Business Judgment or Boardroom Complacency? Reassessing the Informed Decision Requirement under Malaysian Company Law

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ABSTRACT

The business judgment rule (BJR) in Section 214 of the Malaysian Companies Act 2016 conditionally protects directors in respect of the duty of care, skill and diligence. This article examines whether Malaysian courts sufficiently explain the inquiry required for an informed judgment and reasonable reliance on others. Recently, the Court of Appeal examined the extent of this protection in the case of Iris Corporation Berhad v Tan Sri Razali bin Ismail & Ors [2026] 1 MLJ 807 (CA), which concerned an unsuccessful investment in a foreign border-control project. This article looks at whether the judgment gives adequate guidance regarding the requirement that directors should be properly informed and make an independent assessment of the information before reaching a business decision. By conducting a doctrinal and conceptual analysis of selected reported court cases, the article contends that while the Malaysian courts have rejected liability based on hindsight, they have not clearly defined the minimum decision-making process required by sections 214 and 215. In particular, relying on the directors' accumulated experience and general knowledge may result in the independent assessment being reduced to a mostly subjective exercise. This article proposes a Risk-Calibrated Framework according to which the level of inquiry needed will depend on the materiality, complexity, novelty and risk of the transactions, as well as on the presence of identifiable warning signs. This method strikes a balance by preserving managerial autonomy while ensuring that the business judgment rule safeguards informed commercial risk-taking rather than passive or insufficiently scrutinised decision-making.

Keywords: business judgment rule, informed decision, Risk-Calibrated Framework.

INTRODUCTION

It is often necessary for directors to make business decisions as they carry out their duties for a company. Although certain decisions may be advantageous to the company, others might not reach the desired results. If business decisions fail, this could lead to financial losses, damage to the company's reputation, or a fall in the share price. As a result, directors could be subjected to legal action by shareholders or by the shareholders who come after them. Nevertheless, such negative consequences do not in themselves show that a breach of fiduciary duty has taken place. Directors can be freed from liability by means of the Business Judgment Rule (BJR) as provided by the Companies Act 2016 and common law. The aim of this article is to examine selected Malaysian court cases that have been reported in order to determine whether the judicial rulings offer enough clarity to enable directors to carry out their duties without facing an unreasonable risk of being found to have breached their duty.

RESEARCH METHODOLOGY

The article employed doctrinal legal research alongside a qualitative case study approach and examines the statutory provisions, the reasons given by the courts, and the factual situations in a number of selected reported Malaysian cases in order to find the principles that govern judicial review of directors' business decisions.

PROBLEM STATEMENT

The purpose of BJR is to safeguard directors when they make honest and well-informed commercial decisions. Yet, it is difficult to meet the requirement that directors should be "informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate" in light of actual business conditions, since it is the director's own judgment that decides whether the information gathered was adequate. Although Section 215 tries to strengthen this requirement by calling for an independent assessment of the information and for professional advice, it fails to specify the level of scrutiny that is expected.

The problem is apparent in the case of Iris Corporation Berhad v Tan Sri Razali Ismail & Ors [2026] 1 MLJ 807 (CA). The Court of Appeal agreed that the directors' accumulated experience, the fact that they had been involved beforehand and the management briefings offered a sufficient basis of information. It also ruled that an independent assessment need not involve extensive due diligence or call for an inherently sceptical inquiry. While this gives directors protection against hindsight-based liability, it does open the possibility that general board experience could replace a specific investigation into a transaction. The legal issue is thus, the lack of a clearly defined threshold separating:

1) an unsuccessful but properly informed business judgment;

2) an inadequately investigated commercial decision; and

3) a decision influenced by conflict, an improper object, or a dependence on management.

LITERATURE REVIEW

A director owes a fiduciary duty to the company alone. A fiduciary relationship is the relationship between a person in a position of trust, the fiduciary, and the person for whose benefit the fiduciary acts (Lydenberg, 2014). Generally, the board are the agents of the company. They have huge power to manage the company's daily affairs. There are three types of decisions the board makes in the course of managing the company (Mohd Sulaiman & Bidin, 2008) :

a) Enterprise decisions, which are decisions which relate to the company's business or operation;
b) Capital decisions, which involve decisions concerning the sources, amount and composition of the company's capital or sometimes referred to as funding decision; and;
c) Constitutional decisions relate to how the company is constituted and governed, including internal arrangements between the participants, i.e. the shareholders, directors, senior management, and/or other corporate actors.

