

1.0 Introduction

The Asian Financial Crisis that started with the devaluation of the Thai baht on 2nd July , 1997 was a natural result of the bursting of an economic bubble that was building up for the last ten years of robust growth at an unprecedented GDP growth rate of 10% annually. The East Asian countries were touted as the Asian tigers and even the word ‘miracle’ was used freely to describe its phenomenal growth for nearly a decade from 1987 to 1997.

Indeed, in September 1993, the World Bank published ‘The East Asian Miracle: Economic Growth and Public Policy. The Report stated that “In large measure, the HPAEs (high-performing Asian economies) have achieved high growth by getting the basics right.... In this sense, there is little that is ‘miraculous’ about the HPAEs’ superior record of growth; it is largely due to superior accumulation of physical and human capital”.¹

However, the miracle has become a meltdown, exposing in the process serious weaknesses in its economic structure and system. One is of course always the wiser after the event and much has been written by economists and various government agencies to diagnose the causes of the economic contagion that had clouded the Asian economies for the past 3 years.

2.0 The Nature and Causes of the Asian Financial Crisis

In order to understand the sudden meltdown of the Asian economies, it is important to look at the causes for its growth in the years preceding it. Dr Walden Bello has theorized the phenomenal economic growth of the East Asian countries under two waves of foreign investments into these countries in his enlightening article entitled ‘Addicted to Capital: The Ten-Year high and Present-Day Withdrawal Trauma of Southeast Asia’s Economies.’²

¹ The World Bank Report, 1993, at p.5.

² www.focusweb.org/focus/library/addicted_to_capital.htm

The First Wave was that of Japanese Direct Investment which had its origins in the mid-eighties. The trigger for the surge of massive inflow of Japanese direct investment into these countries was the Plaza Accord of 1985, which forced the Japanese government to allow the value of the yen to drastically appreciate relative to the dollar in order to relieve the US trade deficit with Japan by ‘cheapening’ US exports to that country and making imports from Japan more expensive in dollar terms to American consumers.

In order to remain competitive, Japanese firms moved labour intensive production process to cheap labour sites in Southeast Asia. According to Dr Walden Bello, what occurred was one of the largest and swiftest movements of capital to the developing world in recent years. According to the Japanese Ministry of Finance, the volume of its direct investment in Southeast Asia between 1985 and 1990, was some US\$15 billion. Japanese investment in Thailand alone in 1987 exceeded the total Japanese investment for preceding twenty years. By 1996, about US\$48 billion worth of Japanese direct investment was concentrated in the core ASEAN countries of Indonesia, Singapore, Malaysia, Thailand and the Philippines.

Japanese investment in the late eighties and early 1990’s was aimed at turning ASEAN into an integrated production base for Japanese conglomerates that assembled manufacturers for export to the US, Europe and Japan itself. As economic growth spawned a middle class in the ASEAN countries, the region itself became an important consumer of Japanese products. Even in Malaysia itself, the most popular cars are Japanese cars, not to mention Japanese electrical products and household as well as office appliances and equipment. The size, scope and significance of Japanese investments in Southeast Asia during this period can be seen in the fact that Japanese affiliates employed an estimated 800,000 people across ASEAN economies in 1994. Matsushita Electrical Co. Ltd.’s operations in Malaysia itself is said to account for between 4% and 5% of its GDP.³

³ Wade Robert, “Selective Industrial Policies in East Asia: Is the East Asian Economic Miracle Right?”, in Albert Fishlow et al., *Miracle or Design: Lessons from the East Asian Experience*.

The inflows of Japanese foreign direct investments into these countries began to level off in the early 1990's. In Thailand, Japanese direct investment dropped by nearly 50% from US\$2.4 billion in 1990 to US\$578 million in 1993. In Malaysia too, Japanese investments fell from US\$880 million in 1991 to US\$742 million in 1994.

The Second Wave, according to Dr Walden Bello is that of Finance Capital. These take the form of the vast amounts of personal savings, pension funds, government funds, corporate savings and other funds that were deposited in mutual funds and other investment mechanisms that were designed to maximize its value. To attract these funds to their markets, financial managers in the different countries evolved strategies that had the three key elements of financial liberalization, the maintenance of high interest rates and the 'pegging' of the local currency to the dollar. These three-pronged strategy was successful in attracting a new fusion of foreign capital. The new capital flowing in the early 1990's were dominated by American funds. US funds were estimated to have contributed more than 50% of the net foreign equity investments in the Asia Pacific developing countries, and the vast majority of bonds was denominated in dollars, reflecting the strong interest of US investors in these countries.

The downside of portfolio investment is that it could easily flow out as easily as it flowed in. Dr Walden Bello observed that from early 1995 to late 1996, foreign capital came into the region at a dizzying pace, before it began to flow out , at an equally rapid pace, early in 1997. With easy access to capital there became what is called an addiction to capital. Financial institutions, banks and the private sectors were borrowing short-term in US dollars and lending and channeling the funds to unprofitable speculative sectors for a profit. Among the speculation was in the property market and the related construction industries and also mega-projects which look good to the eyes and in the Guinness Book of Records but the citizenry would have to service the interest on the loans for years to come.

The breaking point came in late 1996 in Thailand when the current account balance which is a sensitive measurement of a country's ability to earn the foreign exchange that

will enable it to service its debts over the long term, was a high deficit. To make matters worse, the export growth rate was zero in 1996, compared to the 21% and 24% respectively in 1994 and 1995. Many investors lost confidence and felt that it was time to go. It was like a herd instinct. Stocks plunged to record lows. Foreign portfolio investments sought to divest their investments. Share prices nose-dived in late May 1997 by 65% from their value during the hey days of early 1994. The rush to convert bath into dollars and move out created tremendous pressure to devalue the bath. The rest has been recorded for posterity in a series of rude awakenings and actions. Speculators moved in on the kill and betted on the eventual devaluation. The cost of defending the bath was horrendous and the Bank of Thailand eventually threw in the towel and allowed the bath to float. Overnight, banks and finance companies and public listed companies defaulted on their loans. The dark clouds were already approaching and before long, Thailand had to run to IMF for assistance. The contagion spread like a domino effect- South Korea, Indonesia and Malaysia were badly hit and even Singapore was not spared.

There were already some disturbing signs and the writings on the wall even before the crisis. In the case of Malaysia, the National Economic Recovery Plan⁴ (NERP) listed four causes of concern that should have been addressed and they are:

1. Economic Growth above Potential Output,
2. Loss of Efficiency in the Economy,
3. Rising Current Account Deficit, and
4. Excessive Credit Expansion to the Non-Tradable Sectors⁵.

