

# Technical e-Newsletter

March 2007 Issue

## COVER STORY

*Will WiMAX change our life?*

## FINANCIAL REPORTING STANDARDS

*An Overview of the International FRS for Small and Medium-sized Entities*

## TECHNICAL DIAGNOSTIC CENTRE

*CLRC Consultative Document ~*

*On Creating a Conducive Legal and Regulatory Framework for Business*

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## *Editors' Notes ~ Emerging of New Technology*

Greetings!!

It's great that the Malaysian government has finally announced the winning bidders for the WiMAX licenses, which was supposed to be released in year 2006.

Nevertheless, we are pleased to note that the winners of the WiMAX bid goes to 4 smaller but emerging companies. Out of the 4 winners, 3 companies are MESDAQ issuers. Thus, shall we expect for more "friendly" competition among the broadband service providers, and hence, we, as the users, will receive better services at a "more affordable" price?

In connection with this new development, we have specially written the cover story on WiMAX. More importantly, how WiMAX will benefit us or change our life.

On the FRS Section, we have provided an overview of the Exposure Draft (ED) on the International Financial Reporting Standards (IFRS) for Small and Medium-sized Entities (SMEs). This ED is likely to be reviewed by the MASB (*Note: MASB has issued Malaysian FRS for SMEs in year 2006 ahead of IASB*). Thus, it may affect the financial reporting structure of the SMEs in Malaysia, which represent over 90% of the companies registered in Malaysia.

In next issue's AXP Technical Diagnostic Centre (TDC), we will provide our comments on this ED for submission to MASB and IASB.

In this issue of the AXP TDC, we have reviewed the Corporate Law Reform Committee's (CLRC) Consultative Document ~ **On Creating A Conducive Legal and Regulatory Framework For Business** which is the seventh consultative document issued by the CLRC.

We believe that this is the "*most popular*" consultative document issued as it will significantly affect the members in practice as two of the questions seek consultation on whether the mandatory audit rule and appointment of professional secretary shall retain.

We have answered to the consultative questions in favour of small and medium entities as well as small and medium practitioners for the reason indicated above.

The deadline for the submission of the comments is 15 April 2007. If you support our views, please send us your details as we believe that stronger voice will have stronger weight in the law making process.

A gentle reminder for those who wish to but have not subscribed the **Model Financial Statements plus FRS Disclosure Checklists**. Our promotional prices for the publications are valid till 30 April 2007. Thus, if you have not ordered a copy, please do it as soon as possible.

Editors  
AXP Technical e-Newsletter  
March 2007

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# Cover Story

## *Will WiMAX change our life?*

### INTRODUCTION

Malaysian Communications and Multimedia Commission (MCMC) has on 16 March 2007 announced the four winning bidders for the Worldwide Interoperability for Microwave Access (WiMAX).

Four smaller but emerging companies have outshined 13 other bidders, including big players in the telecommunication sector, such as Telekom, Maxis and DiGi. The winners go to Green Packet Berhad, Redtone International Berhad, YTL E-Solutions Berhad and Asiaspace Dotcom Sdn. Bhd. MCMC said

the evaluation for the licenses considered multiple technology strategy need as the wireless broadband spectrum had been allocated to small companies in the past few years.

These companies are expected to invest up to RM300 million within the first three years.



