

THE MALAYSIAN CAPITAL MARKET NEW RULES OF THE GAME

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1. HISTORY OF REGULATORY DEVELOPMENT

The securities industry in Malaysia began in the late 19th century as an extension of the British corporate presence in the rubber and tin industries. The first formal organisation was established on 23 June 1930 with the formation of the Singapore Stockbrokers' Association.

After a period of turbulent existence interrupted by World War II, it resumed activities when the Malayan Stock Exchange was constituted on 21 March 1960. Public trading of shares started on 9 May 1960 with clerical assistance and telephone facilities provided by the Central Bank.

In an attempt to instil public confidence in the development of the market, a board was established in the Exchange in 1963 to consider application for new listings and to determine listing requirements. Through an informal arrangement among the Central Bank, the Stock Exchange and the Registrar of Companies, companies intending to make public offers were requested to consult with the Central Bank prior to publicising the terms of the issue.

With the formation of the Federation of Malaysia, the Stock Exchange of Malaysia was formed on 6 March 1964. The operations of the Exchange were further strengthened with the adoption of new rules and bye-laws, the creation of a fidelity fund and the implementation of stricter listing requirements.

To provide a more comprehensive legal framework in supervising the operations of companies, the Companies Act 1965 came into force. The provisions of the Act obliged companies to give greater disclosure to protect the investing public and promote the growth of a well informed and discriminating body of investors.

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Given the new institutional and legal framework, the informal arrangements set up in 1963 among the Central Bank, the Exchange and the Registrar of Companies in guiding the development of the stock market was formalised in 1968 with the establishment of the Capital Issues Committee (CIC).

A significant milestone in the securities industry was the enactment of the Securities Industry Act (SIA) 1973. This Act provided for the regulation of the securities industry aimed at protecting the interest of investors. It provided the Government with powers to curb excessive speculation, insider trading, share rigging and other forms of market manipulation. Also included were provisions for the licensing of dealers. The Kuala Lumpur Stock Exchange Berhad was established on 2 July 1973, operating on provisional rules, bye-laws, listing requirements and a corporate disclosure policy.

February 1974 saw the establishment of the Foreign Investment Committee ("FIC") whose main objective is the regulation of the acquisition of assets or any interests, mergers, takeovers of companies and businesses. This is to ensure a more balanced Malaysian participation in their ownership and control in line with the objective of the New Economic Policy (NEP).

To provide for a more orderly conduct of the securities business in the country, a new Securities Industry Act came into force in July 1983, replacing the SIA 1973. The new Act provides for more effective supervision and control of the industry by regulating the operations of the dealers, prohibiting artificial trading and market rigging and empowers the Minister of Finance to amend the rules of the Stock Exchange. The status of the CIC was legally formalised in this new Act.

To further promote efficiency in the market, the CIC made its own set of guidelines more transparent to the public with its formal announcements of the guidelines in April 1986. The guidelines stated in clear terms the CIC criteria and standard for compliance by the public companies. Since then, the Guidelines have been further clarified and strengthened.

The Malaysian Code on Takeover and Mergers 1987 came into force on 1 April 1987 and provided for the establishment of the Panel on Takeover and Mergers ("TOP") to ensure that all takeovers are conducted in an orderly manner and to protect the interest of minority shareholders.

To ensure proper development of the stock market, the Central Bank introduced a "Code of Ethics : Guidelines on Share Trading" for compliance by commercial and merchant banks. The guidelines are directed particularly at the merchant banks which, as corporate advisers or underwriters for share issues, are privy to inside financial information of the companies concerned. These guidelines are designed to prevent any occurrence of grey market and insider trading. The financial institutions are expected to either adopt the Central Bank's guidelines or have their own in-house rules.

To complement these measures by the Government, The Kuala Lumpur Stock Exchange (KLSE) itself has effected various changes and improvements. In July 1987, the Exchange introduced its new Listing Manual with an entirely new section on corporate disclosure policies and penalties. In the same year, the Advance Warning and Surveillance Unit ("AWAS") was formed to alert the KLSE of stockbroking houses and public listed companies facing problems.

