Corporate Law Reform Committee

Responses and Comments Received on
Consultative Document
"Creating A Conducive Legal and Regulatory Framework for Businesses"

Respondents:

A total of twenty-three (23) responses were received from the following:

1. Joint MIA MICPA (MIA)
2. Kadir, Andri & Partners
3. The Association of Banks in Malaysia (ABM)
4. CPA Australia
5. Malaysian Association of Company Secretaries (MACS)
6. Sunway Management Sdn Bhd
7. Mr Lam Kee Soon
8. Institute of Approved Company Secretaries (IACS)
9. The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)
10. Mr Nik Mohd Hasyudeen Yusoff
11. Johor Bahru (JB) Practitioners Group
12. K H Goh & Co
13. Mr. Billy Kang
14. Mr. Ang Chen Tong
15. Maybank
16. Persatuan Firma Akauntan Melayu Malaysia
17. Gagasan Badan Ekonomi Melayu (GABEM)
18. Malaysian Investment Banking Association (MIBA)
19. Takaful
20. PFA
21. Dr. S. Susela Devi
22. Kumpulan Wang Simpanan Pekerja (EPF)
23. Bank Negara Malaysia (BNM)

Summary of responses and comments:

Respondents	Comments
Joint Memorandum from the Malaysian Institute of Accountants (MIA) and The Malaysian Institute of Certified Public Accountants (MICPA)	**Reply to Question 1:** i. Yes, we agree that three should be a single statute that applies to companies irrespective of its size. ii. Yes, we agree that the company legislation should be simplified and refined to ease the burden of compliance on small and closely held companies. **Reply to Question 2:** Yes, we agree that the distinction between public and private companies should be kept and that this should be used as a basis in simplifying and making company law more conducive to business. **Reply to Question 3:** Yes, we agree that the existing threshold of 50 be retained in the definition of a private company. However, employees (who are also shareholders) should be excluded when calculating the threshold of 50. This will encourage small and medium sized companies to offer their employees a stake in their company. **Reply to Question 4:** Yes, private companies should continue to be prohibited from issuing shares to the public. **Reply to Question 5:** Yes we agree that a private company should be allowed to issue debentures to the public. However, the word "public" should be properly defined as it should only refer to the selected members of the public and not the general public. **Reply to Question 6:** Yes, we agree that the definition of "an offer to the public" in relation to the restriction on public offers by private companies as stated in section 769 of the UK Companies Bill 2006 should be adopted. However, we would like to highlight that the terms "an employee of the company", "members of personal family" and "civil partner" should be clearly defined. In addition, we are of the view that the existing definition contained in section 122A(2) of the Companies Act 1965 should be used. **Reply to Question 7:** Yes, we agree that the present mandatory audit rules should be retained. **Reply to Question 8:** Not applicable. **Reply to Question 9:** Not applicable. **Reply to Question 10:** Yes, we agree.

	Reply to Question 11: Not applicable. **Reply to Question 12:** Yes, we agree that a specific person should be appointed to carry out the functions of a company secretary. **Reply to Question 13:** Yes, we agree that such a person must be professionally qualified. **Reply to Question 14:** Not applicable. We are of the view that the directors (or their agents) could be company secretaries provided the directors or their agents are professionally qualified. **Reply to Question 15:** No, we do not agree that a register of company secretaries be established by SSM to monitor company secretaries, as we understand that the various professional bodies prescribed under section 139A of the Companies Act 1965 are governing the professional conduct of their members effectively. MIA and MICPA are prescribed bodies under section 139A of the Companies Act 1965. Thus, all members in good standing of MIA and MICPA are eligible for appointment as company secretary. MIA and MICPA maintain duly updated registers of members and monitor their compliance with professional standards. **Reply to Question 16:** Yes, we agree that a company should be statutorily conferred with the full capacity of a natural person, regardless of anything in its constitution, including its objects. **Reply to Question 17:** Yes, we agree that the doctrine of ultra vires should be abolished except in so far as it applies to members of the company and in proceedings by members against any directors or former directors as well as any petition by the Minister to wind up the company. **Reply to Question 18:** Yes, we agree that it should be expressly provided that third parties are not deemed to have constructive notice of contents of documents lodged with the Registrar and that a third party is not required to inquire into whether or not the transaction is permitted by the company's constitution or beyond the powers of the director. **Reply to Question 19:** Yes, we agree that constructive notice should be abolished except is so far as the Register of Charges is concerned. **Reply to Question 20:** Yes, we agree that companies registered under section 24 of the Companies Act 1965 (i.e. not-for-profit companies) should continue to be required to have objects clause. **Reply to Question 21:**

	Yes, we agree that the present types of companies are sufficient to cater to the present needs of the business community. However, we believe that it is timely for the concept of "Limited Liability Partnerships" to be appropriately considered. **Reply to Question 22:** Yes, we agree that the minimum number of members required for private companies be reduced to one. However we are of the view that public companies should have more than one member. The legal implication of having only one member in private companies should also be given consideration. (E.g. in the interest of continuity of business, due consideration should be given to the consequences arising from the untoward death of that one member). **Reply to Question 23:** Yes, we agree that the minimum number of directors should be reduced to one and the sole director may also be the sole member of the company but must be a Malaysian resident. However, for public companies, the number of directors should be more than one. **Reply to Question 24:** Yes, we agree that the name reservation process should not be made mandatory but should be made optional. **Reply to Question 25:** Yes, the power to direct a change of name by the Registrar should be retained. **Reply to Question 26:** Yes, we agree that the present incorporation documents should be simplified and consolidated into single document. **Reply to Question 27:** Yes, we agree that the requirement for a statutory declaration should be replaced by a declaration of compliance. **Reply to Question 28:** Yes, we agree that the incorporation certificate should be conclusive evidence that a company named in it had been registered and exists as a separate legal person. **Reply to Question 29:** No, we do not agree that the requirement for a company to have a common seal under the Companies Act be retained. However, due consideration ought to be given for other laws in Malaysia relating to the use of common seals. **Reply to Question 30:** No, we do not agree that electronic filing and lodgement of documents should be made mandatory, not until widespread accessibility to information and communications technology (ICT) is in place to facilitate electronic filing. Currently, the ICT in areas outside the major cities may not be adequate to promote equitable business opportunities.
Kadir, Andri &	**Reply to Question 1:**

Partners	i. The existing legislative framework under the Companies Act, 1965 is already tailored to regulate all companies, irrespective of size. As such, it would in our view be counterproductive to change this now. We agree with the CLRC's conclusions, at paragraphs 2.7 and 2.8 of the Consultative Document, that the benefits of simplification can still be achieved under a single legislative framework. ii. We agree with the need for simplification and refinement of the current legislation to be facilitative for the growth of small businesses, and that such companies be able to operate without the burden of complicated provisions in relation to financial disclosure, and other substantive reporting requirements. **Reply to Question 2:** Yes, we agree. Such a distinction is already entrenched under existing law. Further, as per the CLRC's observation in paragraph 3.6 of the Consultative Document, we should distinguish between small and closely held companies and large companies (whether closely held or having management from its shareholders). As such, the law should be flexible enough to cater for such distinction. In addition, we agree with the recommendation of the CLRC (in paragraph 3.10) that such distinction should apply especially in the areas of fund raising, governance and financial reporting. **Reply to Question 3:** Yes – such a provision is important to limit the membership of private companies. This, of course, is reflective of the present law as set out in section 15(1)(b) of the Companies Act, 1965. **Reply to Question 4:** We agree with this proposition as this is in our minds necessary to maintain the private/public company distinction. This is also consistent with the approach in Australia and under English law (as described in paragraph 4.5 and 4.6 of the CLRC's Consultative Document) which in general restricts equity fund-raising by a private company from the public. Notwithstanding, as stated in paragraph 4.12 of the CLRC's Consultative Document, private companies already have access to the debt capital markets in the form of debentures and it is timely that the law be clarified to provide categorically that private companies are allowed to issue debentures to the public. **Reply to Question 5:** Yes. The issue of debentures is already heavily regulated under existing law (e.g. the Securities Commission Act, 1993). In our view, a distinction can certainly be made between debenture holders who are only creditors but not members of the company. **Reply to Question 6:** We agree in principle. Be that as it may, we are of the view that certain provisions of the section 769 of the Bill (now section 756 of the Companies Act, 2006) need to be looked at carefully in the Malaysian context. These are as follows:- i. We are concerned that sub-section 769(3)(a) will be interpreted to "excuse" an offer being made to the public where it is contended that it was not "calculated" to be made to the public. It is in our minds beholden upon the Company to ensure that the offer is not available to the public; and

ii. The term 'family' (provided in sub-section 769(6)) should be interpreted in context of the existing section 122A of the Companies Act, 1965 which interpretation includes a spouse, parent, child (including adopted child and step-child), brother, sister and the spouse of a person's child, brother or sister.

Reply to Question 7:
We agree that as a general rule it should be mandatory for companies to audit their accounts. The external audit is the method by which a company's accounts and finances are independently verified – therefore, its value e.g. for potential creditors to evaluate the credit-worthiness of a particular company outweighs the cost savings that may be gained from abolishment of the said requirement. Further, the role of auditors is wider than to independently verify the veracity of a company's accounts and finances – Auditors also perform an advisory role to the directors of a company and are meant to contribute to and encourage good corporate governance practices.

Notwithstanding the aforesaid, as suggested in paragraph 5.14 of the CLRC's Consultative Document, the rules on mandatory audit requirements can perhaps be relaxed in situations where the company is not publicly accountable. The approach to determine public accountability as discussed by the International Accounting Standards Board, and set out in paragraphs 5.16 and 5.17 of the CLRC's Consultative Document, is in our view a good test. Further, we agree with the Malaysian Accounting Standards Board's approach for determining whether a company is 'exempt' from the Financial Reporting Standards –

i. That a company does not have public accountability;
ii. That at balance sheet date, all of its owners are members of its parent company and
iii. That it is not a 'large' company – and these may be useful in determining whether or not a company should be compelled to audit its accounts.

Reply to Question 8:
Please refer to our answer to Question 7 above.

Reply to Question 9:
a. We agree that the company must be a private company. We are however concerned that by restricting the shareholding requirement to individuals, the exemption would exclude companies which are wholly-owned subsidiaries of private companies for which the same exemptions may also be applicable; and
b. We do not recommend prescribing definitive threshold as these may be subject to abuse by companies in order to avoid having to audit their accounts. Such requirements may inhibit instead of encourage the growth of small businesses. We suggest that the focus be on more "objective" thresholds rather than a definitive monetary amount.

Reply to Question 10:
We agree. There is arguably a greater degree of public interest in such companies, and in addition the investing public would rely on the financial reports of these companies to evaluate the performance of these companies in making their investment and other decisions.

Reply to Question 11:

	Yes. There is in our view legitimate concern that if these companies are not required to table their audited accounts before a general meeting there will be lack of scrutiny of the financial position and activities of these companies. This may arguably be mitigated by adopting as a safeguard, the requirement that these companies include key financial indicators in their annual return, which would still be subject to public scrutiny. **Reply to Question 12:** We concur with this view. The need to maintain complete and accurate company secretarial records is crucial and the company secretary's role and responsibilities in doing so should not be underrated. Hence, we are in agreement with the CLRC's findings in paragraph 6.15 of the Consultative Document that the cost consideration in respect of appointing a specific person as company secretary is outweighed by the need to maintain public confidence in the information obtained from documents lodged with the Registrar. **Reply to Question 13:** Yes. The requirement for professional qualifications sets a minimum threshold of competence for such persons and as noted in paragraph 6.18 of the CLRC's Consultative Document, since the introduction of the requirement that company secretaries must be professionally qualified, there is a significant improvement in compliance amongst companies and in the quality and accuracy of documents lodged with the Registrar. **Reply to Question 14:** The question is not really one of qualification or ability of the directors, but instead whether company directors are willing to be trained to undertake such a role. As such, we consider that for the moment it is better that such tasks are left to professionals. **Reply to Question 15:** We do not agree. There is in our view no necessity for SSM to monitor company secretaries as there already exists professional bodies (such as the Malaysian Association of the Institute of Chartered Secretaries and Administrators, the Bar Council and the Malaysian Institute of Accountants) which regulate the conduct and qualification of its members who are entitled to act as company secretaries. **Reply to Question 16:** Yes, the original objects clause setting out the purposes for which the company is formed is redundant and is a product of the historical development of company legislation. Further, the protection conferred upon third parties by a restriction of the company's capacity to act beyond its objects is also diluted by section 20(1) of the Companies Act, 1965. The law should in our view provide that a company's objects are unrestricted, unless specifically limited. This gives the members power to fetter what a company is otherwise free to do. **Reply to Question 17:** We agree in principle. If the members choose to limit their company's objects, the doctrine of *ultra vires* should still be applicable in this context. **Reply to Question 18:** Such a provision disapplying constructive notice should be applicable only

	to *ultra vires* and in relation to powers of directors. Other information from documents required to be lodged with the Registrar are public documents and are readily available to the public (e.g. information on directors, a company's solvency and register of charges), and the public should be deemed to have constructive knowledge of the same. **Reply to Question 19:** Please refer to Question 18 above. **Reply to Question 20:** Yes, the purpose of incorporation of non-profit companies should clearly be spelt out so as not to "deviate" from the "straight and narrow". **Reply to Question 21:** Yes, we agree. There is no need to alter or revise the present classification as set out in section 14(2) of the Companies Act, 1965. **Reply to Question 22:** We agree that the minimum number of members required for private companies ought to be reduced to one as this would reflect the business reality of the existence in many instances of companies in which the economic interest and control is vested in one single person. This would eliminate the requirement by these companies to take steps or measures merely to comply in form with the present provisions of the Companies Act which require a minimum of 2 members. We are of the view that the existing requirement should be retained for public companies, i.e. a public company must have at least 2 members. **Reply to Question 23:** We agree that the minimum number of directors required for private companies ought to be reduced to one as this would reflect the business reality of the existence in many instances of companies in which the economic interest and control is vested in one single person. This would eliminate the requirement by these companies to take steps or measures merely to comply in form with the present provisions of the Companies Act which require a minimum of 2 directors. We are of the view that the existing requirement should be retained for public companies, i.e. a public company must have at least 2 directors. **Reply to Question 24:** Yes, we agree. **Reply to Question 25:** Yes, we agree. **Reply to Question 26:** Yes, we agree. The streamlining and simplification of the existing incorporation documents into one transactional form would create a more conducive framework for business. **Reply to Question 27:** We agree. The requirement of affirming a statutory declaration is not essential given the provisions of section 364 of the Companies Act, 1965. **Reply to Question 28:**

