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JLPW ECONO LEGAL STUDIES RESEARCH CENTRE

BUSINESS LAW PRACTISE OF A YOUNG LAWYER IN MALAYSIA

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LAW, STRATEGY & COMMUNICATIONS

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What is Business Law?

- Also known as commercial law
- Laws that are related to business and commercial transactions.
- Governs the rights, relations and conduct of persons and businesses engaged in transactions like commerce, merchandising, sale and trade.
- Example of laws related to business/commercial transactions:
  - Companies law
  - Contract law
  - Corporate governance
  - Intellectual property law
  - Employment/labour law
  - Real estate/Conveyancing
  - Business/corporate litigation
  - Tax law
  - Etc.

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Types of Business Law at JLPW

- Examples of business / commercial law practised at JLPW
  - Areas of practise
    - Corporate & Securities
      - Bonds and other capital market issues
      - Initial public offerings
      - Joint Ventures
      - Corporate restructuring
      - Unit Trusts and Fund Management
      - Advisory
      - Mergers and Acquisitions
    - Financial
      - Bridging and development financing
      - Commercial banking (business banking facilities, home loans, hire purchase, leasing and factoring)
      - Corporate loans (syndicated loans , offshore and international financing)
      - Debt securities issues (bonds, commercial papers and medium term notes)
      - Islamic debt securities (Sukuk)

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Types of Business Law at JLPW (Cont'd)

- Examples of business / commercial law practised at JLPW (cont'd)
  - Areas of Practise (Cont'd)
    - Real estate
      - Property development
        - » Acquisition of land and building
        - » Preparing tenancy agreement, deeds of mutual covenants and sale and purchase agreements etc.
        - » Setting up joint venture / joint development of land
      - Financing real estate
        - » Bridging and developing financing for project development
        - » End financing for purchasers of development properties
        - » Commercial banking (banking facilities, home loans, hire purchase etc.)
        - » Corporate loans (bonds, commercial papers and medium term notes)
      - Landlord and tenant law

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Types of Business Law at JLPW (Cont'd)

- Examples of business / commercial law practised at JLPW (cont'd)
  - Areas of practise (cont'd)
    - Litigation
      - Banking litigation
        - » Conventional banking and finance litigation
        - » Islamic banking and finance litigation
      - General litigation
        - » Insurance, shipping and aviation
        - » Civil claims and arbitration (shareholder disputes, joint venture disputes, capital reduction etc.)
        - » Building and construction claims
        - » Employment (unfair dismissal, employee misconduct etc.)

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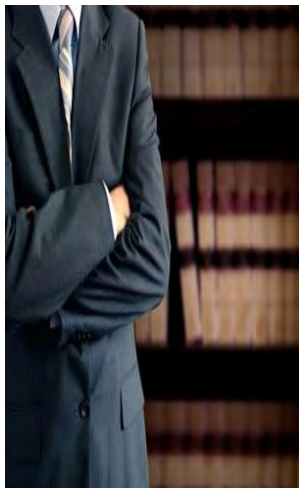
Corporate Lawyer

- Lawyers involved in corporate practise are usually known as commercial or corporate lawyers

- Role of the corporate lawyer is to ensure the legality of the corporate transactions, advising corporations on their legal rights and duties, including the duties and responsibilities of the corporate officers.



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JLPW's Corporate Practise Group

- Seven teams, thirty one lawyers
  - Depending on the team, each team has a team leader and one to five team members.
- My team
  - One team leader, three team members
- Type of work done
  - Initial public offerings
  - Rights issue
  - Bonus issue
  - Employee share option scheme
  - Collective investment schemes
  - Structured warrants
  - Licensing applications
  - Agreements
  - Advisory

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What does it entail?

