Corporate Social Responsibility : Trends And Developments In Malaysia

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ABSTRAK

Sebelum kemerdekaan , konsep tanggungjawab sosial oleh badan korporat(CSR) merupakan suatu konsep yang masih baru di Malaysia. Artikel ini akan mengupas, mengenalpasti dan mengesan perkembangan konsep CSR di Malaysia bermula dari Rancangan Malaysia Kedua (1971- 1975) dan kedudukan CSR dalam konteks rangkakerja undang-undang korporat melalui dua prinsip teras iaitu prinsip "amanah" dan "dermawan ". Kedua-dua prinsip ini merupakan ciri penting dalam CSR. Pengarah sering dianggap sebagai pemegang amanah bagi syarikat terutama bagi pihak yang berkepentingan seperti pemegang syer, pekerja , pengguna, pembekal dan komuniti secara keseluruhan. Seterusnya doktrin utama dibawah Akta Syarikat 1965 iaitu doktrin ultra vires akan turut dikaji. Selain dari itu bagi memelihara kepentingan awam pihak kerajaan juga telah mengambil tindakan melalui syarikat berkaitan kerajaan (GLC) yang ditugaskan untuk melaksanakan tanggungjawab kepada pemegang syer dan pihak yang berkepentingan. Artikel ini juga akan membincangkan perubahan-perubahan yang berlaku dalam persepsi korporat terhadap CSR hasil dari rangkakerja yang baru dilaksanakan oleh GLC dan BURSA Malaysia. Implikasi perundangan dan tahap tugas serta obligasi pengarah terhadap konsep ini juga akan turut dikaji

ABSTRACT

Prior to independence the concept of CSR is an alien concept in Malaysia. Thus this paper will highlight and trace the development of CSR in Malaysia which owns its origin from the Second Malaysia Plan(1971-1975) and the position of CSR in the context of corporate legal environment in Malaysia through the core principle of "trusteeship" and the "philanthropic" rule which are two important ingredients of the concept. Company directors are increasingly perceived as trustees for various "stakeholders" who include the shareholders, employees, consumers, suppliers and the wider community. Further legal development relating to corporate philanthropic including the impact of the ultra vires doctrine on corporate philanthropic will also be analyzed namely the legal structure under the Companies Act 1965. The concept is still in its rudimentary stage in Malaysia. Nevertheless, lately in preserving public interest, the Malaysian government has taken drastic measures by imposing requirements and obligation to specific companies namely government link companies (GLC) in Malaysia to take into account social responsibilities to the

public. As part of the GLC transformation program, one of the initiatives for GLC is achieving value through social responsibility and this includes to become responsible corporate citizens while creating value for their shareholders and stakeholders. Further the Malaysian Stock Exchange or Bursa Malaysia have also played a significant role in promoting CSR among public listed companies in Malaysia. This paper will also discuss the change in corporate attitude to CSR as a result of the new framework implemented for GLC and CSR framework by Bursa Malaysia. The legal implications of the extent of duties and obligation of companies in Malaysia in CSR would also be examined and it is suffice to say at this level, that without legal intervention, the concept of corporate social responsibility may never be implemented in Malaysia. [1]

INTRODUCTION

Corporate social responsibility is defined as the assumption of responsibility of companies whether voluntary or by virtue of statute in discharging socio-economic obligations to society. According to the traditional theory of the firm, the only responsibility of companies is to maximize profits. By maximizing profits, companies are serving the best interest of society. The role of the company therefore is to provide a set of rules and regulations conducive to profit maximization by strengthening the profit motive within the existing legal framework. This is reinforced by the active role of shareholders within the corporate governance system. 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.