The NERP was prepared by the National Economic Action Council (NEAC) which was established on 7th January 1998 as a consultative body to the Cabinet to deal with the economic crisis. The NERP presents a comprehensive for action for national economic recovery.

By way of summary, since 1991, the economy has been consistently growing above what is deemed as its potential growth path. The output gap increased during 1994-1996,

⁴ National Economic Recovery Plan-Agenda for Action, National Economic Action Council, Economic Planning Unit, Prime Minister's Department, Malaysia, August 1998.

⁵ NERP, p.10-12.

as actual GDP grew faster than potential GDP.⁶ This has generated price pressures, especially in the form of wage increases above productivity gains. Instead of improvements to efficiency, growth during this period was primarily brought about through augmenting inputs, a situation that is clearly not sustainable in the longer term. Moreover, the Total Factor Productivity (TFP) which is a measurement of the efficiency in the utilization of resources in the economy has been on a steady decline from 1994. Added to that is the rising current account deficit and this despite Malaysia having one of the highest savings rate in the world. The monthly loans growth (year-on-year) was around 28-30 % in 1997, except for November and December.⁷ For most of 1997, loans to the property sector were growing above 30% (year-on-year) and amounted to 26% of total loans. Loans for the purchase of stocks and shares during 1993-97 grew at an average rate of 35% per year. Following the rapid expansion of credit, private domestic debt escalated in the past few years.⁸

3.0 Effects of the Asian Financial Crisis on Malaysia

The depreciation of the ringgit came two weeks after the floatation of the baht on 2nd July 1997. Initially, Malaysia tried to defend the ringgit when it came under attack but this prove to be too costly an exercise. On 14th July, 1997 the ringgit was allowed to depreciate. From RM2.50 to US\$1, the ringgit slipped to RM2.61 (14th July) and gradually to RM2.72 (11th August) and RM2.83 (12th August) before reaching RM3.00 on 2nd September. The ringgit sank to an intraday low of RM4.88 on 7th January 1998.

Many industries that had borrowed to finance various projects in US Dolllar now are saddled with ballooning debts which they cannot pay and had to default on payments. Imports of machinery became more expensive. Many parents have to recall their children studying in the US because the fees were getting too expensive as a result of the depreciation in the ringgit. Though exports became relatively cheaper to US, it is not necessarily true that export will increase manifold because Malaysia has to compete with

⁶ NERP, p.10.

⁷ NERP, p.12.

⁸ NERP, p.14.

other Asian countries whose currencies too have been devalued and hence their exports too are correspondingly cheaper to the US.

The Kuala Lumpur Stock Exchange (KLSE) Composite Index (CI) continued to slide from a high of 1271 level on 25th February 1997 to 447 points on 12th January 1998.⁹ The loss was about 800 points or 63%. Those who had borrowed to purchase the shares were badly burnt and had to allow the bank to dispose of their shares to third parties. At the high in 1997, the market capitalization was RM 917 billion but sank to RM 308.69 billion by 12th January, 1998. Many remisiers had to quit their job in the securities companies because the volume of trading was so low that the commission they received could hardly sustain them. Some stock broking companies went into liquidation or receivership. Many companies went to the High Court to get a restraining order under S. 176 Companies Act 1965 to restrain creditors from suing them or continuing to sue them until the expiry of the date fixed in the order. Others too had to seek protection under the Pengurusan Danaharta Nasional Act 1998 (National Asset Management Corporation) which gave the company under special administration a moratorium of one year to restructure within which time no action can be commenced against the company for recovery of debts or for enforcement of a security and any action already commenced cannot be proceeded with.

With the depreciation too, there was a proportionate increase in the value of the external debt exposure for foreign debts denominated in foreign currencies. At the end of April 1998, the Federal Government's external debts amounted to RM11.3 billion. However, if the same amount of external debts were calculated on the basis of the exchange rate before the depreciation in mid-1997, they would amount to RM8.6 billion; an increase of 31.4%. Many mega-projects were shelved including the controversial Bakun Hydroelectric Dam in Sarawak (estimated US\$5 billion).

⁹ NERP, p. 16.

The bold plans formulated by the NEAC as set out in the NERP listed six objectives to fulfill out of which two have relation to corporate governance and they shall be examined in greater details:

1. Stabilising the Ringgit,
- 2. Restoring Market Confidence,**
- 3. Maintaining Financial Market Stability,**
4. Strengthening Economic Fundamentals,
5. Continuing the Equity and Socio-Economic Agenda and
6. Revitalising Affected Sectors.¹⁰

The role of corporate governance shall now be examined in greater detail with particular reference to Malaysia in the light of the Asian Financial Crisis..

4. Corporate Governance and the Asian Financial Crisis

4.1 Restoring Market Confidence

It has often been said that the fundamentals of the Malaysian economy has not changed and that what has changed is market confidence or rather the lack of it. Having said that one must hasten to add that there is a need to examine why confidence is lacking and how one can restore confidence in the Malaysian economy and the capital market. The attitude of investors is well captured in the World Bank 2000 Report where the pivotal role played by fund managers is expressed thus¹¹:

“Emerging market fund managers often allocate their portfolios across different countries according to percentages specifies beforehand. When the value of investments in one country drops, one manager’s response might be to sell stocks in other emerging markets to rebalance the portfolio, depressing stock prices and putting pressure on currencies in all the countries in which the manager invests.

Fund managers facing losses from investments in one country may have liquidity problems, forcing the sale of investments in other markets.

¹⁰ NERP, p.45.

¹¹ World Bank 2000 Report, p.75.

Investors, especially in emerging markets, find information on the prospects of a company or a country costly to collect. This difficulty encourages herd behaviour. The disposal of stock by one investor is assumed to be based on news that is not yet widely known, so other investors interpret the action as a signal to sell their own holdings. The lack of information also encourages investors to take news of poor performance in one emerging market as a signal that bad news is imminent in similar markets.”

Confidence in the market is engendered through timely and truthful disclosure of all corporate activities of the Public Listed Companies (PLCs) that investors would need to know. Sunshine is the best antidote still against speculation and suspicion that often lead to share dumping. There can be no good reason to conceal unless of course when is in the business of defrauding and dishonest gains. The NERP noted that there are calls for increased corporate transparency. It further noted that there were also particular incidents, such as the designation of index stocks and deals approved by regulators, which have affected government image. It further commented that the Malaysian public and foreign investors need to be reassured that the regulators are committed to open market and fair dealings. The minority investors must also be fairly protected.¹²

In the light of the lack of corporate governance that had led to the sudden exit of funds in the KLSE, the NEAC proposed a six-step action to restore market confidence:

1. Improve transparency and the regulatory environment,
2. Establish rules for assisting industries and companies,
3. Increase the consistency of government policies,
4. Adopt liberal market-based policies,
5. Improve public relations and
6. Improve the dissemination of economic information.

