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**Closing Address by
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at the
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Distinguished Guests, Ladies and Gentlemen, I am honoured to be given the opportunity to deliver the closing address at this conference. I trust that you would have had a very enlightening day and especially so with the panel of distinguished speakers that the organisers have assembled today. I would also like to congratulate the organisers for holding this very timely discussion on challenges and opportunities for company secretaries in the new millennium.

Being the final speaker for the day, I run the usual risk that much of what I say in this address may have been said already particularly in matters relating to corporate governance. However, I am sure we would all agree that issues on corporate governance are important issues and therefore they are worth reiterating. I would like to take this opportunity to highlight the role of the company secretary, how we in the Commission see the role developing in the new millennium, the challenges ahead as well the opportunities it presents. I will be paying particular emphasis on the role of the company secretary in promoting high standards of disclosure and corporate governance.

The role of a company secretary

The role of the company secretary is not an easy one to describe. Their duties are not fixed by law but are generally those assigned to him by the articles or contract of employment. The company secretary's role as the administrator of a company is well recognised. They keep the necessary registers, send out notices, organise meetings, take down minutes and file whatever is required by the Registry of Companies. The Commission's Policies and Guidelines on the Issue and Offer of Securities also place a duty on company secretaries to receive and keep a record of disclosure of directors of public listed companies, of their dealings in the securities of such companies and to table those disclosures at the meeting of the board of directors. At its core the secretary's function is basically to handle all the paperwork and procedural matters that the running of a company involves.

But today he is more than an office administrator. His authority to bind the company to contracts within the scope of his administrative duties has received judicial recognition in the case of *Panorama Developments v Fidelis* [1971].

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But perhaps more relevant is the developing role of the company secretary in terms of advising the Chairman and the board of the directors' and companies' compliance obligations under the law. On this issue, the Report of the Finance Committee on Corporate Governance, states that company secretaries role is not purely administrative.

"They (company secretaries) have a crucial advisory role, which then follows through into a critical role in encouraging compliance with the law."

This role of the company secretary is a crucial component in any effort to develop a framework for board effectiveness. As pointed out by the speaker from the Kuala Lumpur Stock Exchange, En. Izlan Izhah, earlier today, the Report of the Finance Committee sets out the crucial pre-requisites for an effective board, which he has alluded to in detail. Company secretaries play a crucial role in managing the transition from complacent and uninformed boards to ones that are clear about their responsibilities and discharge them effectively.

SC's move to a disclosure-based regulatory system

Ladies and gentleman

The discussion on the advisory role of company secretaries is particularly relevant in the context of SC's policy shift to a disclosure-based system of regulation. It must be well understood that a full disclosure-based regulatory system not only accords greater flexibility in the process of capital raising for issuers, but also carries with it an onerous regime of information disclosure. One cannot go without the other. There must be transparency in corporate activity and transactions, compliance with existing rules on investor protection and that there is no corporate misconduct. The regime among others is predicated on the diligence of advisers to companies and boards.

This is where the role of the company secretary becomes particularly relevant. The company secretary, in view of his proximity to the board of directors, is able to advise the board on matters pertaining to the disclosure responsibilities of a company. This is particularly relevant in the context of the continuing disclosure obligations of companies. The existing disclosure requirements of companies under securities legislation and the disclosure policies of the Kuala Lumpur Stock Exchange are fairly extensive. The company secretary can in this respect ensure that the board of directors is properly advised about its disclosure obligations and this in turn encourages compliance with the law.

In fact the recommendations of the Finance Committee go so far as to suggest that a liaison person should be identified within every listed company, to whom the regulators can look to in ensuring that the relevant disclosures are made. While the recommendation does not go on to mandate that that person should be the company secretary, it implicitly suggests that the company secretary is an appropriate candidate.

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This however, is not intended to detract from the fact the board of directors is ultimately responsible for ensuring that all required disclosures are made.

Therefore I would urge company secretaries to play a larger role in promoting the quality and timeliness of disclosures. The Commission by itself cannot ensure that high standards of disclosure are met without the co-operation and complicity of all market participants including company secretaries. It is everybody's responsibility to comply with the rules and standards or to encourage compliance with rules and standards to help to restore and enhance investors' confidence in our capital market.