## WHAT'S WiMAX?

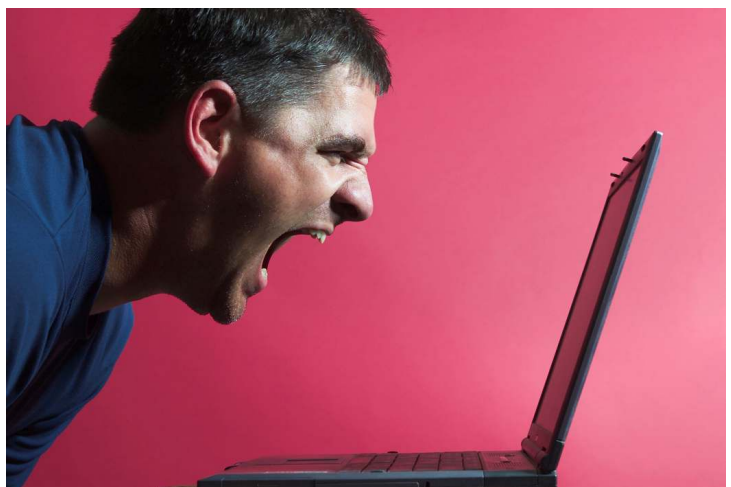
**WiMAX** is defined as Worldwide Interoperability for Microwave Access by the WiMAX Forum to promote conformance and interoperability of the standard IEEE 802.16. The Forum describes WiMAX as "a standards-based technology enabling the delivery of last mile wireless broadband access as an alternative to cable and DSL."

To make it simpler to understand, WiMAX is a **wireless broadband technology**, which is similar to the more familiar WiFi that are available in most of the laptops. However, WiMAX has a higher capacity and operates across much longer distances of over 50 km as opposed to WiFi which is only effective over a short range of about 10 m.

WiMAX improves the limitations of WiFi standard by providing increased bandwidth, range and it has stronger encryption.

There are two main applications of WiMAX, i.e., fixed and mobile applications. Fixed applications enable broadband access to homes and businesses. On the other hand, mobile WiMAX offers the full mobility of cellular networks at much higher broadband speeds.

Do we still need to **ROAR** at our laptops for instable internet connection?



## WiMAX vs 3G



Obviously, the competing technology for WiMAX is 3G mobile phone networks. 3G network can reach out to about 140 km and it can surf internet on the move.

Users are able to access to internet, download contents, check emails, etc over their 3G devices.

There are about 80% of Malaysians use mobile phone, but 3G services are still at the infant stage. In recent years, mobile phone providers have introduced the 3G services to their mobile users. However, the process in migrating the existing users to 3G is slow, most providers are only able to migrate about 10% of the users.

On the other hand, as the bandwidth for 3G is about 384 Kbps, users are demanding for more bandwidth with lower cost. Thus, WiMAX may be emerged as an alternative for 3G since MCMC has stipulated that the service should be provided at “an affordable price”.

As a result, the telecommunication companies are using High-Speed Downlink Packet Access (HSDPA) to roll out broadband service, it can potentially increase the bandwidth to 15Mbps.

Both the 3G and WiMAX have their features and serve different needs. We hope that the awarding of WiMAX licenses to the emerging companies will help to ensure that better services at a more “affordable” price are offered by the service providers.

## MOVING FORWARD

According to MCMC, WiMAX service providers are required to roll out the service of at least 1Mbps to 25% of the population in the area given to them by the end of year 2007. At the end of the third year, they are expected to roll services to at least 40% of the population, and by year 2010, the target is to penetrate 75% of the household.

If this is true, we will be able to access to internet at ultra-high speeds from anywhere and rural areas are able to enjoy internet access. We will also be able to make free phone calls through VoIP service provider, such as Skype, from our mobile phones, and so on.

Furthermore, Intel currently plans to integrate WiMAX and WiFi into its notebook platforms. This will help bring users ultimate high-speed mobile broadband.

Certainly, our life will be, again, substantially changed with the introduction of WiMAX in Malaysia. Technology will play bigger and bigger role in our life and works. The only choice for us is to get the most from adopting the technology.



*With WiMAX, net meeting may be possible at anywhere, anytime.*

## **AN OVERVIEW ~**

# **INTERNATIONAL FRS FOR SMALL AND MEDIUM-SIZED ENTITIES**



## **SCOPE**

The *IFRS for SMEs* is intended for use by small and medium-sized entities (SMEs). SMEs are entities that:

- (a) do not have public accountability; and
- (b) publish general purpose financial statements for external users.