	Yes, this should be retained. **Reply to Question 29:** Yes, this should be retained. **Reply to Question 30:** Although making electronic filing and lodgement of documents mandatory ought to be a long term objective, it is our view that at present the hybrid filing process described in para 8.56(i) ought to be implemented coupled with strong incentives and encouragement for users to migrate to the electronic filing system.
The Association of Banks in Malaysia (ABM)	**Reply to Question 1:** i. Yes. ii. Generally agreed to the CLRC's recommendation but CLRC need to consider the simplification and refinement of the company legislation that would constitute as "to ease the burden of compliance on small and closely held companies." As banks may grant potential loans to such companies. **Reply to Question 2:** Yes. Whilst private companies are reliant on and accountable to their own shareholders, the public companies have to be held more accountable especially where public funds are used to operate the business. In addition, more stringent requirements should be imposed on public companies. **Reply to Question 3:** Yes, as currently stated in Section 15(1)(b) of Companies Act 1965. **Reply to Question 4:** Yes. **Reply to Question 5:** Yes, since this falls within the purview of the guidelines issued by the Securities Commission, the investors' interest will be safeguarded. **Reply to Question 6:** Yes since the definition would help clarify on the uncertainty of interpretations of what constitute 'offer to the public'. **Reply to Question 7:** Yes. **Reply to Question 8:** Not relevant. **Reply to Question 9:** Not relevant. **Reply to Question 10:** Yes. These are the type of companies where disclosures, transparency and accountability are of paramount importance. **Reply to Question 11:**

	Not relevant. **Reply to Question 12:** Yes. This will ensure professionalism in the maintenance and certification of the company's secretarial records, which records are relied upon by banks when dealing with companies, whether as depositors or borrowers. **Reply to Question 13:** Yes. **Reply to Question 14:** Not relevant in view of our answer in Q 13. **Reply to Question 15:** Yes, this will promote better management and monitoring of the qualities and competencies of company secretaries. **Reply to Question 16:** Yes. This will definitely ease the burden of third parties, especially banks, when dealing with a company, as it can deal securely and speedily without having to scrutinise the company's Memorandum & Articles of Association. **Reply to Question 17:** Yes. This would facilitate business as it removes the burden of third parties to verify whether or not the company has capacity to enter the transaction. **Reply to Question 18:** Yes. **Reply to Question 19:** Yes as it would be beneficial to the banks. **Reply to Question 20:** Yes as it would clarify the extent of the company's powers under its M&A. **Reply to Question 21:** Yes. **Reply to Question 22:** The existing requirement on the minimum number of members for public companies should be retained. For the private companies, we would like to seek clarification whether CLRC has addressed the practical problems that could arise in the event of the death of the single member. **Reply to Question 23:** No. For better governance and check and balance, more than 1 director is preferred. **Reply to Question 24:** Yes, as this will speed up the process of incorporating a company. **Reply to Question 25:** Yes.

	Reply to Question 26: Yes, this is ideal and will help to expedite the process of incorporating a company. **Reply to Question 27:** Yes as the declaration of compliance will still be subject to section 364 of the Companies Act 1965 which imposes a stricter penalty to that of the Penal Code for any false and misleading statement. This will help to do away with the red tapes of getting sworn statements. **Reply to Question 28:** Yes. **Reply to Question 29:** Yes. **Reply to Question 30:** Yes. The transitional period should be of reasonable time and that the electronic filing is user friendly and is fully reliable.
CPA Australia	**Reply to Question 6:** Whilst we agree that the Companies Act should provide a definition for 'an offer to the public' in relation to the restriction on public offers by private companies, we do not agree that the definition should follow the wordings of section 769 of the UK Companies Bill 2006. Care should be taken in ensuring that the definition provides for the local environment and be easily by laypersons to avoid possible ambiguities. **Reply to Question 7 & 9:** We are of the view that the mandatory audit requirement should be retained. However, as apposed to Singapore's opt-in approach, we propose an opt-out approach for companies that meet certain criteria which would classify them as "small" companies, and thus be given the option to be exempted from mandatory audit. As to the appropriate threshold for the economic size indicators, we suggest that a thorough study be conducted on companies in Malaysia to ascertain these figures. In addition to the above, there were also concerns that the doing away with mandatory audit requirement will encourage the formation of dormant companies, which the Companies Commission of Malaysia has been trying to eradicate. As such, we recommend that if decision is made to allow newly formed companies, which are dormant, to be exempted from audit, this period of exemption should be limited to three (3) years, after which, the mandatory audit requirement will apply to the company, unless opted-out. **Reply to Question 12 & 13:** In light of the important role of the company secretary, we recommend that company secretaries of public listed companies be professionally qualified to ensure that they are equipped with the necessary knowledge and skills for this role. **Reply to Question 14:** Company secretaries who are professionally qualified would already belong to a professional body and would be governed by that professional body's

	bye-laws. As such, we feel that there is no requirement to further govern or monitor company secretaries who are professional qualified and belong to a professional body. However, we support the establishment of a Register to monitor secretaries who are licensed by SSM, commonly known as "licensed secretaries". This category of company secretaries should be monitored to ensure that they continue to build on their knowledge and skills through Continuing Professional Development programmes. **Reply to Question 21:** Whilst we agree that the present types of companies that could be incorporated in Malaysia are sufficient to cater to the present needs of the business community, we feel that a study should also be conducted as to whether other types of companies, such as Limited Liability Partnership, may further assist in catering for the needs of businesses in Malaysia in light of our constant changing business environment. **Reply to Question 29:** We feel that there is no longer a necessity for a common seal. In an environment where contracts may be made anywhere in different locations of the world, a common seal may prove cumbersome. The requirements by other laws to require such a seal should not influence the decision to maintain or remove the seal. **Reply to Question 30:** No, we do not agree that this process be made mandatory. Instead, we recommend that electronic filing and lodgement of documents should be provided at a much lower cost compared to manual filing to encourage participation in electronic filing and lodgement.
Malaysian Association of Company Secretaries (MACS)	**Reply to Question 1:** MACS agrees on that there should be a single statute that will apply to companies irrespective of whether the company is small or large but for item (ii), MACS is of the view that the current provisions which are encompassed in the Acts are sufficient in governing companies. Perhaps, some slight modifications are more appropriate on the areas where small and family owned companies should be leniently supervised by the Companies Commission of Malaysia. However, there should be more stringent compliance and supervision towards larger companies. **Reply to Question 2:** MACS agrees on that the distinction between public and private companies should be remained. **Reply to Question 3:** MACS agrees on that the definition should be retained. **Reply to Question 4:** MACS agrees on that private companies should continue to be prohibited from issuing shares to the public. **Reply to Question 5:** MACS disagree on that a private company should be allowed to issue debentures to the public.

	Reply to Question 6: MACS agrees on that the definition of 'an offer to the public' in relation to the restriction on public offers by private companies as stated in section 769 of the Companies Bill 2006 be adopted. **Reply to Question 7:** MACS agrees on that the present mandatory audit rules should be retained. **Reply to Question 8:** Not applicable. **Reply to Question 9:** Not applicable. **Reply to Question 10:** Not applicable. **Reply to Question 11:** Not applicable. **Reply to Question 12:** MACS agrees on that a specific person should be appointed to carry out the functions of a company secretary. Such person will act as an adviser in compliance with the Companies Act. **Reply to Question 13:** MACS agrees on that such person must be professionally qualified and trained to perform the duties and responsibility of a company secretary. **Reply to Question 14:** MACS is of the view that knowledge of company law and secretarial practice are fundamental and the directors (or his agents) without such knowledge and experience as company secretary are unable to carry out the functions to an acceptable level of competency. **Reply to Question 15:** MACS agrees on that a register of company secretaries be established by SSM to monitor company secretaries. However, we propose that the monitoring process be done by the respective prescribed professional bodies under the Companies Act. **Reply to Question 16:** MACS agrees on that a company should be statutorily conferred with the full capacity of a natural person, regardless of anything in its constitution, including its objects. **Reply to Question 17:** MACS is in agreement that the doctrine of *ultra vires* should be abolished and except in so far as it applies to members of the company and in proceedings by members against any directors or former directors as well as any petition by the Minister to wind up the company. **Reply to Question 18:** MACS agrees on that the Companies Act should be expressly provided that third parties are not deemed to have constructive notice of contents of documents lodged with the registrar and that a third party is not required to

	inquire into whether or not the transaction in permitted by the company's constitution or beyond the powers of the directors. **Reply to Question 19:** MACS agrees on the abovementioned content. **Reply to Question 20:** MACS agrees on that companies which are registered under section 24 of the Companies Act 1965 (i.e. not-for-profit companies) should continue to be required to have objects clause for the purpose of distinction of its activities with other profit making organizations. **Reply to Question 21:** MACS agrees on the abovementioned content. **Reply to Question 22:** MACS agrees on that the minimum number of members which is to be required for private companies be reduced to one with the exception of public companies, hence Section 36 of the Companies Act should be modified accordingly. **Reply to Question 23:** MACS agrees on that only for private companies that the minimum number of directors should be reduced to one, and that the sole director may also be the sole member of the company. **Reply to Question 24:** MACS agrees on that the name reservation process should be made mandatory in a view to protect the public interest. Therefore, MACS propose that current practice on name reservation process be remained in order to avoid the abuse on the trade of corporate trade name in this respect. **Reply to Question 25:** MACS agrees on the current position where the Registrar be empowered to direct a change of name should be retained. **Reply to Question 26:** MACS agrees on the present incorporation documents should be simplified and consolidated into a single prescribed form. This is indeed a preliminary process towards electronic filing for lodgement of documents with the Registrar. **Reply to Question 27:** MACS is in agreement that the requirement for a statutory declaration should be replaced by a declaration of compliance, with the exception of a statutory declaration prior to the appointment as directors. **Reply to Question 28:** MACS agrees on that the incorporation certificate should be a conclusive evidence that a company which is named in it had been registered and exists as a separate legal person. **Reply to Question 29:** MACS is of the view that the requirement for a company to have a common seal under the Companies Act should not be retained.

	Reply to Question 30: MACS is of the view that electronic filing for lodgement of documents should not be made mandatory.
Sunway Management Sdn Bhd	**Reply to Question 1:** Agreed. i. It is inevitable to have single statute as a once small company will one day grow in size and be converted into public company, or even listed on the Exchange. Different statute poses difficulty for small company to transform into big company in terms of compliance. Corporate companies are moving towards the era of globalization thus single statute is important. A single statute will better facilitate business growth and promote a company's natural business progression from small to large. Separate legislation for small companies may create a trap for small companies in the event that they have ceased to satisfy the criteria for being "small" and yet have failed to take the necessary steps to convert once they become "large" companies. ii. The statute should be drafted in such a way that company law is simplified for small companies i.e. the requirements under the Companies Act should not be burdensome, overwhelming and costly. In fact, small companies should be encouraged to follow what the big companies in terms of compliance but it should not be made mandatory. Generally all members are actively involve in the management in a small company and they have equal access to the information which enable them to assess the state of the company's affairs. Hence, should have a simplify legislation to ease the burden of compliance on small and closely held companies. **Reply to Question 2:** Agreed – there should be clear distinction between the small companies and big companies. A clear and concise definition is necessary in this case. Any constructive suggestion: If a promoter do not wish to comply with too many regulations i.e. too burdensome and costly, he could still opt for registration of a business i.e. sole proprietor, partnership etc. **Reply to Question 3:** Agreed – important to control the size. **Reply to Question 4:** Agreed – If private companies want to issue shares to public then they should take the form of public company. **Reply to Question 5:** Agreed. However, issuance of private offerings of private debentures should be allowed. **Reply to Question 6:** Disagreed. Section 769 of the UK Companies Bill 2006 is not applicable to Malaysia.

	Reply to Question 7: Disagreed. The present mandatory audit rules should not be retained. **Reply to Question 8:** Suggest that those companies with turnover of less than RM5 million per annum need not to be audited (follow Singapore's practice). **Reply to Question 9:** We are of the opinion that among the three proposed economic size indicators, only one is appropriate i.e. Criteria (b)(i) an annual gross revenue. The definition of gross revenue should be clearly set out. We suggest that paid up of the Company can also be used as an economic size indicator. **Reply to Question 10:** Agreed. The above mentioned companies owe fiduciary duty to the stakeholders thus should not be exempted from financial reporting obligations. The interest of stakeholder need to be protected. **Reply to Question 11:** Agree. Probably in a prescribed summary form e.g. Singapore's Annual Return. **Reply to Question 12:** Yes. **Reply to Question 13:** Agree that such person must be professionally qualified. The Company Secretary's role has become more important as they also take on the role of an advisor and compliance officer to the Board of Directors beside their normal administrative role. **Reply to Question 14:** Not applicable. **Reply to Question 15:** Agree. To ensure that only qualified company secretary with experience are practicing to ensure the professionalism is upheld. **Reply to Question 16:** Agreed. **Reply to Question 17:** Not agree. The doctrine of ultra vires should not be abolished. **Reply to Question 18:** No. Third parties are deemed to have constructive notice for all transaction where all the information is available to the public. **Reply to Question 19:** No. The constructive notice should not be abolished. **Reply to Question 20:** Yes, Companies formed pursuant to Section 24 are required to specify their objects in ensuring that such companies do not carry out activities which

	are contrary to their charitable objects. **Reply to Question 21:** Agree. Sufficient for the time being. **Reply to Question 22:** Agreed. **Reply to Question 23:** Agreed. **Reply to Question 24:** The name reservation process should still be mandatory. The reservation time frame should be reduced to two months. **Reply to Question 25:** Agreed. **Reply to Question 26:** Agreed. **Reply to Question 27:** Agreed. Any constructive suggestion: The declaration of compliance should be made before a defined professional. **Reply to Question 28:** Agreed. **Reply to Question 29:** Disagreed. **Reply to Question 30:** Agree subject to the reliability and efficiency of the electronic technology.
Mr Lam Kee Soon	**Reply to Question 3 - 6:** Yes to all the questions. Why 50 members? Why not 40 members since EPC membership total is 20 and no corporate member. A multiple of 2. **Reply to Question 7:** Yes. Audit is either seen as a benefit or a cost. Audit is also a cost: a useful beneficial cost or a burdensome cost. The type and size of the company does not matter. Audit is either useful or useless. The criteria in question 9 is irrelevant. Simple analogy: Government itself is a cost. Good government is a beneficial cost and bad government is a burdensome cost. **Reply to Question 10:** Comment: All companies have reporting obligations – primarily to shareholders and incidentally to stakeholders. Audits raise the level of confidence in financial reporting. **Reply to Question 11:**

	Comment: No. Exemption for filing should be total and not partial.. no necessity to include indicators as these are private companies. **Reply to Question 12 - 13:** Comment: Company secretaries must act professionally. This is only possible through professional training. Hence SSM as a regulator must not issue company secretary licenses as this negates the professional image of the co. sect. There are sufficient professional bodies such as MIA and MIACSA to train and uphold the image of the profession. It is a governance issue for SSM. A regulator must not be a player in the profession. When you issue a licence you become a player in the profession, hence a conflict of interest. **Reply to Question 16 - 20:** Yes to all the questions. **Reply to Question 21:** Yes. **Reply to Question 22 - 23:** Yes but not for public companies. **Reply to Question 24 - 25:** Yes. **Reply to Question 26 - 29:** Comment: Yes, one form **Reply to Question 27:** Do away with all stat dec.S.364(2) penalises false declaration anyway. **Reply to Question 28:** Yes. **Reply to Question 29:** No, a seal is an archaic instrument. An option for seal. **Reply to Question 30:** Comment: E-filing can be made mandatory provided SSM can assure reliability and quick response with a good follow-through process. Other comments: Second schedule – To reduce the registration fees for Authorised capital by 50% in order to promote capitalisation and reducing cost of compliance.
Institute of Approved Company Secretaries (IACS)	**Reply to Question 1:** i. IACS disagrees. The existing company law does not distinguish its application clearly between private companies and public companies. ii. IACS disagrees. The existing company law does not distinguish its application clearly between private companies and public companies. **Reply to Question 2:** IACS is agreeable in respect of the above proposal.

