



incorporation
shareholders
Companies Commission of Malaysia

Pamela Hanrahan

Ian Ramsay

Geof Stapledon

COMMERCIAL APPLICATIONS OF

company law

in MALAYSIA

Aiman Nariman Mohd Sulaiman

Aishah Bidin

**© 2002 CCH Asia Pte Limited, Pamela Hanrahan, Ian Ramsay and
Geof Stapledon.**

All rights reserved. No part of this work covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, recording taping, or information retrieval systems) without the written permission of the copyright owners.

Disclaimer

This publication is sold with the understanding that (1) the authors and editors are not responsible for the results of any actions taken on the basis of information in this work, nor for any errors or omissions; and (2) the publisher is not engaged in rendering legal, accounting or other professional services. The publisher, and the authors and editors, expressly disclaim all and any liability to any person, whether a purchaser of this publication or not, in respect of anything and of the consequences of anything done or omitted to be done by any such person in reliance, whether whole or partial, upon the whole or any part of the contents of this publication. If legal advice or other expert assistance is required, the service of a competent professional person should be sought.

Published by CCH Asia Pte Limited
Printed by Kumvivar Printing Sdn Bhd
ISBN 981-04-6337-5

ABOUT CCH ASIA PTE LIMITED

CCH is part of Wolters Kluwer nv, a leading global publishing company active in many countries. For more than a century, CCH has been providing its subscribers with the highest standard of reporting for which the CCH group of companies has an established worldwide reputation.

CCH loose-leaf publications keep professionals and business people up to date with developments in a wide range of topics including taxation, business and company law and employment and human resources management.

What distinguishes CCH publications is the effective combination of accuracy, authority, practicability and ease of reference. This is achieved by having leading practitioners work on publications, presenting the information in a highly readable format and using comprehensive indexes and other information locators.

CCH Asia Pte Limited publishes a range of books and reporting services for Malaysia, Singapore, Hong Kong and China, and will continue to expand its range of publications to serve the needs of its subscribers in the Asian region.

PREFACE

Commercial Applications of Company Law in Malaysia is a comprehensive company law text book which takes into consideration the unique requirements of students, lecturers and professionals in this area of law. This book focuses on ordinary events and issues faced by companies, and it explains and applies the law in a concise and accessible manner. The law is clearly stated and put into context, and this book demonstrates practical ways in which company law shapes business planning.

This book also introduces a unique teaching method which, has been well received in Australia. For students, the book comes with a supplementary text containing legislative extracts as well as three running case studies which demonstrates the application of company law to a small private company, an unlisted public company and a listed public company. Accompanying these three case studies are problem sets for the students to quiz themselves.

For lecturers, in addition to the supplementary text, they are provided with a CD-Rom, which contains a power point presentation of the various chapters, the case studies, problem sets and solutions to the problem sets.

The original version, *Commercial Applications of Company Law* published by CCH Australia was written by three acknowledged writers that have a unique combination and experience in both legal practice and teaching, Pamela Hanrahan, Ian Ramsay and Geof Stapledon. Pamela Hanrahan wrote chapters 1-8 and 17-20 and 25; Ian Ramsay wrote chapters 9-16 and Geof Stapledon wrote chapters 21-25. *Commercial Applications of Company Law* is now in its 3rd edition.

The adaptation works in Malaysia, which was handled by two academically acclaimed lecturers, Aishah Bidin and Dr. Aiman Nariman Sulaiman, was reviewed by Pamela Hanrahan, Ian Ramsay and Geof Stapledon. Aishah Bidin did the adaptation for chapters 1-4 and 15-18 and 21-24, whilst Dr Aiman Nariman did the adaptation for chapters 5-14 and 19-20. Dr Aiman also reviewed chapters 16-18. Reference was made to the revamped KLSE Listing Requirements and principles of corporate governance.

ABOUT THE AUTHORS

The *Commercial Applications of Company Law in Malaysia* is adapted and written by Dr. Aiman Nariman Mohd Sulaiman and Aishah Bidin.

Dr Aiman Nariman Mohd Sulaiman

Currently, Dr Aiman is an assistant professor at the Law Faculty International Islamic University Malaysia (IIUM). She obtained her LLB (Hon.) (First Class) from IIUM in 1993 and her Masters in Comparative Law (MCL) also from IIUM in 1994. She received her Doctorate of Legal Science (SJD) from Bond University Australia in June 2000. Her thesis on company law and corporate governance, focused on the role of the regulatory authorities in the regulation of corporations.