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 maximise 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 maximisation can also lead to the maximisation 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

[1] This working paper is a preliminary work based on a wider project currently researched by the writer. The writer is indebted to the academic staff of the Department of Business Law and Taxation , Monash University, Melbourne for the stimulating discussion and insights that assist the writer to canvass the major issues in this paper namely Dr Janine Pascoe , Professor Helen Anderson, Abe Herzberg, Professor John Gillespie and Professor Richard Mitchell. See also Aishah Bidin, *"Corporate Social Responsibility and the position of directors duties and shareholders within the corporate governance framework – A legal perspective"* in Shanmugan B., (eds) *Corporate Governance – An International Perspective (Malaysian Institute of Corporate Governance* (MICG) Kuala Lumpur, 2004)

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

responsive to its social environment. Corporate social responsibility is a concept that emerged in the 1960s. The concept of CSR suggests that business organizations are responsible for contributing towards the alleviation of social ills. They need to be cognizant of their social responsibilities beyond their economic and legal obligations. These social responsibilities include among others, ensuring that the environment is preserved, maintaining high ethical standards and undertaken philanthropic responsibilities

CORPORATE SOCIAL RESPONSIBILITY AND THE RELATIONSHIP BETWEEN DIRECTORS, SHAREHOLDER AND CREDITORS

British 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 maximise benefits to shareholders specifically, to maximise 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[3]. 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[4]. Since shareholders are the owners of the company, they could compel directors to pursue certain objectives including profit maximisation.

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[3] Originally this phrase was reflected in Section 90 of the Companies Clauses Consolidated Act 1845. Section 90 was later replaced by what became Article 80 of Table A in the Companies Act 1948.

[4] 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 if the corporation,

As mentioned, Professor Dodd[5] 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[6] 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[7].

With regards to this aspect, Professor Sealy[8] 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 a 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

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

[5]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.*

[6]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.*

[7]Ibid Berle, Pg 1367-1369.

[8]Supra see Sealy note 118.

the imposition of certain rules and a wider extension of duties on directors, which can include creditors' protection. This will certainly enhance creditors' right which at present are not adequately protected under the statutory provisions of the companies legislation.

CREDITORS' INTEREST WITHIN A CORPORATE GOVERNANCE FRAMEWORK: A MALAYSIAN PERSPECTIVE

With regard to creditors rights, Malaysian courts have developed the common law fiduciary duty that directors owe a duty to act bona fide in the interest of the company. This principle which was laid down in Re Smith & Fawcett[9] and Walker v Wimbourne[10] was incorporated in Section 132 of the Malaysian Companies Act 1965 which specified that directors should at all times act honestly and use reasonable diligence in the discharge of the duties. Although there is a long list of director duties stipulated in the Act, these duties are owed to the company. Hence, in Malaysia, creditors have some setbacks because they cannot themselves bring a civil action against a director to recover their loss since they have indirect rights. The fiduciary duties are owed to the company and consequently it is the company which has the remedy[11]. Beyond this, the rights of creditors are in general clear and normally accrued during or in the event of winding-up, except if it involves an element of fraudulent trading, dishonesty, or it amounts to an *ultra vires* transaction. Malaysian courts have not been that advanced in interpreting creditors rights in cases where the company remains a going concern, as compared to their English and American counterparts. Unlike the shareholders, creditors cannot interfere in the management of the company[12].

However, when the company is wound up, its liquidator can take a civil action against the directors and any monies received from them are available for distribution to creditors. The other statutory provision, which imposes on directors a general duty to the creditors, is section 20, which is based on the doctrine of ultra vires. The effect of this provision is that if a certain transaction is otherwise valid, the fact that the company did not have the capacity to enter into it is immaterial. However, the company's lack of capacity may lead to proceedings being taken against the company by any member and the creditor[13]. By virtue of section 20(3)[14], if the transaction entered by the company is yet to be performed, the court has powers to restrain the performance thereof and to order compensation for any loss sustained by

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[9] (1942) 1 ALL ER 542.

[10] (1967) 137 CLR 1.

[11] This is based on the corporate entity principle which specifies that a company is distinct from the members.

[12] This has been accepted in article 73 (fourth schedule of the Malaysian Companies Regulation 1966 which is similarly worded as Art 70 of table A of the UK Companies Act.