In its monitoring role, the board must ensure that shareholders' interests are fully safeguarded to mitigate the agency costs associated with a managerial-centric model. The importance of the board's monitoring function is rooted in agency theory, which posits that a fundamental conflict exists between the interests of a firm's owners and its managers due to the separation of ownership and control. This theory also suggests that shareholders require a certain level of protection against the opportunistic behaviours of corporate managers, which can arise as they pursue their own self-interests, a phenomenon known as managerial opportunism (Fama & Jensen, 1983). The BJR derived from English case, Howard Smith Ltd v Ampol Petroleum Ltd [1974] AC 821 where the Privy Council recognised that the management decisions belong to the directors, and thus the court should not interfere with its affairs. Viewed through Jensen and Meckling's agency

theory, BJR protects directors' legitimate commercial discretion while requiring an informed, good-faith and disinterested decision-making process to constrain managerial opportunism and align directors' conduct with the company's interests (Jensen & Meckling, 1976). It functions as a standard of judicial review, or may even be considered a standard of non-review, which limits the extent to which courts may intervene in a company's internal business decisions (Branson, 2002). The Immunity Doctrine is a legal principle that provides certain individuals or entities with protection from legal claims or liabilities. This doctrine is often applied to government entities, state officials, international organisations, and, in some instances, corporations or individuals granted special legal protection. The main purpose of this immunity is to enable those protected to perform their duties and responsibilities without the threat of excessive litigation (McMillan, 2013). Historically, the modern board of directors was entrusted with managing the company, as reflected in Table A of the repealed Companies Act 1965. The 2006 consultation document issued by the Corporate Law Reform Committee explicitly linked directors' accountability to regulatory flexibility and capable risk-taking. It acknowledged the necessity for safeguards against misuse and the requirement for inquiry in appropriate circumstances. Furthermore, its examination of the business judgment rule differentiated between protected decision-making and the abdication of judgment. (A Consultative Document on Clarifying and Reformulating the Directors' Role and Duties, 2006). At present, this managerial authority is codified in section 211 of the Companies Act 2016, which provides that the company's business and affairs are to be managed by, or under the direction of, the board. Coffee stated that the court should recognise that there are mandatory minimum standards of corporate law, which include the duty of good faith and protection against unconscionable provisions (Coffee, 1989). However, a major concern when applying BJR in this situation is the limited scope of judicial review it permits. This is because courts are usually unwilling to second-guess directors' commercial decisions, minority shareholders may find themselves with very few real avenues for challenging decisions that are to their disadvantage (Turan, 2026). In fact, courts considered experience to be a significant factor in cases involving business (Keay & Loughrey, 2018). They emphasise the importance of experience as an important factor in evaluating cases that pertain to business judgment. The court recognised that the decisions made by directors often hinge upon their backgrounds, expertise and the nuances of their industry.

Malaysian academic work has so far mainly focused on the origins, the statutory components, and the general policy reasons for the business judgment rule. Most of the earlier research was carried out before the Companies Act 2016 or before the detailed appellate interpretations of sections 214 and 215 in the case of Iris Corporation. Masum, Salahudin and Aziz examined good faith and the company's best interest, emphasising the subjective aspect of that duty and have identified that the sincerity of purpose does not determine whether a director's information base was adequate or not. The present inquiry concerns the latter question and must retain the statutory qualification of reasonableness (Masum et al., 2018) . However, Abdul Raof examined the separation of corporate and personal liability, enforcement and directors' duties under the Companies Act 2016. Their discussion includes sections 213–215 and a recent decision refusing protection for inadequately informed conduct (Raof et al., 2025). This complicates any general claim that Malaysian law shields passive directors. As the case sample is selective, its conclusions should not be treated as a comprehensive account of all successful and unsuccessful BJR claims.

