Corporate Social Responsibility and Good Governance – A Malaysian perspective

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Abstract

Within the scope of company law, the notion of corporate governance involves issues such as the exercise of power over the directors of the enterprise, the supervision and control of executive action, concern of the effect of the entity of other parties , and the regulation of corporations within the jurisidiction in which they operate. The constrasting needs of the owners of the company (its shareholders) might conceivably leads to directors acting in a matter which could be deemed to be inconsistent with the concern of the "stakeholders". Thus this paper will focus on the question whether within the system of corporate governance, does the directors owes a wider obligation beyond the traditional notion of accountability to shareholders and whether directors are under an obligation to protect the creditors of the company while the company is a going concern from a legal perspective. The idea of corporate responsibility, a major component of corporate governance will also be discussed. Within this context it will be argued that the position of certain groups such as the creditors and employees can be feasibly incorporated within the ideas of "stakeholders". Finally this paper will also evaluate the practicality and the future prospects of some key issues in corporate governance related to company law namely creditors interests, directors obligation and the stakeholders within the Malaysia legal framework i.e. under the Malaysian Companies Act 1965 and the extent in which its differs from the common law position in United Kingdom.

Introduction

The term corporate social responsibility refers to the assumption of responsibility by companies whether voluntarily or by virtue of statute in discharging socio-economics obligations in society. Since corporation are perceived as social enterprise, it is permissible for them to take account of the social welfare considerations which affect society. Company should therefore discharge their social obligations for the benefit of society and in the public interest. Within the concept of corporate social responsibility, the contrasting needs of the owners of the company (its shareholders) might conceivably leads to directors acting in a manner which could be deemed to be inconsistent with the concern of the "stakeholders." Thus the thrust of this paper will focus on the legal provisions imposed to companies in accordance with keeping in line with the practice of good governance and at the same time adhering to corporate social responsibility issues at a wider perspective. Within this context it will be argued that the position of certain groups such as the creditors and employees can be feasibly incorporated within the ideas of "stakeholders." Finally this paper will also evaluate the practicality and the future prospects of some key issues in relation to good governance related to companies .

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Concept of Corporate social responsibility

Corporate social responsibility can be regarded as an excellent vehicle for demonstrating the multitude of diverse theoretical and ideological approaches to corporate governance. Approaches to corporate social responsibility are intimately connected to economic and social structures and to political and cultural traditions. According to Herman[2], corporate social responsibility means business obligations beyond those traditionally assigned, that is, other than producing goods for a profit within a framework of law and customary behaviour. Sheikh[3] defines corporate social responsibility as the assumption of responsibilities of companies whether voluntary or by virtue of statute in discharging socio-economic obligation in society. Thus, it can be said that in corporate social decision-making, the power exercised must be implemented in the public interest. In order to serve the public interest and at the same time to maximize their profits, companies would be subjected to general legal constraints in force at any particular time such as the rules of employment law, consumer law or environmental law. In other words, profit maximization can also lead to the maximization of social wealth. In the circumstances, company law and corporate governance can be used as an instrument of broad social policy to construct a 'corporate conscience' or to make the organization more responsive to its social environment.

Corporate Social responsibility and the relationship between directors, shareholder and creditors

Company Law incorporates into its model a central obligation for the directors of trading or industrial corporations within the purpose for which it is founded. Broadly, a duty to maximize benefits to shareholders specifically, to maximize profits. Traditionally, company law has been exclusively concerned with the relationship between directors and shareholders. Directors shall have the management and supervision of the affairs of the company and they may lawfully exercise all the powers of the company except, as to such matters as are directed by a general meeting of the company[4]. The shareholders have delegated their powers of management to directors with the hope that the directors will pursue corporate objectives for their benefit. However, this traditional rule and concept of company law regarding directors' duties and their relationship with shareholders have come under challenge. Modern approaches to Company law contend that the law ought to allow or even require directors to have regard to other wider considerations and interests. There are demands for recognition of the claims of the company workforce, its customers, suppliers and creditors and more broadly, the local community and the national interest.

Directors' managerial duties to pursue corporate objectives are derived from the powers conferred on them by the company's articles and memorandum of association. They also derive power from the common law and fiduciary duties, including directors' duties to act bona fide in the interest of the company. To include corporate social responsibility in the broad objectives would include reviewing the company's strategic aims and providing the leadership in order to enforce the aims. This would include supervising the management of the business. However, the board's actions are subject to laws, regulation and the policies adopted in general meeting. Shareholder's role is primary concerned with monitoring directors powers and duties. They are regarded as owners of the company while the directors have been declared as agents of the company[5]. Since shareholders are the owners of the company, they could compel directors to pursue certain objectives including profit maximization.

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[2]Herman, 'Corporate Control, Corporate power' (1981) Cambridge University Press Chapter 7.

[3]Sheikh , 'Corporate social responsibility, Law and practice'(1996) Cavendish Publishing Ltd. Chap 1.

[4]Malaysian Companies Act 1965, Fourth Schedule, Article 76. See Aishah Bidin, *Undang-undang Syarikat Di Malaysia*, Dewan Bahasa dan Pustaka, (2001), Chapter 10.

[5]Lennard's Carrying Company Ltd v Asiatic Petroleum Co Ltd (H.O.L)(1915) AC 705, per Viscount Haldane held that a corporation is an abstraction. It has no mind of its own any more than it has a body of its own. Its active and directive will must consequently be sought in the person of of somebody who for some purpose may be called an agent but who is really the directing mind and will

As mentioned, Professor Dodd[6] proposed that company law should regard the trusteeship of corporate managers as extending to embrace the interests of the employees, customers and others. A. Berle pointed out that the legal difficulties[7] involved would make the whole proposal unworkable. He stated that when the fiduciary obligation of the corporate management and control of shareholders is weakened or eliminated, the management become, for all purposes, absolute. He reiterated that the only thing that can come out of it in any long view is the massing of group after group to assert their private claims by force or threats. This he stated is an invitation not to law or orderly government but to a process of economic civil war[8].

With regards to this aspect, Professor Sealy[9] also shares the same skeptical view as Berle. He contends that without some system of legally ordered priorities between the different groups having claims to recognition as part of the corporations enterprise, there is no way in which any such claim could be positively enforced. Infact, Professor Sealy argues that to extend directors duties so as to embrace the interest of employees and similar group is to deny any effective role for the law and the courts. Furthermore, he states that the concept ceases to be justifiable and that company law lacks proper enforcement procedures.