[13] Section 20(2)(a).

[14] Section 20(3)(a) states that the court may if all the parties to the contract are parties to the proceedings set aside and restrain the performance of the contract if it thinks just and equitable to do so and may allow the party in the contract to receive compensation for the loss or damage resulted from its action.

the other party involved. Furthermore, the case of Pamaron Holdings Sdn. Bhd. v Ganda Holdings Bhd[15] held that this section is confined to members and debenture holders only.

Another statutory provision, which offers protection, is section 181. Although this section was legislated by parliament as a means of remedy available to shareholders and creditors, in most cases it was decided that the member seeking a section 181 remedy is always a shareholder. This remedy, which is said to be a remedy for oppression, is based on section 459 of the English Companies Act 1948 and section 186 of the Australian Uniform Companies Act 1961[16]which provides protection for company members against unfair prejudicial acts and is based on the Foss v Harbottle[17] principle and is known as the proper plaintiff rule.

Section 181 also covers a wide range of conduct that may be prejudicial to the minority based on just and equitable grounds under section 218(1)(I). The two limbs of section 181 also constitute grounds for winding up the company. In this respect, winding-up can be regarded as a remedy for the creditors since they would be in a more secure position compared to their position when the business was a going concern.

Under Section 218(1)(f), the court may wind up a company if the directors have acted in their own interest rather than in the interest of the shareholders. This is often seen as an alternative to the remedy under section 181. Furthermore, the company's inability to pay debts to the creditors will lead to the appointment of a receiver[18], which also constitutes a ground of winding up. However, in Malaysia and indeed in any jurisdiction, winding up a solvent company is a drastic step. The court will not make an order under section 218(1) if it is of the opinion that the applicant has some other remedy available or if they are acting unreasonably in seeking a winding-up order instead of pursuing other remedies.

A further statutory protection for creditors is based on section 303, this section which imposes liability on directors where proper accounts have not been kept. Where an officer is convicted under section 303(3)[19] the court may, on the application of the liquidator or creditor, declare the officer personally responsible for the payment of the whole or any part of the debt under section 304(2)[20]. It seems that this section will provide assistance for the creditor as they are given the opportunity to apply to court to declare that such an officer or director be held personally liable for the contracting debt.

Similarly, the creditor is also given the right to apply to the court in the course of winding-up of the company to examine and compel a person who is guilty of any

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[15] (1988) 1 MSCLS 90, 165.

[16] Although this position is based on English provision it was held in the Privy Council in Re Kong Thai Sawmill (Miri) Sdn. Bhd (1950-1985) MSCLC,14 that this local provision is wider than their English counterpart and the English authorities on this issue should be regarded merely as persuasive authority and not binding.

[17] (1843) 2 Hare 461, 67 ER 189.

[18] Section 218(1)(e).

[19] Section 303 provides that if in course of winding up against a company an officer of the company had knowledge of the contracting debt, than he would be held personally liable.

[20] It should be noted that the personal liability under section 304(2) is dependent on a conviction under section 303(3).

misfeasance or breach of duty to repay or restore money or property misapplied or retained. This is based on section 305(1). This right is in addition to any criminal liability held against the offender under section 305(3).

Furthermore, creditors can also bring proceedings against the company for fraudulent trading. This right is given under section 304 which entitles the creditor to make an application to court if it appears that the business of the company has been carried on with the intent to defraud the creditors of the company. In such a situation based on the application of the creditor the court may, if it thinks it proper to do so, declare that any person personally liable for all debts[21]who was knowingly a party to carrying on the business.

Finally, other protections included under section 250 allow creditors and liquidators to take part in a public examination of the director in court. There are also sections that impose disqualification of directors of insolvent companies, such as section 130A, which is aimed to protect creditors by preventing certain persons from being directors. However, an application under this section can only be made by the registrar or the official receiver. In other words, the creditor will not have direct access to this remedy although, if it were implemented, it would prevent unscrupulous directors from managing the company.