Corporate governance

Ladies and gentleman

This then leads me to my next point about the role of company secretaries in promoting sound corporate governance standards. Quite apart from his role in encouraging high disclosure standards, the company secretary stands to play a very important role in promoting board effectiveness, as I alluded to earlier.

Board efficiency and effectiveness is now an increasing necessity. A lot has been reams of literature written on the need to re-invent the corporate enterprise so as to efficiently meet global competition. Companies now have to be more efficient and better managed than ever before so as to efficiently meet emerging global competition and innovations produced by advancements in technology.

Many jurisdictions around the world look to a Code of Best Practices as a mechanism to promote board effectiveness. Codes of Best Practice essentially set out best practice prescriptions on structures and processes that companies may use in their operations towards achieving the optimal governance framework. Codes guide boards by clarifying their responsibilities and provide prescriptions that aim to strengthen the control exercised by boards over their companies.

The significance of a Code is essentially that it allows for a more practical, constructive and flexible response to raising standards of corporate governance as opposed to the more black and white response engendered by statute or regulation.

Also of significance is the aspirational and evolutionary way in which Codes influence the expectations of society, that are eventually reflected in the law. The attention generated on corporate governance issues for instance, has already had an impact on evolving judicial interpretations of director's duties.

The development of the Malaysian Code on Corporate Governance is a crucial event in this context. The proposed Malaysian Code sets out a set of **principles and best practices** for good governance. Compliance with the Code is voluntary **BUT** the listing

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requirements of the Kuala Lumpur Stock Exchange will require all directors of listed companies to disclose in the annual report, **how they have applied the principles set out in the Code and the extent to which they have complied with the best practices set out in the Code** and justify significant variances therefrom.

Let me now move on to the significance of the introduction of the Code to company secretaries. As pointed out by Mr. John Greene, this morning, the Cadbury Committee on Corporate Governance, in its report, looked to company secretaries to advise the Chairman and the board on matters pertaining to implementation of the Code of Best Practice. Similarly, company secretaries here should gear up to assisting boards in implementing the prescriptions of the Code. Their presence at board meetings and their intimate knowledge of the administrative workings of the board and the company makes them the perfect candidate for undertaking this advisory role.

In guiding implementation, company secretaries must encourage boards to address their governance needs. Too often, companies comply with the strict letter of the best practice without regard to the spirit of it. Directors should be advised to concentrate on substance rather than form. They should not be encouraged to "box-tick". Perhaps most worrying about a box ticking system is that it would not be difficult for a lazy or unscrupulous directors or shareholders to arrange matters in such a way that the letter of every governance rule is complied with but not the substance. It might even be possible for the next disaster to emerge in a company which, on paper has a 100% record of compliance. The true safeguard for good corporate governance lies in the application of informed and independent judgement by experienced and qualified individuals. The presence of experienced and qualified company secretaries in guiding the implementation process is a crucial pre-requisite to successful implementation of the Code.

Quite apart from issues pertaining to its implementation, the Code does allude specifically to the value added role that company secretaries can play in enhancing board efficiency and effectiveness.

Board appointments

The Code suggests that the company secretary has a valuable role to play in ensuring that all board appointments are properly made, that all necessary information is obtained from directors. It is crucial that company secretaries undertake the task of handling all of the preparatory work that has to be completed and information that has to be gathered prior to directors taking up their posts.

Director orientation

It is not just the company that requires information from its directors. If directors are to make a speedy and effective contribution, then they also require information. The Code therefore recommends that company secretaries should be in a position to provide every new director with essential information that he or she will require to undertake the

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functions and such additional information as and when appropriate. In this respect, MAICSA has been asked to prepare a best practice guide to provide a useful check for company secretaries to ensure that appointments are properly made and provide checklists of all information required from and by a new director. This will also act as an invaluable guide for the less experienced company secretary.

Advice to board members

Ladies and gentleman

Much has been said about the role of non-executive directors in setting and maintaining high standards of corporate governance. Non-executive directors are appointed to boards for various reasons - to make positive contribution to the development of the company's strategy, to tap on skills and expertise derived from diverse backgrounds and where they are also the independent directors of the company, to provide a balanced and independent view on the board. And certainly it is this latter role of bringing independent judgement to board decisions, that has received a lot of attention.