	Reply to Question 3: IACS is agreeable in respect of the above proposal. **Reply to Question 4:** IACS is agreeable that the prohibition should be maintained. If private companies wish to issue shares to the public, they need to convert to public companies and be subject to the regime and regulations that govern the issuance of shares. **Reply to Question 5:** IACS is agreeable in respect of the above proposal. **Reply to Question 6:** IACS is agreeable in respect of the above matter. **Reply to Question 7:** IACS agrees that the present mandatory audit rules should be retained. **Reply to Question 8:** Not applicable. **Reply to Question 9:** IACS is of the opinion that as long as the company satisfies condition (a) that it is a private exempt company, economic size should not be a further condition required to enjoy exemption of filing audited accounts. **Reply to Question 10:** In view of the fiduciary capacity of such companies to persons other than shareholders, IACS does not think that these companies should be exempted from financial reporting obligations. **Reply to Question 11:** IACS is in favour of the current requirement to disclose other key financial indicators even though these companies are eligible for exemption. **Reply to Question 12:** IACS concurs with the above proposal. **Reply to Question 13:** IACS is agreeable to the above proposal. IACS is of rthe view that the competency of the person is more relevant than the professional qualification. Not all professionals especially members of the Bar have been trained in company secretarial matters. **Reply to Question 14:** IACS is of the opinion that directors should not carry out this functions whether qualified or competent. **Reply to Question 15:** IACS agrees that a register of company secretaries be established by SSM to monitor company secretaries. They should also be members of a Prescribed Body Status as well as obtain license from SSM. **Reply to Question 16:** IACS is agreeable in relation of the above proposal.

	Reply to Question 17: IACS is agreeable in relation of the above proposal. **Reply to Question 18:** IACS is agreeable in respect of the above proposal. **Reply to Question 19:** IACS is agreeable in relation of the above proposal. **Reply to Question 20:** IACS is agreeable in relation of the above proposal. **Reply to Question 21:** IACS is not agreeable to the above proposal. In addition to the present types of companies, IACS suggests to adopt the concept of "Limited Liability Partnership" as there is a low recognition of separation between company and shareholders as different entities. **Reply to Question 22:** IACS is agreeable only to private companies. **Reply to Question 23:** IACS is agreeable only to private companies. **Reply to Question 24:** IACS disagrees. It should be made mandatory and in fact the name reservation process should be made available to public. **Reply to Question 25:** IACS is agreeable only within 12 months of incorporation. **Reply to Question 26:** IACS is agreeable to the above proposal provided that the supporting documents are kept with the company secretaries. **Reply to Question 27:** IACS is agreeable to the above proposal provided that the supporting documents are kept with the company sectaries. **Reply to Question 28:** IACS is agreeable in relation to the above proposal. **Reply to Question 29:** IACS is agreeable in relation to the above proposal. **Reply to Question 30:** IACS is not agreeable that electronic filing and lodgement of documents be made mandatory.
Chartered Secretaries Malaysia (MAICSA)	**Reply to Question 1:** We agree with CLRC's view that a single statue for all companies irrespective whether the company is small or large and also the need to simplify and refine company legislation to ease the burden of compliance on small and closely held companies. However, we would like to suggest that clear definition for small and large companies should be considered and

	also it is necessary to clarify the issue on the burden of compliance on small and closely held companies. **Reply to Question 5:** We agree with CLRC's view that a private company should be allowed to issue debentures to the public. However, we recommend that regulated conditions be imposed for such exercise. **Reply to Question 7:** We agree with CLRC's view that keeping of accounting records and the preparation of financial statements in compliance with approved accounting standards are important. We recommend that the mandatory audit rules should be retained and be applicable for all companies with less stringent financial reporting framework for small companies provided that small companies clearly be defined in the Companies Act. **Reply to Question 11:** We recommend that this requirement be applicable in the event the exemptions are allowed. **Reply to Question 13:** We are of the view that only the person who is professionally qualified with right skills, knowledge, professionalism and experience be appointed as company secretary, in order to discharge the duties effectively. **Reply to Question 15:** We welcome the recommendation by CLRC that there should be a register of company secretaries to be managed and controlled by SSM. However, we feel that by having a register only will not promote and enhance the profession and therefore establishment of legislation for the profession is important. **Reply to Question 19:** We agree with CLRC's recommendation that the doctrine of constructive notice be abolished except in its applications to company charges subject to records at SSM be updated regularly. **Reply to Question 22:** We agree with CLRC's recommendation that companies be allowed to incorporate with only a single member. However, we feel that it should only be applicable for private companies in order to reduce the incorporation and maintenance costs. **Reply to Question 23:** We are of the view that one-director one-shareholder companies should only be applicable to private companies. **Reply to Question 30:** We are of the view that electronic filing and lodgement of documents should not be made mandatory and remains as optional.
Mr Nik Mohd Hasyudeen Yusoff	**BACKGROUND** I support the initiative of the CLRC in reforming the regulatory framework for business in Malaysia. I believe the initiative is highly timely due to the need of positioning Malaysia as a competitive and conducive investment destination. This is in line with the efforts of the Malaysian government in

	reviewing laws, rules and regulations that may have serve their purpose and may no longer be relevant to the present dynamic and ever changing business conditions as stipulated in the Ninth Malaysian Plan (9MP) **1** and the Third Industrial Master Plan (IMP3) **2**. At the same time, the need to address market failures and protection of the public is critical to the continued confidence of investors in our economy, both local and foreign. **SIGNIFICANT OF SMEs IN THE MALAYSIAN ECONOMY** I also support the attention given by the CLRC to the small and medium enterprises (SMEs) segment of the economy. As a single law for companies appears to be preferred, enough leeway should be provided to accommodate the needs of the SMEs. Based on the IMP3 report, **99.2 percent** of the 532,132 business establishments in the manufacturing, services and agriculture sectors are SMEs **3**. Although the establishments include both those registered by the Registrar of Companies and Registrar of Businesses, it could be extrapolated that such trend persists in the limited company category. The limited liability company structure is critical to the SMEs for the following reasons: • It provides certainty in terms of ownership of the company and those responsible for management and governance • Clarify the ownership of assets (both tangible and intangible such as intellectual properties) • Helps business activities as transactions with the owners or the companies owned by the owners could be differentiated • Succession planning, more certainty in planning for business succession – this is going to be more critical as our population aged further in the future For the above reasons, SMEs should be encouraged to use the limited company platform to conduct their businesses. I share the observation of the CLRC on the closeness of ownership and management in small closely held companies, which I believe would be the case in most SMEs. As such, the thrust of the reform would be very meaningful if this "closeness" could be appreciated and reflected in any changes of the company law. **A CASE STUDY OF A TYPICAL SMALL OWNER MANAGED COMPANY** To facilitate the understanding of the CLRC on the impact of the present law on the small owner managed company, I have developed this simple case study of two entrepreneurs who incorporated a company as the platform for their business venture, which could be a typical situation in the marketplace at present. The Case Study Mr. A and Mr. B decided to start a printing business. They set up a limited company, A&B Sdn. Bhd., with a paid up capital of RM 2, each held by Mr. A and Mr. B. Both are also directors of the company and both are involved in the daily operations of the printing business as well are the cheque signatories. A&B Sdn. Bhd., Mr. A and Mr. B have been offered compound by the Companies Commission due to the breach of Section 169(3) and (4) of the Companies Act 1965 (CA) for failure to table at the annual general meeting of A&B Sdn. Bhd. a duly audited financial statements. Section 171 of the CA stipulates that offences of this nature could result in imprisonment for 5 years and fine of RM 30,000.

Facts for Consideration

- There is no separation of ownership and management as both Mr. A and Mr. B are shareholders and directors.
- They both control the financial matters of A&B Sdn. Bhd. as they are the cheque signatories.
- A&B Sdn. Bhd. qualifies as an Exempt Private Company pursuant to Section 4 of the CA. In such situation, the company is allowed not to file its audited financial statement to the Registrar, therefore no third party could have any access to the audited accounts unless provided by A&B Sdn. Bhd. itself, upon request.

What Does the Offence Really Mean in Lay Person's Term?
From my perspective, Mr. A and Mr. B and their company were penalized for not inviting a third party to report on the financial matters of the company owned and managed by them, and for the purpose of reporting back to them in an annual general meeting.
What would be the value add to the economy for this to be continued?
The CLRC is also proposing for a single shareholder and single director companies to be allowed. In this circumstance, having the requirement for the single director to have the financial statements audited to be reported back to him as the only shareholders could really be seen as out of place.
Risks to the Public if This Area is Improved?
As discussed above, a part from tabling the audited financial statement at the annual general meeting, the financial statement is not available to any third party if the exemption allowed is exercised. Therefore, there is no risk to the public if there requirement is not made mandatory for this category of companies due to facts described above.
Other than the investors who buy shares or other securities on the stock exchange, any other parties wishing to transact with companies have **leverage** i.e. they could ask for relevant information or choose not to have any transaction with the companies concern. Let's consider some example:

- The Inland Revenue Board has its own audit to ensure compliance of tax law by companies irrespective of the statutory audit requirements
- An audited financial statement is required for the purpose of determining stamp duty for share transactions
- Financial institutions could impose audit requirements in their loan agreements with companies
- A supplier could request for financial statement (audited or otherwise) before transacting with any company

In summary, **the directors of small owner managed companies should be allowed to determine what is level of assurance their require with respect to financial reporting of their companies** as the risk to the public cannot be clearly demonstrated and individual organizations and entities have their own processes and risk management framework when dealing with these entities.

SUPPORT FOR THE INITIATIVES PROPOSED
I support all the proposals contained in the consultative document except for the following positions:

Reply to Questions 7, 8 and 9
The outcome of the survey commissioned by the CLRC demonstrated the

	increasing maturity of our business fraternity. This should provide the CLRC the confidence to be more robust in making decisions on this matter. Based on the reasons cited in the case study, I would encourage the CLRC to remove any unnecessary requirements which may result in business people be penalized purely due to legislative requirements which may not be addressing any market failure. The relaxation should only be confined to small owner managed companies (SOMC) where all shareholders are directors, the wholly owned subsidiaries of SOMCs or companies in which the SMOCs are shareholders with other natural persons, or other SMOCs. In implementing the proposal, the CLRC could consider allowing the relaxation to be exercised provided all the shareholders agree. This would enable a minority shareholder to insist on full requirements to be imposed, should the person wishes so. **Reply toQuestion 15** The proposed register should only be for the purpose of monitoring and for public information only. For a person to be registered, a simple and transparent process must be developed and it should not impose unnecessary burden to prospective registrants. **Reply to Questions 22 and 23** For public companies, more than one director should be required in view of public interest involved. The present position of 2 directors should be appropriate. **Reply to Question 30** While electronic filing and lodgement of documents could be made mandatory, provided the following are also achieved at the same time: • Access to the system is widely available in Malaysia • The cost should be lower than manual filing as practiced in the United Kingdom where a benchmark is established between manual and electronic filing. **OTHER RELEVANT MATTERS NOT COVERED BY THE CONSULTATIVE DOCUMENT** Review the Relevance of Retaining Schedule 9 As the approved accounting standards have been adopted pursuant to Section 166A, the CLRC should review the relevance of retaining Schedule 9 which, I believe, was developed prior to the regime where compliance with accounting standards is mandatory. Review the Present Limitation of Partners of Audit Firms to Approved Company Auditors Only Section 9 of the CA limits the partnership of an audit firm to persons who are approved companies auditors only. In view of the demand for higher quality of audit and the depth and breath of knowledge and skills required, the CLRC may want to consider liberalising the scope of partnership. What matters, as far as regulation is concern, are the qualification and competency of the engagement partners and the engagement teams involved. As long as these are assured, the business arrangements of the partnership should not be the factor for consideration. Review the Business Structure Allowed of Auditing Practice Section 9 of the CA also limits the business structure of an audit practice to partnerships. Other professions in Malaysia such as the Architects, Engineers and Surveyors have allowed services to be offered through limited companies, while retaining the professional liabilities of the professionals. The CLRC could consider whether such liberalisation could be accorded to audit