REGULATING CORPORATE PHILANTHROPY

Corporate donations or presumed philanthropy may be regarded as an *ultra vires* act of the company unless the company object specifically provides for such activities. It is therefore appropriate to discuss the *ultra vires* rule doctrine in order to establish whether the basis for corporate philanthropy may be established in the general objectives of a company. The aim of the *ultra vires* doctrine was to protect investors and creditors against unauthorized activities and depletion of their funds. In the strict sense of the term, any transaction which was beyond the company capacity as defined in it object clause in the memorandum of association would be void and could not be ratified even by its members .

The Malaysian Companies Act 1965 will have a significant act on corporate philanthropy because the validity of philanthropic activities is subjected to certain restrictions. Commercial companies now have the option to adopt a short form object clause in the memorandum of association such as the following:

a. The object of the company is to carry on any trade or business whatsoever and
b. The company has power to do all such thing as are incidental or conducive to the carrying on of any trade or business by it.The business judgment approach was one of the first to be applied by the English courts to some cases on corporate philanthropy. Accordingly, the effect of the business judgement rule is extending immunity to company directors who make business judgments in good faith and for a proper

[21] Section 304 which is based on fraudulent trading is based on section 332 of the original English Companies Act 1948. However unlike English position, which only restricts application to be made in winding up ,section 304 also applies 'in any proceedings against a company. Thus widening the scope for the creditor to pursue their action against the company.

purpose, having acted on an informed basis without material personal interest and who have rational belief that the decision is in the best interest of the corporation against potential liability in the event that director is sued for having failed to exercise care. In this respect, that the BJR should be drafted in similar lines to that of the Australian BJR.[22]It allows corporate gifts to be made where decisions are taken by directors bona fide in what they may consider and not what the court may consider a s the best interests of the company. It appears that the court are reluctant to interfere with directors' business decision since they are best place to manage their company business. This approach is also concerned with the extent to which the wishes of the majority can be questioned by minority shareholders. The court will not generally entertain any shareholders proceedings against the company under the rule in Foss v Harbottle.[23]

In Malaysia, the Companies Amendment Act in 2007 introduced a new concept of 'business judgment' [24] to the Act. The term is statutorily defined by s132(6) to mean any decision whether or not to take action in respect of a matter relevant to the business of the company. A director who makes a business judgment is deemed to meet the requirements of the duty under s 132(1A) and the equivalent duties under the common law and in equity if the director satisfies the following conditions [25] :

(i) makes the business judgment in good faith for a proper purpose;
(ii) does not have a material personal interest in the subject matter of the business judgment;
(iii) is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and
(iv) reasonably believes that the business judgment is in the best interest of the company.

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[22] The Business Judgment Rule has been incorporated into the Malaysian Companies Act 1965 by virtue of the Amendment made to the Malaysian Companies Act 1965 in September 2007.

[23] (1843) 2 Hare 461. The court will only consider the shareholders proceedings in very limited situation. In what has become to be regarded as a seminal exposition of the rule Jenkins LJ in Edwards v Haliwell stated that it was a based upon two propositions namely first the proper plaintiff in action in respect of a wrong alleged to be done to a company is prima facie the company and secondly only the majority of the shareholders can decide to bring proceedings where a wrong is done to the company. See also Aishah Bidin, (2004) " Legal issues arising from minority shareholders remedies in Malaysia and United Kingdom" *Journal of Law and Society*, UKM 51-69.

[24] In Australia the Corporate Law Economic Reform Program(CLERP) " Proposals for Reform: Paper no 3" explains why there is a need to incorporate the business judgment rule in the Company legislation :- *"The fundamental purpose of a business judgment rule is to protect the authority of directors in the exercise of their duties, not to insulate directors from liability. In the absence of an express statutory acknowledgement of a business judgment rule, companies and shareholders will inevitably incur costs as a result of the failure by the company and its directors to take advantage of opportunities that involve responsible risk taking".* See also David Tan, "Delivering the judgment on a statutory business judgment Rule in Australia" (1995) AJCL Lexis 39;Stuart Cohn, "Demise of the director's duty of care: Judicial avoidance of standards and sanctions through business judgment rule " (1983) 62 Texas law Review 591.