Dr Aiman has been a faculty member of the Ahmad Ibrahim Kulliyah of Law (IIUM) since 1994. Her areas of interests are the law on partnership, company law, law of trust and equity and Islamic commercial law especially in their application to the partnership and company law. She has been teaching partnership and company law since 1994 and was the course coordinator for these subjects at Ahmad Ibrahim Kulliyah of Laws, IIUM. At present, she is involved in the introduction of Comparative Company Law for the Masters program at IIUM.

She is also active in the ROC-Corporate Directors Training Program, as instructor for several topics including the law on meetings, directors' duties and responsibilities, and the importance of good corporate governance.

Dr Aiman has published in several legal and professional journals, both local and abroad. She is also the author of *Directors Duties and Corporate Governance* (2001, Sweet & Maxwell) and *Corporate Group Liability: A Malaysian Perspective* (2001, Research Centre IIUM).

Aishah Bidin

Aishah is an Associate Professor of Law and Deputy Dean at the Faculty of Law, Universiti Kebangsaan Malaysia (UKM). Aishah obtained her LL.B (Hons) from University of Malaya and Masters in Laws from the University of Kent. She is currently pursuing her Ph.D (University of London).

An academic staff of the law faculty of UKM since 1984, Aishah was also involved in the Law and Accounting teaching program at the Law Faculty of the University of Kent. She was seconded to the law practices of Messrs Allen & Overy, (Banking and Securities Department) and Messrs Travis, Smith and Braithwaite, (Banking and Corporate Insolvency Unit), both of which are based in London.

Her areas of specialisation include company and corporate finance law, securities regulation, bankruptcy and insolvency law. She has been lecturing on

Contents

Details of Contents	3
PART A — THE FUNCTIONS AND STRUCTURE OF COMPANIES	
Chapter	
1 The functions and structure of companies	23
2 Company law	41
3 The Legal nature of companies	63
4 Business planning and company formation	87
PART B — COMPANY MANAGEMENT	
5 The memorandum and articles of association	119
6 Managing companies	131
7 Members decision-making	151
8 Company meetings	171
9 Limitation to voting power	191
10 Company directors	207
11 Directors' duties	237
12 Conflict of interest	265
PART C — CONSEQUENCES OF MISMANAGEMENT	
13 Consequences of breach of duty	299
14 Members' remedies	315
PART D — COMPANY REPORTING	
15 Reporting and disclosure	349
PART E — COMPANY FINANCE	
16 Shares and shareholding	369
17 Increasing and reducing share capital	393
18 Debt finance	419
PART F — COMPANIES AND OUTSIDERS	
19 Contracting by companies	439
20 Corporate liability	455
21 External administration	471
22 Winding up	491
23 Securities	511
24 Take-overs	533

PART G — FINDING AIDS

Table of Cases	549
Legislation Finding List	561
Index	575

Details of Contents

PART A — THE FUNCTIONS AND STRUCTURE OF COMPANIES

1 THE FUNCTIONS AND STRUCTURE OF COMPANIES	
Introduction	¶1-001
A definition of "company"	¶1-050
Companies as a form of business organisation	
Introduction	¶1-100
What are companies used for?	¶1-120
Are all companies listed on Kuala Lumpur Stock Exchange(KLSE)?	¶1-140
The architecture of companies	
Introduction	¶1-200
The capital structure of companies	¶1-220
The management structure of companies	¶1-240
The historical development of companies	
How did companies develop?	¶1-300
What are "corporations aggregate" and "joint stock", and when did these concepts develop?	¶1-320
When did the right to incorporate companies become generally available?	¶1-340
When was limited liability first introduced?	¶1-360
When were companies first used for small businesses?	¶1-380
Some key terms and concepts	
Summary of some important terms used in this book	¶1-400
2 COMPANY LAW	
Introduction	¶2-001
Scope and operation of company law	
What is "company law"?	¶2-100
What does company law cover?	¶2-120
Enforcing company law	¶2-140
What are the main sources of company law?	¶2-160

The Companies Act

What is the Companies Act? ¶2-200
 History of the Companies Act ¶2-220
 Content of the Companies Act ¶2-240