Relative attention has been paid to the connection between the 'informed' requirement in section 214(1)(c), the independent-assessment requirement in section 215(2), and the objective–subjective standard of directors' duties as established in Petra Perdana. However, there is still no clearly defined Malaysian framework for determining how the decision-making process should vary with the scale, complexity, and risk of a transaction. This lack of a framework is evidenced by the contrast between the earlier anticipatory studies, for example, Balan, Saw and Tan's examination of the newly introduced rule, and the current opportunity to assess its real judicial application following Iris Corporation (Balan et al., 2014).

The Business Judgment Rule Under the Companies Act 2016

Section 213 of the Companies Act 2016 states that directors have certain inherent duties and responsibilities when managing a company. The key duties of a director involve a number of important points, one of which is the duty of care. When making business decisions, directors are required to act with a reasonable standard

of care, skill, and diligence. This means that they must collect sufficient information before making a decision, ensure that decisions are based on careful analysis, and avoid taking any actions that might harm the company through negligence. There is also the duty of loyalty, which requires directors to place the company's best interests first and to avoid any circumstances that could lead to conflicts of interest. This duty essentially involves not using their position or their inside information for their own benefit, avoiding any transactions that might cause conflicts, and being transparent about any decisions that could affect the company's interests.

Ultimately, Section 214 of the Companies Act 2016 protects the directors under the Business Judgement Rule as follows:

1. A director who makes a business judgment is deemed to meet the requirements of the duty under subsection 213(2) and the equivalent duties under the common law and equity of the director-

a) Makes the business judgment for a proper purpose and in good faith;

b) Does not have a material personal interest in the subject matter of the business judgment;

c) Is informed about the subject matter of the business judgment to the extent the director reasonably believes to be appropriate under the circumstances; and

d) Believes reasonably that the business judgment is in what is best for the company.

Moreover, the term 'business judgment' as defined in subsection (2) of Section 214 refers to a decision regarding whether or not to take action in relation to the company's business operations.

The principle of the BJR is a basic doctrine in common law systems and protects the director from personal liability on the condition that the directors act in good faith for an appropriate purpose, have no material personal interest, are properly informed, and reasonably believe that the decision is in the best interests of the company. There is, nevertheless, a gap between the position in the law and the actual situation in a company where directors are required to take on commercial risk.

The statutory protection is therefore conditional and focused on the duty of care. A failure to meet the requirements of section 214 does not, on its own, demonstrate a breach of section 213(2). The fundamental duty, along with any relevant considerations regarding causation, loss, and relief, still needs to be assessed. Conversely, even a thorough information-gathering process cannot rectify a material personal interest or improper purpose as defined under section 214.

This article suggests that courts ought to use a risk-calibrated framework to decide when directors can be said to be adequately informed to qualify for protection under BJR. The purpose of this framework is to help the court to assess whether a director is properly protected by the applicable statutory provisions.

Cases on Business Judgment Rule

Pioneer Haven Sdn Bhd v Ho Hup Construction Co Bhd & Anor and Other Appeals [2012] 5 CLJ 169 (CA).

Facts:

Ho Hup Construction Company Bhd (“Ho Hup”) was a publicly listed company in financial distress and was classified as a PN17-affected issuer. To avoid from being delisted, it had to submit a regularisation plan to Bursa Malaysia by 4 April 2010. At the time, the company was facing accumulated losses of approximately RM110 million, substantial bank borrowings and significant outstanding liabilities to purchasers.

Ho Hup held a 70% interest in Bukit Jalil Development Sdn Bhd (“BJD”), which owned approximately 60 acres of valuable development land. On 16 March 2010, just one day before an extraordinary general

meeting was scheduled to remove Ho Hup's existing directors, the boards of Ho Hup and BJD approved a joint development agreement ("JDA") with Pioneer Haven Sdn Bhd.

Under the JDA, Pioneer Haven would fund the entire project, while BJD would retain legal and beneficial ownership of the land. In return, BJD was entitled to 17% of the project's gross development value (GDV), subject to a guaranteed minimum return of RM265 million. BJD also granted Pioneer Haven the power of attorney to facilitate the development.

