

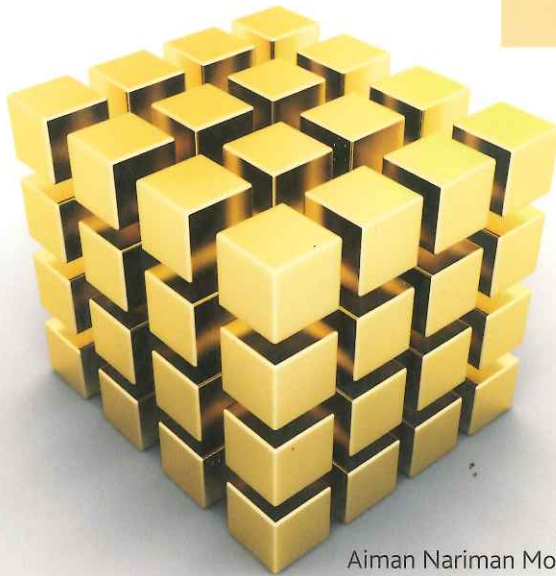
Commercial Applications of Company Law in Malaysia

3rd Edition



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a Wolters Kluwer business



Aiman Nariman Mohd Sulaiman
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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.

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 8th edition.

The adaptation works in Malaysia, which was handled by two academically acclaimed lecturers, Aishah Bidin and Aiman Nariman Sulaiman, was reviewed by Pamela Hanrahan, Ian Ramsay and Geof Stapledon. Dr 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.

This third edition of *Commercial Applications of Company Law in Malaysia* reflects Malaysian law and practice as at the 29th day of February 2008.

About the authors

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

Dr Aiman Nariman Mohd Sulaiman

Currently, Dr Aiman is an associate professor at the Ahmad Ibrahim Kulliyah of Laws International Islamic University Malaysia (IIUM). She obtained her LLB (Hons) (First Class) from IIUM in 1993 and her Masters in Comparative Law (MCL) also from IIUM in 1994. She received her Doctor of Legal Science (SJD) from Bond University, Australia, in June 2000, under the supervision of Prof John H Farrar. 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. She also teaches Comparative Company Law for the Masters program (MCL) and Corporate Governance for the LLM Exec (Business Law) 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. Her current research involvement is in assisting the Corporate Law Reform Committee (CLRC) in the corporate law reform program in Malaysia.

Dr Aiman has published in several legal and professional journals and presented in various conferences and seminars, 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).

Professor Dr Aishah Bidin

Dr Aishah is an Associate Professor of Law at the Faculty of Law, Universiti Kebangsaan Malaysia (UKM). She was the Deputy Dean for Academic and Student Affairs at the faculty from 2000 to 2006. Dr Aishah obtained her LLB (Hons) from University of Malaya, Masters in Laws from University of Kent and her Ph.D in Law from University of London.

An academic staff of the law faculty of UKM since 1984, Dr 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 company and partnership law since 1989, and currently her areas of interest also include Islamic banking and finance, and the effect of environmental law on corporate regulation.

Dr Aishah has written for various local Malaysian and British academic journals in company, securities and insolvency law. Through the Fundamental Research Grant (FRGS) from UKM she has completed three projects for the university, namely a project on Insolvency Governance and Reforms in Malaysia and Its Impact on Creditors in 2002; Corporate Financing in Malaysia in 2004; and Rehabilitative Framework for Insolvent Companies in Malaysia and Australia in 2007. At present, under the Research University Grant (GUP), she is embarking on a research on the Impact of Advancement of Technology on Corporations in which the areas of study include electronic meetings, offering of securities and prospectus on line, banking and corporate fraud. Further, she is also heading a team researching on Corporate Social Responsibilities (CSR) of SME companies in Malaysia.

She is also the consulting editor for the *International Corporate Law Bulletin*, London, Sweet and Maxwell Group and the consulting editor for the *Journal of Society of Advanced Legal Studies*, Kluwer Press Group, London.

