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"Corporate Governance: From Conformance to Performance"

Keynote Address

By

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at the

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1. It is indeed an honour for the Securities Commission (SC) and for me personally, to be given the opportunity to deliver a keynote address at this international conference on corporate governance. Before I begin, I would like to congratulate the co-organisers namely the Malaysian Association of The Institute of Chartered Secretaries and Administrators (MAICSA) and the Malaysian Institute of Corporate Governance (MICG) for organising this conference. I would also like to extend a warm welcome to our foreign guests and thank all of you for your contribution to this effort.
2. The 25th of March of this year marked the second anniversary of the release of the Finance Committee Report on Corporate Governance (I should remember, it was in my first month in office as the SC Chairman, that I attended the launch of the Report). On numerous occasions since that launch the SC had reiterated that the release of the report marked a new beginning, the dawn of a new era, and not the end of our concerted efforts towards enhancing the standards of corporate governance in Malaysia.
3. While the journey ahead remains long (and at times, speaking as a regulator, lonely), I will be the first to say that we have indeed travelled a long long way since that day in March 1999. For all of us who are committed to enhancing corporate governance, it has been a journey of discovery and priceless experience. Like all journeys we have enjoyed cruising on the highways and expressways but we also have had to endure treacherous potholes and proceed at snail's pace on unmetalled roads. I must say that often we find ourselves with other travellers heading in the same direction, but at times, we are a lone traveller in the wilderness. When we do on several occasions meet the odd traveller going in the opposite direction, we would stop to ask and persuade him to make a turn towards the same direction, using moral suasion or if need be, the full force of the law.
4. But we have forged ahead and made significant progress. Much as I do not wish to give you a report card of our achievements so far, I would not be fair to the many individuals, agencies and organisations that have worked so hard to implement the recommendations of the Finance Committee Report on Corporate Governance if I do not at least put on record some of our achievements so far.

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5. You would recall that the recommendations of the Finance Committee are broadly focussed on the following three key areas:
- Legal reform - to strengthen the statutory and regulatory framework for corporate governance;
 - Developing a Malaysian Code on Corporate Governance - to enhance the self-regulatory mechanisms that promote good governance; and
 - Training and Education - to ensure that the proposed framework for the corporate governance is supported by necessary human and institutional capital.
6. Since the SC and other regulatory agencies are often unfairly criticised for putting in place more laws, rules and regulations in response to a problem, let me deal first with the Code of Corporate Governance as well as Education and Training.

First, the Malaysian Code on Corporate Governance.

7. The Code in its present form is the product of extensive collaboration between government and industry and represents international best practices, whilst at the same time is tailored to the needs of the Malaysian corporate environment. The Code sets out prescriptions for Board structures, composition and policy as the key to providing corporate accountability. The Code is a voluntary Code, but as with some codes of best practices around the world, the revamped KLSE Listing Rules require companies to disclose the extent to which they have applied and complied with the principles and best practices in the Code.
8. Indeed the Malaysian Code of Corporate Governance is a cornerstone of the recommendations of the Finance Committee. The fact that we have successfully put firmly in place, speaks volumes of the commitment of all parties in forging ahead with the implementation of the Finance Committee Report. In this regard, I wish to put on record the SC's gratitude to the many individuals, organisations and professional bodies that have gone out of their way in enhancing the awareness and understanding of all concerned, not merely with the letter but more importantly with the spirit of the Code. That so many professionals (particularly accountants and lawyers) have given so much of their time, mostly on a pro-bono basis (unless the bills have not been submitted) to these efforts gives me the comfort that the regulator is not alone in our desire and commitment to see higher standards of corporate governance in the country.
9. In the area of education and training you would note that the Finance Committee has taken a very robust approach to this issue. Directors who might not have read the recommendations earlier would have realised this with the commencement of the Mandatory Accreditation Programme earlier this month by KLSE and its training arm, RIIAM.

