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Case Update: Board Meeting Notice Need Not Contain Full Details of the Business of the Meeting

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Company Law Case Update

Joyce Lim writes an update on a High Court decision on how the notice of a Board meeting need not contain the particulars of the business to be transacted at that meeting

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The High Court in the recent case of *Rozilawati binti Haji Basir v Nationwide Express Holdings Berhad & Ors* [2020] MLJU 1198 (see the **grounds of judgment dated 18 August 2020**) dealt with two issues relating to the Board meeting requirements for companies.

Summary of the Decision and Significance

The Plaintiff in this case, Rozilawati, was the Managing Director (MD) of Nationwide Express Holding Berhad (NEHB). NEHB is a public company listed on the Main Market of Bursa Malaysia.

A board meeting of NEHB was held on 30 May 2018 where a resolution was passed to terminate Rozilawati's services as the MD of NEHB.

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Rozilawati filed an action against NEHB and its directors to, among others, challenge the validity of this Board Meeting and the directors' resolution of termination. Rozilawati claimed that the notice of the board meeting notice did not contain any particulars regarding the potential termination of her services. Further, there was no deliberation or formal voting process by the board of NEHB prior to the resolution being passed. The High Court dismissed Rozilawati's action.

This decision is significant in two respects:

First, the High Court clarified that there was no legal requirement for a board meeting notice to contain the matters or particulars of the business to be transacted at the meeting. Such requirement was, at most, best practice. This is unless expressly required in the relevant company's constitution.

Second, the High Court clarified that it is not necessary for a deliberation or a formal voting process in relation to the subject matter in question before a resolution relating to the said matter can be validly passed.

Brief Facts

Rozilawati received the board meeting notice and an agenda for the Board meeting in question. The board meeting notice and agenda made no mention of any potential termination of Rozilawati's services as the MD of NEHB.

During the Board meeting of 30 May 2018, the Chairperson announced that Rozilawati's position as the MD of NEHB was to be terminated forthwith. No objections were raised by any of the directors who were present. Rozilawati walked out of the meeting in protest. The directors' resolution for termination was passed. A few days later, Rozilawati received a notice stating that her services as the MD of NEHB were terminated with effect on 30 May 2018.

Rozilawati filed a legal action against NEHB and its directors to, among others, invalidate the Board Meeting, resolution for termination and the termination notice on the basis that:

1. The Board meeting notice did not contain sufficient details or particulars of the matters to be transacted at the Board meeting. In particular, the potential termination of Rozilawati as the MD of NEHB was not included in the Board meeting notice and/or the agenda of the Board meeting; and
2. There was no deliberation or formal voting process by the board of NEHB prior to the directors' resolution being passed.

Decision

The High Court dismissed Rozilawati's claim and found that the Board meeting, the directors' resolution for termination and the termination notice were valid.

The reasons behind the High Court's decision are set out below.

Matters to be discussed at a board meeting need not be specified in the board meeting notice

The High Court held that there is no legal requirement for a notice of a Board meeting and the agenda for the Board meeting to set out the matters or particulars of the business to be discussed at the meeting. This is unless the constitution of NEHB expressly requires so. In this case, the constitution of NEHB did not contain such requirement.

Ong Chee Kwan JC explained the impracticalities if such a legal requirement is imposed:

1. Directors often hold meetings on an urgent basis and on very short notice to deal with various business exigencies. It would not be possible to have an agenda specifying in detail all matters to be discussed to be circulated for each meeting;
2. It is common for directors to proceed to discuss other matters arising from the matters listed for discussion. These additional matters would not have been stated in the Board meeting notice and/or agenda;
3. Matters that may be considered of sufficient importance to be listed on the Board meeting notice and/or agenda is subjective and would easily give rise to disagreements among directors; and
4. If there is a legal requirement that directors be notified in advance of important matters to be discussed at Board meetings, this will potentially give rise to proliferation of litigation centred on the omission or inclusion of matters in the agenda. This will cause frequent disruptions to Board meetings.

Nonetheless, the High Court acknowledged that it is best practice to provide advanced notice on the matters to be discussed at a Board meeting. This is consistent with paragraph 4 of the Third

Schedule of the Companies Act 2016 (CA 2016), which provides that a board meeting notice shall, among others, include the matters to be discussed. While a company is at liberty to not adopt the Third Schedule or any of the Third Schedule provisions, it nevertheless reflects the legislative intent that such practice should be the default provision whenever the Third Schedule is adopted.

Deliberation or formal voting process not required before a resolution can be passed

The High Court held that it is not necessary for the Board to have a deliberation or formal voting process regarding the subject matter before a resolution relating to the said matter can be validly passed.

In this case, the High Court also considered the fact that no objections were raised by the directors when the Chairman announced the termination of Rozilawati's services as the MD of NEHB during the Board meeting. Further, the directors did not request for a board deliberation or a formal voting process over the matter. It could therefore be inferred that the board was unanimous on that decision.

Comments

First, the High Court's consideration on the practical aspects of holding a Board meeting is welcomed. In particular, the High Court noted that it would be difficult to impose a legal requirement for all matters for discussion at a Board meeting to be identified and listed on the Board meeting notice. That said, it is certainly recommended for Board meeting notices to contain as much information as possible on matters to be transacted. This will ensure that directors are

well-prepared before attending the Board meeting and to avoid the risk of any challenges being brought.

Second, for companies that do not adopt a constitution, the directors must be aware that the Third Schedule of the CA 2016 would then apply by default. Paragraph 4 of the Third Schedule would then require the notice of the Board meeting must include the matters to be discussed.

Third, this decision should not be taken as a *carte blanche* for directors to decide on matters in Board meetings as they wish without any proper deliberation. Careful deliberation on contentious matters, coupled with detailed minute-taking, may be used as supporting evidence for directors to prove compliance with their duties (see the **earlier case commentary** on the Federal Court decision in Petra Perdana Berhad).

*Joyce Lim is an associate with the boutique disputes firm, **Lim Chee Wee Partnership**. She has acted in a range of company law disputes.*

 Guest post

 Companies Act 2016, company law, corporate law, director, directors duties, Joyce Lim, Lim Chee Wee Partnership

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