Other sources of company law

Overview ¶2-300
 Case law ¶2-310
 The Companies Regulations 1966 ¶2-320
 The Securities Commission Act 1993 ¶2-330
 Securities Commission exemptions, modifications and
 guidelines ¶2-340
 The accounting standards ¶2-350
 The Kuala Lumpur Stock Exchange Listing
 Requirements ¶2-360
 The Securities Industry Act 1983 ¶2-370
 The Futures Industry Act 1993 ¶2-380
 The Code on Take-overs and Mergers 1998 ¶2-390
 The Malaysian Code on Corporate Governance ¶2-400
 The Offshore Companies Act 1990 ¶2-410

Regulation of companies

Overview ¶2-500
 The Securities Commission ¶2-520
 Kuala Lumpur Stock Exchange ¶2-540
 The Registrar of Companies ¶2-560
 Jurisdiction of courts ¶2-580

3 THE LEGAL NATURE OF COMPANIES

Introduction ¶3-001

Separate legal personality

What is separate legal personality? ¶3-100
 The general rule: *Salomon's case* ¶3-120
 What are the consequences of treating the company
 as a separate legal entity? ¶3-140

The exceptions: piercing the corporate veil

Introduction ¶3-200
 The corporate veil and tort claimants ¶3-210
 In what circumstances have courts pierced the
 corporate veil? ¶3-220

When have courts pierced the corporate veil at common law?	¶3-240
How do the statutory provisions operate to lift the corporate veil?	¶3-260

Corporate capacity

What do we mean by "corporate capacity"?	¶3-300
The capacity of a company	¶3-320
How wide are the powers of companies?	¶3-340
What is the effect of any internal limitations on powers?	¶3-360

Limited liability

What is limited liability?	¶3-400
What is the rationale for limited liability?	¶3-420
Contractual agreements that circumvent limited liability	¶3-440
In what circumstances can a parent company lose the benefit of limited liability?	¶3-460

4 BUSINESS PLANNING AND COMPANY FORMATION

Introduction	¶4-001
---------------------------	--------

Choice of form of business organisation

What are the different forms of business organisations?	¶4-100
Non business-associations	¶4-110
What are the key differences between companies and other forms of business organisations?	¶4-120
How do we choose between the different forms of business organisations?	¶4-140
What are some of the advantages of the corporate form?	¶4-160
What are some of the disadvantages of the corporate form?	¶4-180
Deciding on the most appropriate form of business organisation	¶4-190

Types of companies

Overview of the different types of companies	¶4-200
How are companies classified according to the members' liability?	¶4-220
How are companies classified as public or private?	¶4-240

Can companies change type?	¶4-260
Registration of companies	
How are companies created?	¶4-300
What is the required procedure?	¶4-320
Company names	¶4-340
Pre-registration conduct	¶4-360
Listing on the Kuala Lumpur Stock Exchange	
What is listing?	¶4-400
Why do companies list?	¶4-420
How do companies list?	¶4-440
Corporate groups in business planning	
What are corporate groups?	¶4-500
Why use a corporate group, rather than an individual company?	¶4-520
Group relationships — the definitions	¶4-540
In what circumstances does the law recognise and regulate corporate groups?	¶4-560

PART B — COMPANY MANAGEMENT

5 THE MEMORANDUM AND ARTICLES OF ASSOCIATION

Introduction	¶5-001
The memorandum and articles of association	¶5-100
Relationship between memorandum, articles and the statutory provisions in the Companies Act	¶5-210
How does a company amend its memorandum of association?	¶5-220
How does a company amend its articles of association?	¶5-230
Legal effect of the Memorandum and Articles of Association	
The memorandum and articles of association as a statutory contract	¶5-300
Interpreting the memorandum and articles of association	¶5-310
Enforcing the memorandum and articles of association .	¶5-320
Consequences of not observing the memorandum and articles of association	¶5-330

6 MANAGING COMPANIES

Introduction	¶6-001
Decision-making and company management	
The rules governing decision-making in companies	¶6-100
What kinds of decisions do companies make?	¶6-120
Division of powers between the members and the directors	
Overview	¶6-200
How is decision-making divided?	¶6-220
The directors' power of management	
Overview	¶6-300
The management powers of the board	¶6-320
Members cannot override decisions of the board	¶6-340
What options are available to members who disagree with decisions of the board?	¶6-360
Members' decision-making powers	
Decisions reserved to the members	¶6-400
Members' residual decision-making powers	¶6-420
The role of company officers	
Overview	¶6-500
What is the directors' role?	¶6-520
How does the board discharge its role?	¶6-540
What is the company secretary's role?	¶6-560
What is the executive officers' role?	¶6-580
Corporate governance	
Overview	¶6-600
What is corporate governance?	¶6-620
Issues in corporate governance	¶6-640
Mechanisms that play a role in corporate governance ...	¶6-660
7 MEMBERS DECISION-MAKING	
Introduction	¶7-001
Member voting and corporate control	
Do the members control companies?	¶7-100
How much control do members have in large listed companies?	¶7-120