	practices. Discussions with the Malaysia Institute of Accountants on this matter would be recommended. **THE WAY FORWARD** This law reform would set the conditions for business in Malaysia for a long time. It is important for the CLR to focus on the future needs of this country. It should also adopt the principle of "no more burdensome than necessary" so that Malaysia could be seen as a fair place for business with enough safeguards in place.
Johor Bahru (JB) Practitioners Group	**Reply to Question 1:** i. It is inevitable to have single statute as a once small company will one day grow in size and be converted into public company, or even listed on the Exchange. Different statute poses difficulty for small company to transform into big company in terms of compliance. Corporate companies are moving towards the era of globalization thus single statute is important. ii. We are of the view that generally, the existing provisions of the COMPANIES ACT 1965, does not place onerous compliance, governance or disclosure requirements for small companies. Additionally, the ACT had provided for exempt private limited company to be exempted from certain more burdensome requirements, or which are only applicable for public listed companies. As such, except for certain specific overly oppressive legislation such as S132G, we opine that the future proposed revisions to the ACT need not specifically provide for simplified company legislation to ease the burden of compliance for small companies. Compliance requirements and disclosures explicitly applicable for public listed companies are already separately provided for in the relevant legislations and regulations of the Securities Commission and Bursa Malaysia. Please refer to our further comments on S132G in the attached Annexure **Reply to Question 2:** We agree with the recommendation to retain the distinction between public and private companies. **Reply to Question 3:** Yes, we agree. The members figure of 50 represents a reasonable threshold for definition of a private company. **Reply to Question 4:** Private companies, as understood by the general public in Malaysia and internationally, are companies that are privately held, and whose shares cannot be publicly traded. We certainly agree that the prohibition of issuing shares to the public by private companies be retained. **Reply to Question 5:** Investors who subscribed to debentures are usually financial or underwriting institutions, or are more sophisticated than the general investing public. As noted by WGA, issues of debentures are also governed by the Securities Commission. As such, while issuance of shares to the public by private companies should continue to be prohibited, we agree that the ACT should be relaxed in

	relation to the issuance of debentures by private companies. However, we must emphasise that issuance of debentures by private companies must be regulated by the Securities Commission. **Reply to Question 6:** Yes. We would however suggest that section 769 of the Companies Bill, 2006 be critically reviewed and amended, where relevant, to cater to the local corporate environment, and to facilitate easy understanding. **Reply to Question 7:** The JBPGRP had submitted its MEMORANDUM ON AUDIT EXEMPTION to the CLRC on 28 December 2005 wherein we had recommended strongly that the mandatory audit requirement be retained. Excerpts from the EXECUTIVE SUMMARY of our December 2005 MEMORANDUM are reproduced below. (a) The Case FOR Audit ~ Its Tangible and Inherent Value o Audits add credibility and value to a set of financial statements. o Audits increases the accuracy of the information provided to stakeholders. o Audits aid companies in the raising of finance and capital. o Audits improve controls within the company, leading to increased business efficiency and acts as a deterrent against fraud. o Costs savings, on the contrary accrue to companies whose financial statements are subject to annual mandatory audits vis a vis specially commissioned audits which shall be required in an exemption environment. o SMEs receive free consultancy and advisory services from their auditors. i. Audits add credibility to reported financial information, providing the much need assurance to stakeholders and investors, who are increasingly active and critical of poor quality information. This credibility gap is persistently critical in SMEs. ii. There is no doubt that audit increases the reliability of accounts and thus their value to all users. In addition, it inculcates honesty and integrity in company management and the assurance of the quality of accounting information placed on public record. It also helps promote high standard of financial management in private limited companies. iii. Without the comfort of an audit opinion, investors, be they financial institutional lenders or equity investors, will be nervous of risking their capital. iv. Audits, by its very nature of being a “check and balance”, act as a deterrent to occurrences of fraud. v. Lack of in-house financial and managerial skills is a serious problem, which is holding back many businesses around the world, and Malaysia is no exception. This is particularly so in respect of SMEs which is the target of the audit exemption proposal. (b) Revisiting the Purpose and Reasons for a Statutory Audit i. It may be timely to revisit and remind ourselves, the purpose and reasons for a statutory audit. • Limited liability issues related to incorporated companies requires that audit fulfill an additional public interest role,

	as enshrined in the COMPANIES ACT, 1965. • Regulatory background as provided by SECTION 174 of the ACT requires an auditor to examine the company's accounting records and financial statements and to obtain all the information and explanations needed so as to enable him to form his audit opinion. • The ACT also requires auditors to ensure due compliance by companies with the provisions of the ACT, and to report on any non-compliances, thereby facilitating the COMPANIES COMMISSION OF MALAYSIA's (CCM), enforcement of the statutory requirements of the ACT. • Accounting Standards, which ensures the international credibility and comparability of financial statements of Malaysian companies, dictates that auditors report on their compliance or departure therefrom. • Duly reviewed and audited financial statements serve the varied needs and requirements of various users of financial statements. ii. Any consideration of audit exemption will have the take into account, these principal historical reasons and purpose that gave rise to a mandatory audit requirement. We had concluded that: a. audit is not financially burdensome and has an important role in corporate governance. b. it is NOT right to leap from perceived savings of some audit fees to the conclusion that there will be a net reduction in the cost of doing business: c. The target companies of audit exemption, i.e. the SMEs, are paradoxically, the very corporate entities that are in urgent need of an audit, and to whom, the availability of services of qualified professional accountants are critical. d. The experience in the developed countries is not entirely applicable in the Malaysian context in view of the differences in the business and economic environments in developed countries like the USA, UK, New Zealand and Australia, and even Singapore. It may be noteworthy to consider Hong Kong's raison d'être for retaining mandatory statutory audits. e. Ensuring the credibility of financial statements of Malaysian companies, and as such subjecting the same to audit reviews, should be our primary concern in our aspirations towards achieving a first world developed status in Year 2020. In our MEMORANDUM, we had also referred to the 15 December 2005 launch of the National Audit Day by our PRIME MINISTER, Y.A.B. DATUK SERI ABDULLAH BIN HJ. AHMAD BADAWI I wherein YAB had emphasised the importance of financial audits: a. in its role as a "check and balance"; and b. in instilling a sense of responsibility and accountability on those charged with managing a company. **THE JBPGRP IS OF THE ROBUST VIEW THAT THE PRESENT MANDATORY AUDIT RULES SHOULD BE RETAINED.** We further agree with the WGA's findings from its "Survey of Company Directors' views on Statutory Audit" in Section D of the CONSULTATIVE DOCUMENT that:

	"SMEs have found benefits to financial audit and are prepared to carry out the audit voluntarily. This shows their level of propensity to continue audit of their accounts. They have been filing audited accounts hitherto and presumably would not hesitate to continue filing the audited accounts in the future if the Act continues to require submission of the audited accounts" ; and support unreservedly their conclusion to recommend the retention of the status quo, i.e. retaining statutory audit, to the STEERING COMMITTEE of the CLRC. The full text of our MEMORANDUM, copies of which had been submitted to the members of the WGA, and relevant statutory and professional bodies, can be accessed @ http://www.asq.com.my. **Reply to Question 8:** We are in support of retaining mandatory statutory audits. As such, Question 8 is not applicable in our standpoint. **Reply to Question 9:** The JBPGRP had deliberated the issue of threshold criteria if certain companies are to be exempted from mandatory statutory audits in our December 2005 MEMORANDUM, and had concluded that there could be no out-right suitable criteria that may be applied. Criterions based on gross revenues, gross assets would be a "Pandora's Box", when companies move on-to and out-of the stipulated threshold levels, while conversely, companies with low share capital structures, may have significant operations. Additionally, the CLRC should consider the statutory and financial impact and quagmire of scenarios where companies go back and forth within the audit exemption/requirement system, and the consequent absence of a history of audit increases the costs of audit during the years when it is required. In view of the above, while the JBPGRP may understand the rationale of possibly extending audit exemption to dormant companies, we strongly recommend the retention of mandatory statutory audits for all companies incorporated under the COMPANIES ACT, 1965. As noted in the Executive Summary of our December 2005 MEMORANDUM, business which do not wish to be subject to an audit can organise themselves into sole-proprietorships or partnerships, which currently are not legislated under the COMPANIES ACT, 1965, and therefore, are not subject to mandatory statutory audits. **Reply to Question 10:** Our comments in Question 7 and Question 9 supports the retention of mandatory statutory audit for all companies. As such, to the JBPGRP, Question 10 is not relevant. **Reply to Question 11:** Similarly, in view of our comments in Question 7 and Question 9, Question 11 is not relevant. **Reply to Question 12:** The appointment of a qualified company secretary facilitates and ensures companies' compliance with the relevant statutory requirements. Yes, we agree that a specific person should be appointed to carry out the functions

	of a company secretary, and that such persons must be professionally qualified. We are of the further view that the ACT should provide for a distinction between an in-house company secretary (i.e. company secretary who is on the company's payroll), and that of an external company secretary or company secretarial service provider (i.e. where only a monthly retainer fee is paid). The proposed distinction is critical vis a vis, the current recognition of company secretaries as an officer of the company, and with it, the liability of company's officers for offences committed by the company, including being liable for unpaid income and customs taxes. In view of the limited involvement of external company secretaries in the day-to-day operations of the company, and their limited and restricted role in providing corporate secretarial support services to the companies, we suggest that with the distinction proposed, external company secretaries be excluded from being recognised as an officer of the company. **Reply to Question 13:** Our comments in Question 12 refers. **Reply to Question 14:** We are of the view that directors, unless they are suitably professionally qualified, will not able to carry out the functions of a company secretary to an acceptable level of competency. Additionally, we opine that their resources would be better utilised in running the business of the company. Actual day-to-day corporate secretarial functions would in any case, be delegated by the directors, and such delegation should be to a person who is suitably professionally qualified and experienced. In situations where a director also acts as a company secretary, the CLRC may wish to consider the impact of such dual roles, in particular, on execution of statutory documents where signatures of both a director and a company secretary are required. **Reply to Question 15:** We would be under the impression that the SSM would already have a listing of company secretaries, or are capable of compiling such listings, based on Annual Returns of companies submitted. From the professional perspective, we opine that the primary and principal role of the SSM is to monitor companies' compliance with statutory regulations and requirements, and that any proposal or suggestion SSM also monitor company secretaries would be ultra vires its statutory terms of reference. Company secretaries qualified to act as secretaries under S139A(a) by virtue of their professional standing must be, and continued to be, monitored and regulated by their respective professional bodies. **Reply to Question 16:** Yes, we agree that the full capacity of a natural person be statutory conferred to companies. **Reply to Question 17:** Yes, we agree with the CLRC's recommendation. **Reply to Question 18:** We disagree. Removal of constructive notice may be detrimental to the interests of the company and/or minority shareholders.

	a. Constructive notice of contents of documents lodged with the Registrar should be retained. b. Additionally, third parties should still be required to inquire into whether or not the transaction beyond the powers of the directors (Note: With reference to Question 16, where we do agree with the CLRC's recommendation to abolish the ultra vires doctrine, constructive notice vis a vis the companies' objects clause/constitution would not be relevant). **Reply to Question 19:** We disagree. We are of the view that the doctrine of constructive notice be retained in respect of all Statutory Registers and the relevant statutory forms thereof. Our comments in Question 18 refer. **Reply to Question 20:** Yes, we agree that section 24 incorporated companies shall be required to have objects clauses, and that such object clauses should be precise and unambiguous. **Reply to Question 21:** Yes, we agree. **Reply to Question 22:** The CLRC's consideration of reducing the minimum number of members required for companies from two (2) to one (1) is interesting and rather innovative in the Malaysian corporate environment. While we would give a qualified support the CLRC's recommendation with regards to private companies, we categorically disagree with extending the recommendation to public companies. In the enactment of such proposal in respect of private companies, the CLRC will also need to consider appropriate revisions to provisions in the ACT pertaining to quorums for meetings, approvals of resolutions by the majority of members, and other similar clauses in the ACT. Please refer to our further comments on S147(1) – Quorum at Meeting in the attached Annexure **Reply to Question 23:** Our comments in Question 22 refers. Any such proposal to reduce the minimum number of directors should only be in respect of private companies. The existing requirement with regards to public companies should be retained. Residency requirement of director PARA 8.13 of the CONSULTATIVE DOCUMENT had also indicated that the proposed singular director must be a natural person of full age and who has his principal or only place of residence within Malaysia. We would like to refer WGA to the 5TH CONSULTATIVE DOCUMENT on Directors' Roles and Duties, in particular, Question 4 therein. In our submission to the 5TH CONSULTATIVE DOCUMENT, we had commented that that in the current environment of global investment and liberalisation, the existing residency requirement is archaic and irrelevant, and represents a cost barrier to foreign investment. The residency qualification requirement results in the appointment of nominee directors who effectively possess no statutory or operational control over the company, which in itself, defeats the purported purpose of

	this requirement i.e. a mechanism to facilitate the regulatory bodies' enforcement of compliance with the law. We propose that, either: a. The residency qualification requirement be abolished in totality – in view of the current environment of global investment and liberalisation, and reducing the cost of foreign investment in Malaysia. The regulatory bodies should contemplate other enforcement alternatives in ensuring that companies complies with the requirements of the law; or b. Reduce the residency qualification requirement from the existing minimum two (2) to one (1) – so as to minimise the cost foreign investment in Malaysia. Additionally, in retaining a reduced residency qualification requirement, the COMPANIES ACT should also define who is considered to be 'resident' for purposes of the ACT. **Reply to Question 24:** We concur with the recommendation. However, we suggest that the SSM issue clear guidelines on company name formats that would not be acceptable. Additionally, we wish to emphasise that the implementation of the recommendation should not in any way dilute the SSM's responsibility in ensuring that duplicate names are rejected in their approval of incorporations of companies. Please refer to our comments in Question 26 also. **Reply to Question 25:** Yes, as the authority governing incorporated companies, the Registrar's power to direct a change of name should be retained. Please refer to our comments in Question 26 also. **Reply to Question 26:** Any properly structured efforts to simply documentation requirements for incorporation would certainly be welcomed. However, in the design of the proposed consolidated single prescribed form, the SSM should avoid government departments propensity for forms which are complicated, requiring a separate handbook to guide users on its completion, and which requires redundant information to be filled-in (a case in point – the Income Tax Return Forms). We would further recommend that, to improve the delivery process and bureaucratic efficiency, the SSM consider implementing a system for electronic incorporation (e-incorporation) of companies. Evidently, to ensure that such an e-incorporation is effective, the website capabilities and consistency of the SSM's website need to be significantly improved. However, our additional comments in Question 30 with regards to the IT-readiness of Malaysians would be relevant. **Reply to Question 27:** Any minimisation of the requirement for statutory declarations, which will help to reduce the cost of compliance, will again be welcomed. **Reply to Question 28:** Yes, we concur. However, we propose that the SSM takes the necessary