Both public and corporate governance should be strengthened to enhance transparency and accountability. The investing public must have enough information that is both timely and truthful to make informed decision. Without that there is the danger of

¹² NERP, p.57.

following a herd-mentality where rumours would fuel further run on the shares concerned.

The critical role of the Securities Commission and the KLSE as well as the Registrar of Companies cannot be overemphasized. They must be free to act without any interference from the authorities. Indeed they must act without fear or favour. No impression should be given that their ability to enforce is being compromised.

The Securities Commission in its press release of 2nd May, 2001 in conjunction with the release of its Annual Report 2000,¹³ highlighted that in line with its statutory duty to preserve market integrity and protect shareholders' interest, the Commission continued to act against breaches of capital market laws and regulations with 41 Investigation Papers being opened in 2000 while 113 papers were carried forward over from 1999. Resulting from these, 4 warning letters were issued, 6 cases prosecuted, 17 cases compounded while another 39 were closed without further action with the Public Prosecutor's approval. Comparing with the number of cases compounded in 1999 when the figure was 12, one can note a substantial increase in the number of offences that were compounded. However the fines imposed were rather low with the range in 1999 between RM10,000-RM100,000 and that in 2000, between RM20,000-RM300,000 .The press release also went on to state that in the first four months of 2001, the Commission has taken action against 10 individuals of whom 7 are directors and one an executive chairman.

The Securities Commission Annual Report 2000 also traced the several significant milestones that were achieved in the course of the Commission's efforts to enhance transparency and corporate governance in the capital market. Among others, the market entered Phase 2 of the three-phase transition towards a disclosure-based regulatory (DBR) environment in January 2000. Essentially Phase 2 is a partial DBR system with further emphasis on disclosure enhancement, due diligence and corporate governance as well as promotion of accountability and self-regulation.

¹³ Securities Commission Annual Report 2000 at www.sc.com.my .

The Securities Commission also mentioned in its Annual Report 2000 that a headway was made in terms of measures to enhance corporate governance standards in the capital market. There was noteworthy progress in the implementation of the recommendations of the Finance Committee Report on Corporate Governance. This took the form of efforts to amend the KLSE Listing Requirements and the introduction of new rules aimed at raising the standards of conduct of directors and company officers of PLCs, as well as developing effective internal governance mechanism. The efforts culminated in the implementation of the Revamped KLSE Listing Requirements (LR) in January 2001. The pertinent paragraphs in the KLSE LR that are relevant to the issue of corporate governance shall be examined shortly.

Another significant step forward as highlighted in the Press Release of 2nd May, 2001 is the introduction of corporate governance to market institutions such as exchanges, clearing houses and central depositories. The Securities Commission's Code of Conduct for Market Institutions was released in May 2001 to bring about transparency, consistency and fairness in the regulatory processes.

Amendments were also made to the Securities Commission (Amendment) Act 2000 with effect from 1st July 2000 to enable investors to pursue civil remedies to recover losses or damages arising from the provision of false or misleading information contained in the prospectus.

The NERP also recommended in its Action 1 on 'Improve Transparency and the Regulatory Environment' ¹⁴that the campaign against corruption that was launched in mid-1997 should make it easier for the public to report corruption. It goes without saying that a clean government and sound public ethics are essential for public confidence. There is also a need for Malaysia to publicly commit itself to making its regulatory environment as good as, if not better than, other countries.

¹⁴ NERP, p.59.

A recent case of unprecedented proportion in the government's seriousness in examining allegations of corruption was in the disclosure by Election Court Judge Datuk Muhammad Kamil Awang when in his written judgment delivered on 8th June, 2001 in Kota Kinabalu, Sabah, the learned judge had in his judgment declaring the Likas state election result null and void, said:

“In my view, it was an insult to one's intelligence to be given a directive over the phone that these petitions should be struck off without a hearing, and, above all, it is with prescient conscience that I heard these petitions. God has given me the strength and fortitude, as a lesser mortal, to act without fear or favour, for fear of a breach of oath of office and sacrifice justice, and above all to truly act as a judge and not a yes man.”

It was reported on The Star¹⁵ that neither the Chief Justice Tan Sri Mohaned Dzaidin Abdullah nor the Election Court Judge Datuk Muhammad Kamil Awang would want to lodge a police report. Be that as it may, it was hearty to note that the Deputy Inspector General of Police Tan Sri Mohd Jamil Johari said as reported in The Star that the police had lodged a report on the matter and that the Sabah police would be investigating the case. This is a clear and good departure from what the public has been given to know on previous occasions of allegations of corruption in high places when the placid reply is that as no formal complaint had been made the police cannot commence an investigation into the matter. The public-spirited action of the police is to be commended

In The Star report of 15th June, 2001¹⁶, it was reported that the police had contacted the Election Court Judge concerned to take a statement from him. The retired Chief Justice at that time admitted that he did make a call to the Election court Judge but it was to ask him to expedite the case and to draw his attention to two previously reported cases on the fact that the Court has no powers to go behind an Electoral Roll . The police had classified the case under section 219 of the Penal Code which reads: “Whoever, being a public servant, corruptly, or maliciously makes or pronounces at any stage of a judicial proceeding, any report, order, verdict or decision which he knows to be contrary to law,

¹⁵ The Star, Wednesday, June 13 2001 at p. 4.

¹⁶ The Star, Friday, June 15 2001 at p.1.

shall be punished with imprisonment for a term extended to seven years, or with a fine, or with both.” This proactive approach by the police would to some extent reflect a more robust approach taken by the authorities to investigate allegations of corruption even against the judiciary.

The NERP under Action 2 refers to the need to “Establish Rules for Assisting Industries and Companies.” It is stated that the assistance that will be granted by government to troubled companies will be guided by three criteria, namely, national interest, strategic interest, and equity considerations under the New Economic Policy and the National Development Policy. Industries and business activities that provide benefits to a wide cross-section of the population and help raise their living standard can be considered to be in the ‘national interest.’¹⁷ Herein lies the controversy especially with respect to the price at which the government would have to pay to bail out some of these so-called industries of national interest.

The recent acquisition by the Malaysian Ministry of Finance of a 29% stake in Malaysian Airlines Berhad (MAS), a PLC and a national carrier, from Tan Sri Tajudin at the price of RM8 per share has come under severe criticism from certain quarters. The price at RM8 was the same price Tan Sri Tajudin paid for his 29% stake in MAS in 1994 and a 160% premium over the value of the airline stock at that time, fueling a perception that the government was bailing out the well-connected businessmen.¹⁸ The PLC was making a loss of about RM1 million a day.