What impact do institutional investors have on control? . ¶7-140

The scope of member voting rights

Understanding member voting rights ¶7-200
On what issues do members have a vote? ¶7-220

Structural or constitutional decisions

Adopting and amending the articles of association ¶7-300
Changing the company's name or type ¶7-320
Varying class rights ¶7-340
Approving certain corporate actions affecting share
capital ¶7-360

Selecting the board and the auditor

Appointing and removing directors ¶7-400
Approving directors' remuneration and benefits ¶7-420
Appointing and removing auditors ¶7-440

Vetoing certain transactions

Vetoing related party transactions under the Securities
Commission Policies and Guidelines on the
Issue/Offer of Securities & the KLSE Listing
Requirements ¶7-500
Approving certain transactions by companies ¶7-540
Approving certain take-overs and reconstructions ¶7-560

Other decisions

Initiating a members' voluntary winding up ¶7-600
Making decisions under the common law voting
powers ¶7-620

8 COMPANY MEETINGS

Introduction ¶8-001

Members' meetings

Statutory meetings ¶8-100
Other types of meetings ¶8-120

Convening meetings

How are members' meetings convened? ¶8-200
Requesting and calling meetings ¶8-220
Determining the agenda for the meeting ¶8-240
The notice requirements ¶8-260

Conducting meetings

Procedural requirements governing the conduct of meetings	¶8-300
Quorum requirements	¶8-310
Utilising communications technology	¶8-320
Proxies and representatives	¶8-330
Role of the chairperson	¶8-340
Adjourning meetings	¶8-350
Minutes	¶8-360
Meetings of one	¶8-370

Member voting

Voting by members	¶8-400
Members' entitlement to vote	¶8-420
Restrictions on members exercising their voting rights ...	¶8-440
Voting by proxies	¶8-460
Ordinary and special resolutions	¶8-480

Decision-making without a meeting

Overview	¶8-500
Members' written consent to particular matters	¶8-560
The doctrine of unanimous assent	¶8-580

Procedural irregularities

Overview	¶8-600
The effect of procedural irregularities	¶8-620

9 LIMITATION TO VOTING POWER

Introduction	¶9-001
---------------------------	--------

Overview of restrictions

Why are restrictions needed?	¶9-100
Many cases are not clear-cut	¶9-120
Summary of restrictions on majority voting power	¶9-140

Equitable limitation on majority voting power

Summary	¶9-200
Application to cases not involving an amendment of the company's constitution	¶9-220
Application to cases involving an amendment of the company's constitution	¶9-240
Alteration of articles must be done bona fide for the interest of the company as a whole	¶9-260

Other restrictions on voting power

Compliance with procedural requirements	¶9-300
Voting restrictions	¶9-320
Statutory protections for minority shareholders	¶9-340
Personal rights of members	¶9-360
Limits on majority's power to ratify breaches of duty by directors	¶9-380

10 COMPANY DIRECTORS

Introduction	¶10-001
---------------------------	---------

Company boards

Malaysian boards of directors	¶10-100
Australian boards of directors	¶10-110
Board composition as a corporate governance issue	¶10-120

Types of directors

Executive director	¶10-200
Non-executive director	¶10-210
Chairperson of directors	¶10-220
Governing/ managing director	¶10-230
Nominee director	¶10-240
Alternate director	¶10-250
De facto director	¶10-260
Shadow director	¶10-270

Appointment and removal of directors

Overview	¶10-300
Who can be appointed as a director?	¶10-310
How are directors appointed?	¶10-320
For how long is a director appointed?	¶10-330
Can a director resign?	¶10-340
How can a director be removed?	¶10-350
How can a director be disqualified?	¶10-360

Proceedings of the board

Overview	¶10-400
How are directors' meetings called and held?	¶10-420
Can boards delegate their powers?	¶10-440
What rights to information do directors have?	¶10-460