Ho Hup subsequently challenged the JDA, arguing that it effectively amounted to a disposal of BJD's land without the shareholders' approval as required under section 132C of the Companies Act 1965 (repealed). It further alleged that the directors had approved the agreement hastily, in bad faith and for an improper purpose, thereby breaching their statutory and fiduciary duties, including those relating to the exercise of business judgment.

The High Court found breaches of duty, and the defendants appealed. The Court of Appeal held that the JDA was a commercial and managerial decision made in circumstances of serious financial pressure. Ho Hup faced possible delisting, substantial debt and the risk of foreclosure. Its inability to finance development itself was central to the assessment of the available options. The joint venture was therefore the only viable option available in the circumstances. Pioneer Haven would bear the development costs, while BJD was guaranteed at least RM265 million.

It was also held that a reasonable board placed in the same circumstances could have regarded the JDA as being in the interests of Ho Hup, BJD and their shareholders. The decision was therefore not an unreasonable business judgment.

Pioneer Haven shows evidence of inquiry, rather than simply documenting the receipt of advice. The non-executive directors actively queried the management and evaluated the information provided; notably, the minimum entitlement was increased from RM200 million to RM265 million. The court dismissed allegations of abdication as lacking support from the evidence. Thus, it would be misleading to conclude that the absence of a formal due diligence exercise indicates no investigation took place.

The more significant critique concerns the connection between these inquiries and the risks accepted. While legal advice might cover matters of authority and contractual terms, it does not necessarily ascertain the counterparty's ability to fulfil their obligations. Although an increased minimum return is advantageous, its security relies on enforceability and actual performance. The judgment could benefit from a clearer distinction between issues resolved through negotiation and those still reliant on unverified assumptions. This is a critique of the logic's transferability, rather than an assertion that the directors failed in their duties.

Furthermore, financial distress changes the implications of any delays. An inquiry suitable for a solvent company with multiple viable options may be disproportionate in scenarios where foreclosure or delisting is imminent. Therefore, the framework would need to evaluate which methods were still feasible, what insights they could have provided, and the rationale behind their omission. It should not necessitate a detailed report solely because of the transaction's significance.

Tengku Dato' Ibrahim Petra v Petra Perdana Bhd and Another Appeal [2018] 2 MLJ 177; [2018] 2 CLJ 641 (FC).

Facts:

Petra Perdana Bhd ("PPB") was a public-listed offshore marine services company that held approximately 64.62% of the shares in Petra Energy Bhd ("PEB"), formerly its wholly owned subsidiary and a major income-generating asset described as PPB's "jewel in the crown". In 2009, PPB faced serious cash-flow difficulties, including threatened legal action over delayed payment for a vessel required to fulfil a Shell contract valued at RM1.1 billion. It also recorded a quarterly loss of approximately RM8.9 million, the first in its corporate history.

In order to deal with its financial difficulties, the board of PPB approved two transactions relating to the disposal of its PEB shares. The second of these involved the sale of 10.5 million shares for about RM16.065 million, and the third consisted of the sale of an additional 48.8 million shares to Shorefield Resources Sdn Bhd, as a result of which Shorefield Resources Sdn Bhd became the controlling shareholder of PEB. The money obtained from these sales was used to reduce PPB's bank loans and its level of gearing, and the third divestment produced a gain of approximately RM13.7 million for the group. Before approving the transactions, the directors had considered other methods of raising funds and had relied on information and advice from senior management and on professional advisers. The board also looked at other ways of raising funds, such as the sale of its older vessels. These alternatives were rejected since they would take too long to produce the required liquidity. After what the judgment referred to as "long deliberations", the board decided that getting rid of the PEB shares was the most feasible course of action. Also, the directors were given advice by professional financial advisers in support of the share disposal.