The other issue in the acquisition was whether a Mandatory General Offer was necessary as ordinarily it would under the Code of Merger and Take-over as the Ministry of Finance Incorporated and a government pension fund had purchased a combined 38.1% interest in MAS from two shareholders—a 29% stake from a company controlled by Tan Sri Tajudin Ramli (Naluri Bhd) and a 9.1% interest from the Brunei Investment Agency. Apparently, a waiver was applied for from the Securities Commission, otherwise it is

¹⁷ NERP, p.60.

¹⁸ Asian Wall Street Journal, May 30 2001 at p.4.

estimated that a potential RM3.8 billion had to be coughed out if a general offer is required¹⁹. There were debates as to whether a strategic partner could have been sourced for the purchase as was reported in the national newspapers before the deal was wrapped up.

An earlier high-profile rescue was the 1998 purchase by national oil company Petroliam Nasional Bhd (Petronas) of shipping assets owned by a company controlled by Dr Mahathir's eldest son, Mirzan Mahathir. Needless to say such perceived government backed rescues have eroded foreign investors confidence in the level of corporate governance and economic management of some of the biggest companies in the KLSE.

There was actually another supposed to-be rescue plan to the tune of RM6 billion ringgit for two privatized light-rail projects in Kuala Lumpur owned by Renong's wholly owned rail unit, Project Usahasama Transit Ringan Automatik Sdn Bhd or PUTRA and Sistem Transit Aliran Ringan Sdn Bhd. However government officials and bankers involved said that Dr Mahathir objected to the rescue plan on the ground that it would have favoured the companies that hold the concession to operate the unprofitable light-rail lines²⁰. It is said that the two companies cannot meet interest payments on RM2.6 billion in debt. The Prime Minister's decision to review the rescue plan may be a reflection that the government is prepared to get tough with well-connected borrowers. It is also perhaps a reflection that it is now more sensitive to the adverse impact a series of state-sponsored corporate bailouts had on the Malaysian economy.

To promote a culture of transparency and accountability, the government must be seen to be setting a good example by its state agencies and investment bodies being in the forefront of promoting good corporate governance. Recently it was reported in the Asian Wall Street Journal that the Malayan Trade Union Congress (MTUC) wants the Employees Provident Fund's (EPF) investment panel-which is appointed by the Finance

¹⁹ Asian Wall Street Journal 17 January 2000 at p.3.

²⁰ Asian Wall Street Journal 31 May 2001.

Minister –to seek board approval for all major decisions and loans.²¹ Recently the EPF investment practices came under firing in March 2001 after it took a 3.22% stake in TimedotCom Bhd, a telecommunications company controlled by the Renong Group. The EPF agreed to take most of that stake as partial repayment for a RM500 million ringgit loan it made to TimedotCOM's parent, Time Engineering Bhd in 1996. Time Engineering agreed to repay half the loan in cash and half in the form of 78.7 million TimedotCom's shares in January 2001 under a restricted sale offer in the run-up to the IPO in March 2001. TimedotCom's stock price has plunged about 37% since its shares began trading, reducing the value of the EPF's shareholding by about RM106 million ringgit on paper.

4.2 Maintaining Financial Market Stability

The health of the financial market is directly linked to the health of its borrowers and especially the heavy borrowers like the PLCs. Many economists say that the bankers themselves have to be blamed for lending too easily and too heavily on non-productive and speculative sectors. It is said that when a poor man borrows to buy his first and only home, he would probably be required to furnish a guarantor and the loan would only be released after all the documentations are completed. Compare that with PLC borrowing or its subsidiary and associate company borrowing and all that is needed is probably a phone call and a corporate guarantee by the PLC on a one sheet paper. The housing loan documents of a poor man's purchase of his one and only house would probably contain more clauses than that of a corporate loan of RM30 million for instance. It is not unusual during the crisis for a PLC to have debts three to five times more than its paid-up capital. Many of the PLCs have a negative net tangible asset and are actually insolvent with its shares having been suspended from trading.

The NERP noted candidly that since the start of the regional contagion effect, the Malaysian banking system has been under considerable strain following the collapse of the stock market and the depreciation of the ringgit.²² In the fourth quarter of 1997, there had also been a flight-to quality by depositors who moved substantial funds into foreign

²¹ Asian Wall Street Journal May 11-13, 2001 at p.3.

²² NERP, p.69.

and larger domestic banks, thereby creating liquidity problems for some banks. A number of finance companies and stockbrokers experienced financial problems. The weaknesses in the financial system was related to the following factors:

1. Rapid credit growth and high exposure to property and stock markets.
2. High leverage, with large short-term domestic debt.
3. Increasing non-performing loans (NPLs).

The ratio of NPLs rose from 3.5% in March 1997 to 10.6% in April 1998. The following were the recommended actions to bring stability in the financial markets:

1. Preserve the integrity of the banking system.
2. Establish agencies along the lines of the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC).
3. Recapitalise the banking sector.
4. Monitor closely overall credit expansion.
5. **Improve the capital market.**
6. Develop the private debt securities market.

With respect to improving the capital market, it was recommended that a new framework for corporate governance be prepared within 6 months and be submitted to the Ministry of Finance. The Report entitled 'The Finance Committee Report on Corporate Governance' was submitted to the Ministry of Finance on the 5th February 1999. A more detailed analysis of the High level Finance Committee Report on Corporate Governance shall be undertaken shortly under a separate heading.

The NERP also pointed out that the market regulators especially the KLSE, SC and ROC must act firmly and decisively against breaches of regulations. They must increase their monitoring and enforcement activities. What is perceived by the public is that the prosecution of directors and officers have been focused more on those who are aligned to the sacked Deputy Prime Minister Datuk Seri Anwar Ibrahim and that if you are politically well-connected, you will probably at most escape with a fine or a sanction if your offence is blatant enough. What is difficult to understand is that all offences under

the Securities Industries Act are compoundable and that certainly does not deter would be offenders.

The NERP also calls for the relevant authorities, particularly the SC and the ROC, to stamp out the abuse of “Put and Call Options”.²³ It went on to sound the warning that the SC and the ROC should seek to vigorously pursue and punish in the most severe manner all parties involved in the abuse of ‘put and call’ transactions to restore public confidence and deter future recurrence.