- Initial public offerings
  - Type of public offering where shares of a company are sold to the general public on a securities exchange for the first time. Usually used to raise capital for the expansion of the company / business.
- Rights issue / offering
  - Rights issued to the company's existing shareholders that entitles them to purchase additional shares in the company in proportion to their existing shareholding within a fixed time period. The subscription price is generally at a discount from the current market price. Purpose of the rights issue / offering is usually for the company to raise capital.
- Bonus issue / offering
  - An offer of free additional shares to the existing shareholders of the company in proportion to their holdings. Example a company may give one bonus share for every 5 shares held by the shareholder in the company.

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What does it entail? (cont'd)

- Employee Share Option Scheme ("**ESOS**")
  - An option granted to specific employees of a company as incentive or as a remuneration package. ESOS carries the rights but not the obligation to purchase a certain number of shares allocated by the company to the particular employee at a predetermined price.
- Collective Investment Schemes
  - A fund whereby money is pooled together by many investors for investment such as unit trust funds and interest schemes.
- Structured warrants
  - A leveraged financial instrument usually issued by a bank or securities firm (the "**Issuer**") which derives its value from the value of an underlying security, it provides an exposure to the underlying security for a fraction of the underlying securities' price.

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What does it entail? (cont'd)

- Licensing applications
  - Advise and assist companies in applying for licenses, such as approval from the authorities to conduct retail trade in Malaysia by foreign companies; advising on requirements for a Capital Markets and Services License for regulated activities in Malaysia as set out in the Capital Markets and Services Act 2007 ("**CMSA**"). Examples of such regulated activities include, dealing in securities, fund management, advising on corporate finance, investment advice etc.
- Agreements
  - Drafting, reviewing and advising clients on the terms of the agreements. Example of agreements include but are not limited to joint venture agreements, franchise agreements, share sale and purchase agreements, shareholder agreements.
- Advisory
  - Consulting service rendered to the client in respect of legal issues for their consideration and decision making.

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What do we do?

- Due diligence
  - Investigation into the Company and/or its business. The purpose of which is to assist the relevant parties in making an informed decision for the proposed transaction by providing information relevant to the proposed transaction.
  - Commonly two types of due diligence:
    - Acquisition and compliance.
  - An adviser is usually first appointed to advice the company on the due diligence working group ("**DDWG**") composition, and the DDWG is thereafter appointed.
  - The role of the corporate lawyer is to conduct the legal due diligence, prepare the legal due diligence report and keep proper records of all the DDWG meetings.

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What do we do? (cont'd)

- Due diligence (cont'd)
  - Depending on the type of proposal, legal due diligence may include reviewing amongst others (but are not limited to):
    - The Company's corporate records,
    - Licences,
    - Agreements and contracts,
    - Litigation matters,
    - Intellectual property,
    - Borrowings,
    - Details of properties,
    - Employee handbook etc.
  - Examples of types of proposals that require due diligence: initial public offerings, rights issue, bonus issue, ESOS, mergers and acquisitions etc.

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What do we do? (cont'd)

- Due diligence (cont'd)
  - Why do we need due diligence?
    - Ensure compliance with the law (e.g. Companies Act 1965, CMSA, Listing Requirements by Bursa Malaysia Securities Berhad ("**Bursa**") ("**Listing Requirements**"), guidelines etc.).
      - Research and checks are done to ensure that the company has obtained the proper licences / are properly licensed; that the employment policies are not in breach of any employment law; has proper corporate governance etc.
    - Due Diligence Defence
      Section 250 of the CMSA provides that:
      "A person shall not be guilty of an offence under section 246 (Criminal liability for false statements, etc. in prospectus) and is not liable under section 248 (Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc.) if he proves that-
      (a) he had made all enquiries as were reasonable in the circumstances; and
      (b) after making such enquiries, he had reasonable grounds to believe and did believe until the time of the making of the statement or provision of the information that-
      (i) the statement or information was true and not misleading; or
      (ii) there was no material omission."

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What do we do? (cont'd)

- Due diligence (cont'd)
  - Why do we need due diligence? (cont'd)
    - Criminal liability for false statements, etc. in prospectus
      Section 246 of the CMSA:
      "(1) No person shall authorise or cause the issue of a prospectus which contains
      (a) any statement or information that is false or misleading; or
      (b) any statement or information from which there is a material omission.
      (2) for the purposes of this Division, a statement shall be deemed to be in a prospectus if it is-
      (a) contained in a report or memorandum that appears on the face of the prospectus; or
      (b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorised or caused the issue of the prospectus
      (3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both."