11 DIRECTORS' DUTIES

Introduction ¶11-001

Overview of duties

The role of duties ¶11-100

Summary of duties ¶11-120

Who owes the duties? ¶11-140

To whom are the duties owed? ¶11-160

Who enforces the duties? ¶11-180

What are the consequences of breaching a duty? ¶11-190

The duty of care

Sources of the duty of care ¶11-200

The standards that are applied ¶11-220

The business judgment rule ¶11-240

The duty to act in bona fide in the best interests of the company

What is meant by bona fide? ¶11-300

What are the company's interests? ¶11-320

The duty to act for a proper purpose

What are proper purposes? ¶11-400

Duty to retain discretion

What does it mean to retain discretion? ¶11-500

Consequences of breach of duty ¶11-600**12 CONFLICTS OF INTEREST****Overview of the duty to avoid conflicts of interest** ¶12-001**The common law rules**

Overview of the common law rules ¶12-100

What is the common law conflict rule? ¶12-120

Transactions with the company ¶12-140

Taking corporate property, information and

opportunities ¶12-160

Conflicting duties ¶12-180

Other conflicting interests: competing companies and

nominee directors ¶12-190

The company's constitution

How can the constitution affect the duty to avoid conflicts of interest?	¶12-200
--	---------

Statutory regulation

Overview of statutory regulation	¶12-300
Disclosure of interests	¶12-310
Improper use of position or information	¶12-320
Prohibited transactions with directors or persons connected to the directors	¶12-330
Loans to directors or person connected to the directors under sec 133 and 133A	¶12-340
Prohibited transactions involving shareholders and directors under sec 132G	¶12-350
Shareholders approval for substantial property transaction	¶12-360

Consequences of contravention

Contravention of the common law duty	¶12-400
Contravention of the statutory provisions	¶12-420

PART C — CONSEQUENCES OF MISMANAGEMENT**13 CONSEQUENCES OF BREACH OF DUTY**

Introduction	¶13-001
--------------------	---------

Enforcement of directors' duties by the Registrar of Companies (ROC) and the Securities Commission (SC)

ROC enforcement powers	¶13-100
Compounding offences	¶13-120
Disqualification order on the application of the ROC	¶13-140
Disqualification order under the Securities Industry Act 1983 (SIA 1983)	¶13-160
Criminal penalties	¶13-180

The company's civil remedies

Overview	¶13-200
The company's civil remedies for breach of common law duties	¶13-210

Relief from liability for breach of duty

Overview	¶13-300
Relief from liability given by the court	¶13-310

Relief from liability given by the company —
 ratification of breaches of duty ¶13-320
 Insurance and indemnification for breach of duty ¶13-340

14 MEMBERS' REMEDIES

Introduction ¶14-001

Overview of remedies

What are the remedies? ¶14-100
 Why are the remedies needed? ¶14-120
 Difference between the member's derivative action
 and other remedies ¶14-140

Member's statutory remedies

Overview ¶14-200
 The oppression remedy ¶14-210
 Winding up the company as a member's remedy ¶14-220
 Statutory injunction ¶14-240
 Statutory right to inspect books of the company ¶14-260

Member's personal action

Overview ¶14-300
 What are personal rights? ¶14-310

Member's derivative action

What is a derivative action? ¶14-400
 The exceptions to the proper plaintiff rule ¶14-420
 The elements of fraud on the minority ¶14-440

PART D — COMPANY REPORTING

15 REPORTING AND DISCLOSURE

Introduction ¶15-001

Record-keeping

Accounting records ¶15-100
 Minute books ¶15-120
 Registers of members, option holders and debenture
 holders ¶15-140
 Register of charges ¶15-160

Information to be lodged with the Registrar of Companies

Overview ¶15-200

The annual return	¶15-220
Disclosure to the ROC of particular events	¶15-240
Lodging financial reports (Profit and loss account and balance sheet)	¶15-260

Periodic financial reporting

Overview	¶15-300
Profit and loss account and balance sheet	¶15-340
Directors' reports, statement and declaration	¶15-360
Other periodic disclosure by listed companies	¶15-390

Audit

What is audit, and why is it required?	¶15-400
What qualifications do auditors need, and how are they appointed and removed?	¶15-410
What are the auditor's duties, and to whom are they owed?	¶15-420

Continuous disclosure

What is continuous disclosure?	¶15-500
Continuous disclosure by listed companies	¶15-520

PART E — COMPANY FINANCE

16 SHARES AND SHAREHOLDING

Introduction	¶16-001
---------------------------	---------

Company finance

Sources of company finance	¶16-100
Differences between share capital and debt finance	¶16-120