5.The Finance Committee Report on Corporate Governance

Perhaps the clearest admission of the lack of corporate governance as a cause of the financial crisis of 1997 is found in the ‘Introduction to the Report’ in the following words: “The economic turmoil had, within less than a year, taught corporate Malaysia that corporate governance or rather the lack of it, can exact a toll from the markets.”

The Corporate Governance Report can be divided into three parts. First , the development of the Malaysian Code on Corporate Governance. The proposed Code sets out the principles and best practices for good governance. The recommendations in the Code are directed principally at boards of listed companies, aimed at increasing the efficiency and accountability of boards to ensure that their decision-making processes are not only independent but are seen as independent.²⁴ Second, reform of laws, regulations and rules. The recommendations for reform seek to strengthen the overall regulatory framework for PLCs. The key areas of corporate governance covered are:

- clarifying the responsibilities of key corporate participants;
- enhancing obligations of key corporate participants, especially in related party transactions,
- improving the accuracy and timeliness of disclosures,
- enhancing the value of general meetings,
- enhancing the efficiency of shareholder redress for grievances and

²³ NERP, at p.84.

²⁴ Foreword on the Report on Corporate Governance

- enhancing the enforcement of good corporate conduct.

The third is the area of training and development. A significant challenge for the corporate sector arising from implementation of the recommendations is to expand the pool of qualified persons, namely directors to undertake the responsibilities expected of them. The recommendations include identifying the training and education programmes, target participants for these programmes as well as the agencies to conduct these programmes.

Much of what was recommended in the Finance Committee report on Corporate Governance that was issued by the Ministry of Finance on 9th March 1999 find its expression in the KLSE LR, which was fully revamped, having taken into consideration the views expressed in the said Finance Committee Report. The revamped KLSE LR was released on 22nd January 2001 with many of the provisions coming into force on 15th February, 2001 and some taking effect from 1st June, 2001 and subsequently. An extended time frame for compliance with the revamped KLSE LR is well summarized by PriceWaterhouseCoopers in their PWCAAlert.²⁵

A consideration shall now be taken of the new elements introduced in both the Corporate Governance (CG) Report and the revamped KLSE LR and the extent that these new elements might help enhance market transparency and promote corporate governance in the PLCs in Malaysia.

The meaning of corporate governance is neatly defined in the Finance Committee Report on Corporate Governance as the process and structure used to direct and manage the business and affairs of the company towards enhancing business prosperity and corporate accountability with the ultimate objective of realizing long term shareholder value, whilst taking into account the interests of the other stakeholders. The stakeholders would include the employees, the suppliers and creditors and the community at large.

²⁵ PWC Alert Issue No.16, February 2001 at p.5-6.

6. Steps taken to Improve Corporate Governance

6.1 An Effective Board and Independent Directors

The CG Report stated that there should be a clearly accepted division of responsibilities at the head of the company, which will ensure a balance of power and authority, such that no one individual has unfettered powers of decision. Where the roles are combined there should be a strong independent element on the board. A decision to combine the roles of Chairman and Chief Executive should be publicly explained.²⁶ The above is further augmented by the principle laid out that to be effective, independent non-executive directors need to make up at least one third of the membership of the board. The CG Report further required the board to disclose on an annual basis whether one third of the board is independent and in circumstances where the company has a significant shareholder, whether it satisfies the requirement to fairly reflect through board representation, the investment of the minority shareholders in a company. The board should disclose its analysis of the publication of the best practices set out in the CG Report, to the circumstances of the board.

The revamped KLSE LR which is binding on all PLCs has further entrenched this requirement of independent directorship by stipulating in Paragraph 15.02 (1) that at least 2 directors or 1/3 of the board of directors of a PLC, whichever is the higher, are independent directors. What is more onerous and rightly so is the requirement under Paragraph 15.03 (1) that any person who is a director of a PLC shall file an undertaking in the prescribed form in Appendix 3C with the KLSE that he shall comply with the KLSE LR insofar as the same shall apply to the person as a director of the PLC.

Independent Directors are now required to confirm their independence by a Letter of Confirmation in the form of Appendix 3D, confirming and declaring their independence as defined in Paragraph 1.01 of the KLSE LR. Whilst previously, there were some doubts harboured as to when one would cease to be independent by virtue of the nexus of relationship with the PLC, the position is now much clearer. 'Independent director' now

²⁶ Malaysian Code on Corporate Governance (MCCG), Malayan Law Journal Sdn Bhd, p.12.

means a director who is independent of management and free from any business or other relationship which could interfere with the exercise of independent judgment or the ability to act in the best interests of the PLC. Independent Director further must not be a major shareholder (having more than 5% of the shares in the PLC) of the PLC. He must also not be a relative of any executive director, officer or major shareholder of the PLC or any related corporation of the PLC. 'Relative' means the spouse, parent, brother, sister, child (including adopted or step child) and the spouse of such brother, sister or child²⁷.

It would appear from the definition that it does not cover uncles and aunties, nieces and nephews and cousins. Perhaps if there is such a relationship, one must ensure that the independent director must not be acting as a nominee or representative of any executive director or major shareholder of the PLC or any related corporation of the PLC. However it is submitted that there should be a presumption that if there is the related relationship described above, then the director is deemed to be acting as a nominee and hence no longer independent. It is said that blood is thicker than water and thus in order to maintain a truly independent board, all blood relationships of the above nature should be eschewed.

Professionals too who are engaged as a professional adviser by the PLC either personally or through a firm or company of which he is a partner, director or major shareholder, as the case may be, are also disqualified. So too is anyone who has within the last 2 years being engaged in any transaction with the PLC where the value of the transaction exceeds RM250,000. This is indeed a wise qualification for money has a way of clouding our fair and unbiased judgment. Indeed there has been some misgivings already expressed in the field of auditing where a related company of the auditors also render consultancy services to the PLCs and where the fees charged annually can be many times more than the auditing fees. The question is how independent can the auditor be when he fears that a substantial portion of his income will be affected if he insists on certain treatments of accounts which the PLC might not agree.

²⁷ KLSE LR Para 1.01 at p.1-05

To further ensure that the directors of a PLC have time for the business of the company, Paragraph 15.06(1) provides that a director must not hold more than 25 directorships in companies, of which the number of directorships in listed issuers shall not be more than 10 and the number of directorships in non-listed companies should not be more than 15. Absence from more than 50% of the total board of directors' meetings held during a financial year would disqualify the director from office. At least the KLSE is now taking the stand that effectiveness of the directors concerned has to be gauged by among other criteria his attendance at Board Meetings.