	steps to improve the security features of the certificate and its quality. As indicated by the CLRC, the certificate would represent conclusive evidence that the company is registered and exists as a separate legal person – as such, the certificate would correspond to our individual identity cards. The proposed improved security features and quality of the certificate however should not add on to the costs of incorporation of the company. **Reply to Question 29:** Yes, we agree. However, we wish to suggest that WGA consider the impact of the expanding use of ICT on the future of the physical common seal. **Reply to Question 30:** Although we have made significant strides in the use and implementation of ICT, we are categorically of the view that we, Malaysians, as a nation, and as individual citizens, are still ill-equipped to place full reliance on ICT. Implementation of ICT by government departments have not been roaring successes – where: a. millions have been spent on software and hardware with negligible or unsatisfactory results; b. electronic filing initiatives by departments such as the Inland Revenue Board have resulted in cumbersome registration and lodgment processes/procedures, and problems with access and lodgments, with the consequence of low utilisation by taxpayers; c. government websites are launched with fanfare but are not updated or maintained. The IT literacy of, and the utilisation of ICT by the general citizenry is well below the global average of developed nations. In view of the above, we emphatically disagree with the proposal to make electronic and lodgment of documents mandatory. A parallel manual/electronic system, as that currently practiced by the IRB would be advisable. In any proposed electronic system, the importance of minimal cost, time and ease of compliance must be emphasised and underscored, including the simplicity of access authentication, including password access and authorised users such as company secretaries. The IRB's most recent e-filing system initiative which required separate personal registration by taxpayers at respective IRB branches, and complicated encryption processes is a disheartening case in-point, as were its earlier initiatives which required physical security devices for each individual taxpayer. FURTHER AREAS FOR CONSIDERATION OF WGA CONSIDERATION 1 SECTION 132G: PROHIBITED TRANSACTION INVOLVING SHAREHOLDERS AND DIRECTORS. Section 132G prohibits a company from acquiring the shares or assets of another company in which a shareholder or director of the acquiring company has an interests. Such prohibition, which is extended to persons connected to the shareholder or director, are not applicable only if the subject shares or assets were acquired more than three years before the current transaction. We are of the considered view that section 132G is convoluted, perplexing and confounding, and we could find no rationale for its codification. Notwithstanding the baffling use of the English language within section 132G, we surmise that the possible intention of section 132G is to protect the interests of the shareholders from transactions where certain

	shareholders or directors may have a conflict of interests. However, imposing an absolute prohibition within a three year period, other than certain group restructuring situations provided in S132G(5) is overly draconian. We opine that that there are adequate protection of shareholders provided within sections 132C and 132E and suggest either that: i. section 132G be abolished forthwith; or ii. prohibited transactions as described in section 132G be subject to approval by the shareholders in a general meeting, with disclosure by shareholders or directors of their interests thereof. It was announced during the Budget 2005 that section 132G will be abolished. However, it appears that the bill to abolish section 132G has yet to be gazetted. We entreat the CLRC to reiterate the proposed abolishment in its CONSULTATIVE DOCUMENT and to facilitate the expedient gazette of the relevant. We had similarly commented on S132G in the 5TH CONSULTATIVE DOCUMENT on Directors' Roles and Duties CONSIDERATION 2 SECTION 153: RESOLUTION REQUIRING SPECIAL NOTICE 1.1 We are of the view that the phrasing of Section 153, reproduced below, is vague, confusing and ambiguous. " Where by this Act special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is moved, and the company shall give its members notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is not practicable shall give them notice thereof, in any manner allowed by the articles, not less than fourteen days before the meeting, but if after the notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty-right days or less after the notice has been given, the notice, although not given to the company within the time required by this section, shall be deemed to be properly given. " 1.2 We suggest that Section 153 be clarified, modified or removed altogether. We had similarly commented on S153 in the 3RD CONSULTATIVE DOCUMENT on Engagement with Shareholders CONSIDERATION 3 SECTION 147(1): QUORUM AT MEETINGS 2.1 Section 147(1) provides that "two (2) members of the company, personally present shall be a quorum". 2.2 Pursuant to Section 147(1), a company with two (2) shareholders cum directors will NOT be able to transact its ordinary business in the following situations: a. where one (1) shareholder cum director has inevitably pass away; or b. where the two (2) shareholders cum directors are in disagreement and deadlocked. 2.3 We suggest that S147(1) expanded by supplementary provisions to cater to the aforesaid circumstances to allow the ordinary business of a company to be transacted without interruption.

	2.4 DEATH OF ONE (1) SHAREHOLDER We suggest that: (a) Where the shareholder has died Intestate or Partially Intestate i. The S147(1) quorum requirement be waived to enable an immediate appointment of a new director, who will hold office until the next AGM. ii. The S147(1) quorum requirement shall continue to be waived in all subsequent AGMs until the issuance of Letter of Administration for the Estate and the consequent distribution of the Estate. (b) Where the shareholder has died Testate The Executor shall be recognised as the legal representative of the Estate and shall represent the equity shares of the deceased in all general meetings of the company until the issuance of the Probate for the Estate and the consequent distribution of the Estate. 2.5 DEADLOCKED SHAREHOLDERS (a) Where one (1) shareholder holds a majority interest i.e. more that fifty-one per centum (51%) in the company ➢ We suggest that the S147(1) quorum be waived so as to allow all ordinary business of a company to be transacted without interruption. (b) Where the deadlocked shareholders hold equal equity interests in the company i. The proposed S147(1) waived shall NOT be applicable where the deadlocked shareholders hold equal equity interests in the company. ii. The CLRC may wish to consider legislating legal provisions for arbitration or other appropriate legal remedies to resolve such deadlocked companies. We had similarly commented on S153 in the 3RD CONSULTATIVE DOCUMENT on Engagement with Shareholders
K H Goh & Co	**Reply to Question 7:** CLRC has decided that the current mandatory audit rules which have been practiced in Malaysia for many years should be one of the many areas to be reviewed under the reform of corporate law. After a few years and having kept many people especially the accountants and auditors hanging there with uncertainty, CLRC finally issued this consultative paper which addressed the question of mandatory audit. CLRC's initiative and effort should be commended. Like many other accountants(I believe), I was looking forward to read CLRC's recommendation on the subject matter and its argument for it. Obviously, we were disappointed because CLRC did not after all state its recommendation. CLRC also did not give its reasons for not giving any recommendation. I can only assume that CLRC has not done all the necessary work to enable it to derive at a recommendation on such important matter. Assuming I am right and that being the case, then the obvious suggestion I have is for CLRC to complete what is necessary for it to complete its job of coming out with a recommendation that is best for the future of our country. The decision made will definitely have a far reaching implication on the economic development and also the accountancy profession of the country. I am of the opinion that CLRC should engage in an in-depth and active consultation with the relevant stakeholders such as the business community, the financial institutions and the accounting profession before it arrives at any recommendation. The public's comment should only be

	sought on the recommendation made by CLRC consistent with other areas reviewed by CLRC. For instance, CLRC recommended in the same consultative document that the current compulsory company secretary system should be retained. The way of getting the public to sort of voting which of the two options put forward by CLRC is better can be misleading or meaningless. The fact that CLRC despite not stating its recommendation, went ahead or rather jumped the gun to discuss the Consequential Law Reform Should the Mandatory Audit Requirement be Abolished For Private Companies may indirectly suggest that CLRC is nevertheless in favour of audit exemption for smaller companies. Is this the case? Changing a system of this nature is a policy decision rather than anything. The 6 members of the Working Group responsible for this are easily more than qualified and capable to deliberate this issue and come out with a solution. The only shortcoming is they only represent their own selves instead of any represented groups. In a way, it is also not fair to the 6 members to shoulder the responsibility of making such important recommendation. I would like therefore suggest that CLRC consider setting up a Task Force comprising representatives from all the stakeholders for the purposes of coming out with a consensus as to which of the 2 alternative systems is the best for our country and the resultant criteria and rules. I am also of the view that the accounting professional bodies should be at the forefront of this issue. Audit exemption is without doubt an accountant's issue. I think it will be useful and timely for the accountancy profession with the support of the government to come out with a master plan for the industry akin to the Capital Market Plan and Financial Market Plan. We should come out with a 5 or 10 years industry master plan and this issue can be one of the many issues to be addressed. The lack of interest shown by the leading accounting professional bodies in Malaysia on this issue is rather sad. It may however be not surprising as this issue has no effect on the big boys who are the main driving forces behind the professional bodies. In addition, I am of the view that any decision on audit exemption should not be made based on cost beneficial factor or so called conducive business environment alone. We need to consider many other related matters and issues including the effect on the accounting practices and education. For instance, do we know how many accounting professionals and staffs are employed by smaller practitioners and how the audit exemption may affect them? We need a comprehensive study of the possible implication to the accounting profession if audit exemption were to be implemented. In fact the top priority to create a conducive business environment is to improve the public delivery system including those under the jurisdiction of SSM. For instance, it should not take 2 weeks or more to register a new company. Another example is to give tax incentive to business start-up and entrepreneurship. Most of the existing tax incentives are meant for big investment project. For instance a big and listed company like AirAsia was given 5 years tax incentive by the Government. As a comparison, a person who decided to quit his job and take the risk to start a new business will have to pay taxes as soon as he makes profit although at a lower rate (6% lower from 2008 onwards). I do not think audit exemption and hence some cost saving arising therefrom is the top priority in terms of creating a conducive business environment and encouraging innovation and entrepreneurship. At the same time, smaller practitioners who are essentially part of SMEs and who are arguably the key source of business and financial advice to

	SMEs also need a lot of support and assistance from the government to stay competitive and relevant. Never mind that they are not forthcoming, the last thing we want to hear is for the mandatory audit rules to be taken away without any compensating source of revenue. Having said that, I believe over long run, audit exemption may turn out to be a blessing in disguise to the practitioners as goods purchased based on demand will generally fetch a better price. One of the issues currently faced by smaller practitioners is the decreasing margin in audit jobs. Unhealthy margin has the danger of comprising the quality of work. However we need to know what is in stored for us if and assuming that the decision is to do away with mandatory audit. We need a clear direction and a comprehensive solution and plan. Whether or not the mandatory audit rules will stay, I personally think that a study should be carried out to address many industry issues such as the quality of audit, audit fee, audit independence, staffing qualification, quality of accounting graduates, accounting & professional qualification, 'migration' of accountants, lack of industry statistics, lack of quality accounting research and publication, roles of various professional bodies and institutes, compliance with financial reporting standards and the Companies' Act, the lack of enforcement by SSM, the nonfiling of annual return and accounts, dormant companies and the whole list.
Mr. Billy Kang	**Reply to Question 1:** Yes. CLRC's suggestion on single statute for all companies is good. This will undoubtedly reduce confusion and cost of doing business. Presently Malaysia has Partnership Act and Registration of Business Act catering to businesses that opted not to register under the Companies Act. Presently there are partnerships or sole-proprietorship businesses whose size is much bigger (in term of partners or turnover) than many of the 'Sdn Bhd'. Many partnerships and sole-proprietorships will move up to 'Sdn Bhd' when they are more established. Thus to have different set of company law for 'small' and 'large' companies is burdensome and confusing. It will not add value to the business. (para 2.8; 2.13(ii)) Undoubtedly the present provisions in the Companies Act 1965 pose undue burden on the family-controlled companies and owner-director controlled companies. The burdens are mainly compliance-related matters. These 'burdens' eventually lead to higher cost of maintaining the 'Sdn Bhd'. However, it is important to differentiate 'smallness' in term of the composition of the shareholders with that of revenue/turnover. Thus, simplification for family-oriented or owner-director controlled companies is the right way forward. Having said the above, the numerous forms and returns that are required to be filed with the SSM are of value to 3rd parties dealings with the companies. At the very least those information are the basics and bases for which the 3rd parties relied on in dealing with the company. Therefore, there is a need to balance between lessen the burden of 'small' companies and the interest of the 3rd parties dealings with the companies. **Reply to Question 2:** Yes. The present distinction is already entrenched in the mind of the businessmen therefore there is no need to change the status (Para 3.9; 3.11). **Reply to Question 3:**

	Yes. Presently there are two methods for deciding between 'private' and 'public'. The first one is on registration, that is, whether to register as 'public' or 'private' company. The other is where the shareholder of a private company is limited to 50. Company secretary will be in a position to monitor this matter. **Reply to Question 4:** Yes **Reply to Question 5:** Yes **Reply to Question 6:** Yes **Reply to Question 7:** Yes. It is very welcoming to note that CLRC recommends the retention of the present statutory requirements for keeping of proper accounts by all companies. (Para 5.5). In fact maintenance of accurate and clear accounts is very important to the well being of the business. (Where then china man keeps 3 sets of accounts, if its not important!) With the IFRS regime, all business entities will find it more costly to abide by the FRSs. Smaller companies will find it more taxing on the financial resources then the larger ones. So MASB will have to resolve this aspect of the matter. The survey conducted by CLRC had revealed that the business community appreciates the value of audit and they are not against having mandatory audit. So it is safe to say that having audit is acceptable. However, some may still object to having audit, whether mandatory or otherwise. To this section of the community no amount of reasoning can sway their thinking. Let us not the minority affects our judgment. On the other hand let us examine what will the position be if there is no audit (para 5.10). First, majority of the businesses have banking credit facilities of some sort, the bank would prefer third party confirmation of the financial statement. In this case it will be the audited accounts. If the said company does not have annual audit and to have the accounts audited to satisfy the bank, such audit assignment will be classified as 'special audit' or some other similar names. In this case the company will have to pay much higher audit fee for this 'special audit'. On top of that, credit facilities are usually subject to 'annual review'. So the company will have to fork out this higher fee every year! Second, the Inland Review Board has recently adopted Self-Assessment System for filing Annual Return, and Filed Audited procedures. Both procedures put stringent responsibility on taxpayers. The Tax Agent, who is usually also the auditor, plays a vital role in ensuring compliance, are carried out at the same instance. Thus, having statutory audit impose on the business is not a bad idea. Third, if there is certain 'threshold' to be imposed for not having statutory audit, it will eventually more costly for the company if and when the businesses surpasses this threshold. This is because the auditor will have to do more audit tests and verification to establish the historical cost. Forth, most of the SME cannot afford to employ qualified accountant, so the

	quality of the financial statements prepared by their bookkeepers are of lower standard and may be follow recommended accounting standards. Who would want to rely on this financial statement? Eventually, it will be more costly to 'right the wrong' (Para 5.12). Fifth, in cases where there may be shareholders who are not managing the business, tabling of account in the AGM will not hold any more meaning. CLRC noted that audit is less significant where owner and manager are the same person (Para 5.14). But the purpose and concept of audit is to safeguard the third parties. Why then are we putting a premium on the position of owner/manager? For the purpose of safeguarding the public and the third parties, all companies are required to do prescribed filing with the SSM. If there is no audit, hoe do the SSM or the public can be assured of the accuracy of the information filed? (Para 5.16) **Reply to Question 8:** n.a. **Reply to Question 9:** n.a. **Reply to Question 10:** Yes **Reply to Question 11:** Yes **Reply to Question 12:** Yes. Company secretaries are recognized as the 'officer of the company (Para 6.11) and therefore are liable for offences prescribed in the Companies Act 1965. This provision has resulted in independent external company secretaries been prosecuted. In Malaysia scenario, there are 'management services' companies providing professional company secretarial services. They are professionals and not employees of the company. They are paid retainer fees. Therefore there is a need to differentiate between 'in-house' and 'external professional' company secretaries. And there is a need to define their respective responsibilities, duties and penalties (Para 6.14). **Reply to Question 13:** Yes **Reply to Question 14:** n.a **Reply to Question 15:** Yes **Reply to Question 16:** Yes. CLRC is right to suggest the abolishing of the doctrine of ultra vires (Para 7.9) and the doctrine of constructive notice in respect of the object clause (Para 7.11). The present Object Clause contained in the Memorandum usually provide for almost all kinds of businesses. Also the present business environment is forever changing and moving.

