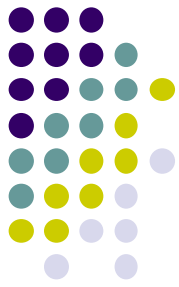


# The Regulatory Environment : Implications for Board Duties, Responsibilities & Liabilities in Malaysia

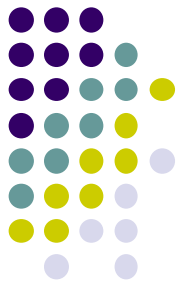


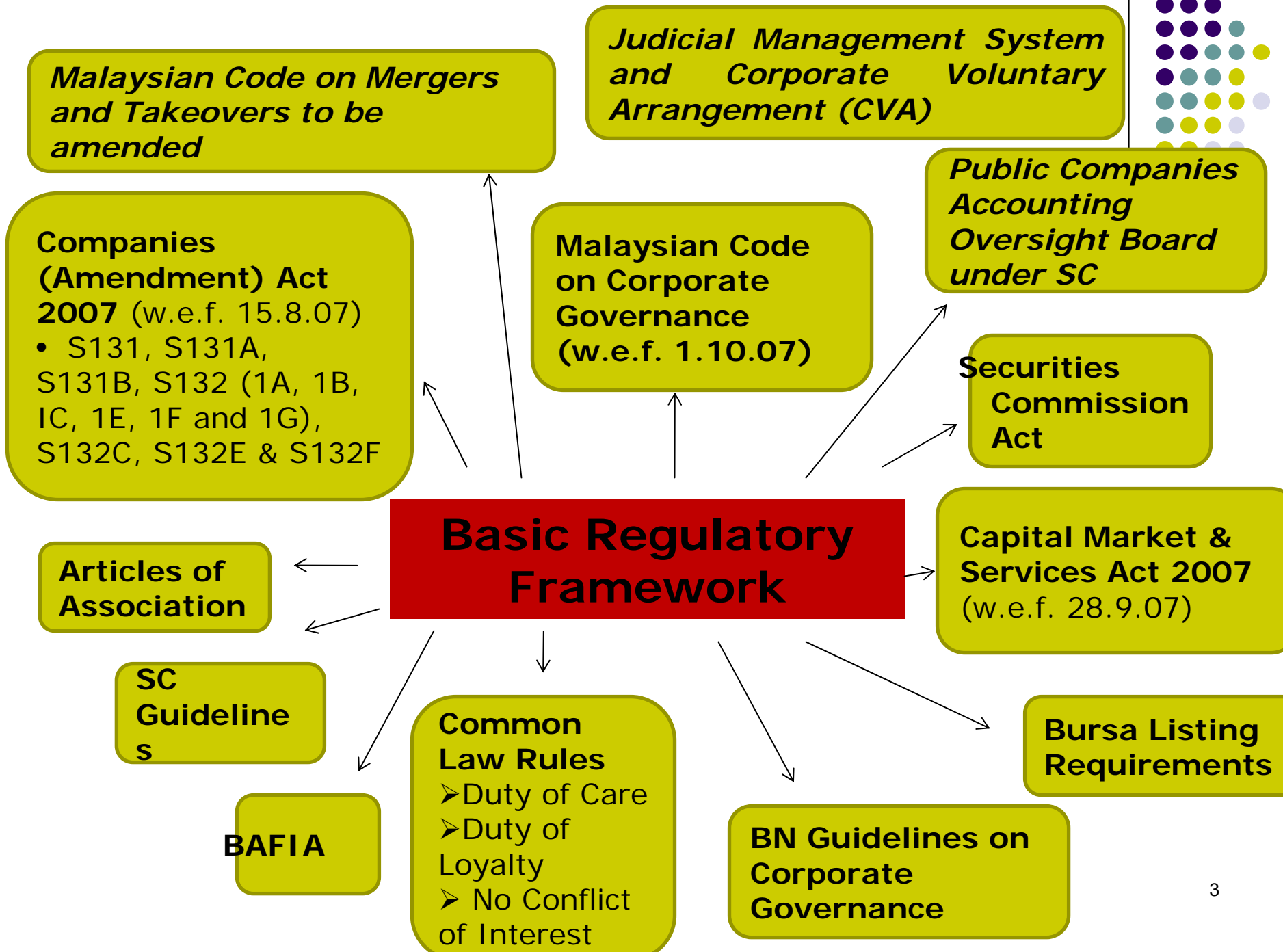
***Loh Siew Cheang***

***CHEANG & ARIFF***

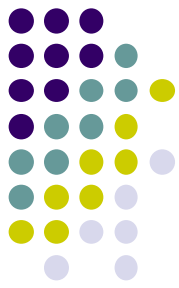
***14 November 2008***

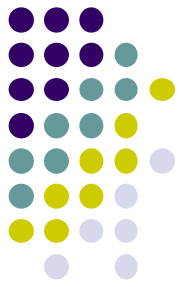
*The materials contained in this presentation are of the nature of general comment only. They do not, and are not intended to constitute legal advice. The materials are made available to you on a strict understanding that they will not be reproduced or used commercially in any way either in whole or in part without the prior permission of the author. All rights are reserved.*