The nature of share capital

What is share capital?	¶16-200
What are classes of shares?	¶16-220
What are partly paid shares?	¶16-240
What are options?	¶16-260

Membership

What is membership?	¶16-300
How does someone become a member of a company?	¶16-320
How does someone stop being a member of a company?	¶16-340

Shareholders' rights

What rights do shareholders have? ¶16-400
 Voting rights ¶16-420
 Distribution rights ¶16-440
 The right to receive information ¶16-460
 Class rights ¶16-480

17 INCREASING AND REDUCING SHARE CAPITAL

Introduction ¶17-001

Increasing issued capital

How are shares issued to the first shareholders? ¶17-100
 What is the process for issuing new shares? ¶17-120
 What are the main types of share issues? ¶17-140
 What is underwriting? ¶17-160

Legal rules governing share issues

Overview ¶17-200
 When is member approval required? ¶17-220
 Are there restrictions on the types of people to whom
 shares can be issued? ¶17-240

Disclosure in relation to securities offers

What are the disclosure requirements? ¶17-300
 When is disclosure required? ¶17-320

Capital maintenance

Overview ¶17-400
 What is the principle of maintenance of capital? ¶17-420

Dividends payable only out of profits

What are the restrictions on payment of dividends? ¶17-500
 What does "profits" include? ¶17-520
 What are the consequences of a breach? ¶17-540

Prohibited self-acquisition

What is the prohibition on self-acquisition? ¶17-600
 Are there any exceptions to the rule? ¶17-620

Prohibited financial assistance

What is the rule prohibiting financial assistance? ¶17-700
 What is financial assistance? ¶17-720
 When is financial assistance permitted? ¶17-740

What are the consequences of a breach? ¶17-760

Permitted buy-backs

Does the law permit a company to reduce its capital in any circumstances? ¶17-800

What is a buy-back? ¶17-820

What are the procedural requirements? ¶17-840

What types of share buy-backs are allowed? ¶17-860

What are the consequences of a breach? ¶17-880

Permitted reductions of capital

What is a reduction of capital? ¶17-900

When is a reduction of capital allowed? ¶17-920

What are the consequences of a breach? ¶17-960

Other permitted reductions of capital ¶17-980

18 DEBT FINANCE

Introduction ¶18-001

Debt finance

The nature of debt finance ¶18-100

Sources and types of debt capital ¶18-120

What are debentures? ¶18-140

Why do companies issue debentures? ¶18-160

What requirements apply to the public issue of debentures? ¶18-180

Company charges

Overview ¶18-200

Fixed and floating charges ¶18-220

What is crystallisation? ¶18-240

Registration of charges

Who maintains the register of charges ¶18-300

How are charges registered? ¶18-320

What is the effect of registration? ¶18-340

Can charges be invalidated by the Companies Act? ¶18-360

PART F — COMPANIES AND OUTSIDERS

19 CONTRACTING BY COMPANIES

Introduction ¶19-001
 How do companies contract? ¶19-050

Contracting directly

How does a company make a contract directly? ¶19-100
 How does a company execute a document with the
 common or official seal? ¶19-120
 How does a company execute a document without the
 common seal? ¶19-140

Contracting through agents

How does a company make a contract through an
 agent? ¶19-200
 Who has authority to act for a company? ¶19-210
 What is actual authority? ¶19-220
 How can express actual authority arise? ¶19-230
 How can implied actual authority arise? ¶19-240
 What is apparent authority? ¶19-250
 What are the requirements for apparent authority to
 exist? ¶19-260
 What does it mean if apparent authority exists? ¶19-270

20 CORPORATE LIABILITY

Introduction

Overview ¶20-001
 Enforcing defective contracts ¶20-050

Enforcing defective contracts made by agents

How can a defective contract made through an agent
 or purported agent of a company be enforced? ¶20-100
 How does the common law assist an outsider? ¶20-110
 What is the indoor management rule? ¶20-120
 Exceptions — when will the common law not assist an
 outsider? ¶20-130
 Are there any statutory provisions to assist an
 outsider? ¶20-140
 What if a document is forged? ¶20-150

Enforcing defective contracts made directly by the company

- How can a defective contract made directly by the company be enforced? ¶20-200
- How is a defect in formal authority overcome? ¶20-220
- How is a defect in substantive authority overcome? ¶20-240