The search for a truly independent non-executive director might be an elusive one. Generally, the existing board would prefer a person who is known to them in some ways and perhaps even being close friends with them already. It is submitted that not only must the independent directors be independent, they must also be seen to be independent. At the end of the day, they must be able to work together co-operatively with their executive colleagues and to demonstrate objectivity and robust independence of judgment when necessary.²⁸

6.2 Remuneration Committees and Remuneration of Directors

The CG Code, in order to give more clout to the non-executive directors, has stipulated that boards should appoint remuneration committees, consisting wholly or mainly of non-executive directors, to recommend to the board the remuneration of the executive directors in all its forms, drawing from outside advice as necessary. Executive directors should play no part in decisions on their own remuneration. Membership of the remuneration committee should appear in the directors' report.²⁹

Too high a remuneration of executive directors and CEOs which bear no reasonable correlation to the profitability of the PLCs may be likened to daylight robbery by the directors concerned. The recent survey by FORTUNE on the pay of CEOs in United

²⁸ The Hampel Report, Jan 1998, The Committee on Corporate Governance and Gee Publishing Ltd, p. 17.

²⁹ MCCG, p.15.

States is illuminating.³⁰ The No. 1 earners in each of the past five years got packages valued cumulatively at nearly US\$1.4 billion, or US\$274 million on average. Yet far from delivering the superb results investors might have expected from the world's highest-priced management, four of the five companies have been marginal to horrible performers. They are Walt Disney, Cendant, Computer Associates and Apple Computers.

The FORTUNE report went on to quote that Apple's Steve Job got last year's mightiest pay package, valued by FORTUNE at US\$381 million. Dell CEO Michael Dell received more than US\$38 million options from 1996 through 1998, though as the company's sole founder he already owned 353 million shares.

The testimony of a former chairman of a compensation committee in the US goes like this:³¹ " I was chairman of a compensation committee, and the company's earnings were down dramatically, and there was a relatively new CEO who wanted to get a substantial amount of new options. I wouldn't give him what he wanted, and there were other people on the committee who agreed with me. And very shortly after that, all the people on the board were rotated to new committees. Nobody was told why. I knew why."

There appears to be an apparent contradiction between the MCGG and the KLSE LR on the issue of disclosure of the directors' remuneration. The KLSE LR requires disclosure of directors' remuneration in successive bands of RM\$50,000 , distinguishing the executive directors from the non-executive directors. However the Best Practices of MCGG states that each director's remuneration should be disclosed separately. The way to resolve this anomaly is to fall back on KLSE Practice Note 9/2001 which states that in the event a PLC does not comply with a Best Practice but complies with a listing requirement that deals with the same issue, it must still explain the reasons for departing from the Best Practice. One wonders what good reasons can be given for such a departure in the light of full disclosure. It is submitted that the executive director and other directors should not be afraid to reveal how much is their remuneration as they should have

³⁰ FORTUNE, Vol.143, No.13, June 2001 at p.38.

³¹ Ibid, at p.48.

nothing to hide. There is a price to pay for being at the helm of PLCs and enjoying various benefits that come with the position. Everyone to whom much is given, of him will much be required.

6.3 Accountability and Audit

The MCCG states that the Board should establish an audit committee of at least 3 directors, a majority of whom are independent, with written terms of reference which deal clearly with its authority and duties. The Chairman of the audit committee should be an independent non-executive director. This recommendation was further elaborated upon in the revamped KLSE LR at Paragraph 15.10 (1) which further provides that at least a member of the audit committee must be an accountant³². This will to some extent ensure that the necessary professional expertise is brought to bear on the issues to be discussed by the audit committee which will to some extent reflect the commitment of the board to a high standard of corporate governance in the PLC.

The audit committee is to discharge the following functions as set out in Paragraph 15.13 (1) of the KLSE LR with respect to reviewing the following and reporting the same to the board of directors of the PLC:

- a. with the external auditor, the audit plan;
- b. with the external auditor, his evaluation of the system of internal controls;
- c. with the external auditor, his audit report;
- d. the assistance given to the employees of the PLC to the external auditor;
- e. the adequacy of the scope, functions and resources of the internal audit functions and that it has the necessary authority to carry out the work;
- f. the internal audit programme, processes, the results of the internal audit programme, processes or investigation undertaken and whether or not appropriate action is taken on the recommendations of the internal audit function;
- g. the quarterly results and year end financial statements, prior to the approval by the board of directors, focusing particularly on:
changes in or implementation of major accounting policy changes;

³² KLSE LR p. 15-04

- significant and unusual events; and
 - compliance with accounting standards and other legal requirements;
 - h. any related party transaction and conflict of interest situation that may arise within the PLC or group including any transaction, procedure or course of conduct that raises questions of management integrity;
 - i. any letter of resignation from the external auditors of the PLC; and
 - j. whether there is reason (supported by grounds) to believe that the PLC's external auditor is not suitable for reappointment; and
- also to recommend the nomination of a person or persons as external auditors.³³

Greater attention is now being directed to the audit committee report which must be clearly set out in the annual report of the PLC and the report should include the following: the terms of reference of the audit committee, the number of audit meetings held during the financial year and the details of attendance of each audit committee member, a summary of the activities of the audit committee in the discharge of its functions and duties for that financial year of the PLC and the existence of the internal audit function or activity and where there is such a function or activity, a summary of the function or activity.³⁴

Onus is placed on the audit committee to report on breaches to the KLSE and indeed Paragraph 10.17 provides that where an audit committee is of the view that a matter reported by it to the board of directors of a PLC has not been satisfactorily resolved resulting in a breach of the KLSE LR, the audit committee must **promptly report** such matter to the KLSE.

It is hoped that with this responsibility placed squarely on the shoulders of the audit committee of which the chairman who is an independent director is responsible, the climate and culture for corporate governance will be further enhanced.

³³ KLSE LR, at p.15-05 and 15-06.

³⁴ KLSE LR Paragraph 15.16 at p.15-07 to 15-08.

6.4 Corporate Governance Disclosure

By Paragraph 15.26 of the KLSE LR, a PLC must ensure that its board of directors makes the following statements in relation to its compliance with the MCCG in its annual report. The statement must disclose in a narrative form how the PLC has applied the principles set out in Part 1 of the MCCG to their particular circumstances. Besides matters pertaining to the board's composition and in particular the composition of the independent directors, the other principles relate to Director's Remuneration and Dialogues with Investors and also how the PLC has used the AGM to communicate with private investors and encourage their participation. There has been a culture developed through the years where a PLC's AGM would be over within 10 minutes of its commencement. Shareholders came more for the food and the gifts rather than to ask pertinent questions with respect to the performance of the company. Things are however changing and across the causeway in Singapore, a group of minority shareholders and public investors have formed an association and their task is to participate actively in all AGMs and EGMs of the PLCs and raise matters which are relevant to good corporate governments. Indeed their clout has been felt in recent months as the movement gathers momentum and the Singapore government itself is now consulting them for their views before proceeding with certain investments. The other matter covered under the Principles of Corporate Governance is that of Accountability and Audit.

