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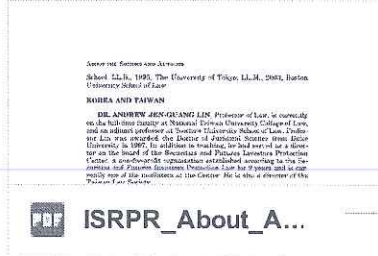
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## **International Securities Regulation Pacific Rim**

*Release 2015-1 (February 2015)*

Gordon R. Walker, General Editor,  
Pacific Rim

Robert C. Rosen, General Editor

Enclosed please find Release 2015-1 for **International Securities Regulation—Pacific Rim**. Commentary for each jurisdiction is written and updated by expert practitioners who have first-hand experience with the regulations in their own jurisdiction.

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## INTERNATIONAL SECURITIES REGULATION: PACIFIC RIM

and an adjunct professor at Soochow University School of Law. Professor Lin was awarded the Doctor of Juridical Science from Duke University in 1997. In addition to teaching, he had served as a director on the board of the Securities and Futures Investors Protection Center, a non-for-profit organization established according to the Securities and Futures Investors Protection Law for 9 years and is currently one of the mediators at the Center. He is also a director of the Taiwan Law Society.

## MALAYSIA

**DR. GORDON R. WALKER** —see biography for General Editor.

**DR. MUSERA AMBARAS KHAN** is a Professor of Law at the Ahmad Ibrahim Law Faculty (Kuliyah of Law), International Islamic University Malaysia (IIUM). She obtained her doctorate from Bond University in 2001. Her areas of expertise include corporations law, comparative law on takeovers and mergers as well as securities law. She was a recipient of Endeavour Research Fellowship Award conferred by DEST (Australia) in 2006 and in the same year she was also appointed as a visiting scholar at Victoria University, Melbourne. In 2011, she was a visiting scholar at the Law School, Durham University UK. She is also an honorary member at the Institute of Commercial and Corporate Law, Durham University. Currently she is the editor for IIUM Law Journal.

Her publications include books and articles in national and international publications. Her books include *Directors' accountability and insider trading* published by Butterworths and a more recent one, *A Guide to Malaysian Takeovers and Mergers Law* with Sweet & Maxwell in 2013. She is currently a member of the Governance Cluster of National Professor Council Malaysia. She also sits as a non-executive member of the University Audit Committee. She has also been involved with training mediators at national level.

## NEW ZEALAND

**DR. GORDON R. WALKER** —see biography for General Editor.

## REPUBLIC OF THE PHILIPPINES

**RAFAEL A. MORALES** is a senior partner in SyCip Salazar Hernandez & Gatmaitan, the largest and leading law firm in the Philippines. He heads the firm's banking, finance and securities group. Asia Pacific Legal 500 (The Guide to Asia's Commercial Law Firms) cited him as a leading practitioner in the field of banking, finance and capital markets. He is also cited in Euromoney Legal Media Group's Guide to the World's Leading Banking Lawyers.

## Highlights

This Release contains a revised **Chapter MY, Securities Regulation in Malaysia**. Highlights include:

- Discussion of the Capital Markets and Services Regulations 2012 which replaced the Capital Markets and Services Regulations 2007. § MY:3 to MY:16.
- Types of public offerings requiring approval by the Securities Commission. § MY:18.
- Exempt offerings under the CMSA. § MY:21.
- Broker dealer licensing. § MY:54.

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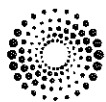
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# International Securities Regulation Pacific Rim

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Gordon R. Walker—General Editor, Pacific Rim  
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Volume 1



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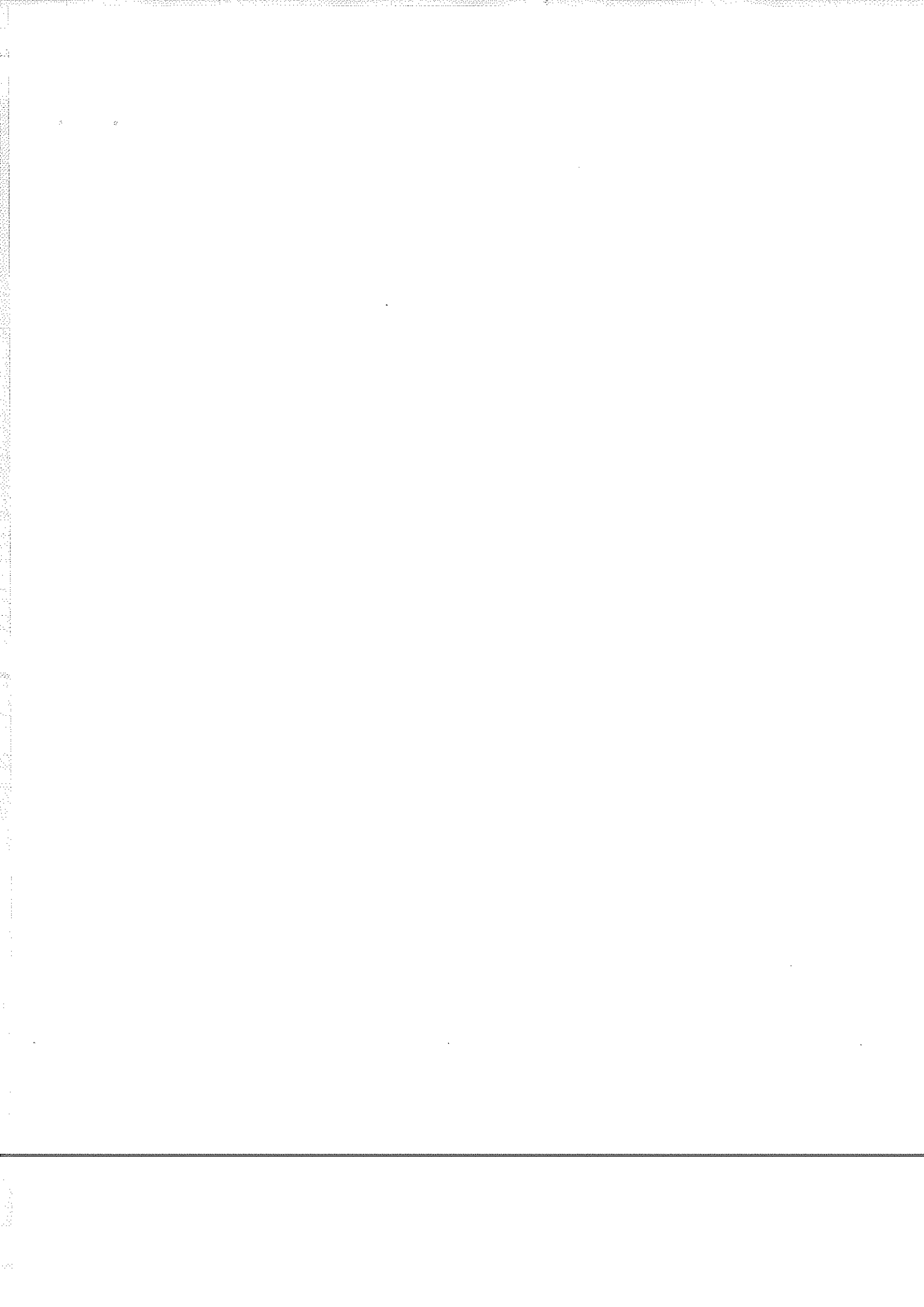
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## **Dedication**