[25] See Section 132(1B)

This new s 132(1B) on business judgment is based on the recommendation that 'a statutory safe harbour in the form of the business judgment rule is necessary in tandem with the extensive codification of fiduciary duties and the duties of skill and care and the introduction of a statutory derivative action. At common law, Courts dislike to substitute its judgment for the business judgment of directors or shareholders. However the business judgment rule does not apply where the judgment was not arrived at bona fide in the interests of the company as a whole or has been precipitated by improper motives .

According to a leading commentator, there are at least five policy bases for the rule of the business judgment rule[26] .First, there is the judicial concern that persons of reason, intellect and integrity will not serve as directors if the law expects from them a degree of prescience not possessed by people of ordinary knowledge. Even without pressing liability, qualified persons will not serve if their decisions can be second guessed at every turn. The second rationale is to encourage the type of informed risk-taking with which corporate enterprise is undertaken especially in an increasing global economy. Third, courts are ill-equipped to exhume and examine business decisions. Corporate officers and directors make many decisions on the basis of incomplete information, intangibles such as experience or intuition and wide ranging general consideration such as consumer preferences, local and regional economic trends and competitive outlook. Even if courts were able to assemble before sufficient data on these topics, most courts would feel ill at ease in reevaluating that data. Fourthly, the rule represents a well established judicial policy of leaving management to managers and a reluctance to undertake or second guess business decisions. Lastly, the rule is a means whereby courts are aided in the management and allocation of their own resources. The business judgment rule is a device courts use to cut off unmeritorious but complex cases at the motion or other pretrial stage. The business judgment rule is thus a standard judicial review consciously or unconsciously used as a tool for achieving judicial economy.

In the United States, the business judgment rule has been described as the principle whereby courts will give directors wide latitude in the management of a corporation affair as long as they reasonably exercise an honest, unbiased judgment [27]. The US business judgment rule may aim to 'to shield corporate decisions-makers from judicial second-guessing'[28] but it appears to be a precondition of protection that reasonable diligence and care have been exercised. In Australia, the CLERP has proposed a statutory formulation of the business judgment rule and the Corporation Act 2001 has accepted the proposal as seen in s 180(2) of the Act. The provision of the section is similar to the new s 132(1B) of the Malaysian Companies Act 1965.[29]

[26] See John H Farrar, " Towards a statutory business judgment rule in Australia" (1998) *AJCL LEXIS 3*

[27] See WE Knepper, Liability of Corporate officers and directors (3rd edition,1978) 20. See also Bodell v General Gas & Electric Corp 15 Del Ch 420, 140 A 254 (Sup Ct 1927)

[28] See Stephen Radin, "The Director's duty of care three years after Smith v Van Gorkom " (1988) 39 *Hasting Law Journal 707,713.*

[29] Section 180(2) of the Corporation Act 2001 provides that: Business judgment rule -- A director or other officer of a corporation who makes a business judgment is taken to meet the requirements of sub-s (1) and their equivalent duties at common law and equity in respect of the judgment if they:

(a) make the judgment in good faith for a proper purpose; and

MALAYSIAN CONTEXT-THE ROLE OF THE GLC (GOVERNMENT LINK CORPORATION)

The various five year national planning since the early sixties have to a considerable extent changed the scenario of the country's social and economic structures. The overriding goal of promoting national unity as a contained in the Second Malaysia Plan (1971- 1975) is still very much the concern of presenting leadership and will continue to be the philosophy of the years to come. The twin objectives of eradicating poverty by raising income levels and increasing employments opportunities and of restructuring society so as to reduce and eliminate the identification of race with economic functions, through reducing imbalances in income, employment and the ownership and management of productive assets in the economy are still pursued vigorously although the strategies and instrument to achieve these objectives may have change to take into account the changes in the global socio-economic environment as well as within the country.
In 2006, the Putrajaya Committee on GLC High Performance (PCG) launched the GLC Transformation Manual namely a set of guidelines on how GLCs can contribute to society in a responsible manner and create a positive impact for their business and for society.