In relation to this, as far as creditors are concerned any changes to increase and strengthen the concept of corporate social responsibility in the corporate governance system might enhance the position of the creditor. The writer is of the opinion that reforms aimed at increasing the shareholders voice in the company would also protect the creditor. A strong shareholder voice would be useful to creditors since this would encourage non-negligent management although creditor and shareholders may have divergent interest and a strong shareholder voice might press directors to acts in ways inconsistent with creditors concern. For example, creditors may fear that directors will use loans for riskier ventures than those the creditors had anticipated. Shareholders, in contrast, may be content that decisions for projects with higher gearing are implemented or higher risks in pursuit of higher returns. However, one aspect of corporate social responsibility that is relevant would be the improvement in the supply of information and disclosure. One example, is the creditors representation on the board. More rigorous rules on disclosure would be necessary if banks have representation on the board and this would certainly assist creditors in situations where the company is in a financial problem.

In addition, the increase in the use of non-executive directors and greater reliance on audit committees might also assist creditors as, to a certain extent, these mechanism would act as a monitoring principal so that any acts of mismanagement and reckless disregard of the creditors can be reduced or at least minimised. Thus, it is hoped that corporate governance through corporate social responsibility will enable the imposition of certain rules and a wider extension of duties on directors, which can include creditors protection. This will certainly enhance creditors rights which at present are not adequately protected under the statutory provisions of the companies legislation.

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if the corporation, the very ego and centre of the personality of the corporation and under the direction of the shareholders in the general meeting.

[6]For whom are corporate manager trustees? (1932) 45 Harv. L.R 1145. This article was written in response to Berle 'Corporate powers as powers in trust' 44 Harv. L.R 1049.

[7]Berle 'For whom corporate managers are trustees; A note' (1932) 45 Harv. L.R 1365. See also Weiner, 'The Berle-Dodd dialogue on the concept of corporation ' (1964) 64 Columbia L. Rev 1458.

[8]Ibid Berle, Pg 1367-1369.

[9]Supra see Sealy note 118.

Protection of employee's interests

This section will analyse how employee's rights and interests have been recognised through legal developments in company law and suggest that in addition to creditors, directors also owe a duty to employees within the corporate governance system[10].

The protection of employees' interests in relation to the concept of the stakeholder has undergone a profound development in Britain[11]. In the early days of Company Law, employees were perceived as having no 'legitimate interest' within the business of the company and thus, protection was not required. Employees were permitted to benefit from managerial discretion, but only when the benefit was consistent with the benefit accruing to the shareholders. The early Company Act had nothing much to mention about employees interests. This was reflected in the line of early cases concerning rights of employees in relation to the company. Furthermore, although shareholders could invoke the ultra vires rules in the court in order to restrict the activities of a director, employees did not possess such rights[12].

The basis of their relationship was a personal contract of service and the contractual relationship between the employer and the employee would not be affected by a change of control in the company. Another factor, which demonstrates the lack of concern for employees, was based on the concept of risk and enterprise, which are the key elements in capitalist philosophy. As enunciated by Goyder[13], employees risked nothing in the conduct of employees and thus they should not be allowed to claim a stake in the fruit of enterprise. Conversely, shareholders were viewed as risk takers and hence company laws ought to be concerned with their welfare.

However, with the developments in Company Law, employee interests were later incorporated in the Act. The position was eventually changed in English law in 1980 with the introduction of what is now Section 309 of the 1985 Company Act[14]. Section 309(1) of the Companies Act 1985 provides that the matters to which the directors of the company are to have regard in the performance of their function include the interests of the company's employees in general, as well as the interests of members. Subsection 2 states that the duty imposed by this section on the directors is owed by them to the company (and to the company alone) and is enforceable in the same way as any other fiduciary duty owed to company by its directors. Furthermore, subsection 3 specifies that this section also applies to shadow directors.

Parkinson[15] argues that this section is open to two different interpretations. Firstly, it is now the duty of the director to operate the business in the interest of the employees in addition to the members. This would mean company law now regards members and employees as joint stakeholders. In this regard, it can be said that there is a substantial conflict of interest between shareholders and employees. Each of these groups has a competing interest in maximising it's share of the surplus generated by the company's business. The shareholder would, of course, prefer as high a rate of profit as possible, but the employee would prefer profits to be lower since maximising could subsequently lead to plant closures or even the introduction of job destroying technology. Hence, employees interests will not always be best

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[10]For background reading on duty of director to employees see: Prentice, 'A Company and its employees: The Company Act 1980' (1980) ILJ; Birds, 'Making directors do their duties' (1980) I Co Law 67.

[11]For background reading see Xuereb, 'The jurisdiction of industrial, relation through company law reform, (1988) 51 MLR, Wedderburn, 'Trust, Corporation and the Worker' (1985)23 Osgoode Hall Law Journal. A more recent account is based in Parkinson, 'Corporate power and responsibility; Issues in the theory of Company Law' (1993) especially at page 81-87.

[12]See Forbes v New South Wales Trotting Club (1977) 3 ACLR 145 at pg 150.

[13]See Goyder, The furture of Private enterprise(1951) at pg 18-19.

[14]For the reaction to the changes in the law see Birds,Making directors do their duties, (1980) 1 Co Law 72, Prentice,A company and its employee (1981) 10 ILJ 1, Mackenzie, (1982) 132 NLJ 688 and Prentice, 'Employee participation in Corporate Government - A critique of the Bullock Report (1978) Canadian Bar Review 277.

[15]Parkinson, 'Corporate power and responsibility - Issues in the theory of Company Law', (1994).

served by a policy of profit maximisation. However, improvements in the prosperity of the company might lead to higher dividends or rising share values which might benefit shareholders and may also result in increase in wages and job security.

The second opinion is that section 309 can be interpreted as changing the definition of the interests of the company. In the second approach, the idea is to add the employees to the shareholders as the people whose interests the directors are required to serve. Since this section does not give any indication as to how the interest of employees and shareholders are to be given different emphasis, what has emerged is that the duty of the directors in managing the company is based on balancing the respective interests of the groups.