**These volumes are dedicated  
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DUKE UNIVERSITY SCHOOL OF LAW  
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## Acknowledgments

This project was conceived in 1994, when I was resident at Duke University School of Law, Durham, North Carolina. My presence at Duke was facilitated by Associate Dean Judy Horowitz and Professor James D. Cox. I thank them both for making my visit possible and Professor Cox for encouraging the project. Whilst at Duke I made use of the Duke Law Library, the Library at the Fuqua School of Business and Perkins Library when researching this text. I thank the librarians of these libraries for their helpfulness and courtesy.

The distinguished English legal scholar, John Morris, said, “Law books are like babies: they are the greatest fun to conceive, but very laborious to deliver.”<sup>1</sup> The remark is particularly apt to describe the logistical task of assembling and coordinating the far-flung group of distinguished practitioners and scholars who contributed to these volumes. A work of this kind would be impossible without the contribution of the many Country Authors to whom I owe the most thanks. In the midst of heavy professional and personal commitments, they somehow found the time to source (and often translate), the relevant legislation and share their expertise in the Country Commentaries.

Gordon R. Walker

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<sup>1</sup> J.H.C. Morris, *The Conflict of Laws* (1971), vii.

## Introduction

In his 1992 Introduction to the multi-volume set, *International Securities Regulation*, the General Editor, Robert Rosen, stated: "When we began *International Securities Regulation*, we believed that we were filling a serious gap in the readily available reference materials concerning the international securities markets." These volumes (the chapters of which are also reproduced in the multi-volume set), is premised on the same concerns. It is immediately apparent to any practitioner or academic dealing with securities regulation in the Pacific Rim that much of the South-East and East Asian legislation is difficult to obtain in translation and current commentaries on a particular regime are scarce, partial or scattered. In the case of Australia, international practitioners should find the relevant chapter particularly useful given the density of the Corporations Act in that country. Accordingly, the principal objective of these volumes is to provide an up-to-date commentary on the regulatory scheme of a particular jurisdiction together with an English language translation of the key legislation in one convenient location. The volumes are updated at regular intervals in order to maintain this objective. In this way, we hope to provide the standard navigational aid for those working the main channels and straits which criss-cross the reefs of Pacific Rim securities regulation.

*International Securities Regulation: Pacific Rim* maintains the structure devised by Robert Rosen to provide a standard means of describing international securities regimes. Each country chapter has two components: first, a Country Commentary (Booklet One) summarizing the legal and securities regimes of the particular country according to a uniform design: (A) Legal System; (B) securities regulatory scheme; (C) a description of the public securities markets, including stock exchanges, broker-dealers or sharebrokers; investment companies; investment advisers; banks, and securities associations; (D) a detailed discussion of the substantive securities law; and (E) recent trends and developments. In-depth discussion of case law is avoided in the discussion of the substantive securities law in the interests of uniformity, economy and clarity of exposition. Second, each chapter reproduces an English language version of the country's securities and related legislation (Booklet Two).

We welcome feedback from users of these volumes. For comments or suggestions, please contact Professor Gordon R. Walker, Law School, La Trobe University, Melbourne, Victoria 3086, Australia. Email: [Gordon.Walker@latrobe.edu.au](mailto:Gordon.Walker@latrobe.edu.au)



## About the Editors and Authors

### GENERAL EDITOR

**DR. GORDON R. WALKER** is the Professor of Commercial Law at La Trobe University School of Law, Melbourne, Australia where he is also Director of the LLM in Global Business Law and the LLM for International Students programs. During 2004-2007, he served as Head of the Law School.

A native of Southland, New Zealand, Professor Walker went to Otago University as the Lissie Rathbone Scholar and graduated BA (Hons.), LLB (Hons.). After a period of law practice in Wellington, New Zealand, he taught and practiced law in Adelaide, South Australia where he earned an LLM degree from the University of Adelaide. In the 1980s, he taught at Sydney University School of Law, practiced law with Freehills, and, worked in investment banking. He earned an MBA from the Australian Graduate School of Management (AGSM) and a doctoral degree in law (SJD) from Duke University School of Law, USA.

Professor Walker's publications (as editor or co-author) include Rosen & Walker, *International Securities Regulation*, Vols. 1-8 (Westlaw); Walker & Rosen, *International Securities Regulation: Pacific Rim*, Vols. 1-5 (Westlaw); *Securities Regulation in Australia and New Zealand*, 2nd ed. (Sydney: LBC, 1998); *Balancing Act: Law, Policy and Politics in Globalisation and Global Trade* (Sydney: Federation Press, 2004); *Law and Finance* (Sydney: Federation Press, 2007); *Commercial Applications of Company Law in New Zealand*, 4th ed. (Auckland: CCH NZ Ltd., 2012) and *Financial Adviser and Broker Regulation in New Zealand* (CCH, 2010). In 1997-2000, he led the teams tasked with annotating the four key statutes governing the securities and futures industry in Malaysia. He is a member of the editorial boards of the *Company and Securities Law Journal*, the *Global Finance Journal* and *Law in Context*. Since 2006, he has advised the Asian Development Bank on company and commercial law reform in the South Pacific including Vanuatu, the Solomon Islands and the Kingdom of Tonga. In 2011-12, he was a consultant to the European Bank for Reconstruction and Development.