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10. While we will continue to hear noises being made by directors given the compulsory nature of the programme, I wish to remind directors that these recommendations were in fact from the industry and if the truth be told, organisations like MICG, FPLC and other professional bodies are fully supportive of this mandatory accreditation programme.
11. While we will continue to hear noises being made by directors given the compulsory nature of the programme, I wish to remind directors that these recommendations were in fact from the industry and if the truth be told, organisations like MICG, FPLC and other professional bodies are fully supportive of this mandatory accreditation programme.
12. I also wish to note the formal establishment of the Minority Shareholder Watchdog Group as a company limited by guarantee whose members comprise of the Employees Provident Fund (EPF), Lembaga Tabung Angkatan Tentera (LTAT), Lembaga Tabung Haji (LTH), Pertubuhan Keselamatan Sosial (PERKESO) and Permodalan Nasional Berhad (PNB).
13. Let me now update you on our efforts at regulatory reform. The various implementing agencies have been hard at work translating the recommendations of the Finance Committee into the appropriate laws, rules and regulations. We can see these efforts significantly materialising in the various changes that have been effected to the Securities Commission Act 1993 and the newly revamped KLSE Listing Requirements, among others.
14. The revamped KLSE Listing Requirements are principally aimed at raising the standards of conduct of directors and company management of PLCs as well as developing effective internal governance and enforcement mechanisms. Notably, the new Listing Requirements bring into full effect the Malaysian Code on Corporate Governance and the Mandatory Accreditation Programme for directors.
15. Aside from that, the SC had, in the year 2000 law reform package, made significant amendments to the law which rationalises the regulation of prospectuses and other fund raising provisions. This follows from a recommendation of the Finance Committee which specifically mentioned the need to provide legal and regulatory certainty in the area of regulation of public offerings of securities in the primary market. The new law creates a facilitative framework for capital raising in Malaysia and in return expects directors to take on greater responsibility in ensuring that the necessary disclosures are made. These reforms came into effect on 1 July 2000.
16. Amendments to the SC's Policies and Guidelines on the Issue and Offer of Securities were also effected to implement the Finance Committee's recommendation in relation to encouraging equity participation by non-executive directors. Shares may now be issued to non-executive directors at a discount of up to 10% as an incentive for non-

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executive directors to take up shareholding in companies they sit on as board members. This is intended to align the interests of non-executive directors with the interests of the company.

Ladies and Gentlemen,

17. I am fully aware that there has been a flurry of legislative activities (both primary and secondary) in the implementation of the Finance Committee Report. But let me assure you that these are not short-sighted, knee-jerk responses from the relevant regulators to the demands for better corporate governance. Rather they are a part, an integral part, of the recommendations of the Finance Committee based on extensive research and consultation. Where appropriate, we have learnt and borrowed from other jurisdictions but always with necessary adaptation to suit local circumstances and our own regulatory environment.
18. But there is only so much that laws and regulations can do to enhance corporate governance. Laws are not and have never been intended to be a cure all, a panacea, for all that ails the corporate sector. Indeed, it is often said that the amount of new laws and regulations is often inversely proportional to the level of self and market discipline observed within the community. The higher the standards of self-governance and discipline, the less laws are needed. In fact we in the SC have made our regulatory philosophy very clear in the Capital Market Masterplan - our intention is to have no more regulation than is necessary. Hence my response to those who say there is over-regulation is this: " enhance your level of self-discipline, exercise restraint, observe high standards of governance and prove to us that the laws are unnecessary" . To reiterate, the SC's regulatory philosophy is to have no more regulation than is necessary.
19. This brings me to the issue of enforcement. After all any credible discussion about the law by a regulator must deal with the issue of enforcement.
20. Enforcement action taken by the SC in recent years has also developed and evolved in line with the objective of promoting good corporate governance. Statistics on enforcement action from 1998-2001 indicate that greater emphasis has been placed on the need for principal officers and persons having key control of listed companies to be accountable and transparent in the discharge of their duties.
21. Advisors of listed companies have also been made aware through the SC's enforcement action of the crucial role advisors play in advising the Board of Directors of their obligations and the company's obligations. Although the SC accepts that there are limitations to advisors in taking a leading role in corporate governance, nevertheless advisors need to ensure good corporate governance when giving advice to the Board of Directors, and must be accountable for advice given.

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22. The SC's enforcement action in recent years has also placed emphasis on the need for listed companies to submit quality information which reflects a true and accurate picture of the subject-matter at hand. This is to secure sufficient disclosure so that investors and shareholders can assess the information released and make informed investment decisions.
23. At this juncture, I will let the statistics speak up for the SC. In 1999, 23 individuals and one Merchant Bank acting as a financial advisor to a listed company were charged in Court for breaching securities laws. Offences ranged from submitting false/misleading information to the SC in connection with corporate proposals to fraudulent activities under section 87A of the Securities Industry Act 1983.
24. In the year of 2000, court action was taken against 13 individuals including three directors of PLCs and one director of a futures broking company. Offences ranged from misleading statements to fraud offences under securities laws and submitting false information to the SC.
25. So far in the year 2001, we have already taken enforcement action against 10 individuals of whom seven were directors and one an executive chairman. Let me assure you that notwithstanding the figures achieved so far, we will not be resting on our laurels for the rest of the year or for that matter for the coming years.