With respect to "Relationship with the Auditors" the MCCG has this to say: 'The board should establish formal and transparent arrangements for maintaining an appropriate relationship with the company's auditors.' The appropriateness of the relationship comes into serious question and indeed is compromised when other consultancy arms of the auditors are billing the PLC for the services it provides which may be many times more than the fees for audit. It is recommended that the KLSE LR should have a requirement that this relationship with related corporations of the auditors must be disclosed in the Corporate Governance Statement.

The MCCG statement by the board of directors must also disclose the extent of compliance with the Best Practices in Corporate Governance set out in Part 2 of the MCCG which statement shall **specifically identify and give reasons for any areas of non-compliance with Part 2** and the alternatives to the Best Practices adopted by the PLC, if any. All PLCs with financial years ending after 30th June 2001 must ensure that their annual reports disclose statements in relation to their compliance with the MCCG.

Additionally, under Paragraph 15.27 of the KLSE LR, a PLC must ensure that its board of directors makes the following additional statements in its annual report i.e. a statement explaining the board of directors responsibility for preparing the annual audited accounts and a statement about the state of internal control of the PLC as a group.³⁵ Whilst this is only enforceable for those with financial years ending after 31st December 2001, all PLCs are encouraged to make the disclosure in relation to the above Paragraph on a voluntary basis for annual reports for financial years that end on or before 31st December, 2001. Needless to say, PLCs who show their readiness of disclosure even before the deadline would be viewed more favourably by investors.

The importance of internal control and the role of the audit committee cannot be overemphasized. Invariably all PLCs that are under Special Administration or under Section 176 moratorium under the Companies Act 1965, suffer from a lack of an effective internal control system and structure. Losses to a PLC does not come overnight but is the result of the board failing to take proper measures to strategise to the changing business environment and the failure to monitor material borrowings and financial assistance to related companies. The unusually high gearing ratios of the PLCs in Malaysia is a cause for concern when there is hardly any substantial level of organic growth in such companies. There have been cases too of likely fraud being perpetrated by directors of PLCs when monies are taken out for alleged land transactions when at the end of the day, the auditors still cannot sight the title to the

³⁵ KLSE LR, at p.15-11.

property. So too are cases of dubious payments to directors and monies being siphoned out of the PLCs for investment in foreign countries especially China and with hardly a line in the Annual Report that investment in China takes a long gestation period and subsequently to report a complete loss in the said investment a few years down the road.

6.5 Related Party Transactions

Clearer and more complete disclosures are now in place to ensure that shareholders are fully aware of the Related Party Transactions that the PLCs are engaged in with their associated companies and other third parties. A whole chapter in Chapter 10 of the revamped KLSE LR is devoted to this subject. A ‘related party transaction’ is defined as a transaction entered into by the PLC or its subsidiaries which involves the interest, direct or indirect, of a related party.³⁶ A ‘related party’ means a director, major shareholder or person connected with such director or major shareholder³⁷. ‘Persons connected’ is also defined in Paragraph 1.01 of the KLSE LR.

The rationale for this provision of disclosure and circular to shareholders and depending on the volume of the transaction or exposure of the PLC concerned, approval of shareholders in general meeting and in the larger transactions even the appointment of an independent adviser is required is so that shareholders are properly briefed with proper information and advice to enable them to make an informed decision in the matter. It is also to prevent allegations from being leveled at the board that the interest of the minority shareholders have not been taken into consideration and that the transaction only seek to benefit the related party.

The various strict requirements are summarized in the Table below. Non-related party transactions means acquisition and disposal of assets by a PLC but excludes transactions of a revenue nature in the ordinary course of business of the PLC. A ‘Transaction’ is now defined to include the acquisition, disposal or leasing of assets;

³⁶ Definition in Paragraph 10.02 of the KLSE LR at p.10-03.

³⁷ Definition in Paragraph 1.01 of the KLSE LR at p. 1-07.

the establishment of joint ventures; the provision of financial assistance; the provision or receipt of services; any business transaction or arrangement entered into by a PLC or its subsidiaries³⁸. The meaning of 'financial assistance' is also defined in Paragraph .23 (1) as the lending or advancing of any money or the guarantee, indemnity or providing a collateral for a debt. Such financial assistance is also limited to the persons to whom the provision of financial assistance is necessary to facilitate the ordinary course of business of the PLC or its subsidiaries, as the case may be, such as the provision of advances to its sub-contractors. This is important, otherwise there might be abuse of the PLC lending money to people or corporations which have no dealings with the company. There is the danger also of the PLC giving guarantees way beyond its ability to honour in the event of default by the person or corporation guaranteed.

Percentage ratios refers to the size of the transaction as expressed in one of the 8 criteria of formulae set out in Paragraph 10.02 (h) of the Definition. It means the figures, expressed as a percentage, resulting from each of the following calculations:

- a) the value of the asset which are the subject matter of the transaction;
- b) the net profit attributable to the asset compared to the net profit of the listed issuer;
- c) the aggregate value of the consideration given or received in relation to the transaction (including any liability to be assumed, where applicable), compared with the net tangible assets of the listed issuer;
- d) the equity share capital;
- e) the aggregate value of the consideration given or received in relation to the transaction (including any liability to be assumed, where applicable), compared with the market value of all the ordinary shares of the listed issuer;
- f) the total assets in respect of joint ventures, business transactions or arrangements, the total project cost attributable to the listed issuer compared with the total assets of the listed issuer or in the case where a joint venture company is incorporated

³⁸ KLSE LR paragraph 10.02 (j) at p.10-03.

as a result of the joint venture , the total equity participation of the listed issuer in the joint venture company (based on the eventual issued capital of the joint venture company) compared with the net tangible assets of the listed issuer. The value of the transaction should include shareholders’ loans and guarantees to be given by the listed issuer; or

g) the aggregate cost of investment.

A Summary of Actions to be taken by a PLC with respect to Size and Type of Transactions.