An entity has public accountability if:

- (a) it files, or it is in the process of filing, its financial statements with a securities commission or other regulatory organisation for the purpose of issuing any class of instruments in a public market; or
- (b) it holds assets in a fiduciary capacity for a broad group of outsiders, such as a bank, insurance entity, securities broker/dealer, pension fund, mutual fund or investment banking entity.

## **CONCEPTS AND PERVASIVE PRINCIPLES**

The objective of financial statements of a SME is to provide information about the financial position, performance and cash flows of the entity that is useful for economic decision-making by a broad range of users who are not in a position to demand reports tailored to meet their particular information needs.

## **FINANCIAL STATEMENTS PRESENTATION**

The financial statements of an entity shall include:

- (a) a balance sheet;
- (b) an income statement;
- (c) a statement of changes in equity showing either:
  - (i) all changes in equity; or
  - (ii) changes in equity other than those arising from transactions with equity holders acting in their capacity as equity holders;
- (d) a cash flow statement; and
- (e) notes, comprising a summary of significant accounting policies and other explanatory information.

## IFRSs' TOPICS THAT ARE OMITTED FROM THE DRAFT IFRS FOR SMEs

The following topics are not covered in the draft *IFRS for SMEs*, but for which it includes a cross-reference to the relevant IFRS that an entity would be required to apply if it encountered the transaction or situation:-

**(a) *Hyperinflation***

If the SMEs' functional currency is the currency of a hyperinflationary economy, they are required to prepare and present financial statements in accordance with *IAS 29 Financial Reporting in Hyperinflationary Economies*.

**(b) *Equity-settled share-based payment***

Equity-settled share-based payments of SMEs are required to be measured in accordance with *IFRS 2 Share-based Payment*.

**(c) *Agriculture***

SMEs are required to comply with paragraphs 10-29 of *IAS 41 Agriculture* to apply **fair value model for those biological assets** whose fair value is readily determinable, together with the disclosure requirements.

**(d) *Interim financial reporting***

SMEs that issue an interim financial report that is described as complying with the *IFRS for SMEs* have a choice of applying either *IAS 34 Interim Financial Reporting* or all the requirements of the proposed *IFRS for SMEs*.

**(e) *Lessor accounting for finance leases***

SMEs that are a lessor in a finance lease are required to apply paragraphs 36-46 of *IAS 17 Leases* and to make the related disclosure required by *IAS 17*.

**(f) *Earnings per share***

SMEs are not required to present amounts of earnings per share. However, if SMEs chose to disclose earnings per share, they are required to follow the requirements of *IAS 33 Earnings per Share*.

**(g) *Segment reporting***

SMEs are not required to present segment information. However, if SMEs chose to disclose segment information, they are required to follow the requirements of *IFRS 8 Operating Segments*.

**(h) *Insurance***

The proposed *IFRS for SMEs* is not intended for, and would not be available for use by, insurers as they hold assets in a fiduciary capacity for a broad group of outsiders and have public accountability.

## SIMPLIFICATION OF RECOGNITION AND MEASUREMENT BASIS

### (a) *Financial instruments*

Principal among the simplifications proposed in the draft *IFRS for SMEs* are the following:

- (i) *Classification of financial instruments* ~ Financial instruments that meet specified criteria are measured at cost or amortised cost, and all others are measured at fair value through profit or loss. The available-for-sale and held-to-maturity classifications in *IAS 39* are not available.
- (ii) *Derecognition* ~ The draft proposes a simple principle for derecognition which is not rely on the “pass-through” and “continuing involvement” provisions that apply to derecognition under *IAS 39*.
- (iii) *Hedge accounting* ~ The draft focus on the types of hedging that SMEs are likely to do, specifically hedges of:
  - ✓ Interest rate risk of a debt instrument measured at amortised cost;
  - ✓ Foreign exchange risk or interest rate risk in a firm commitment or a highly probable forecast transaction;
  - ✓ Price risk of a commodity that is holds or in a firm commitment or a highly probable forecast transaction to purchase or sell a commodity; or
  - ✓ Foreign exchange risk in a net investment in a foreign operation.