# Retrenched employees blockade entrance to headquarters





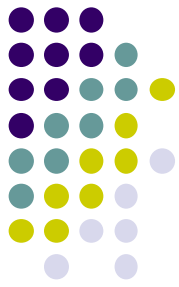
# S 132 PRINCIPLES

INTEGRITY

RELEVANT  
CONSIDERATIONS

KNOWLEDGE,  
SKILL &  
EXPERIENCE

# Mr. Richard Fuld's 2 Claims



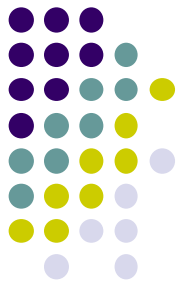
1. SEC regulations were inadequate or insufficient understaffed and underfunded

**Not his fault**

2. Housing & banking regulators failed to curb subprime mortgage market abuses

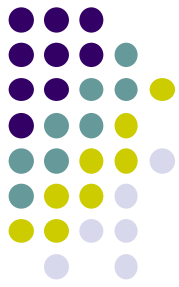
**Not his fault**

- 2004: Clinton administration - 'Cheap money' policy
- 2006: Interest rate went up to 5.35%
- Feb 2007: HSBC fired head of US Mortgage
- Apr 2007: New Century Financial bankrupt
- Aug 2007: American Home Mortgage bankrupt
- Sept 2007: Citigroup & Bank of China- \$12.1 bil loss
- Oct 2007: Merrill Lynch - \$5.6 bil loss
- Nov 2007: Superfund \$75 bil; BA & Barclays wrote off \$5.6 bil
- Dec 2007: Morgan Stanley - \$9.4 bil loss

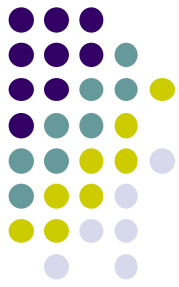




# 5 CORE PRINCIPLES

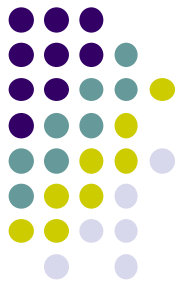


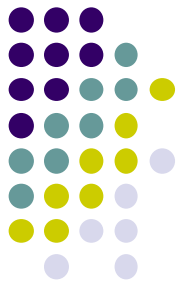
- **S 132(1A)** – General Duty
- **S 132(1B)** – Business Judgment Rule
- **S 131B** – Oversight Duty
- **S 132(1E)** – Nominee Directors
- **S 132(1F)** – Collective responsibility for delegated functions



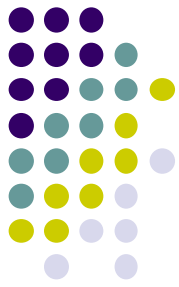
# **Section 131B**

## Oversight or Supervisory Duty



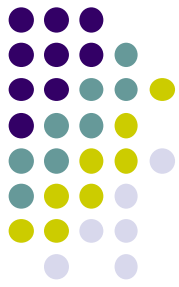


246 years of  
history GONE



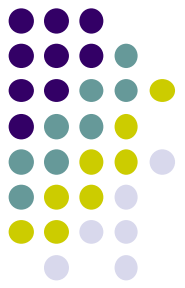
# **Section 132(1C) & (1D)**

## **Reliance on Information**

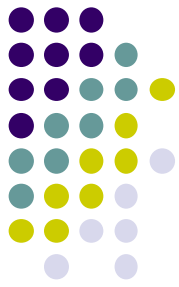


# **Section 132(1E)**

## **Nominee Directors**



# The Current Financial Crisis



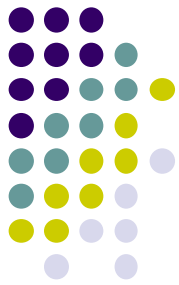
## What role did the directors play?

Richard Aitken- Davies, the president of Association of Chartered Certified Accountants had this to say in the Guardian on 6.10.08 :

“The roles of the chairman and chief executive are ultimately ones of accountability – to shareholders, to customers, to staff and, whether they like it or not, to government, the taxpayer and society at large. But our increasingly well-defined principles of corporate governance have not prevented this crisis. We therefore need to open our thinking to alternative models and, in particular, to the role and effectiveness of independent non-executive directors. If directors ignored bad habits, if they accepted complacency after a prolonged bull market then they should held accountable. If they have overseen failure, and allowed greed to flourish then they are accountable for this, too. Naivety has also played its part, with well-meaning people succumbing to the seductions of advanced risk management techniques at the expense of common sense. And perhaps we accountants haven’t said not enough, either”

# THANK YOU

## *CHEANG & ARIFF*



**For further information  
please contact:**

***Loh Siew Cheang***

**39 Court @ Loke Mansion,  
273A Jalan Medan Tuanku,  
50300 Kuala Lumpur**

**E-mail: [lsc@cheangariff.com](mailto:lsc@cheangariff.com)**

**Contact No: +603-26910803  
Fax No: +603-26928533  
[www.cheangariff.com](http://www.cheangariff.com)**