The seven core areas of contribution to society include the following:

- Human rights- Supporting internationally proclaimed human rights
- Employee welfare- Implementing good employment practices for the benefit of employees
- Customer service- Meeting customer need by efficiently supplying goods and services through exceptional customer services
- Supplier partnership- Working with business partners and suppliers to adopt socially responsible practices
- Environmental protection- Protecting the environment by minimizing the environmental impact of business operation, products and services
- Community involvement- Participating or leading in community development programmes and providing selected universal to under–served or under- developed markets and communities
- Ethical business behaviour – Promoting good behaviour practices and fair competition including working against corruption

As of the December 2004, there were about 40 GLCs, with a combined market value of approximately RM 232 billion, accounting for 32 percent of the market capitalization of Bursa Malaysia. A GLC is defined as a company for which the government has the ability to appoint board members and senior management, and

(b) do not have a material personal interest in the subject matter; and
(c) inform themselves about the subject matter of the judgment to the extent they reasonably believe to be appropriate; and
(d) rationally believe that the judgment is in the best interests of corporation.

actively makes major decisions (example contract awards, strategy, restructuring and financing, acquisitions and divestments). There are three types of GLCs. In the first type, the Government of Malaysia exercises controls directly through *Khazanah Nasional*, the National Pension Fund, and the Bank Negara Malaysia.

The second type are companies controlled indirectly by other federal government-linked agencies, through the *Permodalan Nasional Berhad*, the Employees Provident Fund, and *Tabong Haji*. The third type consists of companies where control is exercised through state agencies. GLCs are undergoing a series of reforms to promote a culture of high performance and to transform them into more efficient and globally competitive corporate vehicles. The policy initiatives include the use of key performance indicators (KPIs), performance-linked compensation (PLC) and competitive contracts for the senior management of all GLCs. This policy signals greater emphasis on commercially driven strategies within the private sector, as well as on the government's gradual withdrawal from active micro-management of its private sector entities.

Domestic institutional investors in the Malaysian capital market consist largely of GLCs, government-linked investment companies, mutual funds, pension funds and investment companies. The most important institutional investors include *Khazanah*, Ministry of Finance Incorporated, the National Pension Fund, *Permodalan Nasional Berhad*, the Employees Provident Fund, *Lembaga Tabong Haji*, RHB Nominees (Tempatan) Sdn Bhd, Petroliam Nasional Berhad, *Amanah Raya Nominees (Tempatan) Sdn Bhd* and Malaysia Venture Capital Management Berhad.

CSR FOR MALAYSIAN PLCS

In Malaysia, listed companies are required to adhere to a number of aspects of business that exemplify CSR. This include the adherence to high ethical standards on financial reporting, minimizing discharge of pollutants, employing physically challenged employees and the like. Most listed companies in Malaysia undertake such programs and this has augured well with the caring society that we live in.

On the national front, a significant amount of efforts has been put into encouraging the proliferation of CSR into the very fabric of our society. The National Integrity Plan, the Ninth Malaysia Plan, the Capital Market Master Plan and the publications for GLC transformation all reflect various aspects of CSR that our Government wants to see put into action. In furtherance to that, Bursa Malaysia has continuously taken a proactive role in driving the promotion of CSR in the Malaysian business environment. Bursa Malaysia also sees CSR as an extension of corporate governance. Though not exactly two sides of the same coin, Corporate governance(CG) and CSR do have a lot in common. Ultimately, both corporate governance and corporate social responsibility are about ensuring the sustainability of business through good business practices. While better CG practices address the concerns of shareholders, good CSR on the other hand more often address the concerns of the stakeholders. Both influence business strategy and illustrate elements of accountability, transparency and sustainability. The correlation between CG and CSR creates a realization to which the company sets its priorities and business objectives.