Value of Transactions	Non-related party transactions	Related party transactions Para 10. 08
(A) Percentage ratios less than 5% - Para 10.07	<ul style="list-style-type: none"> a) If the consideration is satisfied in cash or unquoted shares, no announcement of the transaction is required; b) If the purchase consideration is satisfied wholly or partly in securities for which listing is being sought, the listed issuer must furnish the Exchange with an announcement similar to the case where the transactions exceeds 5%. 	Listed issuer must make an immediate announcement to the Exchange of such transaction which announcement shall include the information set out in Appendices 10A and 10C
(B) Percentage ratios is equal to or exceeds 5% - Para 10.04	<ul style="list-style-type: none"> a) Must make an immediate announcement to the Exchange; b) Must also furnish the Exchange, the percentage ratios applicable to such transaction. 	<ul style="list-style-type: none"> a) Make an immediate announcement to the Exchange; b) Circular to shareholders; c) Shareholders approval of the transaction must be sought in general meeting; d) Independent adviser must be appointed.
(C) Percentage ratio is equal to or exceeds 15% - Para 10.05	<ul style="list-style-type: none"> a) In addition to the requirements under (B), the listed issuer must send circular to the shareholders; b) Draft circular must be submitted together with a checklist showing compliance with Appendix 10B 	<ul style="list-style-type: none"> a) Make an immediate announcement to the Exchange; b) Circular to shareholders; c) Shareholders approval of the transaction must be sought in general meeting; d) Independent adviser must be appointed.

(D) Percentage ratios is equal to or exceeds 25% - Para 10.06	a) In addition to the requirements under (B), the listed issuer must obtain the approval of its shareholders in general meeting of the transaction and ensure that the circular includes the information set out in Appendix 10B; b) Draft circular must be submitted together with a checklist showing compliance with Appendix 10B	a) Make an immediate announcement to the Exchange; b) Circular to shareholders; c) Shareholders approval of the transaction must be sought in general meeting; d) Independent adviser must be appointed. e) Main adviser must be appointed.
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Note: The term 'Listed Issuer' refers to a PLC. The definition of percentage ratio is set out above:

To ameliorate the strictness of the above requirement, some leeway is granted for recurrent related party transactions but then a general mandate must be sought from the shareholders and the following requirements must be fulfilled:

- a) the transactions are in the ordinary course of business and are on terms not more favourable to the related party than those generally available to the public;
- b) the shareholders' mandate is subject to annual renewal and disclosure is made in the annual report of the aggregate value of transactions conducted pursuant to the shareholders' mandate during the financial year;
- c) circular to shareholders for the shareholders mandate shall include information set out in Part B of Appendix 10D. Draft circular to be submitted together with a checklist showing compliance with Part B of Appendix 10D; and
- d) in a meeting to obtain shareholders' mandate, the interested director, major shareholder, or person connected with the above; and where it involves the interest of an interested person connected with a director or major shareholder, such director or major shareholder, must not vote on the resolution approving the transaction.

It is hoped that with such a provision in place and the fact that all circulars to shareholders of PLCs have to be first vetted through and approved by the KLSE, there will be greater transparency in all transactions of PLCs in Malaysia.

6.6 Delisting by the KLSE

This is perhaps the most feared provision in the revamped KLSE LR and hopefully it will send some shivers down the spine of board members. Paragraph 16.09 provides that the KLSE may at any time de-list a listed issuer from the Official List in any of the following circumstances:

- a. where the listed issuer fails to comply with the Requirements, subject to consultation with the Securities Commission;
- b. in other circumstances as provided under Paragraphs 8.14, 8.15, 8.16 or 11.09; or
- c. where in the opinion of the KLSE, circumstances exist which do not warrant the continued listing of a PLC, subject to consultation with the Securities Commission.

Paragraph 8.14 (1) provides that the financial condition of a PLC on a consolidated basis must in the opinion of the KLSE warrant continued trading and/or listing in the Official List. If the financial condition of a PLC does not warrant continued listing, the KLSE may de-list such a PLC. Under Paragraph 8.14 (2) the KLSE may prescribe certain criteria in relation to the financial condition of the PLC, the fulfillment of which would require the PLC and or its directors to comply with subparagraph (3) below:

Some of these conditions include the PLC and/or its directors to regularize its financial condition within such timeframes as may be stipulated by the KLSE and to provide such information or document as may be prescribed by the KLSE from time to time

The KLSE in its website at www.klse.com.my now has a flagging system to inform investors of affected listed issuers via the caption “Investor Alert”. An affected listed issuer of PLC is one who meets one or more of the following criteria:

- a. deficit in the adjusted consolidated shareholders’ equity,
- b. receivers and/or managers have been appointed over then property of the OLC or its major subsidiary or associated company,
- c. the auditors have expressed adverse or disclaimer opinion in respect of the PLC’s going concern in its latest audited accounts,

- d. special administrators have been appointed over the PLC, or a major subsidiary or major associated company of the PLC further to the provisions of the Pengurusan Danaharta Nasional Berhad Act 1998 (National Assent Management Act)

7.0 Conclusion

Even in a relatively new market like China, the China Securities Regulatory Commission last February de-listed a washing machine maker Narcissus from the Shanghai Stock Exchange after the company racked up four consecutive years of losses. The China Securities Regulatory Commission said that firms posting 3 or more years of losses would be given just 6 months to make a profit or face de-listing.³⁹ One wonders how many of our PLCs would have been de-listed based on that criterion.

In 2001, Nasdaq has de-listed 87 companies for failing to meet regulatory standards through march 16 compared to just 29 during the same period in 2000. In 2000, 240 companies in Nasdaq were de-listed. In 1999, it was 440. On the big Board, 15 companies have been delisted this year compared with 61 in all of 2000 and 58 in 1999.⁴⁰ Once the share price fall below US\$1 for more than 3 months, the Securities Exchange Commission will give a show cause letter to the company concerned as to why it should not be de-listed. Again one wonders how many companies in the KLSE will be de-listed if such a criterion were to be followed.

In the website of the National Asset Management Corporation at www.danaharta.com.my, one would note that as at 24th May 2001, there are 99 companies under special administration, out of which 85 are still under special administration and 14 have been successfully restructured and special administration terminated. Therefore the effects of the Asian Financial Crisis is far from being over.

The MCCG and the revamped KLSE LR are certainly key steps in the forward direction to enhance corporate governance and transparency, to strengthen investors' protection and

³⁹ The Asian Wall Street Journal, May 11-13th at p.6.

⁴⁰ The Asian Wall Street Journal, March 21 at p.M1.

to promote investors confidence. In order to withstand any onslaught of economic tremours, Malaysia must move towards adopting international standards even in its market surveillance and supervision. The tide of globalisation has already reached our shores and in these days when funds can be moved in and out of a country in just a few seconds, a culture of timely and transparent disclosure with strong fundamentals of organic growth would go a long way in building economic resilience in Malaysia.

Submitted by Lee Swee Seng

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