### (b) *Goodwill impairment*

SMEs should be required to calculate the recoverable amount of goodwill only if there is indication of impairment, the draft *IFRS for SMEs* includes a list of indicators based on both internal and external sources of information. However, the proposed amortization approach for SMEs was rejected by the Board.

### (c) *Treat all research and development costs as expenses*

Draft *IFRS for SMEs* propose an accounting policy choice for treating all research and development costs as expenses. Alternatively, SMEs would be permitted to apply the requirements of *IAS 38 Intangible Assets* by cross-reference to that IFRS.

### (d) *Cost method for associates and joint ventures*

SMEs should be permitted to use either the cost method or fair value through profit or loss to recognize the investment in associates and joint ventures.

### (e) *Income taxes – “timing differences plus” approach*

Deferred taxes should be recognized using “temporary difference approach”. However, Section 28 of the *IFRS for SMEs* explains temporary differences in terms of “timing differences” and adds requirements to recognize deferred taxes in several additional cases.

**(f) *Less fair value for agriculture***

SMEs should be required to use the fair value through profit or loss model only when the fair value is readily determinable without undue cost or effort. When that is not the case, the Board concluded that SMEs should follow the cost-depreciation-impairment model.

**(g) *Employee benefits – defined benefit plans***

*IFRS for SMEs* proposes to require immediate recognition of actuarial gains and losses in full in profit or loss when they occur.

**(h) *Share-based payment***

*IFRS 2* generally requires measurement by reference to the fair value of the equity instruments granted. However, if the entity is unable to estimate reliably the fair value of the equity instruments granted at the measurement date, equity instruments is allowed to be measured at their intrinsic value. The Board concluded that *IFRS 2* provides appropriate simplification for SMEs.

**(i) *Leases***

*IFRS for SMEs* retains the fundamental recognition principle in *IAS 17* while simplifying the measurement.

**(j) *Transition to the IFRS for SMEs***

Draft *IFRS for SMEs* proposes an “impracticability” exemption with respect to some requirements for restating the opening balance sheet.

## **SIMPLIFICATIONS CONSIDERED BUT NOT ADOPTED**

The following are proposed recognition and measurement simplifications rejected by the Board:

- (a) Not to require a cash flow statement
- (b) Treat all leases as operating leases
- (c) Treat all employee benefit plans as defined contribution plans
- (d) Completed contract method for long-term contracts
- (e) Fewer provisions
- (f) Non-recognition of share-based payment
- (g) Non-recognition of deferred taxes
- (h) Cost model for all agriculture
- (i) No consolidated financial statements
- (j) Recognition of foreign exchange gains and losses and revaluation increases in profit or loss

## OPTIONS IN IFRSs AVAILABLE IN THE IFRS FOR THE SMEs

When full IFRSs allow accounting policy options, the *IFRS for SMEs* should include only the simpler option, and the more complex option(s) should be available to SMEs by cross-reference to the full IFRS, as follows:-

**(a) *Investment property***

Draft *IFRS for SMEs* provides guidance for the cost-depreciation-impairment model. The fair value through profit or loss model would be permitted by cross-reference to *IAS 40 Investment Property*.

**(b) *Property, plant and equipment***

Draft *IFRS for SMEs* provides guidance for the cost-depreciation-impairment model. The revaluation model would be permitted by cross-reference to *IAS 16 Property, Plant and Equipment*.

**(c) *Intangible assets***

Draft *IFRS for SMEs* provides guidance for the cost-depreciation-impairment model. The revaluation model would be permitted by cross-reference to *IAS 38 Intangible Assets*.

**(d) *Borrowing cost***

Draft *IFRS for SMEs* provides guidance for the expense model. The capitalization model would be permitted by cross-reference to *IAS 23 Borrowing Costs*.

**(e) *Presenting operating cash flows***

Draft *IFRS for SMEs* provides guidance for the indirect method of presenting cash flows from operations. The direct method would be permitted by cross-reference to *IAS 7*.