But the effectiveness of non-executive directors in this context turns to a considerable extent, on the quality of information and advice they receive and the use they make of it. The Code therefore states categorically that all board members, whether executive or non-executive, must have access to the advice and services of the company secretary. The proximity that a company secretary has to the Chairman and the board of directors puts them in an ideal position to take on an advisory role in relation to the Board. The Chairman in particular will look to the company secretary for guidance to the board on what their responsibilities are under the rules and regulations to which they are subject and how those responsibilities should be discharged. Their advice should extend to embrace key aspects of laws and regulations and not merely the routine filing requirements and other administrative requirements of the Companies Act 1965.

The thrust of what I have said thus far is cogently encapsulated in Best Practice 21 of the Malaysian Code which states that -

"Directors should appoint as secretary someone who is capable of carrying out the duties to which the post entails and their removal should be a matter for the board as a whole. The board should recognise that the Chairman is entitled to the strong and positive support of the company secretary in ensuring the effective functioning of the board."

Raising the profile of company secretaries

There has certainly been a significant increase in the profile of company secretaries, after the release of the Finance Committee report. Their role has rightly been given due importance in the report.

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Therefore the challenge for company secretaries in the new millennium is to rise to meet the increasing expectations of their evolving role. The company secretary as a key corporate member has to respond efficiently and holistically to these challenges and opportunities.

Independence of company secretaries

Ladies and gentleman

I have thus far highlighted how we see the role of the company secretary is headed into the new millennium.

But equally one must understand the constraints within which the company secretary operates. The reality is that company secretaries are appointed by directors, his term and remuneration fixed by directors and may be removed by them.

However the company secretary is an officer of the company, as defined under the Companies Act 1965. As an officer the company secretary is expected to exercise independent judgement in the discharge of his duty. This is enshrined in their Code of Ethics which requires them, "To be impartial in his dealings with shareholders, directors and without fear or favour, use his best endeavour to ensure that the directors and the company comply with relevant legislation, contractual obligations and other relevant requirements"

The framework under which company secretaries operate however does not preserve their independence in discharging their duties. The Finance Committee report offers one suggestion for insulating company secretaries from capricious removals by directors. It suggests that the existing notification requirement for the removal of a company secretary is enhanced with a requirement for the countersignature of the company secretary being removed stating that his removal or resignation is not for professional reasons. This would give company secretaries an opportunity to assert their independence within a company.

The flip side to this is that it could compromise a director's ability to remove an incompetent company secretary. He may hold the director to ransom by not agreeing to sign the removal notification.

This issue has been targeted for further study. This is an opportunity for company secretaries to institute change by making recommendations to the Finance Committee of measures that could be taken to insulate themselves from unwarranted removals. Company secretaries should not allow this opportunity to create a fairer framework, to pass. They should seize this opportunity to change the equation and to thereby take a lead role in shaping the new corporate culture for Malaysia.

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Advancements in information technology

Before I conclude, allow me also to allude to the issue of advancements in information technology and the consequent explosion in electronic commerce in Malaysia and how these affect company secretaries. The landscape for electronic commerce in Malaysia has changed dramatically since 1997. The growth potential of electronic commerce may be extrapolated from the jump in Internet subscribers in Malaysia, from 200,000 in 1997 to an estimated 400,000 this year. The Multimedia Development Commission has projected Malaysian Internet subscribers to reach 3 million by the year 2001, which is less than 2 years away. The Internet has been growing almost 100% each year since 1998 and shows no signs of slowing down and world wide, is expected to approach 250 million users by the year 2000. The government has signalled its commitment to facilitating the development of electronic commerce. Towards this end, new laws have been introduced which include the Digital Signature Act 1997, the Communications and Multimedia Act 1998 the Copyright Amendment Act 1997. Company secretaries must stay ahead of developments in electronic commerce as businesses take advantage of the flexibilities, efficiencies, interactive and instantaneous communicative features offered by these advancements to propel their businesses forward into the new future.

Conclusion

Ladies and gentleman

I have attempted to give a flavour of how we see the role of the company secretary developing into the new millennium. They are increasingly taking on advisory role both in terms of encouraging compliance with the law and in promoting the creation of effective boards. In order for a company secretary to play this role effectively, there must be conducive framework which will allow him to discharge his responsibilities independently. Hence company secretaries must use whatever opportunities presented by existing inclination toward corporate governance reform to create the appropriate environment. Their action is equally important in shaping the corporate culture for the next millennium.

Thank you.