UNIVERSITI PUTRA MALAYSIA

FAULT LINES IN CORPORATE GOVERNANCE : DIRECTORS VERSUS SHAREHOLDERS

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FAULT LINES IN CORPORATE GOVERNANCE:
DIRECTORS VERSUS SHAREHOLDERS

By
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Specially dedicated to:

Beloved parents Hj Hassan Hj Idris and Hjh Rogayah Hussein,

Beloved husband Yusri Kamarudin

And

Three lovely pearls:
Nurfadhilah Hanani
Nur Iman Nadhira
Muhammad Ihsan
The economic downturn faced by the Asian countries in 1997 highlighted the importance of good corporate governance practices. Entailed from that crisis, measures undertaken towards improving the standard of corporate governance within the Malaysian corporate sector have been extensive. The Malaysian Code on Corporate Governance were introduced by the Malaysian Institute of Corporate Governance. The Kuala Lumpur Stock Exchange Listing Requirements were revamped. Other rules and legislation which were already in existence were viewed afresh. But they are all subject to ambiguities which may affect a conflict-free relationship between directors and shareholders and consequently affect the standard of corporate governance.

This thesis intends to emphasize the fault lines or conflicts which hinder a better relationship between directors and shareholders who are the most important organs in a corporation.
The dichotomy between control and ownership which refers to directors who hold the control and shareholders who hold the ownership, has contributed to the existence of the fault lines. These fault lines are discussed in several areas of company law for instance, power to manage, refusal to register transfer of shares, winding up and general meeting. The research methodology adopted for this thesis involves judicial and legislative interpretation combined with comparative analysis from other jurisdictions with positive developments. Analysis of case law has shown the approach taken by the courts in solving conflicts between directors and shareholders. This study proposes some recommendations, for instance, amending the ambiguous provisions concerning the power to manage and to wind up corporation and expanding the concept of fiduciary duty beyond its traditional scope to apply to the shareholders in exceptional circumstances. These proposals aim at providing a balance of power between these two organs. Although corporate governance covers a wider scope than merely focusing on the directors and shareholders relationship, improving this relationship will consequently improve the standard of corporate governance. Both directors and shareholders have their own role in achieving that purpose. In the final analysis, assisted by relevant rules and regulations and their conscious conduct in improving their relationship, a better standard of corporate governance can be attained which will implicitly affect the corporate economic condition.
Abstrak tesis yang dikemukakan kepada Senat Universiti Putra Malaysia sebagai memenuhi keperluan untuk ijazah Doktor Falsafah

**GARIS SESAR DI DALAM PENGOVERNAN KORPORAT : PENGARAH DAN PEMEGANG SAHAM**

Oleh

**HALYANI HAJI HASSAN**

Januari 2004

Pengerusi: Profesor Shaik Noor Alam S.M. Hussain, Ph.D.

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Tesis ini bertujuan untuk memberi penekanan terhadap garis sesar (Fault lines) atau konflik yang menggugat wujudnya hubungan yang lebih baik di antara
Pengarah dan Pemegang Saham yang merupakan organ-organ penting di dalam struktur sesebuah syarikat.

standard Pengovernan Korporat yang lebih baik yang kemudianya memberi
impak positif kepada ekonomi negara akan dapat dicapai.
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I certify that an Examination Committee met on 14th November 2003 to conduct the final examination of Halyani Haji Hassan on her Doctor of Philosophy thesis entitled "Fault Lines In Corporate Governance: Directors Versus Shareholders" in accordance with Universiti Pertanian Malaysia (Higher Degree) Act 1980 and Universiti Pertanian Malaysia (Higher Degree) Regulations 1981. The Committee recommends that the candidate be awarded the relevant degree. Members of the Examination Committee are as follows:

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I hereby declare that the thesis is based on my original work except for quotations and citations which have been duly acknowledged. I also declare that it has not been previously or concurrently submitted for any other degree at UPM or other institutions.

HALYAM HAJI HASSAN

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TABLE OF CONTENTS

DEDICATION ii
ABSTRACT iii
ABSTRAK v
ACKNOWLEDGEMENTS viii
APPROVAL x
DECLARATION xii
LIST OF CASES xvi
LIST OF STATUTES xxii

CHAPTER

1 INTRODUCTION
1.1 Objectives of the Study 1.5
1.2 Synopsis 1.6
1.3 Scope of the Study 1.7
1.4 Statement of Problem 1.9
1.5 Premise 1.11
1.6 Research Methodology 1.12
  1.6.1 Binding Precedent Framework 1.12
  1.6.2 Interpretation of Legislation 1.13
    1.6.2.1 Literal rule 1.13
    1.6.2.2 Purposive rule 1.13
    1.6.2.3 Golden rule 1.14
    1.6.2.4 Mischief rule 1.14
  1.6.3 Comparative Analysis 1.14
1.7 Literature Review 1.15
  1.7.1 Power to manage 1.17
  1.7.2 Refusal to register transfer of shares 1.23
  1.7.3 General Meeting 1.24
  1.7.4 Power to file winding up petition 1.26
1.8 Summary 1.29