Recent appointments include:

- Paul Hastings Visiting Professor of Corporate and Financial Law, Hong Kong University School of Law (2006);
- Conference Chair, the 14th Global Finance Conference, Melbourne, Australia (2007);

## INTERNATIONAL SECURITIES REGULATION: PACIFIC RIM

- Wallace S. Fujiyama Visiting Professor, University of Hawaii Law School, Hawaii, USA (2008 and 2010);
- Adjunct Professor, Houston University Law Center, Texas, USA (2009-2014);
- Visiting Professor, Hong Kong University of Science & Technology, Clear Water Bay, Hong Kong (2009);
- Adjunct Professor, Texas Tech University School of Law, Texas, USA (2009-2013);
- Visiting Professor and Heinrich Hertz Stiftung Fellow, University of Muenster School of Law, Muenster, Germany (2010; 2012-2013); and
- Adjunct Professor of Law, Te Paringa Faculty of Law, Waikato University, New Zealand (2013-2016).

## CONSULTING EDITORS

**JAMES D. COX** is the Brainerd Currie Professor of Law at Duke University School of Law, Durham, North Carolina. He has focused his writing and teaching in the areas of corporate and securities law. His publications include Cox, Hillman & Langevoort, *Securities Regulation—Cases and Materials* 7th ed. (2013) and the three-volume treatise *Cox and Hazen on Corporations*, 3rd ed. (2010).

**IAN M. RAMSAY** is the Harold Ford Professor of Commercial Law in the Faculty of Law at The University of Melbourne, Melbourne, Australia, where he is Director of the Center for Corporate Law and Securities Regulation. He has practised law with the law firms of Sullivan & Cromwell in New York and Mallesons Stephen Jacques in Sydney. Other positions held by Professor Ramsay include: Deputy Director of the Australian Government's Companies and Securities Advisory Committee; Member of the Executive of the Business Law Section of the Law Council of Australia; Member of the Corporations Law Committee of the Australian Institute of Company Directors and the Companies Committee of the Law Council of Australia and Consultant to the Australian Law Reform Commission for its collective investment schemes project. He has published extensively on corporate law issues both internationally and in Australia.

## AUSTRALIA

**DR. KEITH KENDALL** is a Senior Lecturer in Law at La Trobe University School of Law, Melbourne, Australia.

**DR. ALMA PEKMEZOVIC** is a Lecturer in Law at La Trobe University School of Law, where she teaches commercial law and corporations law. A member of the New York Bar, Alma holds an LLB (Hons) from the University of Melbourne School of Law, an LLM from UCLA School of Law and earned her PhD at La Trobe University School of Law. She has published extensively in the areas of corporate

#### ABOUT THE EDITORS AND AUTHORS

law, corporate governance and stock exchange regulation. Her recent publications include two books – *Commercial Applications of Company Law in New Zealand* (CCH, 2012) and *Financial Adviser and Broker Regulation in New Zealand* (CCH, 2010) which she co-authored with Professor Gordon Walker. In 2010-2011, she was a Visiting Scholar at the UCLA School of Law, USA and she has also taught at the University of Muenster, Germany, in 2009-2010.

**DR. GORDON R. WALKER.** See author biographical information for the **General Editor**.

#### CANADA

**DR. JASON CORBETT**, LLB, LLM, SJD, ACI Arb is based in Singapore. Previously, he was with the Calgary office of Gowling Lafleur Henderson LLP where he was in the Corporate Finance and M&A groups.

**ROBB MCNAUGHTON**, BA, LLB, MBA is a partner with the Calgary office of Gowling Lafleur Henderson LLP where he practices in the Corporate Finance and M&A groups.

#### CHINA

**JIANFU CHEN**, LLM (Hon I, Sydney), Ph.D (Sydney), is Professor of Law, School of Law, La Trobe University, Melbourne. He teaches Australian law and has published widely on Chinese law. His main publications on Chinese law include *From Administrative Authorization to Private Law: a comparative perspective of the developing civil law in the PRC* (Dordrecht/Boston/London: Martinus Nijhoff Publishers, 1995); *Chinese Law: Context & Transformation* (Leiden/Boston: Martinus Nijhoff Publishers, 2008). He is also General-Editor, *China Business Law Guide* (loose-leaf services, CCH Asia Pacific).

**ROBIN HUI HUANG** is Professor in the Faculty of Law, Chinese University of Hong Kong, where he also serves as the Assistant Dean (External Affairs—Asia) and Executive Director of Centre for Financial Regulation and Economic Development. He is Adjunct Professor at the China University of Political Science and Law, Senior Fellow in the Law School of Melbourne University, as well as an elected member of the Executive Council of China Commercial Law Society. He has held visiting positions or has been invited to give talks at prestigious institutions such as the World Bank, Harvard Law School, Columbia Law School, Cambridge Law School, and Tsinghua Law School. Professor Huang specializes in corporate law, securities regulation, financial markets and foreign investment, with a particular focus on Chinese and comparative law issues. He has published extensively in his areas of expertise, with articles published

in some of the top-rated journals in the US, the UK, Australia, Canada, Hong Kong, Mainland China, and elsewhere.

## COLOMBIA

**CARLOS FRADIQUE-MÉNDEZ** is a partner in the law firm of Brigard & Urrutia Abogados specializing in corporate, project and structured finance. He has lead local and international financial transactions related to syndicated loans, debt and equity offerings (including ADR's), derivatives and structured notes, infrastructure project finance deals, securitizations, private equity transactions, privatizations, restructurings, and private/public mergers and acquisitions.

