be in early July. Substantially, the amendments deal with provisions on the tightening of the corporate

governance legislative framework, apart from the amendments to facilitate the e-filing service which will be introduced in the near future.

SSM will be conducting nationwide briefing sessions to update all stakeholders on the amendments as contained in the newly passed Amendment Act on the dates as set out below:-

- 20 July 2007 (Kuala Lumpur);
- 23 July (Johore Bahru);
- 26 July (Seberang Prai);
- 30 July (Kuching); and
- 31 July (Kota Kinabalu).

Please contact Cik Zalina Noor Mohd. Ali or Puan Zarinatul Syeliza at 03-40476018/40476052 to participate in the abovesaid programme.