Currently she is a member of the Malaysian Corporate Law Reform Committee (CLRC) and a member of the Technical Sub-committee for the CLRC. She also sits in two other sub-working groups of the CLRC, namely working group on corporate governance and shareholders' rights and working group on insolvency and corporate securities. In early 2007, she has been a Visiting Professor at the Department of Business Law and Taxation, Faculty of Business and Economics, Monash University, Melbourne, Australia and was also an Honorary Research Fellow at the Centre for Malaysian Studies in Monash Asia Institute, Australia.

Associate Professor Pamela Hanrahan

Pamela is an Associate Professor of Law at The University of Melbourne, Australia, where she is also Deputy Director of the Centre for Corporate Law and Securities Regulation and director of studies for the Law School's graduate program in banking and financial services law.

Pamela has published widely in the areas of company law and financial services law. In addition to numerous refereed journal articles, she is the author of *Managed Investments Law & Practice*, which was published by CCH in 1999. She is also the co-author of the 6th edition of *Securities and Financial Services Law* and the Malaysian, New Zealand and Singapore editions of *Commercial Applications of Company Law*.

For many years Pamela practised law with Allens Arthur Robinson in Melbourne, specialising in financial sector law and managed investments law. She is a member of the Corporations Committee of the Law Council of Australia.

Professor Ian Ramsay

Ian is the Harold Ford Professor of Commercial Law in the Faculty of Law at The University of Melbourne, where he is Director of the Centre for Corporate Law and Securities Regulation. He has practised law with the firms Sullivan & Cromwell in New York and Mallesons Stephen Jaques in Sydney. Other positions Ian holds or has previously held include:

- Associate Dean, Melbourne Law Masters, Faculty of Law, The University of Melbourne (2005 to date)
- Dean, Faculty of Law, The University of Melbourne (2002–03)
- Member of the Australian Takeovers Panel (which is the main forum for resolving takeover disputes) (2000 to date)
- Deputy Director of the Australian Federal Government's Companies and Securities Advisory Committee, where he wrote a number of reports which resulted in changes to the law, including a report on directors' and officers' insurance (1991–92)
- Head of the Australian Federal Government inquiry on auditor independence (2001)
- Member of the Australian Corporations and Markets Advisory Committee (which is the Federal Government's main corporate law reform advisory body) (2002 to date)
- Member of the Australian Federal Government's Implementation Consultative Committee for the Financial Services Reform Act (2001–2005)
- Member of the Executive of the Business Law Section of the Law Council of Australia (1990–99)
- Member of the National Law Committee of the Australian Institute of Company Directors (1995 to date) and the Corporations Law Committee of the Law Council of Australia (1995 to date)
- President of the Corporate Law Teachers Association (2000–01)
- Member of the International Federation of Accountants taskforce on rebuilding confidence in financial reporting (2002–03)
- Consultant to the Australian Securities and Investments Commission (ASIC) and author of the report for ASIC on disclosure of fees and charges in superannuation and other managed investments (2002)
- Member of the Audit Quality Review Board (2006 to date)
- Member of the Australian Federal Government's Companies Auditors and Liquidators Disciplinary Board (2004 to date)
- Member of the Appeals Commission of the Federation of International Basketball Associations (2002 to date)

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LEGAL SERIES T762M

Commercial Applications of Company Law in Malaysia provides a direct and easy-to-understand explanation of the complex area of company law. It reconceptualises traditional approaches to the subject, setting out and applying corporate 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, take-overs, receivership and winding-up are also covered. Legal principles are discussed using local and foreign case law and further clarified using examples and charts, where necessary.

Commercial Applications of Company Law in Malaysia is an ideal source of reference for practitioners and professionals as well as students from the law, business and accountancy faculties.

It is an adaptation of the Australian book, *Commercial Applications of Company Law* co-authored by Pamela Hanrahan, Ian Ramsay and Geof Stapledon.

Related publications include:

Books

- Companies Act 1965 (with subsidiary legislation)
- Company Meetings Law and Practice in Malaysia
- Corporate Governance - A Director's Practical Legal Guide, Malaysia
- Directors & Corporate Officers - Case Summaries (MAICSA Series)

Looseleaves

- The Hands on Guide - Company Secretarial Essentials, Malaysia
- Malaysian Companies Legislation
- Malaysia and Singapore Company and Securities Law Cases
- Malaysia and Singapore Company Secretary's Practice
- Directors' Manual Malaysia

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