He graduated with honors from the J.D program at Universidad del Rosario, received an LL.M. in International Banking and Finance at Boston University and an LL.M. in International Commercial Law at University of Ottawa. He also graduated from the Graduate Program in Financial Law at Universidad de Los Andes and from the International Development Lawyers Program with the IDLO in Rome.

Carlos Fradique-Méndez is Co-Chair of the Colombian Chapter of The New York State Bar Association, Judge of the Colombian Self Regulatory Organization (SRO) for the Securities Market and Former President of the Colombian Chapter of the International Development Law Organization. He is also a frequent writer and lecturer in local and international forums and universities on topics relating to local and international financial and corporate matters.

## HONG KONG

**LOW CHEE KEONG** ("CK"), is an Associate Professor in Corporate Law and Director of the Centre for Accounting Disclosure and Corporate Governance at the School of Accountancy of The Chinese University of Hong Kong. He holds degrees in economics and law from Monash University in Australia and obtained his Master of Laws at the University of Hong Kong and joined the university following his admission as an Advocate and Solicitor of the High Court of Malaya in 1992.

His research interests in company and securities laws reflect his educational background. He has focused primarily on the issues pertaining to corporate governance and regulatory frameworks on which he has published in numerous internationally refereed academic journals including the *Australian Journal of Corporate Law*, the *Columbia Journal of Asian Law*, the *Journal of Asian Business* and the *Singapore Journal of Legal Studies*. CK is the author of *Securities Regulation in Malaysia* and the editor of *Financial Markets in Malaysia* and *Financial Markets in Hong Kong*. In addition, he has

#### ABOUT THE EDITORS AND AUTHORS

co-authored two books on company law, namely, *Understanding Company Law in Malaysia* and *Understanding Company Law in Hong Kong*. A recent publication is *Corporate Governance: An Asian-Pacific Critique* (2002).

#### INDONESIA

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#### JAPAN

**HIDEKI EBATA** specializes in the fields of Capital Markets, Compliance and International Transactions. He has represented, among other clients, Japanese and non-Japanese issuers, as well as securities firms in numerous capital market transactions, such as offerings of samurai bonds, euro bonds, equity offerings and so on. He has been a lecturer at Chuo Law School (2004-2006) for a course in "Corporate Finance." LL.B., 1991, Chuo University; LL.M., 1999, New York University School of Law.

**TAKU ISHIZU** specializes in the fields of International Transactions, Capital Markets, Acquisition Finance, Asset Management, and Banking. He is one of the partners in charge of the field of finance, has published many articles in financial magazines, and has served as a lecturer at several seminars. He is also a lecturer at Keio Law School. LL.B., 1995, The University of Tokyo; LL.M., 2003, Boston University School of Law.

#### KOREA AND TAIWAN

**DR. ANDREW JEN-GUANG LIN**, Professor of Law, is currently on the full-time faculty at National Taiwan University College of Law,



#### ABOUT THE EDITORS AND AUTHORS

Mr. Morales is the author of two books, namely, *The Philippine Securities Regulation Code (Annotated)* and *The Philippine General Banking Law (Annotated)*.

#### SINGAPORE

**WALTER WOON**, LL.B. (Singapore), LL.M (Cambridge) and Advocate and Solicitor (Singapore) is a Professor at the Faculty of Law, National University of Singapore, and is well known in legal and political circles. Apart from lecturing in company law, he has been involved in some of the most important appellate cases in that area in Singapore. In addition, he sat on the Board of Directors of two listed companies, Intraco Ltd, and Natsteel Ltd. From 1992 to 1996 he was a Nominated Member of Parliament and from 1995 to 1997 legal adviser to the President and Council of Presidential Advisers. Professor Woon has written extensively on the Singapore legal system, company law and securities regulation in both the local and international fora.

**HANS TJIO** MBA, Cambridge; LL.M, Harvard; Barrister (Middle Temple) and Advocate and Solicitor of the Supreme Court, Singapore. Professor, Faculty of Law, National University of Singapore. He has taught at the Faculty since 1990 in areas such as securities regulation, company law, banking, and trusts and equity. He is the author of "Principles and Practice of Securities Regulation in Singapore" and has also published in local and overseas journals, including the Law Quarterly Review and Journal of Business Law.

**MARGARET CHEW** BA and MA, Oxford; LL.M, National University of Singapore; Barrister (Gray's Inn and Hong Kong); Advocate and Solicitor of the Supreme Court, Singapore. Margaret Chew heads the Knowledge Management and Communications Department at the law firm of Allen & Gledhill, Singapore. Prior to joining Allen & Gledhill in as a Partner 2001, she was an Assistant Professor and Sub-Dean, Graduate Division, of the Faculty of Law, National University of Singapore, where she taught company law, contract law and securities regulation. She is the author of *Minority Shareholders' Rights and Remedies* (Butterworths, 2000) and has published in the Singapore Journal of Legal Studies and the Singapore Journal of International and Comparative Law. Her research areas include financial markets regulation, in particular, insider trading, disclosure regimes and various aspects of corporate governance.

#### THAILAND

**PISES SETHSATHIRA** LLB (Hons.) (Chulalongkorn); LL.M (Columbia) was an Associate Professor of Law at Chulalongkorn

# Chapter MY. Securities Regulation in Malaysia

By:

Mushera Ambaras Khan and Gordon R. Walker \*

## I. Legal System

### MY:1. Generally

Malaysia was formed in 1963 as an amalgam of 9 independent states (the Federated and Unfederated Malay States), the British settlements of Penang and Malacca and the British colonies of Singapore, Sarawak and Sabah. Malaysia currently consists of 13 states and the Federal Territory of Kuala Lumpur and Labuan. Singapore seceded in 1965.

Malaysia has a constitutional monarchy with the King (Yang di Pertuan Agong) as the head of state. The King is selected every 5 years from the 9 rulers of the Federated and Unfederated Malay States.

Malaysia has a bicameral legislature comprising the senate (Dewan Negara) and the house of representatives (Dewan Rakyat). Elections to the house of representatives are held every 5 years. The cabinet consists of members of the legislature and is headed by the Prime Minister.

