The companies commission of malaysia law company business partnership essay

Law

The existing position of the law. Appointment of directorsAccording to Section 122(1) of Companies Act 1965, every company shall have at least two directors, who each has his principal or only place of residence within Malaysia. However, in the case of Wong Kim Fatt v. Leong & Co Sdn Bhd & Anor [1976] 1 MLJ 140, the court held that the Articles of Association empowering the requisition of shares of the only other holder is not repugnant to the Companies Act. It was purely a matter of contractual obligation and the plaintiff must be held to the obligation he had undertaken even though there is only one director left in the company. According to Article 68 of Table A, it states 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 other reason causes the 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. According to S. 122(2) of Companies Act 1965, no person other than a natural person of full age (18 year-old) shall be a director of a company. While, under S. 129(1) of Companies 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. According to S. 125(1) of Companies Act 1965, every person who being an undischarged bankrupt acts as director shall be guilty of an offence against this Act. Under S. 130 of Companies Act 1965, where every person convicted of an offence involving fraud or dishonesty, or under S. 130A of Companies Act 1965, where directors of insolvent companies shall be disqualified. According to S. 126(1) of Companies Act 1965, it states no motion for the

appointment of two or more persons as directors by single resolution may be made at a general meeting, unless it is a unanimous resolution. In Article 67 of Table A, company can increase or reduce the number of directors by passing the general meeting. Under S. 127 of Companies Act 1965, a director or manager or secretary shall be valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. However, if the outsider (party dealing with the director) has knowledge of the irregularity or invalidity of the appointment, then cannot rely on it. Resignation of directorsDirectors may resign at any time by giving proper notice to the company by referring to Art 72(e) Table A. According to the Section 122(6) of Companies Act 1965 mentioned that none of the directors can resign if it will cause the number of directors to be less than 2. The Articles of Association of a company usually confers a right on a director to resignfrom office. Under Article 72(e) of Table A also provides for this right and pursuant to the article, a director’s resignation takes effect with him giving written notice of hisresignation to the company. There is no need for any other further acts, such asacceptance by the company, unless the Articles provide otherwise. However, aproblem faced by directors is that the resignation is not made public and in somecases, the necessary information or documents are not lodged by the company withthe Registrar. In some instances, the company will not proceed to give this requirednotification and this may cause difficulties to the director who still remains on recordas a director although he has resigned. This problem arises because the CompaniesAct 1965 only allows the company and not the director who has resigned to file theForm 49 with the Companies Commission of Malaysia.

Removal of DirectorsA director may not be removed unless the Articles allows for it, but then there are view that the shareholders at the general meeting have the right to appoint directors and the right to remove persons they have appointed. The issue show that the method of removal of directors in the absence of a specific provision in the Articles of Association may not be clear. There are views that if a method of removal is specified in the Articles, the director may not be removed except in accordance with that procedure. Nonetheless, section 128 of the Companies Act 1965 provides that the shareholdersof a public company may remove a director by passing an ordinary resolution at thegeneral meeting. This power is exercisable notwithstanding anything in thecompany's Memorandum or Articles of Association or in any agreement betweenthe company and that person. But Section 128(1) of Companies Act 1965 only applies to public companies12. In the case of a private company, the right of its shareholders to remove a director from office is dependent upon the Articles of that private company. Subsequently, most Articles of Association of private companies may provide for the termination of office of the directors before his term expires under article 69 of Table A of the Companies Act 1965In Soliappan v Lim Yoke Fan & Others18, the court decided that Section 128 of Companies Act 1965 is an independent source for the power of removal that can be relied on in the absence of provisions in the Articles empowering the removal of a director. However, subsequent to this case, section 128(2) of Companies Act 1965 was amended where the words ' under this section' were removed, leading to arguments that whilst directors of a public company may be removed by a simple resolution passed at a general meeting irrespective of anything

stated in the Articles, a special notice must still be given to the company in respect of the resolution to remove a director even if the removal is in accordance with procedures specified in the Articles and even in the case of a director of a private company. The company required the special notice when the director of a public company is to be removed at a shareholders' general meeting. This is because the special notice is to be served by the shareholders who propose for the removal of director but yet the special notice is to provide a reasonable opportunity to the directors of the public companies to make a presentation to the shareholders at general meeting regarding to their removal. The special notice will be irrelevant as no meeting if the director is not removed at the shareholders' general meeting. In Tuan Haji bin Ismail v Leong Hup Holdings Bhd [1996], the management agreement provided Lau brothers to be appointed as directors of Leong Hup. Subsequently, Lau brothers were removed as directors by GM. The court held the removal was valid.