2 CORPORATE GOVERNANCE: DEFINITIONS AND FRAMEWORK
2.1 Introduction 2.1
2.2 Problems of Definition 2.1
  2.2.1 Non disputable Stakeholder 2.4
    2.2.1.1 Employees 2.5
    2.2.1.2 Suppliers 2.5
    2.2.1.3 Customers or Consumers 2.6
    2.2.1.4 The Community or Local populace 2.7
  2.2.2 Disputable Stakeholders 2.7
  2.2.3 Stakeholders in Malaysia 2.11
    2.2.3.1 Employees 2.12
### 2.2.3.2 Customers or Consumers

2.13

### 2.2.3.3 Environmentalists

2.15

### 2.2.3.4 Suppliers

2.17

### 2.2.3.5 Local populace

2.18

#### 2.3 The Framework of Corporate Governance

2.18

##### 2.3.1 Responsibility

- **2.3.1.1 Legal Responsibilities**
  2.19
- **2.3.1.2 Corporate Social Responsibility**
  2.21

##### 2.3.2 Accountability

2.26

#### 2.4 Summary

2.30

### 3 CORPORATE GOVERNANCE – THE CURRENT LEGISLATIVE PROVISIONS IN MALAYSIA

#### 3.1 Introduction

3.1

#### 3.2 The Governing Legislation and Regulations

3.2

#### 3.3 Directors

3.3

- **3.3.1 Disclosure**
  3.4
- **3.3.2 Obligations to be honest and to exercise diligence**
  3.17
- **3.3.3 Approval from General Meeting**
  3.19
- **3.3.4 Prohibited transactions**
  3.28
- **3.3.5 Sanctions for non-compliance by the Directors**
  3.31

#### 3.4 Shareholders

3.31

- **3.4.1 Rights of shareholders under section 181 of the Companies Act 1965**
  3.32
- **3.4.2 Right to have the Memorandum and Articles of Association observed.**
  3.37
- **3.4.3 Right to attend general meeting and to vote**
  3.38
- **3.4.4 Right to records and information.**
  3.40

#### 3.5 Other parties

3.44

- **3.5.1 Creditors**
  3.44
- **3.5.2 Company Secretary**
  3.47
- **3.5.3 Auditors**
  3.49

#### 3.6 Summary

3.51

### 4 FAULT LINES IN DIRECTORS – SHAREHOLDERS RELATIONSHIP

#### 4.1 Introduction

4.1

#### 4.2 Control and Ownership

4.1

#### 4.3 Article 73 of the Articles of Association

4.6

#### 4.4 Shares

4.17

- **4.4.1 Issuance of shares**
  4.17
- **4.4.2 Refusal to register transfer of shares**
  4.22

#### 4.5 General meeting

4.29

- **4.5.1 Problems of general meetings**
  4.33
  - **4.5.1.1 Agenda of the meeting**
    4.33
  - **4.5.1.2 Notices for general meeting**
    4.36
  - **4.5.1.3 Attendance**
    4.38
  - **4.5.1.4 Shareholder Communication**
    4.39
4.5.1.5 Extraordinary general meeting
4.5.1.6 Voting
4.5.1.7 Other issues
4.6 Removal of directors.
4.7 Takeovers and Mergers
4.8 Insider trading
4.9 Winding up
4.10 Summary

5 JUDICIAL ANALYSIS OF CASE LAWS
5.1 Introduction
5.2 The Separation of Ownership from control
5.3 The Judicial Position
5.3.1 Power to manage
5.3.2 Issuance of shares and refusal to register transfer of shares
5.3.3 Takeovers
5.3.4 Insider trading
5.3.5 Winding up
5.4 Summary

6 CONCLUSION AND RECOMMENDATIONS
6.1 Introduction
6.2 Definitions and Framework of Corporate Governance
6.3 Corporate Governance - The Current Legislative Provisions in Malaysia
6.4 Fault lines in directors shareholders relationship
6.4.1 Power to manage
6.4.2 Issuance of shares and refusal to register transfer of shares
6.4.3 General meeting
6.4.4 Removal of Directors
6.4.5 Takeovers and Mergers
6.4.6 Insider trading
6.4.7 Winding up
6.5.0 Analysis of Case Laws
6.6.0 Concluding Remark

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CHAPTER ONE
INTRODUCTION

The country's economy depends on the drive and efficiency of its companies. Thus the effectiveness with which their boards discharge their responsibilities determines Britain's competitive position. They must be free to drive their companies forward but exercise that freedom within a framework of effective accountability. This is the essence of any system of good corporate governance.¹

The above statement describes the importance of corporate governance and its role in achieving efficient corporations that will influence the economic development of a country. A corporation which practices good corporate governance will provide greater accountability and transparency in its business operations, whilst taking into consideration the interest of its shareholders and other stakeholders.

The East Asian financial crisis of 1997 had highlighted the importance of good corporate governance. It is believed that corporations with good governance managed to survive the turmoil. Since then 'corporate governance' became the most talked about agenda or corporate buzzword within the Malaysian corporate sector.

In March 1998, the Ministry of Finance established the Finance Committee on Corporate Governance to prepare a report for the purpose of upgrading the