Malaysia has a Federal Constitution and 13 state constitutions. It has a federal legislature and federal government and a legislature and government in each of the 13 states.

The Federal Constitution was contained in the *Federation of Malaya Agreement 1957 between Her Britannic Majesty and the Rulers of the Federated and Unfederated Malay States*. Under this agreement, the Federation of Malaya was formed. The Federation consisted of the Federated and Unfederated Malay States, Penang and Malacca.

The Federal Constitution was given the force of law by the *Federal Constitution Ordinance 1957*. Each of the Federated and Unfederated Malay States in turn passed state enactments approving and giving the force of law to the Federal Constitution.

Under the Federal Constitution, the federal government may exercise legislative powers over matters listed in the federal list while the state governments have legislative powers over matters listed in the state list. The powers of the state governments extend mainly over Islamic matters and land. There are some matters over which both the Federal and state governments have legislative powers. In case of an inconsistency, a federal law prevails over a state law.

\*

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The federal government has legislative powers over securities regulation.

Given the historical background to the formation of Malaysia, it is not surprising that Malaysian law has adopted many English legal principles. Among these is the English doctrine of precedent.

Under the doctrine of precedent, a decision of the highest court--the Federal Court (formerly the Supreme Court)--is binding on a lower court (eg the High Court). The High Court, in turn, binds sessions courts and other lower courts (in particular, magistrate courts and penghulu's courts).

The *Civil Law Act 1956* provides for the express reception of English common law and equity as at 7 April 1956 (except for Sabah and Sarawak where the cut-off dates are 1 December 1951 and 12 December 1949, respectively).

The Civil Law Act allows for modification of English law to suit local conditions. This enables the courts to apply various indigenous sources of law including Malay, Chinese and Hindu customary laws and Muslim law. Such indigenous sources of law apply mainly in the areas of personal law (e.g., marriage) and family and religious matters.

## II. Securities Regulatory Scheme

### MY:2. General

The Malaysian laws that regulate the securities industry have their origin in corresponding English and Australian laws. The *Malaysian Companies Act 1965*, for example, was based on the *Companies Act 1961* of the various Australian states which, in turn, originated from the *English Companies Act 1948*. The *Securities Industry Act 1983* has its origins in the corresponding Australian statute. The former *Malaysian Code on Take-overs and Mergers 1987* was modeled on the London City Code on Take-overs and Mergers. Legislation governing the securities industry in Malaysia has been extensively amended since the Asian financial crisis of 1997-98. The most recent amendment to the securities regulatory scheme in 2007 resulted in the enactment and passing of the *Capital Market and Services Act 2007* (CMSA 2007), which essentially combined the relevant securities law into a single omnibus Act. Most of the CMSA came into force on 28 September 2007.<sup>1</sup> The CMSA, which was passed by Parliament in May 2007, consolidated the *Securities Industry Act 1983*, the *Futures Industry Act 1993* and Part IV of the *Securities Commission Act 1993* which deals with fund raising activities. The CMSA is supported by the *Capital Markets and Services Regulations 2012* which replaced the *Capital Markets and Services Regulations 2007*. The CMSA is also supported by the *Licensing Handbook* and the *Guidelines on Regulation of Markets* which come into effect concurrently with the CMSA in 2007.

Malaysia seeks to pre-empt an "ad hoc reactionary approach towards policy and

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1

The provisions relating to takeovers, mergers and compulsory acquisitions contained in Division 2 Part IV were not in force until 1st April 2010. Before Division 2 was brought into effect in April 2010, the then existing provisions in the *Securities Commission Act 1993* regulated takeovers and mergers along with the 1998 Code on Takeovers and Mergers.

regulatory development" by way of a ten-year strategic plan for capital market development.<sup>2</sup> Thus, in 2001, the Securities Commission (SC) released the *Capital Market Masterplan* (CMM) charting the future development of the Malaysian capital market.<sup>3</sup> The 152 recommendations contained in this document indicate further changes to Malaysia's securities regime. For example, as of 30 June 2003, 39 of the 152 recommendations in the CMM had been implemented. Progress reports on the implementation of the CMM can be viewed on the Securities Commission's website.<sup>4</sup> In 2011, the SC published the Capital Market Masterplan 2 (CMP2).

Two main themes have dominated Malaysian securities regulation in recent years. First, Malaysia has been progressively moving from a system of merit-based regulation (MBR) to one of disclosure-based regulation (DBR) for fund raising. On 31 March 2003, the chairman of the Malaysian Securities Commission, Datuk Ali Abdul Kadir, announced that the transition to a disclosure-based framework for fund-raising was complete.<sup>5</sup> Second, Malaysia has sought to progressively transfer the legal regime relating to fund raising from the *Companies Act 1965* to the *Securities Commission Act 1993*. Thus, it is now the Securities Commission who must *approve* and *register* all prospectuses (although, generally speaking, these must also be *lodged* with the Registrar of Companies (ROC): section 43 of the SCA.).

It is important to note that Malaysian company law, like Australia, maintains a

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2

Ybhg Datin Zarinah Anwar, "Towards a world class regulatory framework: enhanced transparency and governance" (Speech of 19 August 2003). Available at the SC website).

3

Securities Commission, *Capital Market Masterplan: Malaysia* (Kuala Lumpur: Securities Commission, 2001). Hereafter, "CMM". For comment, see G. Walker, "Globalisation and the K-Economy": Malaysia's Strategic Response" (2000) 18 C&SLJ 289-297. Note that Malaysia has a long history of centralized economic planning: see V. M. Hooker, *A Short History of Malaysia* (Sydney: Allen & Unwin, 2003), Chapters 9 and 10.

4

See, for example, Securities Commission, "Update on the implementation of the Capital Market Masterplan as at 30 June 2003." Available at [www.sc.com.my/html/cmp/cmp\\_implement.html](http://www.sc.com.my/html/cmp/cmp_implement.html).