2. THE SECURITIES INDUSTRY'S REGULATORY AUTHORITIES

The regulatory authorities are:

- (a) Securities Commission
- (b) Registrar of Companies
- (c) Licencing Officer, (Securities/Futures Trading), Ministry of Finance
- (d) Foreign Investment Committee
- (e) The Kuala Lumpur Stock Exchange

PRIOR TO 1ST MARCH 1993

2.1. The Registrar of Companies (ROC)

The ROC administered and regulated the Securities Industry Act 1983 and ensured that stockbroking companies complied with the provisions thereunder. Its functions included the following:

- to issue, renew or reject licences to dealers, dealer's representatives and investment advisers.
- to investigate and prosecute any violations of the Securities Industry Act 1983.
- to detect the misuse of sensitive information connected to share prices.
- to check that all information provided by listed companies is true and correct.

The ROC has both administrative and regulatory powers under the Companies Act 1965 which governs companies and its officers. The ROC's power under the Companies Act also includes power of investigation and prosecution for violations thereunder.

2.2. The Capital Issues Committee (CIC)

The CIC acted as a consultative body to advise the Minister of Finance and the ROC on all matters relating to the securities industry.

Section 6 of the Securities Industry Act 1983 had set out the functions of the CIC. All public listed companies incorporated in Malaysia (unless otherwise exempted by the Minister of Finance in the Gazette) had to seek the prior approval of the CIC for any of the following:

- new issues of offers for sale of securities to the public, whether by way of public issues or by private placements.
- rights issues.
- bonus issues otherwise than by way of the capitalisation of unappropriated profits.
- schemes of arrangements, schemes of reconstruction, takeover schemes, share option schemes and acquisitions of assets by way of issues of securities.
- listing and quotation of securities on a stock exchange.

In addition, all foreign-incorporated public companies, whether listed or unlisted, had to obtain the prior approval of the CIC if they intended to issue or offer for sale securities to the Malaysian public or to list such securities on a Malaysian stock exchange.

2.3. The Foreign Investment Committee (FIC)

The FIC was formed to implement the Government's guidelines on regulation of acquisition of assets or interests, mergers or takeovers of companies and businesses. The guidelines apply to the following:-

- any proposed acquisition by foreign interests of any substantial fixed assets in Malaysia.

- any proposed acquisition of assets or any interests, mergers and takeovers of companies and businesses in Malaysia by any means, which will result in ownership or control passing to foreign interests.
- any proposed acquisition of 15 percent or more of the voting power by any one foreign interest or associated group or by foreign interests in the aggregate of 30 percent or more of the voting power of a Malaysian company or business.
- control of Malaysian companies or businesses through any form of joint-venture agreement, management agreement, and technical assistance or other agreements.
- any mergers and takeovers of any company or business in Malaysia whether by Malaysian or foreign interests.
- any other proposed acquisition of assets or interests exceeding in value of M\$5 million whether by Malaysian or foreign interests.

Projects approved by the Government, however, do not require the approval of the FIC. They include privatised projects both undertaken by the Federal or any of the State Governments.

2.4. The Panel on Takeover and Mergers (TOP)

Established by the Minister of Trade and Industry (pursuant to Section 179(3) of the Companies Act 1965), TOP ensured that all takeovers and mergers were conducted in an orderly manner, while at the same time ensured the protection of the interest of minority shareholders as provided under the Code on Takeovers and Mergers 1987. The Code has 14 General Principles and Rules.

Under the Code (except with the consent of the Panel or unless directed by it), a mandatory offer must be made by any person or party acting in concert who acquires shares which carry more than 33 percent of the voting rights of a company, or any person or party acting in concert who holds between 33 to 50 percent of the voting rights and acquires within a 12-month period additional shares carrying more than 2 percent of the voting rights.

2.5. The Kuala Lumpur Stock Exchange (KLSE)

Unlike the abovementioned regulatory bodies which were mandated by Governmental authority, the KLSE is a self-regulatory organisation ("SRO") with its own Memorandum

and Articles of Association. It also has a set of rules which govern the conduct of its members in securities dealings.