The writer is of the opinion that although the provision acknowledges the existence of the employees interests, it fails to address the issue of potential conflict between the employees and shareholders interests, since no guidelines as to which interests should be given priority is offered. Subsection (3) makes it clear that this obligation extends to shadow directors. However, the scope is reduced by section 741(3) which states that for these purposes a parent company cannot be regarded as a shadow director simply because the directors of the subsidiary follows it's instruction. Problems would also arise in relation to the means of enforcing this section since a decision to institute legal proceeding to ensure compliance of Section 309 is a matter at the discretion of the board or the general meeting. In this respect, employees have no right to be represented on the board and unless employees own any shares in the company they would not be eligible to participate in the general meeting. Thus, in such cases, the decision to challenge the conduct of directors is unlikely to be pursued.

Therefore, as conceded by Professor Sealy[16], the emptiness of Section 309 is thus exposed, 'since it is either one of the most incompetent or one of the most cynical pieces of drafting on record'. However, Pettet[17] is more assured in his statement by saying that,' a moral principle has been embodied in a statute with the intention of making it law while the absence of an effective sanction may not detract from its legal quality as such it reduces its impact and importance'.

The Concept of Corporate Governance

The origin of the word governance can be traced to the Latin word 'gubernare' meaning to rule or to steer and from the Greek word 'kybernaein' meaning to steer. Wiener[18] used the Greek root, as the basis for cybernetics, the source of control in man and machine. The idea of a steering, with someone at the helm provides a particularly helpful insight into the reality of governance.

Until recent years, the subject of corporate governance has been the subject of little discussion, yet the issues have existed for, as long as there have been corporate structures. Today, the subject is a central political and economic issue in Britain and the United States. The word 'governance' itself was revived by Harold Wilson[19] in 1977. In his book, the Prime Minister of the day identified governance solely with governance at state level. R. I. Tricker defines governance as the process by which companies are run and the process by which corporate entities, particularly limited liability companies, are governed[20]. The notion of corporate governance includes issues such as the exercise of power over the directors of the enterprise, the supervision and control of executive action, concern for the effect of the entity on other parties, the acceptance of a duty to be accountable, and the regulation of corporations within the jurisdiction in which they operate[21].

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[16]Supra See Sealy, note 118 at page 177.

[17]Pettet, (1981) 34 CLP 199 at page 204.

[18]Wiener, Cybernatics, Wiley (1948).

[19]Wilson, *The Governance of Britain,* Weidenfeld and Nicholson Ltd and Michael Joseph, Ltd, (1976), Sphere Books, 1977.

[20]Tricker, *Corporate Governance: Practice, Procedures and Powers in British Companies and their Board of Directors*, Gower Publishing Company, 1984.

[21]Ibid, Chapter 1: The Principal features, Issues and Ideas.

The Committee on the Financial aspects of Corporate Governance defines 'corporate governance' as the system by which companies are directed and controlled[22] and accordingly, great significance is attached to the role of the board. Hence, it can be said that corporate governance in its broadest sense encapsulates the whole legal, regulatory and social framework within which companies operate. That framework is partly determined by the law, partly by the participants themselves and more widely by 'society' in the form of the prevailing political, economic and business climate.

While the legal requirements on companies are relatively predictable, limits on corporate behaviour set by the participants and by society are always changing; the standards expected of companies appear to rise and the interests they should protect widen. At the centre of the system stands the board of directors whose actions are subject to law, regulation, the discipline of the market place and the shareholders in general meeting. The undercurrent of corporate governance is the notion of accountability, primarily directed towards the shareholder. An effective corporate governance system should provide mechanisms for regulating directors duties in order to restrain them from abusing their powers and to ensure that they act in the interests of the company[23].

Shareholder aspects and Management accountability
The Governance Structure of the company

Companies legislation in Malaysia contains a model of corporate management and control involving two main organs, the board of directors and the general meeting of members. However, the standard article of association allows for the board to appoint and confer any of their powers, upon one or more executive (or managing) directors, which in effect, allows for the creation of a third organ such as executive management[24]. Under the Companies Act and articles of association, the board of directors is the most important day to day organ of the company. The board is given the power to manage the business of the company[25] and the general meeting is not permitted to interfere with its actions. The general meeting does, however, retain ultimate power in that it has the right by simple majority to remove the directors with cause[26] and to change the articles by special resolution[27].

Directors and senior executives owe their fiduciary and other duties to the company as a legal entity separate from its shareholders and creditors. However, under the general law 'the interest of the company' means whilst the company is solvent, the interests of the shareholders present and future as a group. It is an accepted principle of company law that directors owe their duties to the company and not to the company's creditors or to its shareholders. Directors do not owe a duty of care to individual members of the company, but only to the company itself and no duty is owed to a person who is not a member of the company[28]. Although many writers[29] are of the opinion that the interest of large companies are

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[22]Report of the Committee on the Financial Aspects of Corporate Governance, The Cadbury Report, December 1, 1992, para 2.5.

[23]Sheikh and Chatterjee, Perspective on Corporate Governance in Sheikh and Rees, *Corporate Governance and Corporate Control*, 1995, Cavendish Publishing Ltd., Chap. 1.

[24]Companies Act 1985, Table A, Art 72 and Art 84.

[25]Table A, art 70.

[26]Section 30 Companies Act 1985.See also North-West Transportation Co.Ltd v Beatty (1887) 12 App.Cas. 59 at 693 where it was held those shareholders may cast their votes as rights of prosperity in order to advance their own interest.

[27]Sec 9, Companies Act 1985.

[28]Jenkins Committee Report, Cmnd 1749 (19620 at para 89.

[29]For the US position see Dodd, 'For whom are corporate managers trustees? (1932) 45 Harv.law.Rev 1145. Note that in the United States towards the end of the 1980s takeway boom, many states adopted anti-takeover 'constituency' statutes which empowers directors to considers the interest of employees, creditors and the local community. See Herzel and Shepro, 'Bidders and targets '(1990) 62-64. For the commercial law perspective see Lord Weddernburn, 'The legal development of corporate responsibility in Hopt and Teubner (eds), Corporate Governance and directors liability, (1985), M

an amalgam of the interests of a number of stakeholders such as shareholders, creditors, employers, customers, employees and indeed the community, the general law still considers the company's interest to be those of the collective body of the shareholders[30].

