

## High Court: Notice of Board Meeting Need Not Contain Details of Matters to be Discussed at Meeting

23 APRIL 2019

In *Rozilawati bt Hj Basir v Nationwide Express Holdings Sdn Bhd & Ors* [2019] 8 MLJ 8, the plaintiff's contract of employment as managing director ("MD") of the 1<sup>st</sup> defendant was terminated at a board meeting of the 1<sup>st</sup> defendant held on 30 May 2018 ("the board meeting").

In essence, the plaintiff contended that the notice of meeting and the agenda for the board meeting did not state or indicate that her contract of employment, or her performance, or conduct as MD would be discussed at the board meeting and that a decision would be taken to terminate her contract of employment. The plaintiff sought a declaration that (i) the board meeting was wrongly convened, ineffective, invalid null and/or void; and (ii) the resolution passed at the board meeting was wrongful, ineffective, invalid, null and/or void.

The relevant facts in this case are as follows -

1. Article 86 of the 1<sup>st</sup> defendant's Constitution was silent as to the need for any specific detail to be mentioned in the notice or agenda for the board meeting;
2. the notice of the board meeting issued to the directors merely informed the directors of the convening of the board meeting and did not contain further details; and
3. the agenda for the board meeting, issued subsequently, specified other items to be discussed, including 'to receive Matters Arising' and "to transact other matters" but made no mention of any proposal to discuss the plaintiff's performance as MD or to remove her from that position.

The Court dismissed the plaintiff's claim. Nantha Balan, J, relying on the English Court of Appeal case of *La Compagnie de Mayville v Whitley* [1896] 1 Ch 788 held that (unlike notices of meetings of shareholders) there is no mandatory requirement that a notice of a directors' meeting must contain specific particulars of matters that are to be discussed or deliberated. The judge acknowledged that as a matter of prudent business practice, corporate transparency, and possibly, fairness to the targeted individual, the notice or agenda ought to give a 'heads up' of what to expect at the meeting so that the relevant parties can equip or appraise themselves with sufficient information so as to address the issues that are likely to or will arise at a board meeting. His Lordship however added that:

*"... these ideal or best practices or equitable considerations do not derogate from or denude the salutary principle that a notice of board of directors or agenda which states precious little about the matters that are to be discussed is not ipso facto invalid or null and void ..."*

The Court considered the decision in *Lee Nyuk Heng & Anor v Pembangunan Ladang Hassan Sdn Bhd & Ors* [2003] 8 CLJ 237 where the High Court held that a notice convening a board meeting was invalid as the notice merely stated that the meeting was to fix a date for the company's annual general meeting and did not state that it was also to appoint the 5<sup>th</sup> defendant as chairman of the board. The 5<sup>th</sup> defendant subsequently used his casting vote as chairman to remove the 1<sup>st</sup> plaintiff as managing director.

Ian Chin, J in *Lee Nyuk Heng* concluded that *"it is highly arguable that the failure to state the matter of the of the proposal to appoint the 5<sup>th</sup> defendant as the chairman was deliberate as the (sic) surely such matter is*

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*intention of the said defendants to appoint the fifth defendant as chairman and therefore to wrest control of the companies. The notice of meeting was therefore invalid. Consequently, the appointment of the 5<sup>th</sup> defendant as the chairman and the removal of the first plaintiff as managing director, which are acts that flow from such invalid notice are themselves invalid as well.”*

The judge in this case declined to follow the decision in *Lee Nyuk Heng* as it was a decision by a court of coordinate jurisdiction and does not accord with the correct legal position, as set out in *La Compagnie*.

*Rozilawati* should not be taken as authority for the proposition that there is no mandatory requirement in all situations for a notice of board meeting to specify the matters that are to be discussed at a board meeting. Arising from this case, the following points should be noted –

1. Paragraph 4 of the Third Schedule of the Companies Act 2016 (“CA2016”) which is a replaceable rule (see section 212 of CA2016) provides that a notice of a meeting of the Board shall, among others, **include the matters to be discussed**. If the 1<sup>st</sup> defendant in this case had not adopted a constitution or had adopted paragraph 4 of the said Third Schedule in its constitution, it is possible that the High Court would have come to a different conclusion; and
2. In any given case on a similar issue, the applicability of the general rule laid down in *La Compagnie* must be considered in light of the relevant provisions in the company’s constitution (if any). In the absence of a constitution, or of express provision to the contrary in the constitution, paragraph 4 of the Third Schedule of CA2016 will require the notice of board meeting to include matters which are to be discussed at the meeting.

It is to be noted that the default position set out in paragraph 4 of the Third Schedule of CA2016 differs from the position set out in regulation 79 of the Fourth Schedule of the repealed Companies Act 1965. Regulation 79 merely states that “*The directors may meet together for the despatch of business, adjourn or otherwise regulated their meetings as they think fit. A director may at any time and the secretary shall on the requisition of a director summon a meeting of the directors*” and does not specify details of the information which is to be included in the notice of a board meeting.

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