Ladies and gentlemen,

26. Rules, regulations and best practices are meant to provide the foundation upon which companies are to build their framework for better governance. However, the essence of good corporate governance is not about mere compliance with the black letter of the law. The question then is - how can we facilitate the creation of substance in addition to form.
27. The definition of corporate governance as set out in the Finance Committee's Report on Corporate Governance is, " the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realising long term shareholder value, whilst taking into account the interests of other stakeholders" .
28. Corporate governance as may be elicited from this definition is therefore not only about ensuring accountability but also about achieving business prosperity. The definition clearly presupposes a balance between both these objectives and emphasises the fundamental relationship between the direction of the company and the realisation of long-term shareholder value.

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29. Shareholder value is usually measured in monetary value in terms of the total benefit that shareholders obtain from investing in a company. This is often interpreted to be synonymous with an increase in value of the share price of the company and in the dividends paid. The creation and preservation of shareholder value is by no means an easy task especially in these trying times when we are grappling not only with the fall-out from the Asian crisis but with the imminent threats of a global economic slowdown and its attendant challenges.
30. Against the backdrop of good governance practices and with the ultimate objective of realising and maximising shareholder value, it is the continuing responsibility of the board to effectively monitor the performance of the company. Some experts in fact suggest that the board of directors should use specific performance indicators to guide the company in its decision making processes. Such performance indicators would include factors such as client satisfaction, total quality management, human resource management, the effective monitoring of environmental factors as well as the comparative and competitive advantages of the company.
31. While no direct correlation between corporate governance and shareholder value has been proven conclusively, a number of important studies have demonstrated that many shareholders, particularly institutional shareholders, do in fact place a premium on good corporate governance. The most frequently quoted is the McKinsey Survey of June 2000 which points to the fact that in the Asian region, institutional investors both local and foreign are willing to pay a premium of between 20% - 30% for the shares of companies that demonstrate good corporate governance.
32. Another survey carried out in October 2000 by Credit Lyonnais Securities Asia (CLSA) on emerging markets, demonstrate inter alia, that stocks of companies with good governance significantly outperform those that do not practise good governance standards and that when large institutional investors are confident that a company practices good governance, demand for its shares rises. The CLSA survey also showed that companies with high standards of governance have much more resilient prices during an economic downturn compared to companies that practice bad governance
33. Notwithstanding the above there remains the contrarian view that suggest that compliance results in higher costs thus affecting the bottom-line and profit margins that companies would otherwise enjoy if not for such requirements.
34. To me it is as simple as this: if companies are to attract and retain long-term capital from a large pool of investors, they need credible and recognisable corporate governance arrangements. In order to achieve this companies must therefore consider seriously how governance structures may be implemented in substance and not merely in form. And while the process of such implementation may involve costs, in the long run, the inculcation of good governance practices will likely result in long term benefits to companies which far outweigh any short term or teething costs and inconveniences

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incurred. Companies that choose to sit back and wait for more empirical evidence of the correlation between shareholder value and good corporate good do so at their own peril.

35. The demand for good corporate governance can no longer be viewed as an internal matter. Any company, indeed any country, wishing to attract global capital will have a strong incentive to meet the increasing expectations of these capital providers for good corporate governance practices. It is for this reason that notwithstanding the very comprehensive Report coupled with detailed recommendations of the Finance Committee, the SC's recently launched Capital Market Masterplan again underscores the importance of corporate governance in the attainment of our vision of a capital market for Malaysia that is internationally competitive, highly efficient and supported by a strong and facilitative regulatory framework. In this regard the SC has reiterated that it will ensure that the recommendations contained in the Finance Committee Report on Corporate Governance will be effected in a timely and comprehensive manner. Additionally, the SC has identified numerous other specific recommendations for strengthening corporate governance, including further enhancing shareholder rights, especially those of minority shareholders and broadening avenues for private enforcement of these rights. We have also undertaken to work with relevant industry bodies in enhancing the quality and independence of auditors of PLCs.

Ladies and Gentlemen,

36. If we are to make any headway towards enhancing business prosperity and ultimately shareholder value, the proactive participation of all concerned is vital i.e. from the management and board to the shareholders, from the regulatory agencies to the market participants and professional bodies. We should all be working together to achieve this end. Together we can make things happen. Let's just get on with it!

Thank you.

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