5

Securities Commission Press Release of 31 March 2003. This statement requires some qualification. Under section 32 of the SCA, all proposals in relation to securities must be submitted to the SC who may approve or reject them on such terms and conditions as it deems fit. Since a proposal may include a proposed prospectus, it is at least arguable that a form of MBR remains by virtue of the SC approval process. Note that capital raising proposals formed the bulk of the approvals given by the SC in the second quarter of 2003: see SC Press Release of 17 July 2003.

distinction between private companies, public companies and to a certain extent public listed companies. Under the *Companies Act 1965*, a private company is a company incorporated under section 15 of that Act. A private company may be incorporated if its memorandum or articles:

- (a) Restrict the right to transfer shares;
- (b) Limit the number of shareholders to no more than 50 shareholders, and,
- (c) Prohibit any invitation to the public to subscribe for shares and debentures.<sup>6</sup>

*Prima facie*, then, no private company would be incorporated without these restrictions appearing in the memorandum and articles. As to the fund raising prohibition, however, note that debentures of a private company are not exempted under Schedule 5 of the *Capital Market and Services Act 2007* from the prior approval requirements of section 212 of the CMSA. This prohibition means that although private companies are prohibited from making any invitation to the public to subscribe for debentures (by virtue of the required restriction in their memorandum or articles), they may make a private placement of debentures (debt securities) with the prior approval of the SC.

### MY:3. Securities laws

The term "securities laws" is defined in section 2 of the *Securities Commission Act 1993* (SCA). It means, This Act, the Securities Industry (Central Depositories) Act 1991 [Act 453] and the Capital Markets and Services Act 2007;<sup>1</sup> Section 2A of the *Securities Commission Act 1993* states that any reference to "this Act" or a "securities law" shall, unless otherwise expressly stated, include a reference to any regulations, rules, orders, notifications or other subsidiary legislation made under the Act or a securities law, as the case may be. Thus, legislation on securities law includes statutes, regulations, rules, orders, notifications and guidelines.

The CMSA 2007, has now consolidated the:

- (a) the *Securities Industry Act 1983* which formerly provided for a scheme of licensing of securities dealers, investment advisers and fund managers and proscribed various unfair practices relating to securities dealings; and
- (b) the *Futures Industry Act 1993*; and
- (c) the fund raising provisions in the *Securities Commission Act 1993*.

In addition to the CMSA 2007, the securities industry is now primarily regulated by the following laws:

- (a) the *Securities Commission Act 1993* which established the Malaysian Securities Commission (SC) and regulations made under this Act;
- (b) the *Companies Act 1965* which regulates corporate matters generally and the *Companies Regulations 1966* together with the *Companies Commission Act of Malaysia 2001*;
- (c) the *Securities Industry (Central Depositories) Act 1991* that forms the basis for the scripless trading of shares listed on the Kuala Lumpur Stock Exchange

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<sup>6</sup>.

See section 15 of the *Companies Act 1965*.

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[Subs. Act A1305:s.2]

(KLSE) and the Malaysian Exchange of Securities Dealing and Automated Quotation Bhd (MESDAQ) which now is known as the ACE market;

(d) the Securities Commission exemptions, modifications and guidelines;

(e) the Accounting Standards via the *Financial Reporting Act 1997*; and

(f) the Bursa Securities Listing Requirements and Rules of Bursa Securities.

These laws and rules are supplemented by a number of codes and guidelines.

By way of example, these include the following:

(a) the *Code on Take-overs and Mergers 2010*;

(b) the *Malaysian Code on Corporate Governance 2000*, as amended in 2007;

(c) the Policies and Guidelines on Issue/Offer of Securities (Revised edition: 2008); and

(d) the Prospectus Guidelines (Revised edition: 28 December 2012).

Current versions of the various guidelines, codes and practice notes can be viewed on the Securities Commission's website.

#### MY:4. Organisations involved in securities regulation

##### ***The Securities Commission***

The SC was established under the *Securities Commission Act 1993* (SCA) to promote the development of the securities market in Malaysia. The SC is the primary regulator of the securities industry. It is responsible to The Minister of Finance. The SC's functions include regulating matters relating to securities and derivatives, protecting investors and encouraging and promoting the development of securities and derivatives markets in Malaysia. The powers of the SC are set out in section 15(1) of the SCA.

The SC speaks to the securities industry by way of a series of guidelines. These guidelines are especially important because section 32 of the SCA now makes it mandatory for all corporate proposals by public companies to be submitted to the SC for approval prior to implementation (subject only to a limited list of exceptions set out in Schedule 1 of the SCA). The guidelines set out the requisite criteria to be satisfied for a particular approval. An example is provided by the Policies and Guidelines on the Issue/Offer of Securities (rev. ed., 2008), which is the primary source of regulations for initial public offerings.

##### ***Companies Commission of Malaysia (CCM)***

CCM was established by the *Companies Commission of Malaysia Act 2001*. CCM administers the *Companies Act 1965* which deals with the management and administration of companies. The Chief Executive Officer of CCM is also the Registrar of Companies under the Companies Act.

Prior to July 2000, the regulation of prospectuses was dealt with in Part IV, Division I of the Companies Act. Now, however, the approval of prospectuses is the province of the SC under section 32 of the *Securities Commission Act 1993*.

In addition to the SC and CCM, the following regulatory authorities have various responsibilities over securities matters:

(a) Bank Negara Malaysia (the central bank);

(b) Malaysian Accounting Standards Board;

(c) the Bursa Malaysia Group (which includes The ACE Market, a self-regulatory organization with powers over securities traded on the Bursa Malaysia and the ACE Market, respectively;

(d) the Foreign Investment Committee (FIC), which is a committee in the

Economic Planning Unit of the Prime Minister's Department. The FIC regulates the acquisition of Malaysian businesses and companies and the issue of certain types of debt securities (primarily those which are convertible into equity) although FIC aspects of corporate proposals are now being processed by the SC; and

(e) the Ministry of Trade and Industry (MITI), MITI decides the allocation of shares of public listed companies to Bumiputeras (comprising Malays and certain indigenous and ethnic groups) and, in conjunction with FIC, regulates certain acquisitions of Malaysian businesses and companies and issues of certain types of debt securities.