	Reply to Question 17: Yes **Reply to Question 18:** Yes **Reply to Question 19:** Yes **Reply to Question 20:** Yes **Reply to Question 21:** **Reply to Question 22:** **Reply to Question 23:** **Reply to Question 24:** **Reply to Question 25:** **Reply to Question 26:** **Reply to Question 27:** **Reply to Question 28:** **Reply to Question 29:** **Reply to Question 30:**
Mr. Ang Chen Tong	**Reply to Question 7:** I agree that the present mandatory audit rules should be retained simply because: (i) Audit increases credibility of accounts (ii) Without audit, accounts may be presented without compliance with the generally accepted accounting principles i.e. the approved accounting standards. (iii) Audit highlights weaknesses in the accounting system and thus improves the internal control system of SMEs. (iv) Audit ensures transparency and corporate governance by acting as a check and balance on the accounts. (v) Audited accounts are relied upon by banks, tax authorities, suppliers and other interested parties. (vi) Audit provides management of SMEs with reliable information for decision-making. (vii) Audit provides assurance that the financial statements are free of misstatements. (viii) Audited accounts form the basis of computing tax liabilities of SMEs. (ix) Audit minimises the work of the tax authorities when they carry out filed audits of SMEs. (x) Audit raises the standard of accounting works of SMEs in order to meet the high expectations of auditors.

	(xi) In April 2004, ACCA (UK) published a booklet called "Why Audit Matters" to outline why audit remains a valuable activity which will continue to be demanded by SMEs. In line with this, ACCA (UK) has developed a range of 6 leaflets reiterating the value of audit. Their titles are: a. Why Audit Matters – You and the Tax Authorities b. Why Audit Matters – You and Your Banks c. Why Audit Matters – You and Your Customer d. Why Audit Matters – You and Your Suppliers e. Why Audit Matters – You and Your Business f. Why Audit Matters – You and Your Employees
Maybank	**Reply to Question 1:** (i) Yes. Different set of statutes may not address the current problem of compliance. What is more effective is for the processes involved and the requirements imposed statutorily to be simplified and clarified. (ii) Yes, the relevant company legislation should be simplified and refined based on existing waivers, similar approach to exempt private companies. **Reply to Question 2:** Yes. There are other laws/requirements specific to listed public companies and their subsidiaries such as the Listing Requirements. **Reply to Question 3:** Yes but also to consider the use of financial criteria e.g. annual revenue and gross asset. **Reply to Question 4:** Yes. Otherwise the company would cease to be controlled by identifiable and close circuit members hence rendering it no longer 'private'. **Reply to Question 5:** Yes. This will facilitate fund raising exercise by private companies but such exercise should be regulated by the Securities Commission. **Reply to Question 6:** Yes. This would help to clarify on the uncertainty of interpretations of what constitute 'offer to the public' i.e. at what point does invitation ceases to be private and become a 'public offer'. **Reply to Question 7:** Yes. Audit exemption would lead to the value or standards of accounts to be compromised and not to acceptable accounting standards. **Reply to Question 8:** Not applicable. **Reply to Question 9:** Any threshold set must be acceptable to financiers as currently they refer to the company's audited accounts in respect of financing applications. As such, the objective of the amendment must not impede the company's procurement of financing. **Reply to Question 10:** Yes. These are the type of companies where disclosures, transparency and

	accountability are of paramount importance. **Reply to Question 11:** Yes. **Reply to Question 12:** Yes, for consistency, independence and accountability. **Reply to Question 13:** Yes. This is to ensure that a certain set of professional standards are maintained. **Reply to Question 14:** Not applicable. **Reply to Question 15:** Yes. **Reply to Question 16:** Yes. This would confer on the company with full capacity to contract and at the same time negate any issue on the enforceability. **Reply to Question 17:** Yes, but the amendments should ensure all companies are required to follows the single approach, otherwise there would be questions on whether a company has amended its objects clause. It should be noted that the single approach may be disadvantages to investors i.e. whether investors would have adequate information about the nature of the business of a company. **Reply to Question 18:** Yes. **Reply to Question 19:** Yes. **Reply to Question 20:** Yes as it would clarify the extent of the company's powers under its M&A. **Reply to Question 21:** Yes. **Reply to Question 22:** Yes. **Reply to Question 23:** No, for better governance and check and balance, more than one director is preferred. **Reply to Question 24:** No, unless it can be ensured that information in the register with CCM is accurate and up to date so as to enable the public to access and ascertain if names intended have already been proposed by others. If not mandatory and info not reliable, the process of incorporation may be delayed.

	Reply to Question 25: Yes, in order to address instances where inappropriate (offensive etc.) name is used by a company. **Reply to Question 26:** Yes. Would be practical and also enable easy quick retrieval of information in future. **Reply to Question 27:** Yes. **Reply to Question 28:** Yes. Coming from the Registrar, the Certificate could be relied upon by members of the public seeking to verify the status of the company that they deal with. **Reply to Question 29:** Yes, for practical reasons as common seal is used in execution of contracts/agreements between companies and 3rd parties and also relevant under other laws. **Reply to Question 30:** Yes but gradual implementation to be made. This should facilitate retrieval of information and soft copy of documents (Forms lodged etc.) by the Registrar and the public.
Persatuan Firma Akauntan Melayu Malaysia (AMCAF)	General Comments: Company Secretaries (Q12-Q15) The company secretaries under the Company Act are regarded as officers of the company subjected to various laws similar to tose faced by the directors. Company secretaries have been the target of LHDN, SSM, EPF,SOCSO, Customs Department, Local Councils and Bandaraya for any money outstanding since its much easier to locate company secretaries than company directors. We would like CLRC to look at these problems and amended the act so that the company secretaries are not officers of the company. The monthly fee to company secretaries are not commensurate with the liabilities and hope there must be a way out to address the issue. We have no objection if you want to downgrade the professional company secretaries to whatever name called so long as not subjected to unnecessary legal problems created by directors of the company. One Director Company (Q22 &Q23) We have no objection on your proposal but please make sure the company secretaries are not victimised if the single director absconded. We noticed that you have good intention but if not careful benefit out of the proposed amendment are at the expense of the company secretaries. The residential requirement be made mandatory and reclassify company secretaries as not the officer of the company. Audit remained Mandatory (Q7)

	We supported your proposal to maintain status quo on audit as mandatory. The University of Malaysia School of Accounting headed by Dr Sasele Devi had made similar survey on SMEs' and confirmed your finding. Big international firms of accountants are putting pressure for implementing audit exemption as part of their worldwide agenda in eliminating local firms of accountant on grounds that small audit have no values. The United Nation openly reported that big international firms be blamed for Asian share collapse because of excessive IPO share valuations (ACCA cutting enclosed. Massive write-off if investment were made in those years where until now still cannot be recovered. There were numerous other cases of corporate collapse involving international firms of accountants but no action were taken against them either by professional bodies or authorities. Some of these companies include Bank Rakyat, Cooperative Central Bank (CCB), Bank Bumiputra, 23 Deposit Taking Cooperatives, Pel El, Perwaja and many others not reported upon. Big international firms contentions of 'no value' for small company audit is nothing compared to billion of losses suffered by ordinary innocent Malaysia individual, companies and government as a result of share collapse as stated in above paragraph. There are certain European countries still have audit as mandatory. In Asia, Hong Kong and India, technically advanced countries still have audit as mandatory. Why can't we wait the above countries implement audit exemption after all we are only called advanced countries in 2020. Insolvency By Law In Australia, companies have to cease business if they are insolvent. The directors carry on trading using insolvent companies will be personally liable when the companies are dissolved. The insolvent companies in Malaysia can carry on business indefinitely as long as not being wound up. We propose CLRC to look at his insolvency law. Good opportunities for bankrupt by hiding behind audit exemption. There are many small companies bebing run by bankrupt through nominee. The audit exemption will facilitate bankrupts using Sdn Bhd as a company to carry on business since the audit no longer required. Reasonable fines for non-compliance Of late we noticed that unreasonable fines were imposed by SSM for non-compliance. This had a damaging effect to business community and may affect the local and foreign investors. We would like to know the rational of the high penalties imposed by SSM and came to our attention the highest so far up to RM1million. **Reply to Question 1:** (i) Yes (ii) Yes **Reply to Question 2:** Yes **Reply to Question 3:** YES excluding full time employees.

	Reply to Question 4: Yes **Reply to Question 5:** YES but restricted to friends and associates. **Reply to Question 6:** YES but clear definition of public. **Reply to Question 7:** YES. The survey made by University Malaysia had confirmed your finding on maintaining the audit as mandatory. **Reply to Question 8:** N/A **Reply to Question 9:** N/A **Reply to Question 10:** Yes **Reply to Question 11:** N/A because of our reply on Q7. **Reply to Question 12:** Yes **Reply to Question 13:** Yes **Reply to Question 14:** N/A. **Reply to Question 15:** NO. It should be the responsibility of the various Professional Bodies. Any monitoring and enforcement be made by professional bodies. The government should have confidence in Professional Bodies in taking care the licensing. **Reply to Question 16:** YES **Reply to Question 17:** YES **Reply to Question 18:** YES **Reply to Question 19:** YES. However the filling fees and penalties be reviewed and reduced accordingly with the proposal. So that in line with the exercise of minimizing unnecessary burden of compliance. **Reply to Question 20:**

	YES **Reply to Question 21:** YES **Reply to Question 22:** YES **Reply to Question 23:** YES but this director must comply with usual place of residence in Malaysia. **Reply to Question 24:** YES **Reply to Question 25:** YES **Reply to Question 26:** YES **Reply to Question 27:** YES **Reply to Question 28:** YES **Reply to Question 29:** NO. **Reply to Question 30:** NO. It should be optional.
Gagasan Badan Ekonomi Melayu (GABEM)	**Reply to Question 1:** Yes, we agree that there should only be a single statute which applies to all companies. Additionally, serious consideration should be given to simplify laws and regulations applicable to owner-managed companies which may have different risk factors as far as regulation and public interest are concern. In addition to the national strategies and policies, we believe the principle of "no more burdensome than necessary" should be applied. **Reply to Question 2:** Yes, we agree with the retention of the distinction and for it to be used as a basis for simplification of laws and regulations. **Reply to Question 3:** Yes, we agree with the definition of private company. **Reply to Question 4:** Yes, we agree with the restriction to be continued. **Reply to Question 5:** Yes, we agree with the recommendation for private companies to be allowed to issue debentures to the public in view of existing regulation by the Securities Commission.

	Reply to Question 6: Yes, the definition is clear enough and does not restrict private arrangements. **Reply to Question 7:** No. While audit for listed companies and other public interest entities is one of the critical elements of good corporate governance, we believe that for smaller companies, especially in situations of owner-managed companies, the mandatory audit requirement is not necessary and should be left to the shareholders to decide. We also recognize the single shareholder and single director proposal in this document. Under such circumstances, the separation between ownership and management does not exist at all. Therefore, audit requirement for such companies is highly inappropriate. **Reply to Question 8:** In responding to the above question, we assume the reference to question 1 is actually reference to question 7. Yes, we agree that certain types of companies should be exempted from audit requirements. **Reply to Question 9:** In responding to the above question, we assume the reference to question 2 is actually reference to question 7. Yes, we agree that exemption from mandatory audit requirements should be given to private companies only and the threshold for economic size test be limited to a single indicator of annual gross revenue to avoid confusion. As for the actual size of the threshold, we could not offer any view due to the lack of data on the present population of companies in Malaysia. For consistency, the CLRC could use threshold in line with the definition of small and medium enterprise as applied by the Small Medium Enterprise Development Corporation. **Reply to Question 10:** Yes, we agree with the recommendation. **Reply to Question 11:** All companies should be still be required to maintain their financial statements and accounting records in accordance with the applicable approved accounting standards. Therefore, although certain companies may be exempted from the audit requirements, they should continue be required to lodge their unaudited statutory financial statements to the Companies Commission Malaysia together with the annual return. Exemption from filing of financial statement may be considered for exempt private companies as presently provided under the Companies Act. **Reply to Question 12:** Yes, we agree with the recommendation. **Reply to Question 13:** No, while we support the recommendation for the person to carry out the function of a company secretary to be professionally qualified, we also believe that directors of companies should be allowed to carry out the function.

	Reply to Question 14: For smaller companies, the changes in the corporate affairs may not be frequent and involve in matters that are simple such as opening of bank account, changes in directorship and filing of annual return. We do not see such activities could not be handled by the directors. A transparent and simple certification process should be set up. This may be in the form of training provided by the Companies Commission Malaysia and the production of guidance and tools to be used by the directors. **Reply to Question 15:** Yes, we support the proposal provided such establishment does not create another layer of bureaucracy which cause unnecessary burden to company secretaries and companies. **Reply to Question 16:** Yes, we agree with the recommendation. **Reply to Question 17:** Yes, we agree with the recommendation. **Reply to Question 18:** Yes, a clear expression in the Companies Act would clarify the legal position. **Reply to Question 19:** Yes, we agree with the proposal. **Reply to Question 20:** Yes, we agree with the retention of the requirements of having object clauses for not-for-profit organisation. **Reply to Question 21:** Yes, we believe the present corporate structures are adequate, however, simplification for owner-managed companies should be given priority in this law reform. **Reply to Question 22:** We agree with the proposal. **Reply to Question 23:** We agree with the proposal. **Reply to Question 24:** We agree with the proposal. We would also recommend for an option for the process to be performed entirely online similar to name search for websites as practiced globally. **Reply to Question 25:** Yes, we agree with the recommendation. However, the Companies Commission should make all guidelines with respect to registration of companies and other matters transparent and clear to the public. **Reply to Question 26:** Yes, we agree with the recommendation. **Reply to Question 27:**

	Yes, we agree with the recommendation. **Reply to Question 28:** Yes, we agree with the recommendation. **Reply to Question 29:** Yes, we agree with the recommendation. **Reply to Question 30:** We agree with the proposal provided that the system is accessible throughout the country. We also propose that a policy is established for the fees charged for online submission to be lower than physical submission. This is due to the fact that online submission reduces the need for additional staff as well as reducing human error. The saving from this should be passed back to consumers.
Malaysian Investment Banking Asscociation (MIBA)	**Reply to Question 1:** i. Yes. ii. Yes. **Reply to Question 2:** Yes. **Reply to Question 3:** Yes. **Reply to Question 4:** Yes. **Reply to Question 5:** Yes. **Reply to Question 6:** Yes. **Reply to Question 7:** Yes. **Reply to Question 8:** - **Reply to Question 9:** - **Reply to Question 10:** Yes. **Reply to Question 11:** Yes. **Reply to Question 12:** Yes. **Reply to Question 13:** Yes.