The KLSE is responsible for the surveillance of the market place, and the enforcement of its Listing Requirements which spell out the criteria for listing, disclosure requirements and standards to be maintained by public listed companies.

The KLSE's subsidiary, Securities Clearing Automated Network Services Sdn. Bhd. ("SCANS") operates as the clearing house for the Exchange and is supervised by the Board of SCANS, comprising members of the KLSE Committee.

Another KLSE subsidiary, Malaysian Central Depository Sdn Bhd, operates the Central Depository System in accordance with the Securities Industry (Central Depositories) Act 1991. Further details are provided in item 6.

2.6. Other Regulatory Bodies

Besides the main regulatory authorities mentioned above, various regulatory bodies too regulate certain aspects of the corporate securities industry. This includes :

- The Central Bank
- Ministry of Finance
- Ministry of International Trade and Industry
- Implementation and Coordination Unit ("ICU") of the Prime Minister's Department

3. STRENGTH AND WEAKNESSES OF THE FRAGMENTED REGULATORY ENVIRONMENT

Securities regulation, like other regulations developed as a local or national activity and evolved over a period of years to meet local conditions, practices and needs in the context of the political, cultural and social environment.

The Malaysian securities regulation is no different. The existence of various regulatory bodies was to look into specific issues or interests. As they are established with specific objectives, these bodies are more critical and tend to give closer attention to these needs.

However as the capital market developed, the multi-agencies regulatory system showed its weaknesses. Some of the unsatisfactory features within such a regulatory structure are as follows :

- the lengthy and tedious approval process for corporate transactions. For example, from date of application, it takes 5 to 8 1/2 months before the issue of prospectuses. In many cases, the approval of 5 or more agencies are involved and often requires the approval first of one before the processing by another can proceed.
- lack of speed and efficiency in the approval process as the members of the approving bodies are mostly appointees who are busy with their own schedule. This is a handicap in the world of business which places great importance on speed and efficiency.
- lack of coordination between the regulatory bodies as each supervising Governmental authority or agency is looking at a proposal or transaction in the context of its specific rules and guidelines. No single body is looking at a transaction in the overall context. As a result, differing and inconsistent interpretations of rules and anomalies arise.
- opportunities for abuse and malpractice increase with the growth of the capital market.
- corporate manoeuvres have become increasingly sophisticated and complicated. Some regulatory bodies may be understaffed and this contributes to the delay in approvals.

This legislative and regulatory framework for the capital market in Malaysia has been criticised as highly fragmented. Competition, duplication and jurisdictional confusion among regulators led to lessened investor protection and lower overall regulatory standards which were not in the public's interest and were adverse to the maintenance of capital markets which are attractive for investors and capital investment.

4. FROM 1ST MARCH 1993

The Securities Commission (SC) was mooted to remove the problems of fragmented regulation of the capital market. The body is essentially an independent one-stop agency which has absorbed the functions of CIC and TOP. It will also be taking over certain functions currently performed by the Central Bank, ROC, FIC and other bodies.

The revamp of the present system will streamline the country's financial system under two regulatory agencies with the Central Bank supervising the banking system and the SC monitoring the capital market.

The SC will have two main functions – as an approving body and as a policing body. It will be responsible for promoting Kuala Lumpur as a key financial centre in the region and to encourage the development of securities and financial futures markets in the country and to ensure orderly development of these markets.

Its establishment is by the new Securities Commission Act, 1993, and existing Acts, principally the Securities Industry Act, 1983 and the Companies Act, 1965 have been amended accordingly to accommodate this. The Securities Industry (Central Depositories) Act 1991 and the Futures Industry Act, 1993 will also be administered by the SC.