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What do we do? (cont'd)

- Due diligence (cont'd)
  - Why do we need due diligence? (cont'd)
    - Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc.

      Section 248 of the CMSA:

      "(1) A person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any statement or information contained in a prospectus that is false or misleading, or any statement or information contained in a prospectus from which there is a material omission, may recover the amount of loss or damage from all or any of the persons set out in paragraphs (a), (b), (c), (d), (e) and (f) and to the extent provided for:

      (a) the issuer and each director of the issuer at the time of the issue of the prospectus, for any loss or damage;

      (b) a person who consented or caused himself to be named and is named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, for any loss or damage;

      (c) a promoter, for any loss or damage arising from the prospectus or any relevant portion of the prospectus in respect of which he was a party to the preparation thereof;

      (d) a principal adviser, for any loss or damage;

      (e) a person named in the prospectus with his consent as having"

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What do we do? (cont'd)

- Due diligence (cont'd)
  - Why do we need due diligence? (cont'd)
    - Right to recover for loss or damage resulting from false or misleading statement in prospectus, etc. (cont'd)

      Section 248 of the CMSA (cont'd):

      "(f) a person named in the prospectus with his consent as a stockbroker, share broker, underwriter, auditor, banker or advocate of the issuer in relation to the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities, and who has made a statement that is included in the prospectus or on which a statement made in the prospectus is based, for any loss or damage caused by the inclusion of the statement in the prospectus; or

      (g) a person who is authorised or caused the issue of a prospectus in contravention of section 246, for any loss or damage caused by such contravention

      (2) For the purposes of paragraphs (1)(a) and (b), a director referred to therein shall include any person by whom the issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities is made.

      (3) for the purpose of paragraph (1)(f), an underwriter shall not include a subunderwriter".

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What do we do? (cont'd)

- Due diligence (cont'd)
  - Why do we need due diligence? (cont'd)
    - Civil liability for misleading or deceptive acts
      Section 249 of the CMSA:
      (1) A person shall not act in a manner that is misleading or deceptive or is likely to mislead or deceive in connection with:
      (a) any prospectus issued;
      (b) the allotment of, issue of, offer for subscription or purchase of, or invitation to subscribe for or purchase, securities;
      (c) any notice referred to in subsection 241(4) or (5) or a preliminary prospectus referred to in subsection 241(6), or any report referred to in subsection 241(7) or any notice or report as may be specified by the commission under paragraph 241(3)(d); or
      (d) the carrying on of negotiations, the making of any arrangements or the doing of any other act preparatory to or in any other way related to any matter referred to in paragraph (a), (b) or (c).
      (2) A person who contravenes this section shall not be guilty of an offence but a person who acquires, subscribes for or purchases securities and suffers loss or damage as a result of any act referred to in paragraph (1)(a), (b), (c) or (d) may recover the amount of the loss or damage under section 357.

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What do we do? (cont'd)

- Depending on the type of proposal, certain documents must be prepared for the information of the investors.
  - E.g. Section 232 of the CMSA provides for the requirement to register a prospectus in relation to securities:
    "(1) A person shall not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase or in the case of an initial listing of securities, make an application for the quotation of the securities on a stock market of a stock exchange unless-
    (a) a prospectus in relation to the securities has been registered by the commission under section 233 of the CMSA (Registration of prospectus); and
    (b) the prospectus complies with the requirements or provisions of the CMSA.
    (2) Unless authorised in writing by the commission, a person shall not issue, circulate or distribute any form of application for securities unless the form is accompanied by a copy of a prospectus which has been registered by the commission under section 233.
    (3) A person shall not issue, circulate or distribute any form of application for securities of a corporation that has not been formed or of a unit trust scheme or prescribed investment scheme that has not been formed
    (4) the commission may for public information publish the registrable prospectus submitted to the commission before the registration of the prospectus under section 233 of the CMSA"