**(f) *Accounting for government grants***

Draft *IFRS for SMEs* provides guidance for one method of accounting for government grants (essentially the model in *IAS 41 Agriculture*). The other methods would be permitted by cross-reference to *IAS 20*.



# **AXP TECHNICAL DIAGNOSTIC CENTRE**

## SEPARATE LEGISLATION FOR SMALL COMPANIES

### Question 1:

Do you agree that:

- (i) there should be a single statute that will apply to companies irrespective of whether the company is small or large; and
- (ii) there is a need to simplify and refine company legislation to ease the burden of compliance on small and closely held companies?

### Our Recommendations

- (i) Yes, we agree. This proposal will simplify the business structure and facilitate understanding by the general public.
- (ii) Though we agree that the existing company legislation shall be simplified and refined, we are of the opinion that only those “redundant” and out-of-date procedures need to be simplified and refined. However, it is not necessary to simply and refine company legislation for small and closely held companies as it is generally believed that these companies will have lesser transactions, and thus, those complex requirements will not be applicable to these companies.

On the other hand, CLRC should be aware that larger companies, foreign investments and public listed companies are governed by other legislations. The extent of the financial reporting, corporate governance and other procedures are largely different from those small and closely held companies. Thus, it may not be necessary to simplify the Companies Act for small and closely held companies to ensure that the corporate law is more conducive to business.

## THE DISTINCTION BETWEEN PRIVATE AND PUBLIC COMPANIES

### Question 2:

Do you 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?

### Our Recommendations

Yes, we agree.

## THE ABILITY OF PRIVATE COMPANIES TO RAISE CAPITAL

### Question 3:

Do you agree that a private company be defined as one where the number of members cannot exceed 50?

### Our Recommendations

Although the number of members seems to be a good indicator to differentiate public and private companies, we opine that a private company should be defined as a company which does not have public accountability.

This is due to some companies may have the public accountability but the number of members is below 50. On the other hand, there may have companies which have more than 50 members but they are closely related or family members. Thus, the definition of “public company” does not truly reflect the status of the companies and it may place unnecessary burden for those “private” companies with more than 50 members.

### Question 4:

Do you agree that private companies should continue to be prohibited from issuing shares to the public?

### Our Recommendations

Yes, we agree, as the ability to source fund from public shall continue to be the distinction between the private and public company.

### Question 5:

Do you agree that a private company should be allowed to issue debentures to the public?

### Our Recommendations

No, we do not agree. We recommend that the private companies shall be prohibited from issuing “any” securities to the public to differentiate private and public companies.

### Question 6:

Do you 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?

### Our Recommendations

Yes, we agree as this definition will clarify what constitutes “an offer to the public”.

## AUDITS, FINANCIAL REPORTING AND DISCLOSURE

### Question 7:

Do you agree that the present mandatory audit rules should be retained?

### Our Recommendations

Yes, we agree, this is due to the following reasons:

1. the mandatory audit rules will have additional credits to Malaysia to attract in-bound investments and to assist small and medium enterprises (SMEs) to venture abroad. This is due to the audited financial statements will always be the basic piece of information for the stakeholders to understand the SMEs.
2. generally, SMEs in Malaysia do not have qualified personnel to prepare “proper” financial statements. Furthermore, there are lacks of willingness to prepare proper accounting records by the SMEs. Thus, Inland Revenue Board are required to spend more resources to perform the desk or field audit should the mandatory audit rules be removed. As a result, the implicit and explicit compliance cost of SMEs may be increased tremendously. On the other hand, the government spending will also be escalated.
3. In Malaysia, auditors of SMEs will normally provide value-added service in addition to the statutory audit, among others, improving the internal control and accounting system, compliance with other legislations.
4. on the comments that the value and usefulness of keeping accounting records and preparing financial statements in accordance with approved accounting standards to be insignificant, we have the following views:
  - (a) MASB / International Accounting Standards Board (IASB) are in the process of issuing financial reporting standards (FRSs) for SMEs. Based on the exposure drafts issued, it will reduce the “burden” of SMEs in preparing their financial statements in compliance with FRSs;
  - (b) The purpose of the financial statements is **NOT ONLY** intended for shareholders’ protection, the financial statements is intended to be used for making economic decision making by various stakeholders. It will also assist the managers-owners understand their financial position, performance and cash flow status, which are the fundamental of running businesses;
  - (c) The financial statements should be prepared in accordance with the applicable guidelines for reporting profits for income tax purpose, FRSs are deemed to be the common guidance to ensure consistency among the tax payers; and
  - (d) Due to the above reasons, the audit rules should be retained, with the fact that, generally, SMEs do not have the necessary knowledge in understanding the development of FRSs, as compare to the SMEs in developed countries.
5. There are other stakeholders and users of the audited financial statements, the most significant users are IRB, bankers, etc as the beginning stage in understanding the financial information of SMEs.
6. The cost of audit is normally minimal as compare to the total costs of running business. However, the benefits derived therefrom are proved to outweigh the cost.

**Question 8:**

If your answer to question 7 is no, do you agree that certain types of companies should be exempted from audit requirements?

**Our Recommendations**

Not applicable as we are of the opinion that audit rule shall retain.

**Question 9:**

If your answer to question 8 is yes, do you agree that the exemption from audit requirements should be based on the following criteria?

- (a) that the company is a private company (in the shares of which no beneficial interest is held directly or indirectly by any corporation and which has not more than 50 members none of whom is a corporation); and
- (b) that the company meets at least two of the following economic size indicators with certain prescribed thresholds:
  - (i) an annual gross revenue;
  - (ii) an annual of gross assets; and
  - (iii) total number of employees.

What do you think would be the appropriate thresholds for the economic size indicators?

**Our Recommendations**

Not applicable. As we opine that exemption from audit requirements is not practical and necessary in Malaysia.

A practical issue for this option is that, if the SMEs' financial statements have not audited for a few years, and they meet the threshold set for a year. It means that the SMEs' financial statements are required to be audited for all the previous years. Otherwise, the financial statements will be qualified and defeat the purpose of performing the audit. This will cause unnecessary burden for SMEs to recall transactions entered into for the previous years and the cost of the audit will be increased as it is difficult and time consuming to obtain all the necessary information for audit purposes.

**Question 10:**

Do you 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?

**Our Recommendations**

We are of the opinion that mandatory audit rule shall be retained, partly due to there are different stakeholders for different companies who are interested on the audited financial statements of companies. It may be more costly for SMEs to prepare specific purposes financial statements for different stakeholders than audited general purpose financial statements.

## CONSEQUENTIAL LAW REFORM SHOULD THE MANDATORY AUDIT REQUIREMENT BE ABOLISHED FOR PRIVATE COMPANIES

### Question 11:

Do you agree that companies eligible for exemptions should still be required to file key financial indicators (assets, turnover) to SSM together with their annual return?

### Our Recommendations

Not applicable as we are of the opinion that audit rule shall be retained.

## COMPANY SECRETARIES

### Question 12:

Do you agree that a specific person should be appointed to carry out the functions of a company secretary?

### Our Recommendations

Yes, we agree. It may not be an easy task for a non-qualified person to study all the laws and regulations and determine which are applicable to a company.

Though there are costs to appoint / recruit secretary, the cost should outweigh the benefits since the cost of non-compliance will be much higher than the cost of appointment of secretary.

### Question 13:

If yes, do you agree that such a person must be professionally qualified?

### Our Recommendations

Yes, we agree. This is to ensure that the standard of compliance be maintained.

### Question 14:

If no, do you think the directors (or his agents) are able to carry out the functions to an acceptable level of competency?

### Our Recommendations

Not applicable.

Question 15:

Do you agree that a register of company secretaries be established by SSM to monitor company secretaries?