4.1 Securities Commission

The Securities Commission began its operations on 1st March 1993 and under Section 15(1) of the said Act its functions are as follows:

- (i) to advise the Minister of Finance on all matters relating to securities and futures contract industries;
- (ii) to regulate the issue of securities;
- (iii) to regulate the designation of futures contract;
- (iv) to regulate the take-overs and mergers of companies;
- (v) to regulate all matters relating to unit trust schemes;
- (vi) to be responsible for supervising and monitoring the activities of any exchange, clearing house and central depository;
- (vii) to take all reasonable measures to safeguard the interest of persons dealing in securities or trading in futures contract;
- (viii) to promote and encourage proper conduct amongst members of the exchanges and all registered persons;

- (ix) to suppress illegal, dishonourable and improper practices in dealings in securities and trading in futures contracts and the provision of investment advice or other services relating to securities or futures contracts;
- (x) to consider and suggest reforms of the law relating to securities or futures contracts including changes to the constitution, rules and regulations of any exchange and its clearing house;
- (xi) to encourage the development of securities and futures markets in Malaysia; and
- (xii) to perform any functions conferred by or under any other Act;

With reference to the SC's functions (i), (ii) and (iv) above, the CIC and TOP therefore ceased to exist as of 1st March 1993.

4.2 The Registrar of Companies

In relation to the KLSE, the Securities Industry Act 1983 stipulates that the KLSE shall provide assistance to the ROC, as well as the SC and Licensing Officer (Securities/Futures Trading) for the performance of their respective functions and duties.

4.3 The Licensing Officer (Securities/Futures Trading)

The Licensing function is now the responsibility of the Licensing Officer (Securities/Futures Trading). He is appointed by the Minister of Finance and is responsible for the issuance of the relevant licences under the Securities Industry Act 1983 and the Futures Industry Act 1993.

5. SELF-REGULATION

The advantages of having a one-stop regulatory body cannot be denied. It cuts down red-tape and improves general efficiency of the regulatory system. However, as the SC will take over substantial functions of the various regulatory agencies, the danger of it being overburdened is also real.

Having to keep watch over a wide range of issues, the SC may spread its attention and manpower too thin. It may not be able to detect and hence react quickly to some misdeeds or misconduct that take place in a fast moving corporate world. For this, the self-regulatory organisations

(SROs) which are at the “pulse of the action” should be given due independence and autonomy to operate.

Self-regulation as defined in the FIBV paper on “Self-Regulation of Securities Markets” has two elements :-

- i. the primary policy makers within the organisation are themselves practitioners, which could include not only intermediaries but also users of the market.
- ii. the organisation is funded by the market rather than from public funds.

The benefits self-regulation offers to investors, participants in the securities markets and public generally are as follows :-

- i. **Ethical standards**
SROs have the ability to impose ethical standards which go beyond those which can be imposed by statutory laws and therefore can develop requirements and ethical standards of conduct to meet the changing conditions
- ii. **Accountability**
Self-regulators are directly accountable to their members and often to the government for actions taken or not taken. Thus, the self-regulatory system carries a built-in motivation to take the regulatory course which is most effective and least disruptive to market efficiency
- iii. **Acceptability**
self-regulation operates in an environment where there is a willingness to accept regulations promulgated by professional peers as the necessary and appropriate action for the common good of the group
- iv. **Sensitivity**
self-regulators have the business sensitivity to know when a regulation will be workable and beneficial to the investors and users of the markets
- v. **Participation**
the opportunity of persons and organisation who are subject to the regulations to participate

at all levels of the self-regulatory process makes it easier to accept new regulations which often mean restrictions or impediments to legitimate business activities

vi. Checks and balances

self-regulation has a built-in system of checks and balances. The persons and organisations which must comply with the regulations, such as companies who list their securities, and members and investors who do business on the exchange are less reluctant to make their views known to the self-regulatory organisation to whom they have a business relationship

vii. Responsiveness

self-regulators are able to identify and comprehend complex problems at an early stage and can respond with a solution or approach to meet the specific or particular development or problem situation. This ability to respond to developments as they are occurring often can ameliorate or lessen potential problem situations before they reach a crisis stage

viii. Expertise

self-regulators also have a reservoir of expertise in the officers and staff of their member organisations which can be drawn upon at different levels and stages of the self-regulatory process. Thus, self-regulators have a closeness to, and familiarity with, the field of financial activity to be regulated

ix. Cost effectiveness

self-regulation, which often operates as a part of a voluntary membership organizational structure, has a built-in incentive to minimize the cost of regulations to investors and users of the markets

x. Effective use of government resources

self-regulation permits the government to devote its resources to activities which cannot be adequately served by self-regulation, such as criminal proceedings, legal actions on insider trading and manipulative practices by non-members

xi. Good business sense

self-regulation makes good business sense for both those concerned about investor protection and those who are subject to regulation

