

Rules pertaining to the appointment law company business partnership essay

[Law](#)



According to s. 122(1) of Company Act 1965, every company shall have at least two directors, who each has his principal or only place of residence within Malaysia. However, in *Wong Kim Fatt v Leong & Co Bhd (1976)*, the court held that it is acceptable to have one director as long as he is taking the necessary step to appoint another within the grace period allowed by the Company Act 1965. According to Article 68 of Table A, it states that other directors may appoint additional directors and this may be to add to the existing directors or to fill a casual vacancy. A casual vacancy may arise when death, bankruptcy or some other reason causes an existing director to vacate his office. However any new appointments must not exceed the number of company directors as specified in the Articles of Association (A/A). According to s. 122(2) of Company Act 1965, the person must be a natural person and cannot be a company of full age (18 years old). According to s. 129(1) of Company Act 1965, no person of or over the age of 70 years shall be appointed or act as a director of a public company or of a subsidiary of a public company. However, private company has not limit age. According to s. 125 of Company Act 1965, if the person is bankrupt, he is not be disqualified from being a director. According to s. 126 of Company Act 1965, this states that the appointment of directors of a public company must be voted on individually. According to s. 132 of Company Act 1965, if the person has been convicted of failure to perform any of the duties of a director and s. 303 of Company Act 1965, failure to keep proper accounts, and s. 130 of Company Act 1965, convicted of an offence involving fraud or dishonesty or directors of insolvent companies under s. 130A of Company Act 1965, he will be disqualification from being a director. According to s. 130(1) of Company

Act 1965, person can be disqualified for up to five years. According to Article 72(e) of Table A, it states that if the directors want to resign at any time, they must give a proper notice to the company. However, according to s. 122(6) of Company Act 1965, if the number of the directors is less than 2, none of directors can resign. Private company is depending on the company's A/A. If the A/A provides that a particular director cannot be removed or can only be removed by passing a special resolution or that he is a life director, then that is the case. If the private company has adopted Article 69 of Table A, it provides that a director can be removed by the shareholders by passing an ordinary resolution. According to s. 128(1) of Company Act 1965, for public company, general meeting passes ordinary resolution notwithstanding anything in A/A or any contract. According to s. 128(2) of Company Act 1965, in the event of removal, must give notice to the company and director. Director has right to represent, send copy of representation to shareholder or read it out at general meeting. In the case of *Tuan Haji Ishak bin Ismail v Leong Hup Holdings Bhd* (1996) 1 MLJ 661, management agreement provided Lau brothers to be appointed as directors of Leong Hup. Subsequently, Lau brothers were removed as directors by general meeting. Removal was valid.

(b) Proposed Recommendation

As a recommendation, the rules pertaining to the appointment, resignation and removal of directors should be preserved.

(c) Comments on the Recommendation

I agree with the proposed recommendation that the rules pertaining to the appointment, resignation and removal of directors should be preserved.

First, according to s. 122(1) of Company Act 1965, every company shall have at least two directors, who each has his principal or only place of residence within Malaysia. It is to protect the Malaysia's company's profit. If the both of director is not a resident of Malaysia, and they are not always stay in Malaysia and if happen any urgent for the company in Malaysia, they cannot solve it immediately. Therefore, there must have one of director is resident of Malaysia and he can settle the problem occur for the company in Malaysia. Second, according to s. 122(2) of Company Act 1965, the person must be a natural person (cannot be a company) of full age (18 years old) and according to s. 129(1) of Company Act 1965, no person of or over the age of 70 years shall be appointed. It is because the person who are 18 years old or above is consider mutual, so they have the ability to operate the company. Besides, the person who are over 70 years old shall not be appoint because the health of the body is going weak day by day. It cannot afford his job and his decision will affect whole company. Third, according to s. 125 of Company Act 1965, if the person is bankrupt, he is not be disqualified from being a director. It is because bankrupt is his financial problem, he can use his salary to cover it. Since, the company appoint he to be a director, is means that the company recognize his ability to fill the position, so the company should not remove him because of his financial problem. Lastly, according to the common law, shareholders have the power to remove the directors. It is because shareholders want to protect the benefits for

themselves. Since, shareholders have the share of the company so if the directors do anything not benefits to the company, it will not only affect the company, and it will affect them too.