### III. Public Securities Market

#### MY:5. General

Public trading of securities in Malaysia started soon after the establishment of the Malayan Stock Exchange in 1960. In June 1964, the Stock Exchange of Malaysia was formed. With the secession of Singapore, this evolved into the Stock Exchange of Malaysia and Singapore.

The stock exchanges of Malaysia and Singapore were formally split with the establishment of The Kuala Lumpur Stock Exchange Berhad in July 1973. The operations of this company were taken over by the KLSE when the *Securities Industry Act 1973* (the predecessor of the *Securities Industry Act 1983*) came into force in 1976. In late 2002, it was announced that the KLSE would seek to demutualise.<sup>1</sup> According to Bursa Malaysia, the purpose of the demutualisation exercise was to enhance Bursa's competitive position and to respond to global trends in the exchange sector by making the organization more customer-driven and market-oriented. The demutualisation exercise was effected through the *Demutualization (Kuala Lumpur Stock Exchange) Act 2003* and completed in 2004 with the signing of a memorandum of understanding between the KLSE and the Securities Commission. The KLSE transferred its stock exchange business to a wholly owned subsidiary known as the Malaysian Securities Exchange Berhad (MSEB) In April 2004, MSEB had a change of name and is now referred to as Bursa Malaysia Securities Berhad or Bursa Securities. On 18 March 2005, Bursa Malaysia was listed on the Main Board of Bursa Malaysia Securities Berhad.

#### MY:6. Islamic Capital Market (ICM)

Apart from the conventional capital market, Malaysia's has a parallel capital market i.e. the Islamic Capital Market. The ICM functions as a market which provide for market transactions which are carried out in ways that do not conflict with the conscience of Muslims and the religion of Islam, i.e. where the market is free from activities prohibited by Islam such as usury (*riba*), gambling (*maysir*) and ambiguity (*gharar*).

In its early stages of development, the SC set up a dedicated Islamic Capital Market Department (ICMD) within its Strategy and Development Business Group. This

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KLSE Press Release of 31 December 2002.

was intended to provide infrastructure support, to carry out research and development activities including formulating and facilitating a long-term plan to further strengthen the ICM in Malaysia. The Shariah Advisory Council (SAC) was established in May 1996 to advise the Commission on Shariah matters pertaining to the ICM. Members of the SAC are qualified individuals who can present Shariah opinions and have vast experience in the application of Shariah, particularly in the areas of Islamic economics and finance. The current product under the ICM include the SC list of Shariah-compliant securities, *sukuk*, Islamic unit trusts, Shariah indices, warrants (TSR), call warrants and crude palm oil futures contract.

In 2000, the Capital Market Masterplan (CMP) identified as one of six strategic objectives, the establishment of Malaysia as an international Islamic Financial Centre. Specific recommendations to achieve this strategic objective are laid out in the CMP and now, the CMP2. These include the development of a wide range of products, creating a viable market for effective mobilisation of Islamic funds and establishing appropriate and comprehensive regulatory and tax frameworks.

As the ICM functions as a parallel market to the conventional market, the same laws and regulations applied except where specific guidelines are provided. Some examples are the Islamic Securities Guidelines 2004 (revised edition 2014) and the Guidelines on Islamic REITS issued in November 2005.

#### MY:7. Listed securities

Public trading of securities in Malaysia is now primarily conducted through the Bursa Securities.

On 6 October 1997, the Minister of Finance approved MESDAQ as a stock exchange under section 8 of the Securities Industry Act. In January 2002, it was announced that KLSE and MESDAQ had completed an agreement for MESDAQ to become part of the KLSE Group. In 2004, KLSE demutualised and became a public company limited by shares and subsequently changed its name to Bursa Malaysia Berhad while the stock exchange is known as Bursa Malaysia Securities Berhad or Bursa Securities.

The types of securities that are traded on the Bursa Securities include shares, bonds, loan stocks, loan notes, property trust units, warrants, transferable subscription rights and call warrants.

As at October 2007, there were 996 companies listed on the Bursa Securities (including Main board, second board and MESDAQ listings). The Annual Report of Bursa Malaysia 2006 showed that as at 2006, the market capitalization of Bursa Malaysia was RM848.7 billion. As at July 2007, the market capitalization was RM1077.28 billion. In the equity market, 85% of listed stocks on Bursa are classified as Shariah compliant.

#### MY:8. Private debt securities

The private debt securities (PDS) market in Malaysia is relatively young. There is a good discussion of this market in Malaysia in C. K. Low, ed., *Financial Markets in Malaysia* (2000) at 181.

Since 1 July 2000, a new regulatory regime applies to the issuance of private debt securities. Division 3 of Part IV of the *Securities Commission Act 1993* was the main division that dealt with prospectuses and the provisions contained therein are



applicable in relation to all securities including debt securities. The law is now contained in Capital Market and Services (Amendment) Act 2012. Division 4 of the CMSA (amendment) Act 2012 deals with debentures and include requirements with regards to trust deeds, duties of trustees, borrowers, etc.

In broad overview:

(a) Bank Negara Malaysia permission is no longer required for the issue of private debt securities;

(b) The Securities Commission's Guidelines on Offerings of Private Debt Securities now set out the relevant criteria for the issuance of private debt securities;

(c) Division 4 of the Capital Market and Services (Amendment) Act 2012 deals with the regulation of trustees, trust deeds, and, borrowers and guarantors obligations in relation to debentures of corporations;

(d) A prospectus for PDSs must be lodged with the CCM;

(e) The approval of the Securities Commission under Part VI of the Capital Market and Services (Amendment) Act 2012.