These benefits demonstrate why self-regulation has an important role to play in the regulation of the securities markets. In addition to the above, it is relevant at this stage to relate the experience of KLSE as an SRO with respect to maintaining healthy order of the market.

Following the lesson learnt from the Pan Electric crisis in the mid-80s, The KLSE had taken steps to establish a surveillance department (AWAS) for the purpose of monitoring the market and alerting the management and the regulatory authorities on possible occurrence of misconduct which may if left unchecked jeopardize the integrity of the market. The Exchange felt that this was proper as it is located in the frontline of where the action is.

In the process of monitoring the market, the Exchange has from time to time encountered transactions which appear questionable in the eyes of the minority shareholders and shareholders at large. These transactions may be in the form of shuffling of assets between related companies, pricing of assets, unattainable profit forecast, non-disclosure of material information and fluctuation in stock prices.

Based on the limited power vested in The KLSE, ie investigative powers, the Exchange has submitted reports, deemed appropriate, to the relevant authorities for the latter's consideration and action. In this regard, it is to be emphasised that the Exchange never viewed itself as an enforcer of the law as this is not provided for; it assists the relevant authorities to maintain healthy order of the market.

Since the Exchange in this regard acts as an unappointed adviser to the relevant authorities, it is pertinent for one to ask whether or not its effort in this area is welcome. Indications to date show that there is a need to improve the understanding on the complementary role of the Exchange vis-a-vis the relevant authorities. It is hoped that this situation will be corrected in the future so that misdeeds can be brought to book by the relevant authorities thereby enhancing the integrity of our market.

The Government, as mentioned earlier, has an important role in overseeing private sector regulatory activities. Government regulation provides benefits such as establishing broad public policy objective, overseeing of private sector activity and taking action where self-regulation cannot operate effectively as in criminal matters.

A securities regulatory process which combines the strengths of government regulation with the benefits of self-regulation results in the most effective and efficient overall regulatory system. Government regulation and private sector regulation working together can promote confidence in the integrity of the securities market.

6. SECURITIES INDUSTRY (CENTRAL DEPOSITORIES) ACT 1991

The geographical difficulties of delivery and settlement of securities from different towns as well as the adverse experience with missing scrips made it imperative to automate both the trading and delivery systems.

The Securities Industry (Central Depositories) Act 1991 provides the legal framework for the central depository system. The Malaysian Central Depository System (CDS) is managed by a subsidiary of the KLSE, Malaysian Central Depository Sdn Bhd (MCD).

A gradual process of transition is contemplated by the Act. Once a prescribed security is so designated, no trading in its shares may take place on the stock market unless the shares have been deposited in the CDS. The depositor is required to deposit the transfer and the certificate with the CDS which in turn will lodge the same with the issuer for registration into MCD Nominees Sdn. Bhd., a wholly-owned subsidiary of MCD. This has legal effect under the Companies Act of constituting MCD Nominees Sdn. Bhd. as a bare trustee. The first KLSE counter to be traded under the CDS is Autoways Holdings Berhad, with effect from 2nd March 1993.

The Act addresses two functional concerns - firstly, the problem of forged and missing scrip and secondly, the legal effects of book entries by the CDS.

6.1. Issue of forged/missing scrips

When the CDS lodges designated scrips for registration, the Company shall refuse to register such transfer if, inter alia, it determines that the scrip is not genuine, was reported lost or destroyed, or that there has been a duplication of issue or an issue in excess of the issued share capital of the issuer.