	Reply to Question 14: - **Reply to Question 15:** Yes. **Reply to Question 16:** Yes. **Reply to Question 17:** Yes. **Reply to Question 18:** Yes. **Reply to Question 18:** Yes. **Reply to Question 19:** Yes. **Reply to Question 20:** Yes. **Reply to Question 21:** **Reply to Question 22:** No, should remain as the current position i.e. 2 members for better corporate governance **Reply to Question 23:** No, should remain as the current position i.e. 2 directors for better corporate governance. The 2 directors may also be the members of the company. **Reply to Question 24:** Yes. **Reply to Question 25:** Yes. **Reply to Question 26:** Yes. **Reply to Question 27:** Yes so long as the contents remain similar to that of the statutory declaration. **Reply to Question 28:** Yes. **Reply to Question 29:** Yes. **Reply to Question 30:** Yes, however the transitional period should be of reasonable time e.g. 6

	months – 1 year.
Takaful	**Reply to Question 1:** i. We do agree with the proposal that there should be a single statute that apply to companies irrespective of whether the company is small or large. ii. We do agree with the proposal on the need to simplify and refine company legislation to ease the burden of compliance on small and closely held company. This proposal would certainly lessen the burden of small companies in obliging the rules and regulations that govern them as a company registered in Malaysia. **Reply to Question 2:** We do agree that the distinction between public and private companies should be kept and that this should be used as a basis in simplifying and making company law more conducive to business. **Reply to Question 3:** We do agree that the private company to be defined as one where the number of members cannot exceed 50. **Reply to Question 4:** We do agree that private companies should continue to be prohibited from issuing shares to the public. **Reply to Question 5:** We do not agree that a private company should be allowed to issue debentures to the public. **Reply to Question 6:** We do agree that the definition of 'an offer to the public' in relation to the restriction on public offers by private companies as stated in section 769 of the Companies Bill 2006 be adopted. **Reply to Question 7:** We do not agree that the present mandatory audit rules should be retained. **Reply to Question 8:** We do agree that certain types of companies should be exempted from audit requirements. **Reply to Question 9:** a. Yes. We agree. b. We do agree and think that an annual gross revenue and an annual gross assets would be the appropriate thresholds for the economic size indicators. **Reply to Question 10:** We do agree that companies that hold assets in a fiduciary capacity for, or have obligations or liabilities to, a broad group of outsiders such as banks, insurance companies, securities brokers/dealers, pension funds, mutual funds or investment banks should not be exempted from financial reporting obligations irrespective of ownership structure or economic size.

	Reply to Question 11: We do agree that companies eligible for exemptions should still be required to file key financial indicators (assets, turnover) to SSM together with their annual return. **Reply to Question 12:** We do agree that a specific person should be appointed to carry out the functions of a company secretary. **Reply to Question 13:** We do agree that such a person must be professionally qualified. **Reply to Question 14:** N/A **Reply to Question 15:** We do agree that a register of company secretaries be established by SSM to monitor company secretaries. **Reply to Question 16:** We do agree that a company should be statutorily conferred with the full capacity of a natural person, regardless of anything in its constitution, including its object. **Reply to Question 17:** We do agree that the doctrine of ultra vires should be abolished except in so far as it applies to members of the company and in proceedings by members against any directors or former directors as well as any petition by the Minister to wind up the company. **Reply to Question 18:** We do agree that it should be expressly provided that third parties are not deemed to have constructive notice of contents of documents lodge with the Registrar and that a third party is not required to inquire into whether or not the transaction is permitted by the company's constitution or beyond the powers of the directors. **Reply to Question 19:** We do agree that constructive notice be abolished except in so far as the Register of Charges is concern. **Reply to Question 20:** We do agree that companies registered under Section 24 of the Companies Act 1965 (i.e. not-for-profit companies) should continue to be required to have objects clause. **Reply to Question 21:** We do agree that the present types of companies that could be incorporated (i.e. company limited by shares, company limited by guarantee, and unlimited liability company) are sufficient to cater to the present needs of the business community. **Reply to Question 22:** We do agree that the minimum number of members required for public and private companies be reduced to one.

	Reply to Question 23: We do agree that the minimum number of directors should be reduced to one and that the sole director may also be the sole member of the company. **Reply to Question 24:** We do agree that the name reservation process should not be made mandatory but should be made optional. **Reply to Question 25:** We do agree that the current position where the Registrar is authorised to direct a change of name should be retained. **Reply to Question 26:** We do agree that the present incorporation of documents should be simplified and consolidated into a single prescribed form. **Reply to Question 27:** We do agree that with the exception of a statutory declaration prior to the appointment as directors or secretaries, the requirement for a statutory declaration should be replaced by a declaration of compliance. **Reply to Question 28:** We do agree that the present incorporation certificate should be conclusive evidence that a company named in it had been registered and exists as a separate legal person. **Reply to Question 29:** We do agree that the requirement for a company to have a common seal under the Companies Act be retained. **Reply to Question 30:** We do agree that electronic filing and lodgement of documents be made mandatory.
PFA Corporate Services Sdn Bhd	**Reply to Question 1:** i. Yes. ii. Yes. **Reply to Question 2:** Yes, but have a new definition for “small” private companies like in Australia such a company is known as “proprietary company”. **Reply to Question 3:** Yes, but a further small private company be defined. **Reply to Question 4:** Yes, because it can be abused if allowed to issue shares to the public without proper control. **Reply to Question 5:** Yes, as this would assist private companies to raise working capital. **Reply to Question 6:** Yes.

	Reply to Question 7: Yes, this must be maintained to preserve quality assurance of accounts for third party use. **Reply to Question 8:** Question number may be stated wrongly. If exemption is to be given it should be "dormant companies" which then will require a new definition of "dormant company" **Reply to Question 9:** Question number may be stated wrongly. Criteria for audit should not be based on any economic values or gross revenue. It becomes complicated and impractical. **Reply to Question 10:** Yes. **Reply to Question 11:** Yes. **Reply to Question 12:** Yes and they should be qualified with practical company secretarial experience and professional qualifications **Reply to Question 13:** Yes. Professionally qualified plus working experience in company secretarial matters. **Reply to Question 14:** Directors or his agents may not be able to fulfill the demands of company secretarial matters, record keeping and proper advice to be given. Directors are too busy conducting business whilst agent are too busy attending to their own needs and not for the benefit of the company's need for compliance. **Reply to Question 15:** Yes, although this is may a good move to monitor (know only) the numbers of company secretaries, there is a greater need to regulate their professional standing for integrity, honesty and conduct. An enactment of a "Company Secretaries Act" will be most appropriate. **Reply to Question 16:** Yes. **Reply to Question 17:** Yes, although section 20 has partly abolish *ultra vires* concept. **Reply to Question 18:** Yes. Because constructive notice is deemed given where the particulars are found in the Registry of the CCM. **Reply to Question 19:** All constructive notice should be abolished. **Reply to Question 20:** Yes, so that their specific no-for-profit objectives are made known to third

	parties and members. **Reply to Question 21:** Yes. **Reply to Question 22:** Yes. **Reply to Question 23:** Yes, but only for private companies. **Reply to Question 24:** No. The mandatory period of name reservation gives promoters time to prepare the incorporation documents. **Reply to Question 25:** No. The reason is that the Registrar will normally not direct the change of name and therefore the provision is of no effect. **Reply to Question 26:** Yes. **Reply to Question 27:** Yes. **Reply to Question 28:** Yes. This must be maintained as evidence of incorporation which is required by all government and private agencies. **Reply to Question 29:** Yes, because it has it's significance value. But the manner of the common seal should be stated in law. The current practice of making a heavy common seal is a convention, as common seal can be a mere rubber stamp or any form that represents the signature of the company. **Reply to Question 30:** No. This is because electronic media may have mishaps like power failure or other communication failure caused by natural disaster to the ICT.
Dr. S. Susela. Devi	**Reply to Question 7:** The CLRC recommends the retention of the present statutory requirements in relation to accounting records and financial reporting. In arriving at its recommendation, the CLRC considered the findings from a survey commissioned by Companies Commission of Malaysia (CCM survey). The survey reveals some very interesting findings. These are: i. 18.2% did not find statutory audit beneficial; 25.9% were not really sure; and 55.9 % find it beneficial; (p. 121) ii. 23.3% felt it was not necessary to make audit mandatory; 22.5% were not sure; and 54.2% felt it was necessary to make audit mandatory (p.122); iii. 23.4% disagreed that audit was a worthwhile exercise; 31.6% were not sure; and 45% felt it was worthwhile (p.122) iv. 20% of small companies felt audit is not beneficial compared to 5% of large companies; 26% of small companies felt audit is not necessary compared to 10% of large companies. Hence,

	25% of small companies felt audit is not worthwhile exercise. However, only 19% of large companies felt likewise. v. Interestingly, 66.7% of small companies would do voluntary audit and 80% of large companies would do voluntary audit My concern is that the findings merely scratch the surface. A more robust analysis would have yielded more insights to this phenomenon. I would pose the following questions: 1. What was the relationship between ownership structure, and perception of benefits of audit? 2. Is there a relationship between employment of in-house qualified accountant and voluntary audit? 3. What were the nature and characteristics of companies that did not perceive audit as being useful/ beneficial/worthwhile? 4. What were the characteristics of companies that would choose voluntary audit? Answers to the above question would yield further insights that merit consideration by the policy makers. I refer to the findings of another survey conducted by a post graduate student at the Graduate School of Business University of Malaya around the same time (Engku Ahmad, 2005). Briefly, the study shows that contrary to findings in the UK (Collins, 2003) where the non-family owned companies would be more likely to prefer voluntary audit, in Malaysia, wholly family owned companies strongly preferred voluntary audit. Further analysis reveals that there is a significant difference between the level of professional qualification of in-house accountants among non-family owned, partly family owned and wholly family owned SMEs. What this means is that wholly family owned SMEs tend to employ lower qualified staff or none at all and hence they favour voluntary audit as it is perceived as 'an outsourcing of accounting services". This is supported by the findings that the highest perceived benefit from the external accountant is terms of preparation of annual accounts (64%). Majority of the SMEs surveyed utilised the services of the external accountant to provide audit, tax and accounting services. This raises the question of independence as well. Therefore, my concerns are: 1. Based on the findings it appears that audit is perceived to be beneficial. Those who perceive it to be beneficial would request a voluntary audit anyway as the survey indicates. So why should audit be made mandatory? Perhaps, not all private company should be required to have their accounts audited. It is perceived that in the current self-regulatory environment, the requirements to perform audits should be driven by pressure from stakeholders of the company (e.g., bankers, shareholders, etc. etc.) For example, if the financial statements are audited, the bankers may give a lower cost of borrowing; and suppliers may give a longer credit period. This approach will provide a value to the audit and the company can feel the importance of having their financial statements audited, rather than the current mentality of "fulfilling the statutory requirements" (viewpoint expressed by another respondent to this document,

	which I concur). 2. There appears to be some general consensus that the level of financial discipline and financial compliance maturity is still very low and therefore it is necessary to maintain status quo to have mandatory audit. My question is: for long will we defer the decision. When will the businesses be ready? For example, UK introduced audit exemption regime in 1994.Singapore followed suit in 2003. Hong Kong considered and rejected the idea in 2000. It would be useful for policy makers to consider the justifications provided by these jurisdictions that opted for audit exemption. Interestingly, whilst the Institute of Certified Public Accountants Singapore surveyed showed similar results as found in CCM survey, the decision by CLRFC to exemption audit is worth exploring. 3. Perhaps the question that is paramount is whether SMEs perceive audit as beneficial or whether the accounting services provided by the public accounting firm that conduct the audit is beneficial? So if the latter is perceived as valuable, then audit exemption will make no difference since companies will still opt to have accounting services provided to fulfil the statutory requirement to file just statutory accounts (not audited accounts). Stakeholder can request audit to be done if there is a need. 4. This can thus achieve the objective of reducing unnecessary compliance costs and reporting burdens on SMEs. I believe that now is the time for action and further consultation. A decision taken at this point of time may not be revisited for some time. But this decision to mandate audit sends signals to the wider business and international investor community. Having mandatory audit for SMEs by itself does not indicate that the business and regulatory environment is robust and reliable. Taking away mandatory audit signals the confidence in the financial discipline of the SME community. I think it is time market forces be allowed to reinforce financial discipline in the SME business community. Those that opt for voluntary audit perceive the benefit of an audit and make this decision as a strategic policy decision. In summary my response to question 7, would be to reconsider the decision on mandatory audit. Policy makers must see the bigger picture and the implications of this decision. I see that this is a decision that the regulators should make after considering the wider implications. Whilst it appears that audit of smaller companies is useful, perhaps the resources and efforts of the public accountant gainfully directed to provide more value added services for these SMEs such as business coaching or consultancy.
Kumpulan Wang Simpanan Pekerja (EPF)	Secara amnya, pihak kami bersetuju dengan semua sadangan yang terkandung di dalam Dokumen 7 tersebut di atas. Bagaimanapun, pihak kami ingin memberikan maklum balas ke atas tiga perkara berikut:- a) Separate Legislation for Small Companies Kami berpandangan perundangan yang berasingan perlu diwujudkan untuk syarikat-syarikat kecil. b) Minimum Number of Members and Directors Kami berpandangan syarikat awam perlu mempunyai sekurang-kurangnya dua orang pengarah.