The Concept of corporate governance in Malaysia
Historical background

The Companies Act 1965 and the Companies Regulations 1966 form the core for regulation of companies in Malaysia. These Acts are modeled on the English Companies Act 1948 and the Australian Uniform Companies Act 1961. As a consequence, the history and development of company law both in England and Australia bear a degree of importance to the general principle supporting the regulatory framework in Malaysia, although there has been a distinct trend towards increasing divergence between the jurisdictions[31]. Whilst superficially, Malaysian company law is similar to that of England and Australia, it is not identical. Even Singapore[32], as Malaysia's closest neighbour, has moved inexorably away from Malaysia in the development of company law. It can be said that Malaysia is on the way to developing an indigenous stream of company law. This has its advantages and disadvantages, but one country cannot remain tied to another country's legal system forever. However, in view of the historical relationship, English and Australian judicial pronouncements on the interpretations of company legislation are highly persuasive in interpreting the Malaysia provisions[33]. Whilst English and Australian decisions are predominantly cited, they are not binding, but rather of highly persuasive authority[34]. The courts in Malaysia are free to develop and interpret the law in a manner which best reflects the domestic, socio-economic and political environment[35].

Regulatory structure of enforcement

The regulatory structure for the administration of corporate laws in Malaysia was based on the enactment of the Securities Industries Act 1983 and the Securities Commission Act 1993. The primary regulatory bodies consist of the Securities Commission, the Kuala Lumpur Stock Exchange, Registrar of Companies and the Ministry of Finance and several other related ministries such as the Ministry of Domestic Trade and Consumer Affairs, Ministry of International Trade and Industry[36], the Prime Minister Department[37] and the Minister of Public Enterprise[38].

Stokes, Company Law and legal theory in W.L Twinning (ed) Legal theory and common law (1986) 155 at pg 176-181 and J.E Parkinson, *Corporate power and responsibility*, (1993), Chap. 9-12.

[30]For writers who favour this position see, A.A Berle, For whom corporate managers are trustee; A note (1932) 45 Harv. Lar Rev 1365, Fischel, The corporate governance movement (1982) 35 Vanderbilt L.Review, 1259. For the English position see also Prentice, 'Directors Creditors and shareholders' in Ewan Mckendrick (ed) *Commercial Aspects of trust and fiduciary obligations* (1992) Clarendon Press, pg 73.

[31]See Aishah Bidin, *Undang-undang Syarikat di Malaysia* (1997) Dewan Bahasa dan Pustaka , (*Company Law in Malaysia*, Chapter 1).See also Aishah Bidin, et al, *Commercial application of Malaysian Company Law in Malaysia*, CCH Publications , Singapore (2002), Chapter 2.

[32]The Singapore Companies Act 1985 is indirectly derived from the Malaysian Companies Act 1965 . It is also based on the common law principle and because of the similarity and common heritage , authorities from these jurisdiction are often cited when discussing Malaysian company law.

[33]Supra see Aishah Bidin note 38, Chapter 1.

[34]See Wu Min Aun, *An introduction to the Malaysian Legal System* (1977), Heinneman, Chapter 2.

[35]A survey conducted by the writer regarding the citation of cases in local decisions revealed that in the field of company law, English decisions were frequently cited. This is not to say that English cases are binding in Malaysia since they are not. Such decision are accorded great respect but not in themselves decisive. The same applies to decision of Australian and other commonwealth courts. By usage, decision of the Privy Council of other jurisdiction where the privy council is constructing a statute in pari materia with a local provision are treated as binding.

[36]The Ministry of Trade and Industry or MITI is responsible for issuing guidelines on shares allocation to directors and employees and share option schemes.

[37]The Prime Minister Department is empowered the task to issue the guidelines on the regulation of acquisition of asset, mergers and takeover or known as the FIC guidelines. These guidelines are administered by the Foreign Investment Committee and are aimed at ensuring that all proposed

The Malaysian Securities Commission was established in 1993 with the primary function of advising the Ministry of Finance on all matters relating to the securities and future industry and to ensure the orderly development of a fair and efficient securities and futures market in line with the economic development objectives of the country[39].

On the other hand, the Kuala Lumpur Stock Exchange (KLSE) is a self-regulatory organisation, incorporated as a company with its own memorandum and articles of association. The KLSE sets out the criteria for companies seeking a public flotation of their shares and it is also entrusted with the responsibility of ensuring that relevant disclosure requirements and appropriate corporate conducts of public-listed companies are preserved. The KLSE is also obliged under the Securities Act 1983 to cooperate with the Registrar of Companies and the Securities Commission and its rules are subject to any amendments as may be required by the Ministry of Finance.

The administration of companies is vested to the Registrar of Companies who is appointed by the Ministry of Domestic Trade and Industry. The principal function of the registrar of Companies is to ensure that corporations and their directors comply with the provisions under both the Companies Act 1965 and the Securities Industry Act 1983. For this purpose, the Registrar has been accorded extensive powers of enforcement under SS 7B, 7C and 7D which were brought into effect by the Companies (Amendment No 2) Act 1992[40]. The Registrar of Companies also works very closely with former Capital Issue Committee (CIC)[41] whose responsibilities in regulating the companies and securities market have now been taken over by the Securities Commission and KLSE. Each of these bodies is concerned with certain areas of corporate governance or the administration of certain type of corporation and some of them issue guidelines for acceptable conduct of companies.

Corporate Governance framework in Malaysia

Corporate Governance has been an umbrella for numerous ideas, including the process and structure used to direct and manage the business affairs of the corporation with the objective of enhancing long term value for the shareholders and financial viability of the business. Many of the concepts have an 'international quality' to them, transcending jurisdictional boundaries, but each concept when applied to a specific country may well take on a local flavour.

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acquisitions directly or indirectly in a balance of Malaysian control and participation. The Committee is also entrusted with the responsibility of ensuring that every proposal is consistent with the national interest, a function is made less onerous by placing the onus of proving this on the matter seeking consent for the proposed acquisition.

[38]The Ministry of Public Enterprise was reponsible for the Bumiputra Stock Exchange which was established in 1969 with an objective to assist in promoting the participation of increasing numbers of the Bumiputra community in the commercial and Industrial activities of the country. Accordingly the Exchange only admits the listing of Public Listed Companies owed by the Bumiputra community.

[39]The function of the Commission is stipulated under section 15 of the Securities Commission Act 1993. Of 12 functions enumerated in this sections 4 of it is related to ensuring a fair and orderly market.

[40]These provisions stipulates the rights given to the registrar to enter premises, to seize documents which may be used as evidence against the corporation or its officers and to compel the oral testimony of any witness without providing such witness the protection against self-incrimination . Further Section 7B (3) (b) of the Act also specified that it can be an offence to withhold coorperation from or to obstruct the Registrar in the performance of his or her duties.