This process is designed to control the forgeries and over issue of certificates. The CDS is relieved from any liability to a depositor arising from the company's refusal to register in such

circumstances. The loss falls on the depositor supplying the defective scrips, who in turn may, if he can trace his seller, seek redress from the seller.

A further safeguard initiated to control missing scrips would be to require the CDS to undertake quarterly stock counts of all deposited securities and to issue depositors with statement of accounts. Legal status has been accorded to these statements issued by the CDS. The statement of accounts shall be prima facie evidence of the truth of matters specified in the statement. The CDS is obliged to issue such statements upon request by depositors at any time.

6.2. Legal effects of book entries

Book entry dealing lies at the heart of the Act which is systematically treated as follows:- Dealings in respect of deposited securities are effected by means of entries in the securities account of the depositor without need of instruments in writing or in the case of bearer security of scrip delivery. A record of entry is prima facie evidence of the truth of the matters so recorded.

Under Section 35(1) of the Securities Industry (Central Depositories) Act, 1991, notwithstanding the provisions of the Companies Act, 1965, a depositor whose name appears in the record of depositors shall be entitled to all rights, benefits, duties and obligation in respect of or arising out of such security as if he were a member registered in the register of members maintained by the Company, instead of the CDS. Entitlement with respect to bonus or rights issues are to be effected through the central depository which will cause appropriate entries to be made to securities accounts and receive the scrip from the Company.

With respect to shares used as collateral, Section 40 introduces a process by which upon production of documents supporting a charge of pledge of securities, such securities will be debited to the account holder and credited to the Pledged Securities account of the chargee/pledgee. This device serves to remove the danger of the chargor trading in the securities. However without registration with the Company, the chargee's interest is at best an equitable one.

Section 40(5) absorbs the provision relating to transfers or withdrawals in the Act, which shall apply, mutatis mutandis, to securities in the Pledged Securities Account. This means that the CDS registers itself with the Company as a member but will have the rights of a bare trustee with all membership rights being enjoyed by the chargee.

Another feature covered in the Act is the creation of a suspense account. This is an operationally useful device which has been collated as a suspense device which indicates that such securities are in suspense pending registration or where no registration can be made, or where court orders or where securities are being withdrawn from the system.

7. SIGNIFICANT AMENDMENT - SECTION 132G

One of the most far reaching amendments made recently to the regulation of the corporate world is Section 132G of the Companies Act 1965 (gazetted on 10.9.1992). Section 132G says, "..... a company shall not enter into any arrangement or transaction to acquire the shares or assets of another company in which a shareholder or director of the acquiring company, or a person connected to such shareholder or director has a substantial shareholding unless the arrangement or transaction was entered into three years after such shareholder, director or connected person,, first held the shares in that other company or after the assets were first acquired"

It is quite normal to inject private assets into quoted companies. The acquisition of private assets is seen as potential growth for a quoted company, especially if the substantial shareholder also has a considerable amount of private business. Section 132G seeks to protect minority shareholders and to prevent major shareholders from selling assets at inflated prices to companies under their control.

Prior to the introduction of Section 132G, the Companies Act already had some provisions to restrict transactions between a company and its director. Under Section 132E, a company is not allowed to enter into any transaction (to acquire or to sell) with a director or his company unless such a transaction has been approved by the shareholders.

The KLSE usually requires interested parties in such transactions to refrain from exercising their voting rights at shareholders' meetings. If a new share issue is involved in the transaction, the approval of the CIC is also needed. However as cash acquisition does not need the approval of CIC, certain substantial shareholders have taken advantage of this loose regulatory system.

For years, minority shareholders have had their stakes diluted and the value of their shares diminished by a number of transactions that benefitted a few powerful shareholders

or corporate directors. The practice has also led to manipulation of shares and market rigging.

Section 132G specifies that any transaction which is pending completion at the time the section comes into force shall be considered as void. In terms of penalty, imprisonment of three years or a fine of \$50,000.00 or both may be imposed on every director found guilty of an offence under the Act.

