

The requirement for remuneration law company business partnership essay

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According to Art 70, Table A of Companies Act 1965, the remuneration of the directors shall from time to time be determined by the company in general meeting. That remuneration shall be deemed to accrue from day to day. The directors may also be paid all travelling, hotel, and other expenses properly incurred by them in attending and returning from meetings of the directors or any committee of the directors or general meetings of the company or in connection with the business of the company. Note for listed companies Para. 7. 24 BMLR states that the Articles of Association (A/A) of such companies must provide that fees payable to directors shall not be increased except pursuant to a resolution passed at a general meeting, where notice of the proposed increase has been given in the notice convening the meeting. Under Section 137(1) of Companies Act 1965, it shall not be lawful for a company to make to any director any payment by way of compensation for loss of office as an officer of that company or of a subsidiary of that company or as consideration for or in connection with his retirement from any such office. Thus, the payment for loss of office is allowed but must comply with the statutory provision which provides that particulars with respect to the proposed payment have been disclosed to the members of the company and approval in the general meeting. However, there are exceptions in Section 137(5) of Companies Act 1965. Any payment under an agreement entered into before the commencement of the relevant repealed written laws shall be invalid; any payment under an agreement, particulars whereof have been disclosed to and approved by special resolution of the company shall be invalid; any bona fide payment by way of damages for breach of contract; any bona fide payment by way of pension or lump sum payment in respect

of past services where the value or amount of the pension or payment does not exceed the total emoluments of the director in the three years immediately preceding his retirement or death; or any payment to a director pursuant to an agreement made between the company and him before he became a director of the company as the consideration or part of the consideration for the director agreeing to serve the company as a director. In the case *Ngan & Ngan Holdings Sdn Bhd & Anor v. Central Mercantile Corporation (M) Sdn Bhd* 1 MLJ 822, the Court of Appeal held that the board of directors of a holding company is not in a position to dispose of the asset or property of its subsidiary company without the approval of the subsidiary company in a general meeting for the simple reason that the two companies are separate legal entities. According to Section 136(1) of Companies Act 1965, it is prohibited a company from paying a director his director's remuneration free of income tax or otherwise calculated by reference to or varying with the amount of his income tax or rate of income tax. In other words, the director's remuneration shall not be tax free, He/she, but not the company, shall pay his/her taxes.

Section 140(1) of Companies Act 1965 provides that whether any provision contained in the articles or in any contract with a company or otherwise , for exempting any officer or auditor of the company from or indemnifying him against,

any liability which by law would otherwise attach to him in respect of any negligence, default, breach of duty or breach of trust, of which he may be guilty in relation to the company shall be void. As the term " officer" include director (Section 4(1)), a company cannot agree to indemnify a director for his

wrongdoing. Such agreement is void and cannot be enforced. If a director has committed a wrong against the company, the company has the right to take action against him. However, the director may apply to the court for relief under Section 354(1) of the companies act 1965. In the case of *Kelly v. FCT (No 2)* [2012] FCA 689, the highlighted issues is whether a company is entitled to claim a deduction for superannuation contributions from directors. In this case, the judge rejected the argument that the company was entitled to deductions it had made for two directors, noting that although the company constitution provides that directors can be remunerated by way of resolution at a general meeting, there was no evidence of any resolution actually having been made. The judge also said that the fact that contributions were made did not in itself establish an entitlement to remuneration, nor did the fact that the company was trustee of a family trust, the trust deed of which provides the trustee power to pay directors. The case of *Guinness Plc v Saunders* [1990] 2 AC 663 is a key decision on directors remuneration. This case appears to demonstrate that where the Articles determine entitlement for receipt of remuneration then directors have a right to the same. The Guinness case suggests that the courts generally will not seek to overrule the Articles and impose reasonable remuneration on a quantum meruit basis on an implied contract. This position appears consistent with the law on drawing dividends as set out in *Bairstow v Queen's Moat Houses plc* [2001] 2 BCLC 531, in which it was declared that compliance with mandatory legal requirements such as the need for dividends to be drawn with reference to relevant accounts, is required before a dividend could be deemed legal and properly binding.

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