[41]The Capital Issue Committee as a consultative body was set up in June 1968 with the approval of the Minister of Finance to provide a watchdog service for the investing public and to supervise the growth of a healthy capital market .The function of the CIC was enumerated in Section 5 and 6 of the Security Industry Act 1983 which include working in conjunction with the Registrar to ensure that the provision of the Companies Act 1965 are complied with by the listed companies and provide supervision of markets dealings and assisting the Government in formulating policies and legislation for the Securities Industry. However with the coming into force of the Securities Commission Act 1993 the function of CIC established under the 1983 Act are now vested in the Securities Cmmission.

The Government, with cooperation from the regulators, has already taken a drastic step to create a Malaysian version of the Code of Conduct of Corporate Governance. In Malaysia, the work to strengthen corporate governance standards had begun prior to 1997[42]. However, the crisis of confidence after 1997 precipitated the commissioning of a 'high-level Finance Committee on corporate governance' .On March 24th 1998, the Finance Minister appointed a high level committee to look into establishing a framework for corporate governance, setting best practice for the industry and to provide a comprehensive report on measures to improve corporate governance in Malaysia. The membership of the finance committee reflects co-operative effort between the public and private sectors to strengthen governance standards in Malaysia[43]. The Committee's terms of reference include undertaking a review of the legal and regulatory infrastructure to evaluate its effectiveness in promoting second corporate governance standards. The work of the committee has included a review of laws governing shareholder rights, duties of directors, disclosure provisions and evaluating the effectiveness of existing enforcement mechanisms. Furthermore, the Committee also has the task of developing a Malaysian Code of Best Practices in Corporate Governance and to identify training and education needs of directors as well as other key corporate participants and investors. The Committee's report was released for consultation in November 1998 to selective industry bodies not represented on the Finance Committee to ensure that their views were considered. Finally in February 1999, the Committee published its report on Corporate Governance detailing some 70 principal recommendations. In addition, the Committee was assisted by the joint survey of corporate governance practices of public listed companies by Kuala Lumpur Stock Exchange and Price Waterhouse[44].

The Report[45] provides a definition of corporate governance as 'the process and structure used to direct and manage the business and affairs of the company towards enhancing the business prosperity and corporate accountability with the ultimate objective of realising long term shareholder value, whilst taking into account the interests of other stakeholders'.
There are two crucial features of the definition. Firstly, corporate governance is not just about accountability, but its importance also lies in its contribution to business prosperity. Secondly, the ultimate objective of directing and managing the business and affairs of the company is that of enhancing shareholder value. However the longer-term interest of shareholders will not be well served if the interest of other stakeholders are not addressed.

In terms of it's recommendation on strengthening of laws[46], the approach of the Committee has been to enhance and modernise the existing foundation on which the corporate governance framework is premised which includes reform of law on companies[47], securities legislation and the listing rules of exchange. The Committee also attempts to ensure that checks and balances against abuse be made more effective. In particular, recommendations have been made towards strengthening the law on related party transactions[48]. For example,

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[42]Strengthening corporate governance standards in Malaysian public listed companies is an important activity in the Malaysian Securities Commission's phased programme to move to a disclosure based system for regulating the primary markets which began in 1995. Similarly the Registrar of Companies had developed to Code of Ethics for Directors in 1996 in its initiative towards creating better boards of directors.

[43]The Committee is chared by the Secretary General of Treasury, Ministry of Finance. Its members comprise the governor of the Central Bank, the Chairman of the Securities Commission, the Chairman of the KLSE, the Chairman of the Financial Reporting Foundation and representatives of various industry organisation and professional bodies.

[44]1998 survey of public listed companies in Malaysia and 1998 survey of industrial group, (1998) Kuala Lumpur Stock Exchange and Price Waterhouse Coopers.

[45]Report Corporate Governance, Chap 4, Clause 1.1.

[46]Ibid., Chap. 6.

[47]The review on Company law covers areas on duties and liabilities of directors, company officers and controlling shareholders; adequacy of disclosure and conflict of interest with respect to transaction that involve the waste of corporate assets; enhancing the quality of general meetings and shareholders rights and remedies.

[48]Ibid. Chapter 6, clause 4.1-4.7.

interested parties in a related party transaction are currently required to disclose their interest in a transaction when obtaining shareholders approval. In relation to this, the Committee recommends the introduction of an additional check by requiring that interested party abstain from voting in such a transaction[49].

The recommendations of the Committee on measures to strengthen disclosure and transparency include calls for a rationalised regime for prospectus regulation and the introduction of civil action for insufficient disclosures. Furthermore, in relation to the role of investors in ensuing good governance, the Committee recommends that measures should be taken to enhance their ability to participate in voting and enforcing their rights by making voting and legal procedures simpler and more accessible. The Committee also considered the effectiveness of the existing avenues for shareholder to enforce their rights and it's report makes recommendations to increase the effectiveness of shareholder enforcement mechanisms which include, the introduction of statutory derivative action to make it easier for a minority shareholder to institute action in the name of a company where a wrong has been done to the company and simplifying the procedure for collective class action[50]. As a means of encouraging shareholder activism in Malaysia[51], the Committee also proposed the creation of an Institutional shareholder watchdog Committee to monitor and combat abuses by company insiders against minority shareholders.

In view of the wide objective and aspiration of the Report, its will certainly involve amendments to the legislation concerning listing rules and publication of new documentation, such as the Code of Best Practice in corporate governance and various guidelines by professional and other organisations. Intangible changes in approach and attitude in working relationships, regulatory techniques, organisation, and priorities and in other activities will also be required. So far, detailed implementation of the committee's recommendations has been undertaken by an implementation Project Team, a sub-committee comprising the Securities Commission, Registrar of Companies, Kuala Lumpur Stock Exchange and the Federation of Public Listed Companies. In order to achieve its objectives, one of the most fundamental and basic issues that the committee and the regulators have had to deal with, is how to strike the appropriate balance between the often-competing objectives of facilitating commercial activity and investor protection. One further question has been how does one preserve the integrity of market without stifling it with well-intentioned, but nevertheless burdensome regulation and red tape?

The Report reflects the Finance Committee attempt to strike the right balance. However, whether it will succeed in achieving its objectives given the underlying competing interests, regulatory requirements and red tape is another issue and it is too early to make any predictions at the moment. Nevertheless, the code is a clear indication of the government's support and awareness of the importance of sustaining an effective corporate governance framework and this is certainly a positive step in line with the democratic impulse which, in the final analysis, is the justification of the existence of the corporation, namely the common good and preparation in facing the challenges of the new millennium.