Despite its good intent of curbing abuses of corporate power, Section 132G has been highly criticised as too sweeping and may threaten potentially sound and bonafide corporate transactions. Some of the more significant observations made on the effect of 132G were:

- delay to the listing of a company as most involve innocent restructuring prior to listing.
- reduction in foreign and local investments through fund managers as it was common for fund managers to hold more than five percent in medium-sized companies and those listed on Second Board. Problem arises when a fund manager acquires a substantial stake in an inter-related company which is also a substantial shareholder of another firm. The provision will restrict the fund managers from these investments.
- reduces the flexibility of government-recognized investment concerns and cooperatives in shifting and restructuring their vast corporate assets.
- encourage more investors to cloak themselves and their corporate holdings behind nominee companies, already a common practice in Malaysia.
- block the transfer of inconsequential assets, such as office furniture.
- prevent cash-poor companies from being regrouped under their cash-rich associates.
- threatening to halt much of the merger and acquisition business in Malaysia.
- prevent fair transactions that would benefit minority and majority shareholders alike.

Furthermore, it is noted that existing assets held for more than three years can still be injected into

a public company and acquisition of a third party's assets at high prices can still be done under Section 132G. As such Section 132G still cannot provide full protection to minority shareholders. In response to the voice of the corporate world, Section 132G was subsequently amended to provide for exceptions to the prohibitions under it. Section 132G will now not apply to the following:

- (a) subscription of new shares in a company for cash consideration.
- (b) an arrangement or transaction for the acquisition of shares or assets entered into by a company -
 - (i) and any of its wholly-owned subsidiaries;
 - (ii) and its holding company which holds all the issued shares of the company; or
 - (iii) which is a wholly-owned subsidiary of a holding company and another wholly-owned subsidiary company of that same holding company;
- (c) an acquisition of any asset, other than shares, by a company from another company where the sale of the relevant asset is part of the ordinary course of business of the second-mentioned company;
- (d) an acquisition of shares or assets by a company made in pursuance of a scheme of compromise or arrangement approved by the Court under Section 176; or
- (e) an acquisition of shares made by a company in connection with a take-over offer made in accordance with the relevant law applicable to such offers.

8. PROPOSED AMENDMENTS/NEW RULINGS

The regulatory bodies are constantly reviewing, amending and formulating policies and legislations relating to the securities industry to promote a more stable securities market and to inculcate greater public confidence. Some proposals brought up in recent times may more than others change the corporate game and hence the securities industry. These proposals are discussed in the following paragraphs.

8.1. Cross-shareholdings

Much views had been aired on the Registrar of Companies' proposal to ban cross-shareholdings. At the most basic level, cross-holdings refer to the situation where two companies hold mutual shareholdings in each other. Such a structure allows an interlocking of company shares with friendly parties, thus safeguarding the position of majority shareholders.

It is entirely permissible under the present Companies Act, which only prohibits (in Section 17) a subsidiary from owning stakes in its parent company.

The ROC's proposal to ban cross-holdings was aim at protecting minority shareholders while making corporate moves more transparent. There are two sides to the cross-holdings argument. The pros and cons of cross-holdings are presented below :-

For cross-holdings

- i. for investment or genuine business interests, for example to create synergistic benefits (such as access to technology or marketing networks)
- ii. as a means to protect company against hostile takeover bids
- iii. provides management with a sense of security to implement projects with long gestation period
- iv. encourage more companies to float as it provides avenue to maintain control after listing and thus motivates the original owners to expand the company even after going public
- v. the prohibition of cross-holdings may adversely affect share prices and stifle the development of equity market

Against cross-holdings

- i. allows cheap control to cash-starved majority shareholders as they can secure management control largely with minority shareholders' money
- ii. the cross-holdings structure can be manipulated to push up the share prices of the companies concerned to the benefit of controlling shareholders

- iii. substantial shareholders may use it as a means to avoid disclosure requirements under the Companies Act 1965.
- iv. can cause confusion to shareholders and public.