As an exchange and a listed company, Bursa Malaysia is in a unique position to face the challenge that CSR poses, both from a commercial and regulatory standpoint. Being a listed company, Bursa Malaysia is in position to "walk the talk" as a PLC as well as guide and influence other PLCs to implement good CSR. As a commercial entity, it will have to follow up its announcements and guidelines with its own performance according to set standards. Through its regulatory role, Bursa Malaysia has the ability to influence the way all the other PLCs view, adopt and integrate CSR into their business practices.

As part of the Malaysian government efforts to guide PLCs in adopting CSR into their business practices, Bursa Malaysia has introduced a CSR framework and guidelines in 2007 CSR issues such as carbon emission reductions, human capital development and global health are moving from being mere value adds to becoming key performance indicators in business management. It is noted that many companies carry CSR criteria as KPIs of the senior management in addressing long term risks to shareholder and stakeholders' value. In this respect, members of the top management become proactive CSR champions and lead the pack in inculcating CSR into the organizational culture. It is important to note that CSR strengthens the very fabric that builds both internal and external trust and for this to work,employees have to be engaged in CSR and the values must be embedded into every aspect of the company's fundamental operations.

The role of NGOs and professional bodies is also important to complement efforts to spur CSR. Through self-regulation and raising public awareness and expectations, NGOs and professional bodies can place pressure on companies to go beyond their minimal statutory duties and legislative requirements. Therefore, efforts taken by bodies such as the ACCA through the Malaysian Environmental and Social Reporting Awards (MESRA) awards to promote CSR best practices should be applauded and continuously encouraged.

Bursa Malaysia also recognizes the importance of long term sustainable development, not only to generate stronger business growth but also to promote a more balanced growth which incorporates the social and environmental dimensions of development. CSR is a journey by business rather than a destination. Although there is a slow uptake of CSR amongst Malaysian companies, there is a growing awareness that CSR affects the long-term profitability of the business. As non-financial considerations become more important to a business and the way it is regarded by the community, it will not be long before CSR moves into mainstream strategic management.

CORPORATE SOCIAL RESPONSIBILITY (CSR) FRAMEWORK FOR MALAYSIAN PUBLIC LISTED COMPANIES

The CSR Framework is basically a set of guidelines for Malaysian PLCs to help them in the practice of CSR. As the Prime Minister mentioned in the 2006 budget speech, from now on, all PLCs are required to disclose their CSR activities. Many of Malaysian have already practice CSR to some extent. Some PLCs may be doing it even without realising it. The directive from the PM is really an opportunity for logical thinking about CSR. It is meant to encourage Malaysian PLCs to become more engaged in being socially responsible, and to make the way they approach the process of CSR,

CSR is defined as open and transparent business practices that are based on ethical values and respect for the community, employees, the environment, shareholders and other stakeholders. It is designed to deliver sustainable value to society at large. CSR supports Triple Bottom Line reporting which emphasises the economic, social and environmental bottom-line wellness. CSR goes beyond compliance to laws. It is important to avoid a legalistic way of thinking when considering CSR. There is no universal approach to CSR. Companies are free to adopt what suits them. However there are some basic concepts that cut across all definitions and these should be considered in crafting a company's CSR vision. CSR is not about compliance or philanthropy or public relations. It often involves cultural transformation in a company as it integrates CSR concepts into its operations and decision making. Vitally, CSR involves communicating the company's actions to its stakeholders and encouraging their feedback. Only in this way can a company have a dynamic and relevant CSR vision. The Bursa Malaysia CSR Framework looks at 4 main focal areas for CSR practice. They are: the Environment, the Workplace, the Community and the Marketplace , in no order of priority.