After the change of control of the PPB board, the company took legal action against its former directors, claiming that the divestments had breached their statutory, fiduciary and common-law duties, were contrary to the best interests of PPB, and constituted part of a conspiracy to harm the company. Although the High Court dismissed the claim, the Court of Appeal overturned its decision and found the directors to be liable. The directors then appealed to the Federal Court, which ruled that they were entitled to the protection of the business judgment rule under section 132(1B). The divestments were the result of well-informed and collective commercial decisions made with the aim of dealing with PPB's real financial difficulties and there was no evidence of bad faith, personal gain, an improper purpose or a conspiracy. The Federal Court regarded the share divestments as business judgments taken in order to meet the company's liquidity problems. The report shows that judicial restraint does not preclude objective scrutiny of the directors' purposes and the circumstances surrounding those decisions.

The process undertaken in the case of Petra Perdana is significant because the board diligently considered its liquidity needs, explored alternative avenues for raising funds, and sought professional advice before endorsing the asset disposals. These considerations lend important context for scrutinising the decision-making process. However, it is essential to understand that these particular circumstances should not be interpreted as a universal checklist or assumed to imply that every distressed disposal automatically fulfils the necessary statutory conditions.

Yet the Federal Court did not turn these factors into a compulsory or rigid legal test. Even though Petra Perdana offers strong factual support for a risk-calibrated informed-judgment approach, it does not clearly set out such an approach or specify the minimum decision-making process required by section 132(1B) of the Companies Act 1965 (repealed), a provision which is now found in section 214 of the Companies Act 2016. Specifically, the court did not explain how the amount of information, investigation, and deliberation required should vary with the size, complexity, and risk of a transaction.

Iris Corporation Berhad v Tan Sri Razali bin Ismail & Ors [2026] 1 MLJ 807 (CA)

Facts:

In 2015, Iris Corp Bhd ("Iris"), a company specialising in electronic passports and trusted identification systems, became part of a plan to privatise certain functions of the United Kingdom Border Force. As a means of carrying out this project, Border Control Solutions Ltd ("BCS") was set up as a special-purpose vehicle, Joseph Vijay Kumar ("JVK") being the only shareholder and director of BCS. Iris backed the proposal by supplying the necessary personnel, technical know-how and equipment.

In January 2016, BCS offered Iris a 10% shareholding in exchange for £2 million, a proposal which was approved by Iris's board via a directors' circular resolution. From January to August 2016, Iris made payments amounting to approximately £2.05 million to BCS and JVK under the consultancy agreements. Yet by October 2016, concerns had arisen regarding the project's viability. Iris then decided to withdraw, but was not able to get back the money it had invested, and BCS was finally wound up in January 2018.

After the change in management, Iris took legal action against its former directors for approximately RM11.7 million, alleging that they had violated their fiduciary and statutory duties by approving the investment without conducting adequate due diligence. While Iris pointed to an investigation carried out by Ernst & Young, which had detected possible irregularities, the directors referred to a previous report by Ferrier Hodgson, which stated that the investment had been properly considered and approved. The High Court rejected Iris's claim on the grounds that the directors were entitled to protection under the business judgment rule, whereupon Iris appealed. The Court of Appeal confirmed the High Court's decision and ruled that the directors were protected by the statutory business judgment rule under section 214 of the Companies Act 2016 since the investment was made in good faith and for a proper purpose, the directors had no material personal interest, they had been informed to the extent that was reasonable for them to consider and they had reasonably believed that the investment was in the best interests of Iris.

The court also stressed that the project was closely linked to Iris's main business activity. It was an opportunity to obtain a possibly large UK government contract, to establish a foothold in the UK market and to make use of Iris's existing expertise in trusted identification technology. Most important of all, the court stated that an independent assessment need not be exhaustive or carried out with a sceptical attitude; it could be based on the knowledge and experience that the directors had accumulated. Since the BJR safeguards director against hindsight bias, the court evaluated the decision on the basis of the information that was reasonably available at the time it was made, not on the later information that BCS would fail.