The ROC is still analysing the views of the corporate and private sectors and investors. It may regulate instead of enact legislation to ban cross-holdings totally. An appropriate transitional provision may also be introduced so that the price of shares on a stock exchange would not be adversely affected.

8.2. Private Debt Securities (PDS)

The government has now placed greater attention on private debt securities as the volume of Malaysian Government Securities (MGS) is not expected to increase significantly in the 1990s due to the down-sizing of government operations and consequent reduction of domestic borrowing requirements.

However several "restrictive" policies and practices have prohibited savings and investment institutions from participating in the private debt securities which the government is committed to develop. Several of these policies and practices that need to be reviewed are:-

- the need for bank guarantees/collateral by institutional and corporate investors when purchasing unsecured corporate securities.
- the current government policy requiring provident and financial institutions to invest a significant portion of their funds in MGS.
- the requirement that major institutions invest a large portion of their resources in assets authorised under the Trustee Act 1949.
- lengthy preparatory time and cost in issuing a full prospectus in any public offer of corporate bonds.

The legislations and regulations relating to trustees and fund managers, for example, should be redesigned to give them powers to effectively manage the funds entrusted to them on the basis of rational risk-reward assessments and ratings. To promote the PDS market and improve liquidity of the bonds, clear provisions should be made.

9. OTHER INSTRUMENTS

The South East Asia region is one of the fastest growing economic areas of the world. The capital markets here are proving to be good sources for funding the economic expansion. This has resulted in phenomenal growth of these markets.

Besides tapping the fund from local players, the Malaysian capital market competes with other regional markets for foreign investments. To add depth and to satisfy a wider range of players, it is inevitable that new derivatives will be introduced. This in turn has gradually changed the Malaysian corporate capital game.

The local players are also getting more sophisticated and knowledgeable. Besides the traditional instrument such as ordinary shares, they are now more acceptable to new products. Recent new instruments such as Transferable Subscription Rights, and property trusts have been successfully listed and traded.

As our capital market matures, it is poised to handle even more complicated derivative instrument that require greater knowledge from would-be participants. More sophisticated derivatives to be introduced includes the much discussed options and futures tradings. In line with this and with its aspirations to transform Kuala Lumpur into a financial centre, the Government in September 1992 permitted a company called KLOFFE Sdn Bhd to establish the Kuala Lumpur Options and Financial Futures Exchange. KLOFFE is expected to initially trade in equity and index options, and stock index futures; financial futures products will follow later. The derivatives market in Malaysia is provided for in the Futures Industry Act 1993 which came into force on 1.3.93.

The Malaysian Government is committed to the expansion of the domestic capital market. However, as instruments to be traded gets more sophisticated and complicated, the authority has to be more vigilant. Rules may need to be added or amended from time to time to ensure the interest of players are not eroded. One example is the amendment to the CIC Guidelines pertaining to the adjustment of TSR in cases of dilution of equity.

10. CONCLUSION

The capital market in Malaysia is advancing rapidly, in line with the government's call for the private sector to be the engine of the nation's economic growth. On its part, the government

intends to provide a conducive environment through a more efficient and effective regulatory system.

The implementation of a one-stop regulatory authority in place of the current multi-agencies system will certainly speed up approvals, while giving the authority a better overview of the development of the corporate capital market. However in the bid to house everything under one roof, the role of self-regulatory organizations should not be over-looked and must be given due recognition.

The enactment of the Securities Industry (Central Depositories) Act, 1991 acknowledges that the mechanism of the securities industry must move in tandem with technological advancement. The eventual implementation of a full central depository system will be the ultimate goal of an efficient and fast delivery and settlement system.

In a freer investment environment, made more complicated by sophisticated corporate manoeuvres, the investing public can be easily confused. The government has the responsibility of ensuring that the minority shareholders' interest is protected. To achieve this, the authority has sought to make corporate moves more transparent. Examples are the amended ruling on acquisition by substantial shareholders and the proposed ruling on cross-holdings.

Once the various new rules of the corporate capital game are in place, the Malaysian Capital market can look forward to a more dynamic and exciting era.