Firstly,The Environment: When looking at the environment, CSR can focus on a variety of issues. Most consumers worry about energy, how to use it more efficiently and how to reduce the way its emissions damage the climate. Here in Malaysia, bio fuels have become a topical issue. There are other aspects as well. Malaysian live amongst some of the richest biodiversity in the world. Protecting our flora and fauna is essential.

Secondly,The Community: Companies live within the community. They depend on the community in many ways and the community depends on them. Supporting employee involvement in community issues enriches the community and the company. Supporting education, such as adopting a school, is another possible activity. Companies can be creative in looking at how they can contribute to children, youth development and the under-privileged. The opportunities for company interaction with the community are vast.

Thirdly,The Marketplace: The Marketplace is where we find important stakeholders – our shareholders, suppliers, and customers. Companies can interact responsibly with this group in a number of ways, such as supporting green products or engaging in only ethical procurement practices. Helping to develop suppliers and other vendors is another way of contributing. Raising the standards of Corporate Governance within the company so that it meets shareholder expectations is a further consideration.

Fourthly, The Workplace: Company draw employees from society and so everything they does with their staff needs to be socially responsible, namely whether dealing with basic human rights or gender issues. A quality work environment and health & safety are obvious considerations, as in the way in which, companies believe in CSR, and to inculcate employees, the values which the company believes. Ideally, companies should consider all 4 CSR dimensions when crafting their own visions. But that does not mean a company must do everything. For some companies there will be focal areas or initiatives that do not apply. The important thing is that the company uses the framework to help it identify its choices and priorities. Individual CSR initiatives will depend on the nature of each company's business, its inclinations, and its resources.

Like most PLCs, Bursa Malaysia will soon be producing a CSR Vision statement and employee involvement and volunteerism will be high on the priority list, and so will the management of our internal environment. On a longer term basis, Bursa will also be looking at creating green products CSR such as carbon funds, carbon credit notes and the adoption of triple bottom-line reporting. Further other consideration will also include to consider how best to tap the potential of socially responsible investment (SRI) funds and socially responsible indices. Thus CSR is essentially about companies moving beyond a base of legal compliance to integrating socially responsible behaviour into their core values, in recognition of the sound business benefits in doing so. Since businesses and the challenges they face differ widely, government interventions need to be carefully considered, well-designed and targeted to achieve their objective. The Government's approach is to encourage and incentivise the adoption and reporting of CSR through best practice guidance, and, where appropriate, intelligent regulation and fiscal incentives.

CONCLUSION

Although arguments for corporate 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.

It has also been demonstrated that the Malaysian Companies Act 1965 do not expressly prohibit companies from making political and charitable donations. Disclosure therefore has an important role to play as a means of regulating the political and charitable donations. Although some of the provisions allow the company to engage in corporate philanthropy, directors must nevertheless observe any limitation on their power. Further there are also legal mechanism to be observed namely the doctrine of *ultra vires* and the business judgment rule.

Consistency towards adherence and promotion of CSR is an important facet of any organization that intends to incorporate CSR. It essentially involves adherence to stated values and serves as the litmus test of an organization's own credibility. Failure to "walk the talk" is a common source of criticism of many companies claiming to be socially responsible. Listed companies in Malaysia should not only proclaim themselves to be good corporate citizens but must also be seen to be in that light. Failure to consistently behave in line with the stated value commitments will undermine the organization's credibility in the eyes of the public, and this detrimental to the image. Therefore being consistently involves in CSR is crucial.

The modern corporation must be perceived as a private enterprise institution with economic and social objectives. In the modern business corporation, corporate managers act as trustees for all those who have an interest in the enterprise-stockholders, employees, creditors, consumers, suppliers and the public. Companies must adapt themselves to the new role and they must match their ideas with social aspirations. For this to be achieved, it is essential that a more secure legal framework is provided which addresses the issues directly. What is needed is a change of companies' aspiration from profit maximization to profit optimization and a system of accountability to society in which they operate, since they provide the main springboard to developing the concept of corporate social responsibility.

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