	c) Company Formation and Related Matters i. Kami ingin mencadangkan supaya syarikat-syarikat diwajibkan melantik agen percukaian (tax agent) untuk memastikan pematuhan dan system pengurusan percukaian yang lebih efisien. ii. Pengarah Urusan sesebuah syarikat dipertanggungjawabkan untuk menurunkan tanda tangan mereka di dalam semua boring berkanun termasuklah boring caruman KWSP.
Bank Negara Malaysia (BNM)	**Reply to Question 1:** We agree that there should be a single statute to apply to all companies, regardless of its size. We also agree with the proposal to simplify the current laws and procedures for small and closely held companies. For example in terms of auditing requirements and transparency, in the case of small and closely held companies, transparency is not a major issue as the corporate information is largely meant for their respective creditors. We agree with CLRC's view that corporate information in these companies is of limited use to the public because the companies are normally self-funded and do not rely on external financing. In furtherance of the Government's initiative to promote the activities by Small and Medium Enterprises (SME), the simplification of company law and procedures relating to these companies will make it more conducive for them to do business and ease the burden of compliance. Examples may be drawn from the UK Companies Act 2006 which has specific provisions for small companies and businesses so that these companies are not burdened with unnecessary provisions and difficult procedures, and in the Australian Corporations Act 2001, where the section on "small business guide,,1 summarizes the main rules and gives a general overview of the Act as it applies to companies that carry on small business. **Reply to Question 2:** We agree that the distinction between public and private companies should remain as the same has been entrenched in legislation as well as in business. We agree with the CLRC that it would be too radical to amend the definition of types of companies by reference to its economic size. In this respect, we note that the UK Companies Act 20062 also maintains the distinction between public and private companies, while the Australian Corporations Act 2001 defines the same as proprietary companies and public companies. **Reply to Question 3:** We are agreeable to the limit the number of members in a private company to 50. Looking at the other jurisdictions, Singapore's limit is 60, while UK and Australia is 50. Therefore Malaysia would be in the same range. **Reply to Question 4:**

	Yes, we agree that the prohibition should stand as it is the main feature of a private company. We take note of the CLRC's comment that the Securities Commission Act ("SCA") 1993 does not actually state whether of not a private company may raise equity capital from the public. In this regard, if the prohibition was lifted, the public will not be protected from potential risks arising from an offering of securities in relation to a private company as this transaction is deemed as an excluded offer under the SCA which does not require prior approval form the Securities Commission ("SC"). Also, the public issuance will be in conflict with the feature of having a limited number of members in a private company. **Reply to Question 5:** We are agreeable to this proposal, as stated in paragraph 4.3. It would allow a private company to raise capital from the public via debentures. As the approval to issue debentures must first be obtained under the SCA, such issuances will be regulated by the SC and thus protect debenture holders. Given the flexibility, private companies will be able to seek alternate sources of financing to expand their growth, instead of solely depending on capital from limited number of private shareholders or loans from financial institutions. In our view, and as expounded by the CLRC in paragraph 4.12 of the Consultative Document, this proposal is an extension of the existing provision in section 4(6) (b) of the Companies Act 1965 which allows private companies to tap into the capital markets through issuance of debentures to certain investors. **Reply to Question 6:** We are agreeable to the adopt the definition of 'an offer to the public' in relation to the restriction on public offers by private companies as stated in the UK Companies Act 2006. However, please note that the relevant section in the new Act is section 756 and not 769. **Reply to Question 7:** We do not agree that the present mandatory audit rules should be retained. We have weighed the considerations discussed by the CLRC in both Options(Option to retain and Option to exempt audit) and the findings of the survey conducted on Company Directors' View of Statutory Audit in February 2006 (of small-medium sized companies). These Directors found that a financial audit of the accounts of their companies to be beneficial, necessary and a worthwhile exercise, and responded that they would be willing to carry our audits voluntarily, even if not mandated by legislation. While we note the validity of the reasons set out by the CLRC in paragraph 5.12 of the Consultative Document in support of the mandatory audit requirement, in particular the fact that (i) the Malaysian economy is still developing and removing the statutory audit requirement may have adverse effects on businesses and (ii) the lack of financial expertise amongst SMEs could be mitigated through the advice given by the auditors as a result of an audit. However, this should be balanced with a need for companies to be

	more self regulated and this is evident from the findings of the survey which shows that companies are responsible enough to carry out audits voluntarily, even if not legislated. The new UK companies legislation has specific provisions to deal with small4 and dormant5 companies where audit may be exempted on certain conditions. The Act also distinguishes the provisions for appointment of auditors between public and private companies6. In our view, if CCM is moving toward simplifying compliance and reporting procedures, then if the requirement of mandatory audit is maintained, this may defeat the exercise of making the process easier for small businesses. **Reply to Question 8:** Yes, certain types of companies should be exempted from audit requirements and the features are discussed in the next question. **Reply to Question 9:** We agree that the proposed exemption from the mandatory audit requirement for private companies that meet the above criteria merits consideration to reduce compliance costs for small companies, without unduly compromising public interest. We also agree that the treatment of companies for the purposes of the audit requirement should be based on a combination of both ownership structure and economic size. With respect to the appropriate thresholds for the economic size indicators, we suggest the adoption of the prescribed thresholds formulated based on MASS Statement of Principles as stated in paragraph 5.30 of the Consultative Document. The criteria combines economic size, ownership structure and accountability in determining if a company may be exempted. **Reply to Question 10:** Yes. We strongly agree with the proposition that companies holding assets in a fiduciary capacity for, or have obligations or liabilities to a broad group of outsiders such as conventional and Islamic banks, investment banks, insurance companies, Takaful operators and their intermediaries should not be exempted from financial reporting obligations as well as auditing and accounting obligations. Their obligations should remain irrespective of ownership structure or economic size because these companies have a higher degree of accountability. **Reply to Question 11:** We agree that that companies eligible for exemptions should still be required to file key financial indicators to SSM together with their annual return so that the monitoring process of these companies is not abolished altogether and to ensure some degree of accountability and answerability. In this respect, the Singapore position (as discussed in Paragraph 5.37 of the Consultative Document) with regard to the directors' requirement to issue an annual statement stating that the company has kept accounting records which are correct, are true and fair and are in a manner which

	would allow an audit of the accounts to be conducted, is a good provision. **Reply to Question 12:** We note the explanation provided by the CLRC in paragraphs 6.1 to 6.11 of the Consultative Document, which discusses the current evolvement of company secretaries in Malaysia. In short, the requirement to have a company secretary applies across the board to both public and private companies. Malaysia has also made it a requirement for a company secretary to have a certain degree of competency and professionalism by being a member of a prescribed body or licensed by the Registrar. A specific person should be responsible to carry out the functions of a company secretary. However, we would like CLRC to re-consider the requirement for a private company to appoint a company secretary. We note the UK Government's observation that the role of a company secretary, although valuable is not essential to good corporate governance as this is properly the responsibility of directors. The current provision in the new UK companies legislation provides: *"A private company is not required to have* a *secretary".* The corresponding Australian provision is: *"A company other than* a *proprietary company must have* a *company secretary. However,* a *proprietary company may choose to have* a *company secretary. The* same *person may be both* a *director of* a *company and the company secretary".* This move would minimize unnecessary statutory burdens on private companies and reduce compliance costs. It would also be in line with the aim of our current review process, which is to simplify the laws and procedures, particularly for 'smal' companies. As such, we propose that the law allows a private company to choose whether or not to have its own company secretary as in the Australian provision above. If the company does not have an officer who is able to carry out the secretarial functions, the company may appoint a company secretary. This deregulatory step would give greater flexibility to companies to carry out their internal administrative arrangements. Private companies will then remain free to decide whether to appoint someone to be a company secretary or to undertake the tasks internally. **Reply to Question 13:** Where a person is appointed as company secretary, then such person must be professionally qualified or licensed by the Registrar to ensure professionalism and competency. **Reply to Question 14:** Where the company chooses to undertake the secretarial functions internally, the director may execute the functions of a company secretary himself.

	Reply to Question 15: We agree with the CLRC's proposal for the establishment of a register of company secretaries by SSM to monitor the company secretaries on the basis that not all members of prescribed bodies practice as company secretaries and as such they are not regulated by the professional bodies. **Reply to Question 16:** We agree with this proposal as the objects clause is the prelude to the *ultra vires* doctrine which is discussed in the next question. **Reply to Question 17:** We are agree with CLRC's view that the *ultra vires* doctrine should be abolished with respect to newly formed companies. We note the views of the Cohen Committee which is discussed in paragraph 7.4 of the Consultative Document. Some of the reasons discussed are: -the doctrine is an illusory protection for the shareholders as shareholders are more concerned about the commercial profitability of a transaction rather then its constitutionality; -the doctrine is considered too rigid as it restricts the range of transactions that a company may otherwise legitimately undertake; -the doctrine has been circumvented through ingenious drafting; and -the doctrine has confusingly been used to restrict directors' authority. We also agree that by abolishing the *ultra vires* doctrine, a company would have flexibility in organizing its own business and would be able to limit its objects if it so wishes. However, for purposes of certainty, the CLRC should stipulate whether a company would be allowed switch between having an objects clause and not having one or vice versa and whether there is a limit to the number of times a company may do this. As for the licensees and institutions regulated by the Bank, despite the proposed unlimited capacity for newly formed companies in carrying on their business, the provisions in Banking and Financial Instutitutions Act 1989("BAFIA") and the Insurance Act 1996 ("I A") require an institution to be licensed under the respective legislation before it can be allowed to carry on insurance and banking business9. The list of activities that constitute licensed business is also expressly provided for in the respective Acts. Section 122 of BAFIA and Section 199 of IA further stipulate that where there is any conflict or inconsistency between the provisions of the Companies Act and Acts administered by BNM, the latter would prevail. As such, we have no objections to the proposal being implemented. **Reply to Question 18:** We agree with that third parties should not be deemed to have constructive notice of contents of documents lodged with the Registrar and that a third party should not be required to inquire into whether or not the transaction is permitted by the company's constitution or beyond the powers of the directors. If the proposal to abolish the doctrine of *ultra vires* is followed through, then this proposal must be effected.

	Reply to Question 19: This proposal flows from the above proposal. We agree that constructive notice be abolished except in so far as the Register of Charges is concerned. **Reply to Question 20:** Yes, we agree that companies registered under section 24 of the Companies Act 1965 should continue to be required to have objects clause as these companies are charitable companies and there is a need to ensure that their activities do not conflict with their charitable objectives. **Reply to Question 21:** We agree that the present types of companies that could be incorporated under the Companies Act are sufficient. **Reply to Question 22:** In furtherance of the simplification of company law and procedures, we are agreeable to this proposal. The UK Companies Act10 as well as the Singapore Companies Act11 has moved to the single director/single member regime. **Reply to Question 23:** We agree with this proposal as it is an extension of the proposal in question 22. This proposal would reduce incorporation and maintenance costs and deal with the problem of nominee directors being appointed to satisfy the minimum 2 directors requirement as the law currently stands. **Reply to Question 24:** We are agreeable to CLRC's recommendation of making the name reservation process optional instead of mandatory. The initial purpose of the name reservation process was to ensure availability of the name for the intended company, to avoid duplication with current companies' names and reserved names. However, as observed by CLRC in paragraph 8.15, with the increase in the use of ICT by CCM, the public may easily access the directory of names of registered companies and soon the reserved names. Hence a mandatory name reservation process would be redundant. Instead, the incorporators should be given the option of reserving a name. In addition, adopting the optional approach would shift the burden of ensuring that a proposed name is not prohibited, undesirable or too similar to an existing company, to the incorporators and spare the Registrar from being implicated as a defendant in passing off actions.

	Reply to Question 25: We are agreeable to retain the current position of allowing the Registrar authority to direct a change of name to the incorporators. We note CLRC's explanation in paragraph 8.20, that in setting up an optional approach for the taking up of names for new companies, the Registrar would retain a final say in ensuring that the name chosen by the incorporators is among others, not a name which is prohibited by the Minister. More importantly it would also allow the Registrar to curb registration of names for "opportunistic registration" purposes as noted in the same paragraph above. We also note that Australia's approach merits consideration too, where the ASIC in exercising it powers may direct a company to change its name, and failure to comply with such directive within 2 months would result in ASIC changing the company's name to Australian Company Number (ACN). **Reply to Question 26:** We are agreeable to this approach, and note that in paragraph 8.30, CLRC had pointed out that the consolidation of various documents into a single form will simplify a company's pre-incorporation procedure. With the advent of technology, we would also like to propose for the pre-incorporation documents to be sent online. Accompanying documents, such as the company's Memorandum and Articles of Association may also be lodged online. **Reply to Question 27:** We note the CLRC's arguments for having a declaration of compliance instead of a statutory declaration. We are agreeable to the proposal of having a declaration of compliance. It would also facilitate CCM's move towards more ICT usage and simpler processes as a declaration of compliance can be made online. We would also like to highlight the approach taken by ASIC, where lodgment of documents online or electronically may only be done where there is a written consent between ASIC and the person who wishes to lodge such documents. **Reply to Question 28:** We are agreeable to retain the current practice, where an incorporation certificate is conclusive evidence that the named company is registered and exists as a separate legal entity. **Reply to Question 29:** While we agree with the CLRC's view that retention of the usage of a common seal should be preserved as it represents the company's "signature" and is used in the company's day to day operations, we would also request that the CLRC consider the alternative of encouraging

	companies to fully utilize the digital signature under the Digital Signature Act 1997. The Act recognizes the validity of a document if it is signed with a digital signature in accordance with its provisions. If CCM follows through with the proposal in question 30 to make electronic transmission or lodgment mandatory by companies, then the digital signature should be used more frequently. However, we recognize that certain documents under the National Land Code and the Powers of Attorney Act 1949 still require the common seal to be affixed, and as such the task of doing away with common seal altogether may not be practical. In this respect we note that the UK and New Zealand no longer require companies to have a common seal while Australia gives a choice to companies whether or not to have a common seal. **Reply to Question 30:** Yes we agree that electronic filing and lodgment of documents by companies be made mandatory. However, a transitional period should be allowed for the public to be familiar with the new system. We note from the cross jurisdictional study you have done that electronic filing has been adopted by UK, Australia and New Zealand with Australia being the earliest, since 1993. Additionally UK, has in the new Companies Act introduced provisions which will allow: (i) all companies to communicate with their shareholders and others in electronic form or by posting information on their websites 12; (ii) companies to send documents in relation to meetings in electronic form. However, the persons receiving the information have to agree to receive the information in this manner. In research done in the UK, it was found that use of electronic communication will result in significant savings for businesses and companies as they would move away from paper communication. The CLRC may wish to consider adopting similar provisions to allow companies to communicate with shareholders in electronic form.