

Notice of Board Meeting: How Much to Disclose?

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The primary function of a board of directors, as the principal management organ of a company, is to meet and discuss the company's business upon being summoned by fellow directors. The question of whether it is necessary to give notice not only of the meeting, but also of the business to be transacted at the meeting, was answered in the negative in the seminal decision of *La Compagnie*,¹ where Lindley LJ remarked that:

"I am not prepared to say as a matter of law that it is necessary. As a matter of prudence it is very often done, and it is a very wise thing to do it... It is not uncommon for directors conducting a company's business to meet on stated days without any previous notice being given either of the day or of what they are going to do. Being paid for their services – as they generally are, and as is the case in this company – it is their duty to go when there is any business to be done, and to attend to that business whatever it is; and I cannot now say for the first time that as a matter of law the business conducted at a directors' meeting is invalid if the directors have had no notice of the kind of business which is to come before them. Such a rule would be extremely embarrassing in the transaction of the business of companies."



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Trenchant analysis of *La Compagnie*

The principle propounded in *La Compagnie* received a nod of approval in *Dr Mahesan*,² where the High Court was asked to consider whether a notice of board meeting was valid, notwithstanding that it lacked particulars vis-à-vis the agenda of the meeting.

Then came the case of *Aik Ming*³ — in deciding whether a board meeting was validly convened in the absence of a notice, the Court of Appeal remarked 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 issue before the Court of Appeal in *Aik Ming* was not on the sufficiency of details in the notice of board meeting, but the absence of the same.

¹ *La Compagnie de Mayville v Whitley* [1896] 1 Ch 788
² *Dr Mahesan & Ors v Ponnusamy & Ors* [1994] 3 MLJ 312 (HC)
³ *Aik Ming (M) Sdn Bhd & Ors v Chang Ching Chuen & Ors and Another Appeal* [1995] 2 MLJ 770 (CA)



In *Lee Nyuk Heng*,⁴ the plaintiffs did not attend the board meeting as the notice only stated it was to fix a date for the annual general meeting. At the meeting, the fifth defendant was appointed as chairman and the first plaintiff was removed as managing director of the company. The High Court, in following *Aik Ming*, held the notice was invalid as it was a ruse to disarm the plaintiffs of their vigilance against the intentions of the defendants to wrest control of the company.

***La Compagnie* revisited**

The High Court recently considered the principle laid down in *La Compagnie*. In *Rozilawati*,⁵ an agenda was announced and passed at a board meeting, resulting in the termination of the plaintiff as managing director of the company. The plaintiff then challenged the validity of the board meeting, as the termination of her contract of service was not part of the agenda specified in the notice. The company's constitution is silent on the need for matters to be discussed at the board meeting to be set out in the notice.

In dismissing the plaintiff's action, the High Court held there is no legal requirement for a notice of board meeting to specify the business to be transacted at the meeting, unless expressly provided for in the company's constitution. Such requirement is, at best, a matter of prudent business practice.

The rationale of *Rozilawati* is rooted in practicality as:

- (a) It is common for directors to hold an urgent board meeting to deal with various business exigencies. In such circumstances, it may not be possible for an agenda to be prepared and circulated in advance.
- (b) Oftentimes, the board of directors will, upon deliberation of matters listed for discussion at the board meeting, proceed to also decide and resolve other matters not stated in the notice of board meeting.
- (c) Matters that may be considered of sufficient importance to be listed in a notice of board meeting are subjective and will easily result in disagreements and proliferation of litigation among directors. This will lead to frequent disruptions of the board.

⁴ *Lee Nyuk Heng & Anor v Pembangunan Ladang Hassan Sdn Bhd & Ors* [2003] 8 CLJ 237 (HC)
⁵ *Rozilawati binti Haji Basir v Nationwide Express Holdings Berhad & Ors* [2021] 8 MLJ 243 (HC)



- (d) It is incumbent on each director to attend board meetings and be prepared for any discussions raised during a meeting. A director who fails to attend a board meeting, or is ill-prepared to discuss any matter raised, must necessarily accept the outcome of the meeting made by the majority of the directors.

Authors' comments

It remains to be seen whether the approach taken in *Rozilawati* will be followed in future cases.⁶ For the time being, directors must be vigilant and exercise prudence as well as corporate transparency to avoid challenges being brought against resolutions passed at board meetings. Such practice would uphold good corporate governance and ultimately avoid a prevalence of “ambushed meetings”.⁷

It is to be noted that, in the absence of a constitution, or in respect of a company that adopts the Third Schedule of the Companies Act 2016 in its constitution, the law provides by default that notice of a board meeting shall include matters to be discussed by directors.⁸ In such circumstances, the proposition of law enunciated in *La Compagnie* may not be applicable.

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⁶ At the time of writing, the authors understand an appeal has been filed against the decision in *Rozilawati*.
⁷ Corporate Powers Accountability (3rd Ed, 2018) at paras 22 - 47
⁸ Paragraph 4, Third Schedule of the Companies Act 2016, read together with s 212 of the Act