Company liability for civil wrongs

- Introduction ¶20-300
- What is vicarious liability? ¶20-320
- What is direct liability? ¶20-340

Company liability for crimes

- Which crimes can companies commit? ¶20-400
- Is vicarious liability possible for crimes? ¶20-420
- Is direct liability possible for crimes? ¶20-440

21 EXTERNAL ADMINISTRATION**Introduction** ¶21-001**Receivership**

- What is a receiver? ¶21-100
- Who is allowed to be appointed as a receiver? ¶21-110
- Who may appoint a receiver? ¶21-120
- A receiver is an agent of the company ¶21-130
- What are the powers of receivers? ¶21-140
- What are the duties of a receiver? ¶21-150
- What are the liabilities of receivers? ¶21-160

Scheme of creditors arrangement under sec 176 of the Companies Act

- What is a scheme of arrangement? ¶21-200
- What are the important considerations in formulating a scheme of arrangement? ¶21-220
- What does the preliminary meeting with creditors involve ¶21-240

Other non-legal mechanisms of creditors arrangement

- Pengurusan Danaharta Nasional Berhad ¶21-300
- Corporate Debt Restructuring Committee (CDRC) ¶21-320

22 WINDING UP

Introduction ¶22-001

Winding up

What is a winding up? ¶22-100

What types of winding up are possible? ¶22-110

Who is allowed to be appointed as a liquidator? ¶22-120

What are a liquidator's functions? ¶22-130

What are a liquidator's duties? ¶22-140

What are a liquidator's powers? ¶22-150

What funds are available for distribution by the liquidator? ¶22-160

What are voidable transactions? ¶22-170

What are void charges? ¶22-180

A liquidator's right of recovery on sales to and by the company ¶22-190

How are the funds distributed? ¶22-195

Deregistration

What is deregistration? ¶22-200

What types of deregistration are possible? ¶22-210

What are the effects of deregistration? ¶22-220

How can a company's registration be reinstated? ¶22-230

23 SECURITIES

Introduction ¶23-001

Securities offers and issues

How are offers of securities regulated? ¶23-100

Approval of the Securities Commission ¶23-105

Which offers are subject to the disclosure and other requirements in of the Securities Commission Act 1993? ¶23-110

What must be disclosed? ¶23-120

What procedure must be followed for an issue, offer or invitation? ¶23-140

What if the prospectus is wrong or incomplete? ¶23-160

Trading in securities

What is secondary trading in securities? ¶23-200

What laws govern trading in securities? ¶23-210

What is insider trading? ¶23-220

What procedure must be followed for an issue, offer or invitation? ¶23-140
 What if the prospectus is wrong or incomplete? ¶23-160

24 TAKE-OVERS

Takeovers

What is a take-over? ¶24-100
 Why do take-overs occur? ¶24-120
 How common are take-overs in Malaysia? ¶24-140
 What are the purposes of Malaysia's take-over regulations? ¶24-160
 Overview of the take-over regulations ¶24-180
 What is compulsory acquisition? ¶24-200

The substantial holding and tracing provisions

When does a large shareholder need to disclose their holding? ¶24-300
 How can listed companies trace persons with substantial shareholdings ¶24-320



CCH ASIA PTE LIMITED

1556

Commercial Applications of Company Law in Malaysia is an adaptation of the innovative and well-received Australian book, "Commercial Applications of Company Law" written by Pamela Hanrahan, Ian Ramsay and Geof Stapledon.

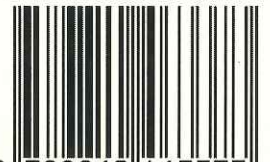
Commercial Applications of Company Law in Malaysia is written in Plain English and reconceptualises traditional approaches to the subject. It sets out and applies the law in a practical and accessible manner.

This book is aimed at providing a comprehensive working knowledge of the sources, application and impact of company law in Malaysia. The reader is given an overview of the function and structure of companies, the operation of company law, the formation and legal nature of companies and the securities industry. Issues such as members' decision-making processes, powers and duties of directors, reporting and disclosure requirements, share issues, takeovers, receivership and winding-up are also covered. Legal principles are discussed using local case law and further clarified using examples and charts, where necessary.

It is a book designed to meet specifically the needs of practitioners and professionals as well as law and business students.

COMMERCIAL APPLICATIONS OF
company law
in MALAYSIA

ISBN 981-04-6337-5



9 789810 463373