

SECTION KK – FRAUD

- (a) There are many instances of allegations of corporate fraud in Malaysia, but rarely large enough to be well publicized. The exceptions were the BMF – Carrian affair, which involved a Hong Kong, China subsidiary of one of the large Malaysian banks and the plight of Rakyat Merchant Bankers, a merchant bank, in the mid-1990's.
- (b) Instances of corporate fraud would tend to be disclosed or revealed when the corporation encounters financial difficulties.
- (c) Fraud is not tolerated either by the authorities or regulatory bodies. However, although criminal prosecutions as well as civil proceedings would follow, these have tended to be inconclusive or have yet to be completed.
- (d) It is not the case that soft fraud may be overlooked; indeed it may be easier to get a conviction in the case of soft fraud rather than in the instances of big, complex cases of hard fraud, where investigations get bogged down through lack of manpower and expertise. The following may be said in connection with the response of the legal system in Malaysia:
 - i. The insolvency laws of Malaysia do provide for restitution from or by the wrongdoer, in particular the Companies Act 1965, for example, section 132F in relation to substantial property transactions involving directors, or section 300(1)(c)(i) to (vii) and (g) and (h) which deal with fraud in a corporate entity within 12 months of the commencement of winding up and section 305 dealing with fraud and misappropriation of property or money of a company.
 - ii. The criminal law provides sanctions in the form of section 378 of the Penal Code dealing with theft, sections 402 to 404 dealing with criminal misappropriation of property, and sections 405 to 409 dealing with criminal breach of trust and sections 421 to 424 dealing with fraudulent deeds and dispositions of property. The Court is empowered under the Criminal Procedure Code in criminal proceedings to make restitution orders.

