

MALAYSIAN HIGH COURT CLARIFIES NOTICE OF DIRECTORS MEETING

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Malaysian High Court Clarifies Notice of Directors Meeting

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In the Malaysian High Court case of *Rozilawati bt Hj Basir v Nationwide Express Holdings Bhd & Ors* [2019] 8 MLJ 8 (“**Rozilawati’s case**”), it was held that as a matter of company law or the law of meetings, there is no mandatory requirement for a notice of directors meeting to contain the specific particulars of the matters that are to be discussed and deliberated upon.

The Facts

The plaintiff, Rozilawati bt Hj Basir (“**Rozilawati**”), was a former director and a former managing director of the first defendant, Nationwide Express Holdings Bhd (“**Nationwide Express**”). By way of a notice dated 27 April 2018 (“**notice**”), Rozilawati and the other directors of Nationwide Express, namely the second to fifth defendants were informed of a board of directors meeting which was to be held on 30 May 2018 (“**Board Meeting**”). Thereafter, an agenda dated 21 May 2018 for the Board Meeting (“**agenda**”) was circulated to Rozilawati. During the Board Meeting on 30 May 2018, the chairperson announced that Rozilawati’s contract of employment as the managing director was to be terminated forthwith.

The notice was in compliance with article 86 of the constitution of Nationwide Express which stipulated that no less than seven days’ notice must be given for any meeting of the board of directors. It should be noted that the constitution of Nationwide Express was silent on the need for any specific details to be mentioned in the notice or agenda for the Board Meeting. Rozilawati in fact attended the Board Meeting. Therefore, there was no issue in relation to sufficiency of notice.

The gist of Rozilawati’s complaint was that the notice calling for the meeting of directors and the agenda which was issued thereafter did not state or indicate that her contract of employment, or her performance, or conduct as managing director, was to be discussed at the meeting and that a decision would be taken to terminate her contract of employment. As such, it was contended on her behalf that the failure to specify these matters in the notice or in the agenda vitiated the Board Meeting and the decisions taken thereat.

The Issue

The issue in Rozilawati’s case was whether insufficiency or absence of content or particulars in the notice or agenda vitiated the Board Meeting.

The Decision

The counsel for Rozilawati relied on amongst others, *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and another appeal* [1995] 2 MLJ 770 (“**Aik Ming’s case**”), where the judge in Aik Ming’s case took “the proposition to be well settled that, unless the articles of a company provide to the contrary, no meeting of a board is valid, unless reasonable notice of it and the relevant agenda that is to be discussed at it is given to the directors.” The judge in the Rozilawati’s case distinguished Aik Ming’s

case on the ground that the issue in Aik Ming's case was only with regard to the complaint of non-service of the notice of meeting and not lack of particulars in the notice. Hence, the observation by the Court of Appeal in Aik Ming's case in relation to the failure to state the object of the meeting was 'obiter'. Although it is persuasive, but it is not binding on the court.

The judge in Rozilawati's case held that as a matter of company law or the law of meetings, there is no requirement that a notice of directors meeting must mandatorily contain the specific particulars of the matters that are to be discussed and deliberated upon. The notice and agenda in Rozilawati's case were held to be valid and consequently, the Board Meeting and the resolutions passed thereat were valid and proper from the perspective of company law and the law of meetings.

Takeaway

It should be noted that this is a High Court decision and may be subject to challenge in the future. If the intention is for agenda of meeting of board of directors to contain specific particulars of the matters that are to be discussed and deliberated, this should be specified in the constitution of a company as there is no such requirement under company law or the law of meetings.

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