Apart from the establishment of the Code, the mechanism of Malaysian corporate governance framework can be divided into statutory and regulatory control. Traditionally, these mechanisms have been utilised to protect shareholders. Accountability to shareholders is based on the principle of limited liability. However, there are signs of a growing trend emphasizing the notion that the scope of corporate governance in Malaysia should include duties wider then those owed to creditors, employees and others.

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[49]Ibid., Chapter 6, Clause 4.3.
[50]Ibid., Chap 6, Clause 4 and Clause 5.
[51]Ibid., Chap 6, Clause 9.1-9.5.

Statutory control consists of legal provisions designed to protect shareholders and it consists of obligations, which ought to be adhered to by those in control of the company. With regards to position of directors, duties are imposed upon directors based on the common law position, the Malaysian Companies Act 1965[52] and powers of management which are incorporated in the articles of association subject to Malaysian Companies Regulation 1966[53]. Furthermore, the memorandum and articles of association as incorporated in the Company Regulation 1966 contain basic details of the corporation. Section 33 of the Malaysian Companies Act, which is equivalent to section 14 of the UK Companies Act 1985, states that: -

> 'subject to this Act the memorandum and article shall when registered bind the companies and the members thereto to the same extent as if they has been respectively has been signed and sealed by each member and contained covenants on the part of each member to observe all the provision of the memorandum and the articles'.

The implication of this section is that the memorandum and article constitute a statutory legal contract under which the parties to the contract (the companies and the members) are bound by legally enforceable contractual duties to comply with the provisions of the corporate constitution. From the corporate governance viewpoint, it is important to note that section 33 does not provide a contract between shareholders and the management.
In addition, statutory legal provisions can be divided into two set of rules; those requiring disclosure and those which are prescriptive. These rules enable shareholders to ensure that the management remains accountable to them in the conduct of corporate affairs. The rules of disclosure are a form of indirect control. They provide that shareholders are to be privy to information, which would otherwise remain, undisclosed to them and acted on only by direction. This obligation to disclose will ensure that the shareholders may, when they deem it necessary, by virtue of their acquired knowledge, take any necessary action to safeguard their interests from manipulation by the management[54].

As for the prescriptive rules, these are provisions, which directly control the governance of a corporation by the board in two ways, namely, ratification of the shareholders and direct prescription of managerial action. The provisions dealing with the ratification by the shareholders of the decisions of the board essentially provide a mechanism for action by the shareholders as the owners of the company following any disclosure of an adverse nature arising from an implementation of the disclosure rules. Many amendments to the Malaysian Companies Act 1965 were made in 1985, 1986, and 1992 relating to situations necessitating shareholders approval obtained either at an annual general meeting or an extraordinary general meeting. This is another indication that in Malaysia, the enforcement of accountability is on the rise. One such provision is Section 132D. This provides that, notwithstanding

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[52]The statutory provision under the Companies Act 1965 with regards to director duties has infact codified some of the common law principles in the Act. For example this would include for instance Section 132(1) of the Act which imposed a duty of the director to act honestly in and use reasonable dilligence in exercising and discharge of their duties as similarly enunciated in the common law decision in Re Smith & Fawcett Ltd (1942) Ch.304. Other section imposing duties on directors include duty to exercise powers for proper purpose i.e Section 63, duty to avoid conflict of interest subject to section131, section 133 and section 132, duty on disclosure of directors interest as accorded in Section 131 and section 134. For further discussion on directors duties under the Malaysian Companies Act 1965, see Aishah Bidin, *Undang-undang syarikat di Malaysia,* Chapter 10.

[53]The article of association usually confer wider powers of management of a companys affairs on the board of director. A common example of such provision is Art 73 of Table A. Art. 73 is similarly worded to Art 70 of Table A of the UK Companies Act. Article 73 specifies that the company business is managed by the directors and they are given the right to exercise all the companys powers except those specifically bestowed on the company in the general meeting.

[54]An example rule of such rule is section 135 of the Malaysian Companies Act 1965 which imposes upon the director a duty to disclose in writing all particulars of his shareholding held in the company or a related company in which he or she holds an interest. The penalty for infringement of this section is imprisonment for 3 years or a fine of MR15000. Since this provision was introduced in 1985, it can be seen that legislative policy is moving towards increasing accountability to shareholders.

anything in a company's memorandum or articles, directors shall not exercise any power of the company to issue shares without first obtaining the approval of the company in general meeting. Any contravention of this section will give rise to a liability to compensate the company and the person to whom the shares were issued for any loss, damages or costs sustained or incurred[55].

The other method of direct control of corporate governance is by, in effect, dictating to the management what it may and may not do. One of the common provisions designed to discourage misconduct on the part of the directors is section 130A which resulted from a 1992 amendment to the Companies Act 1965 and is actually based on a similar provision in the Companies Directors Disqualification Act 1986 of the United Kingdom[56]. Both the rules of disclosure and prescription are traditional methods of seeking to preserve accountability.

With regard to the position of employees, the Malaysian Companies Act does not have a general position such as the UK Companies Act to take into account the interest of employees in general. According to Section 4 of the Malaysian Companies Act 1965, in relation to a corporation, an 'employee' is also regarded as an officer of the company. However, under para 7 of the third Schedule of the Companies Regulation 1966, companies are empowered to establish and support various facilities calculated to benefit employees and their dependents as well as provide pensions and allowances. The powers from this third schedule are available to companies by virtue of Section 19(1)(C) of the Act[57].

Apart from the statutory control, the second control mechanism is in the form of regulatory control by prescription and implemented by various bodies which operate as watchdogs empowered to take action on behalf of the shareholders who are not able to or are unwilling to conduct litigation on their own. This process involves investigations and inspections, which may lead to court enforcement via the institution of civil and criminal proceedings or to regulatory sanctions. In all cases, the regulators are concerned with monitoring corporate governance. The watchdogs for corporation administration in Malaysia are the Registrar of Companies, The Securities Commission, the KLSE and the Foreign Investment Committee and this has been dealt with under 4.6.2. In addition to the role played by the KLSE, the Code also sets out the appropriate number of non-executive directors who should be appointed to reflect the public shareholder status of the company. Thus, independent non-executive directors have an important contribution towards the governance of the company. To enhance and enforce the contribution of the non-executive independent directors the Exchange has also amended its Listing Requirements in 1996 on the establishment of Audit Committees for all public listed companies and this is certainly a step towards improving the credibility and perceived objectivity of financial statements generally and a positive step toward better corporate governance.