#### MY:9. Derivatives and Futures

The regulatory structure of the Malaysian futures industry can be shortly stated. The legislative framework was provided by the *Futures Industry Act 1993* and Regulations which has now been subsumed under the *Capital Market and Services Act 2007*. The *Capital Market and Services Act 2007* contains provisions relating to the legal requirements placed on the exchanges, clearing house and broker members. The Minister of Finance approves the establishment of the exchanges (originally KLOFFE and CONMEX) and is given regulatory powers under the Act. The Securities Commission is the regulatory authority overseeing the operation of the industry including licensing of futures fund managers and futures brokers. KLOFFE has been replaced by Malaysia Derivative Exchange which has subsequently been renamed as the Bursa Malaysia Derivatives Berhad and the clearinghouse is the Bursa Malaysia Derivatives Clearing Berhad. KLOFFE was officially launched on 15 December 1995. Its first product was a futures contract on the KLSE Composite Index. In 1999, KLOFFE was taken over by KLSE. There is a good discussion of KLOFFE in Low, op. cit., Chapter 7.

The futures industry in Malaysia can be traced back to the Kuala Lumpur Commodity Exchange (KLCE) in July 1980. KLCE was the first commodity exchange in Malaysia with crude palm oil futures launched in that year. With the merger of KLCE and the Malaysia Monetary Exchange (MME), the Commodity and Monetary Exchange of Malaysia (CONMEX) was formed in 1998. Today, the main contracts offered by CONMEX are the three-month KLIBOR futures contract and the crude palm oil futures contract. The operation of CONMEX is discussed in Low, op. cit., Chapter 8.

#### IV. Discussion of Regulations Regarding Substantive Securities Matters

#### MY:10. Establishment, regulation and organisation of securities regulatory organisations-- Securities Commission-- General

The SC was established by the *Securities Commission Act 1993* (SCA) on 1

March 1993.<sup>1</sup> The SC is a body corporate with the powers conferred on it by the Act. Section 15 (1) of the SCA sets out the functions of the SC.

The SC's functions include:

- (a) regulating all matters relating to securities and futures contracts;
- (b) regulating take-overs and mergers of Malaysian companies;
- (c) regulating all matters relating to unit trust schemes;
- (d) supervising and monitoring the activities of any exchange, clearing house and central depository;
- (e) maintaining the confidence of investors in the securities and futures markets by ensuring adequate protection for investors;
- (f) suppressing illegal, dishonorable and improper practices in dealings in securities, trading in futures contracts and the provision of investment advice and other services relating to securities or futures contracts;
- (g) encouraging and promoting the development of securities and futures markets in Malaysia; and
- (h) licensing and supervising persons licensed for purposes of any securities law.

The SC consists of an Executive Chairman, 4 members representing the Government and 4 other persons each of whom are appointed by the Minister of Finance.

The SC was initially funded by a grant from the Government. It is now funded through fees and charges and a levy imposed on transactions on the Bursa Malaysia. The levy is currently 0.015% of the purchase price. The SC also has power to impose a levy on futures contracts effected on any futures exchange.

#### MY:11. Establishment, regulation and organisation of securities regulatory organisations-- Securities Commission-- Powers

The Securities Commission Act confers on the SC all such powers as may be necessary for or in connection with, or reasonably incidental to, the performance of its functions under the securities laws.

The SC approves offers and issues of securities, the listing of securities and restructuring exercises. In addition, the SC is empowered under the Securities Commission Act to regulate take-overs and mergers (see D.6 below).

#### MY:12. Establishment, regulation and organisation of securities regulatory organisations-- Securities Commission-- Enforcement and investigation

The SC has power to appoint investigating officers for the purposes of carrying out an investigation of any offence or inspection under the Securities Commission Act, the *Capital Market and Services Act 2007* and the Securities Industry (Central Depositories) Act. An investigating officer may in the course of an investigation or inspection enter a place or building, inspect and make copies of books and documents and, where he believes an offence has been committed against a securities law, search, seize or take possession of or detain articles or documents. An investigating officer may also require the production of books and documents: section 128 of the SCA.

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See the discussion in Low, *op. cit.*, Chapter 4.

An investigating officer may require a person acquainted with the facts and circumstances of a particular case to appear before the investigating officer to be examined orally. A person being examined must answer all questions put to him by the investigating officer and cannot refuse to answer a question on the ground that it tends to incriminate him. The record of examination is admissible as evidence in any court proceeding: section 134 of the SCA.

The SC may supply to a police officer or any other public officer copies of any book or other document it has seized, detained or taken possession of or of any such record of examination or allow such officer to have access to and inspect any property, book, other document, article or thing produced before or seized, detained or taken possession of by an investigating officer.

The SC may also provide such assistance as the SC thinks fit to a foreign supervisory authority exercising functions which correspond to those of the SC's.

A prosecution for an offence under the Securities Commission Act may only be instituted with the written consent of the public prosecutor.

#### MY:13. Establishment, regulation and organisation of securities regulatory organisations-- Companies Commission of Malaysia (CCM)

CCM administers the Companies Act.

In the exercise of its powers, the ROC (who is also the Chief Executive Officer of CCM) has power to call for information, to conduct inspections, to carry out investigations where it has reason to suspect that a person has committed an offence against the Companies Act and to call a person for examination for the purposes of such an investigation: see Parts II and IX of the Companies Act.

The ROC keeps various registers in accordance with the requirements of the Companies Act. These include a register of companies and a register of charges required to be registered under the Companies Act.

Part IV, Division 1 of the Companies Act is entitled "Prospectuses." Section 36A commences by stating that Divisions 1 to 4 do not apply to offers under the *Securities Commission Act 1993*. Section 36A(4) of the Companies Act then goes on to say that where a prospectus has been *registered* (subsequent to approval by the SC) under the *Securities Commission Act 1993*, it must then be *lodged* with the Registrar.

#### MY:14. Establishment, regulation and organisation of securities regulatory organisations-- Bursa Securities

The Bursa Securities is the stock exchange in Malaysia.<sup>1</sup> It is a stock exchange approved by the Minister of Finance under the *Securities Industry Act 1983* which has now been consolidated under the *Capital Market and Services Act 2007*. Under the CMSA, the Minister of Finance has power to grant approval to a body corporate, if recommended by the Securities Commission to establish and conduct a stock exchange if the Minister is satisfied that:

(a) the body corporate will not act contrary to the public interest and in particular

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For a recent discussion of the role of the KLSE, see M. A. Hashim, "Kuala Lumpur Stock Exchange" in C.K Low, op. cit., Chapter 5.