Our Recommendations

No, we do not agree. However, a form similar to Form 49 should be filed with SSM. We do not see the necessity for SSM to “monitor” company secretaries as professional company secretaries are “monitored” by their respective professional bodies. SSM should focus on improving the efficiency and effectiveness in their services.

THE CAPACITY OF A COMPANY TO CONTRACT AND CONSTRUCTIVE NOTICE

Question 16:

Do you 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?

Our Recommendations

Yes, we agree as this will help the business to grow.

Question 17:

Do you 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?

Our Recommendations

Yes, we agree.

Question 18:

Do you 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 directors?

Our Recommendations

Yes, we agree.

Question 19:

Do you agree that constructive notice be abolished except in so far as the Register of Charges is concerned?

Our Recommendations

Yes, we agree.

Question 20:

Do you 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?

Our Recommendations

Yes, we agree as this will ensure that the non-for-profit companies are operating within the object clause.

## COMPANY FORMATION AND RELATED MATTERS

### TYPES OF COMPANIES THAT CAN BE INCORPORATED

Question 21:

Do you agree that the present types of companies that could be incorporated (i.e. company limited by shares, company limited by guarantee, and an unlimited liability company) are sufficient to cater to the present needs of the business community?

Our Recommendations

Yes, we agree.

### MINIMUM NUMBER OF MEMBERS AND DIRECTORS

Question 22:

Do you agree that the minimum number of members required for public and private companies be reduced to one?

Our Recommendations

Yes, we agree as this proposal is more practical to the businesses in Malaysia.

Question 23:

Do you 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?

Our Recommendations

Yes, we agree as this will promote the business growth and it is more practical.

Furthermore, to attract more investments from overseas and reduce the cost of business, we are of the opinion that the residency requirements for the directorship be removed entirely.

INCORPORATION AND REGISTRATION OF COMPANIES

Question 24:

Do you agree that the name reservation process should not be made mandatory but should be made optional?

Our Recommendations

Yes, we agree as this will shorten the existing lengthy incorporation process.

However, we recommend that proper systems are established to ensure that the incorporation process are not longer than the existing time frame, for example, names reserved and used should be easily accessible to facilitate the incorporators to perform their own search prior to the filing of the incorporation documents. Furthermore, CCM should issue a detailed guidance on the names not acceptable for registration.

Question 25:

Do you agree that the current position where the Registrar is authorised to direct a change of name should be retained?

Our Recommendations

Yes, we agree. However, the Registrar should give clear reason of why the name should be changed.

## CERTIFICATES OF INCORPORATION

### Question 26:

Do you agree that the present incorporation documents should be simplified and consolidated into a single prescribed form?

### Our Recommendations

Yes, we agree. However, the prescribed form should be really “simplified” and not impose unnecessary “burden” to the companies.

### Question 27:

Do you 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?

### Our Recommendations

Yes, we agree.

### Question 28:

Do you 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?

### Our Recommendations

Yes, we agree.

### Question 29:

Do you agree that the requirement for a company to have a common seal under the Companies Act be retained?

### Our Recommendations

No, we do not agree. We are of the opinion that as long as the decisions are made and approved by the Board of Directors, the common seal is not necessary.

## FACILITATING ELECTRONIC INCORPORATION AND ELECTRONIC FILING/LODGEMENT OF DOCUMENTS

### Question 30:

Do you agree that electronic filing and lodgement of documents be made mandatory?

### Our Recommendations

Though it is great to hear that SSM has initiated to enforce electronic filing and lodgement of documents, we strongly recommend that this cannot be implemented unless the computer system of SSM is proved to be stable and able to cope with the expected and unexpected high volume of electronic transactions. Also, the electronic filing and lodgement process shall be “conductive” to business and not to impose unnecessary “burden” to the business.

On the other hand, we believe that the general computer knowledge of Malaysian has yet to achieve the level of mandatory electronic filing and lodgement of documents. Thus, implementing mandatory electronic filing and lodgement of documents may not be a wise decision for the next few years.