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[55]Example of other section of this nature includes Section 132C, a section which stipulates that approval of company is required for disposal for directors' undertaking or property or section 132 E which prohibits directors of companies to enter into any transactions involving substantial property unless the arrangement is first approved by a resolution of the company in a general meeting.

[56]Section 130A allows the court to make an order that a person shall be disqualified from taking part directly or indirectly in the management of a company for up to 5 years if that person has been a director of a company which has at any time goes into liquidation whether whilst he was a director or subsequently and was insolvent at that time and then within the next 5 years been the director of a second company which has also gone into liquidation and his conduct in either or both makes him unfit to be concerned in the management of the company.

[57]In addition Section 19 (1) (a) of the Malaysian Companies Act also authorises companies power to make donations for patriotic or charitable nature purpose and this has been held to include making gratutious payments paid to th employees.

Protection of creditors

Why creditors need protection

Company law regards creditors as contractual claimants while shareholders are considered as owners of the corporation. As a result, creditors are treated as not being entitled to any more than what has been agreed under the debt agreement. On the other hand, shareholders are entitled to unlimited claims on the remaining assets of the corporation. Since, in the event of liquidation, the claims of both creditors and shareholders are brought against the same assets, their respective claims often conflict. In the event of insolvency of the corporation, the Insolvency Act 1986 provides a system of priority and in the event of winding up of the corporation the Companies Act 1985 would provide a system of priority of creditors over the shareholders. However, no such priority is given to creditors while the corporation is a going concern other than their contractual rights to be paid interest on their debt.

Furthermore, creditors also require protection from various forms of corporate mismanagement. These include shirking, under-investment, asset substitution, diluting creditors' claims and excessive dividend payments. Accordingly, the act of shirking (or inadequate effort) occurs where a fixed percentage of profits is required to be paid out to the lender. In this respect, the management may be tempted to invest less effort in the development of this form of opportunity (beyond what is necessary to make an appropriate minimum payout) and to concentrate on opportunities that do not require the reward to be shared with the creditors. Consequently, this will result in failure to exploit the fullest opportunity for which the loan was advanced. Under investment is another form of shirking.

This occurs when a substantial part of the value of the firm is composed of intangible asset in the form of future investment opportunities. In this situation, the management may be tempted to reject projects which have a positive net present value, if the benefit from accepting such projects would accrue to debenture holders whose claims mature over a long period of time.

Another form of corporate mismanagement is asset substitution. According to McDaniel[58], this takes the form of utilising the loan on a different and riskier venture than the creditor may have contemplated in order to sustain higher returns or, by making the venture for which the loan was advanced (same venture) more riskier, again for higher returns. Where the additional risk projects succeed, the market value of the firms will increase, but it will be the stockholders who will gain from most of the profits. However, when the project fails, the market value of the firm will decrease, but it will be the bondholder that will incur the loss. The effect of such action is to reduce the interest costs of the loan or conversely a higher risk loan is obtained at a lower rate of interest. According to Brealey and Myers[59], this type of misconduct occurs when loans are obtained at fixed rate of interest and these interest rates actually reflect the risk of default and such risk itself is the characteristic of the riskiness of the debtor's business.

Finally, another corporate mismanagement that affects creditors is diluting creditors' claims. According to McDaniels[60], this involves taking further credit on terms where the new debt competes with the original debt for the security. The problem is greater when the later loan is obtained at a higher rate of interest and is used for higher risk ventures.

Forms of Protection

Most of the protection offered for creditors lies within the scope of the insolvency laws. This can be characterised as one of the weaknesses of the legislation, since judicial pronouncements have recognised the duty to creditors, the statutory provisions do not accord protection while the company remains a going concern. The protection is not given in the form of duties directly owed to creditors by directors, but the courts may request a third party to analyse the impact of directorial misconduct on the creditors. According to Prentice, such an act is normally assessed in the context of liquidation, once the company's insolvency has

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[58]McDaniel, 'Bondholders and Corporate Governance' (1986) 41 Business Lawyer 413

[59]Brealey and Myers, *Principles of Corporate Finance* (McGraw Hill Book Co) 5th Edition 1996.

[60]McDaniel, 'Bondholders and Stockholders' (1988) The Journal of Corporation Law , 205.

been determined[61]. Liquidation is also seen as a compulsory collective procedure to bring about the cessation of a company's business and the distribution of its asset to its creditors, predominantly according to the creditors' pre-insolvency entitlements[62]. In England, the Cork Committee proposed that directors should be made liable for the debts of a company where the company incurs liabilities with no reasonable prospect of meeting them[63]. It was hoped that the effect of such a reform would be that, "if the directors at any time consider the company to be insolvent, they would take immediate steps for the company to be placed in receivership, administration or liquidation". The recommendations of the Committee[64] were given effect in what is now section 214 of the Insolvency Act 1986.

Section 214 empowers the Court to order a director or shadow director to contribute to the assets of a company where the company has gone into insolvent liquidation in circumstances where, before the winding up, the director 'knew or ought to have concluded that there was no[65] reasonable prospect that the company would avoid going into insolvent liquidation. This section also imposes a duty on directors of companies which are subsequently wound up to take every step[66] a to minimise the potential loss to the company's creditors once they know, or ought to know, there is no reasonable prospect of the company avoiding insolvent liquidation[67].

Under Sec 214, a director is judged not only by the knowledge, skill and experience which he actually has (S214 (4)(b), but also by the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions.....(sec214 (4)(a). Hence, there is a movement away from the purely subjective test of skill and care applied to directors in the common law cases such as Re City Equitable Fire Insurance Co[68].

In addition to Sec 214, Section 213 of the Act also contains directors' duties to creditors. This provision aims to prevent directors carrying on a business with intent to defraud creditors or for any other fraudulent purpose. However, this provision has been severely restricted by some of its requirements. This section not only creates a civil and personal liability, but also creates a criminal offence. The constituent elements of the two are identical. As a result, the courts have consistently refused to entertain a claim to civil liability in the absence of dishonesty and moreover, have insisted upon a strict standard of proof. It is the general experience of those concerned with the administration of the affairs of insolvent companies, that the difficulty of establishing dishonesty has deterred the issue of proceedings in many cases despite a strong case existing for recovering compensation from the directors or others involved[69].