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What do we do? (cont'd)

- Depending on the type of proposal, certain documents must be prepared for the information of the investors (cont'd).
  - Section 232 of the CMSA (cont'd)
    "(5) the publication under subsection (4) shall not indicate that the commission recommends the securities or assumes responsibility for the correctness of any statements made or opinions or reports expressed in the registrable prospectus.
    (6) for the purposes of section 232, a "registrable prospectus" refers to a prospectus that has been submitted under section 233 and which has yet to be registered by the commission
    (7) A person who contravenes subsection (1), (2) or (3) commits and offence and shall, on conviction be liable to a fine not exceeding ten million ringgit or to imprisonment for a term not exceeding ten years or to both."
  - Section 228 of the CMSA clarifies that "for the purposes of Division 3 (Prospectus) and Division 5 (unit trust schemes and prescribed investment schemes) of the CMSA, the expression "offer for subscription or purchase" or "making an invitation to subscribe for or purchase", in relation to units of a unit trust scheme or prescribed investment scheme, as the case may be, shall include the making available of such units"

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What do we do? (cont'd)

- Depending on the type of proposal, certain documents must be prepared for the information of the investors (cont'd).
  - Chapter 6 of the Listing Requirements in relation to new issues of securities, provides that listed companies issuing new securities such as bonus issue, rights issue and share issuance scheme (e.g. ESOS) requires an announcement and circular.
  - Further provides that a rights issue requires an abridged prospectus and for a share issuance scheme requires that bylaws be prepared.
- The Corporate lawyer's role in relation to the abovementioned documents would be to draft and/or review the prospectus; circular to shareholders; announcement; information memorandum; or by laws etc. ensuring that it complies with the CMSA, Listing Requirements, respective guidelines (as the case may be).

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What do we do? (cont'd)

- Agreements / Contracts
  - The corporate lawyer's role with regard to agreements / contracts is to draft and/or review the agreement; assist the client in negotiations in relation to the subject matter of the agreement; advise the client on the terms and conditions in the agreement / contract; ensuring that the agreement / contract complies with the relevant laws or restrictions e.g. Contracts Act 1950 (all contracts & agreements), Franchise Act 1998 (for franchise agreements), memorandum and articles of association of the company (for shareholders agreements) etc.
- Advisory
  - The corporate lawyer's role is to understand the client's legal concern, conduct research on the matter and prepare a legal opinion setting out your findings and advise.

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Working as a team

- Due to the nature of the corporate lawyer's work which tends to be extensive, corporate law practise is commonly carried out in teams. Consisting of the:
  - Team leader; and
  - Team members.

- Role of the team leader:
  - Provide direction, instruction and guidance to the team;
  - Develop strategies to ensure proper delegation and completion of the work;
  - Providing clear instructions to team members on the work to be done;
  - Managing client's expectations and timeline;
  - Providing training to team members;
  - Monitor team member's progress and participation to ensure that training has been put into good use, and to see if any additional training is required;
  - Listening to team members' feed back;
  - Ensure communication within the team; etc.

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Working as a team (cont'd)

- Role of the team member
  - Understanding the purpose and the objective of the work;
  - Identify issues and/or risks associated with the work;
  - Contribute ideas and sharing of knowledge within the team;
  - Communicate and work together with the team;
  - Follow through with the work;
  - Report progress of work back to the team leader and the team;
  - Working within the time frame allocated;
  - Contributing to successful communication and positive motivation within the team;
  - Ensuring a correct balance of time is spread out between the work and non work matters (time management); etc.

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Overview

- Daily routine
- Challenges faced as a corporate lawyer
  - Keeping up to date with the changes in the law
  - As each proposal is different and encompasses many different areas of the law, the scope of law that must be studied for each proposal can be very wide
  - Tight deadlines
  - Managing team / client expectations

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Thank you

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