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[61]Prentice, 'Effect of Insolvency on Pre-liquidation transactions', in, Pettet (ed), *Company law in change* (1987).

[62]See Jackson , 'Bankruptcy, Non-Banckruptcy entitlement and the creditors' bargain', (1982) 91 Yale L.J.857.

[63]Report of the Review Committee on Insolvency Law and Practice (Cmnd. 8558)Chap 44 , para 1783 (1982).

[64]Ibid para 1786.

[65]Section 214(2)(a) and (2)(b) of the Insolvency Act 1986. Issues on wrongful trading will be discuss in detail in chapter 5 and 7 of this thesis.

[66]Section 214(3).

[67]This was defined in section 214(6) in balance sheets terms i.e a company goes into insolvent liquidation at a time when the company's asset are insufficient to pay its debt and other liabilities.

[68](1925) Ch. 407.

[69]The report on the Review Committee on Insolvency Law and Practice (Cmnd 8558)(1982)Ch 44, pg 398. See also the cases which discussed this issue in Patrick v Legon Ltd (1933) Ch 787. See also Re Williams Leitch Bros Ltd (1932) 2 Ch 71 and Re L. Todd (Swanscombe) Ltd (1990) BCC 125.

Other provisions of the 1986 Insolvency Act are also aimed at preventing directors from diminishing the company's asset in ways that would be prejudicial to the company's general creditors. The avoidance provisions attempt to preserve the corporate pool of assets and can be seen as a positive side of the pari passu principle from the unsecured creditors point of view[70]. The avoidance provisions in the 1986 Act are not the only statutory means of determining directorial standards towards creditors. Both the Cork Committee Report and the Government's subsequent White Paper[71] suggested that creditors, particularly unsecured creditors, might be protected more effectively by extending and tightening up not merely provisions on directors' personal liability, but also on their disqualification. In the White paper, the Government considers that appropriate sanctions should be applied to directors who fail to conform to acceptable standards of behaviour and that existing powers to disqualify a person who has taken part in the management of a company should be strengthened.

Directors who allow their companies to arrive at a state of affairs where they are wound up compulsorily by the court, have demonstrated that they are not fit to be in control of a company and it was proposed that there should be an automatic three years disqualification from the management of a company for the directors of insolvent companies wound up by the Court. Furthermore, the Government intends to amend Section 9 of the Insolvency Act 1978 (under which persons involved in two insolvent liquidations and who are considered by the court to be unfit for company management, can now be disqualified, for up to 15 years) to enable it to operate after one liquidation and to allow a voluntary liquidator to make an application[72].

Furthermore, protection includes extensive grounds to disqualify directors under the Company Directors Disqualification Act 1986[73]. For example, directors duties to file returns and accounts and give notices under the companies legislation have been backed up with discretionary disqualification for persistent failures[74] and section 6 of the Company Directors Disqualification Act 1986 requires disqualification on the application of the Secretary of State in the case of a director whose company has become insolvent and whose conduct makes him unfit to manage.

In deciding whether a director is unfit, the court is referred to a wide range of matters for consideration in Sch 1, Part 1 and Part 2[75]. Reference to the latter reflects the Cork Committee's concern for unsecured creditors. In this regard, the position of the unsecured creditors in corporate insolvency was recognised by the Cork Committee when it was set up to undertake to renew and reform the insolvency law. As Cork pointed out, the fundamental principle of Insolvency law of 'parri passu' distribution in liquidation, namely equality between creditors with all creditors participating in the common pool and being paid pro rata according to the size of their claims, was seldom obtained[76]. This is because the pari passu principle has no application to rights in rem, only to the company's assets.

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[70]See Jackson, 'Avoiding powers in bankruptcy (1984) 36 Stan. L. Rev 725, See also Goode, *Principles of corporate insolvency law* (1990) pg 61.

[71]A revised Framework for Insolvency Law (Cmnd 9175).

[72]Ibid Chapter 2 Pg. 11.

[73]Issues on disqualification of directors will be dealt in chapter 7 of this thesis.

[74]Company Directors Disqualification Act 1986, Sec 3(1).

[75]Paras 6 and 7, Part 11 Schedule 1, Insolvency Act 1986.This include where the company has become insolvent, the directors part in in the cause of the insolvency and his role in th ecompany's failure to supply goods and services which have been paid for in whole or in part.

[76]Cork Report, para 1396.

These removals substantially reduce the corpus of assets to which the unsecured creditors looks for payments, but then payments from the corpus itself is subject to a strict hierarchy with expenses of liquidation taking priority, followed by preferential debts. Satisfaction of these claims means that in practice, unsecured creditors hopes of receiving anything at all in the winding up process are usually nothing more than an empty formality. Thus, the generally favoured position of secured creditors and their ability to act in their own interest would seem to merit consideration of alternative sources of duty to protect the unsecured creditor.

Thus, finally, one conclusion that can be drawn for the position of creditors in the corporate governance framework is that although they have almost no right to intervene in the way corporate debtors carry on their business, once the company has ceased carrying out its ordinary course of business, the rights of creditors emerge. Their rights to re-open pre-insolvency transactions and to pursue claims for contribution towards the company's assets will be ascertained and further strengthened by the developments, both in company law and the Insolvency legislation.

Conclusion

In general, although there are statutory protections for creditors under English and Malaysian Companies Legislation, most of these provisions are only effective when the company has gone into liquidation. An effective remedy would not only enable the creditors to seek compensation, but also enable them to take reasonable steps to prevent such directors from committing the same mistakes or negligent acts in the future. Since statutory provisions offers inadequate protection, one alternative redress for creditors is through the corporate governance system where the board is required to perform certain obligations and social responsibilities to the stakeholder. Although arguments for social responsibility and representation of stakeholders in enterprise sounds attractive, structural changes and checks and balances in the corporate framework should be incorporated first, before any decision are made to incorporate these interest groups. However, creditors and the employees should be reasonably included within the system. Malaysia, like any other developing economy, depends on the entrepreneurship and efficiency of the private sector and the private sector companies.

The manner in which a board discharges its duties and responsibilities will determine the company's competitive edge. The board must be given the freedom to manage it's business and make judgement, but these freedom must be within a framework of integrity and accountability. Thus, it is hoped that a more skillful and accountable board, which is the essence of good governance, will act as an impetus to provide protection and enhance 3creditors interests in the next millennium.