The central issue at hand revolves around the extent to which the acceptance of accumulated knowledge by a judgment can be generalised beyond the specific context of the evidence presented. Iris Corporation adopts a unique position by treating independent assessments as contextual, acknowledging the involvement and knowledge of its directors prior to making decisions. This approach has a significant strength: it differentiates between an assessment and an investigation, highlighting the independent nature of the evaluation. One possible consequence of this method is that the directors' previous experiences may be misinterpreted as comprehensive investigations. This misunderstanding can occur unless the directors provide clear explanations that detail how their past experiences have shaped their assessments and evaluations. Without such clarity, their insights may be perceived as lacking depth and rigour, rather than reflecting a well-informed perspective. For example, while familiarity with identification technology may suggest expertise, it does not automatically translate into understanding the nuances of a foreign counterparty's funding or the intricacies of its governmental authority. Nevertheless, these distinctions are analytical in nature and do not imply that such critical information was absent from the available evidence.

An enhanced explanation would analyse deeper into the uncertainties related to the specific transaction, clarifying what relevant knowledge was available prior to any commitment and outlining the rationale for placing trust in management's assurances. Furthermore, it is important to separate the knowledge that directors had prior to their approval from information they acquired afterwards and subsequent briefings cannot be used to revise earlier decisions, although they may serve to reaffirm previously held knowledge or contribute to later decision-making processes. The timing of information helps to improve the reasoning behind deference, illustrating why confidence was warranted at the moment it was exercised. On the other hand, to make the directors verify every assertion made by management could diminish the reliance allowed by section 215, creating unnecessary duplication of expertise that would incur considerable costs. As a result, the framework requires targeted follow-up actions only when there is an apparent substantive gap, inconsistency, or other relevant factor that justifies such inquiry. This is because the management is to be regarded as trustworthy unless there are compelling reasons to question their reliability. Furthermore, the existence of conflicting reports following an event does not automatically imply that the initial decision was made without sufficient information.

FINDINGS

On the basis of the three cases referred to above, it is clear that the court will not substitute its own judgment for that of the directors when passing a decision on behalf of the company. The cases in question, Pioneer Haven, Petra Perdana and Iris Corporation, properly rejected liability based on the outcome and serve to

discourage the courts from reviewing the directors' decisions having the benefit of hindsight. Even though they point out a number of indicators which are sensitive to the circumstances and which show that a proper decision-making process has been followed, they do not clearly specify the minimum inquiry that is required under sections 214(1)(c) and 215(2)(b) of the Companies Act 2016.

The fact that a venture has been a commercial failure is not, in itself, sufficient to show a breach of duty. Nowadays, courts place a strong emphasis on the need for contextual knowledge when making business decisions. A director's experience, level of involvement, and familiarity with the company may meet the requirement of having made an informed decision without the need to carry out thorough due diligence. The cases referred to show an implicit and yet incomplete form of risk-based approach rather than a fully developed process-based one. The current attitude is that routine operational decisions do not need to be investigated to the same extent as significant foreign investments which involve new counterparties and are subject to uncertain regulatory approval. It is therefore suggested that the courts should adopt a Risk-Calibrated Framework when judging whether directors have made an informed decision. This framework does not allow the courts to assess the commercial viability of a transaction; it only examines whether the decision-making process was adequate in light of the level of risk involved.

FRAMEWORK FOR MANAGING RISK TO MEET THE REQUIREMENT OF 'INFORMED DECISION'

The risk-calibrated framework is the authors' proposed synthesis of existing statutory and judicial principles. Its contribution lies in organising those principles into a sequence of questions suited to Malaysian law. It is not presented as an established legal doctrine or as a claim to have originated the general idea of proportionate inquiry.

There are several court cases which may be cited when adopting this framework. In the American case of Smith v. Van Gorkom (1985) 488 A.2d 858, the plaintiffs, Alden Smith and John Gosselin, brought a class action against the defendant corporation, Trans Union, and its directors after the Board had approved a merger proposal put forward by the CEO of Trans Union, who was also a defendant, Jerome Van Gorkom. The company's chief financial officer performed a preliminary, rough calculation to determine whether a Leveraged Buyout (LBO) was feasible. This study found that an LBO could be carried out easily at $50 per share and with some difficulty at $60 per share. Importantly, the purpose of this study was to evaluate the company's debt capacity, not to establish a fair intrinsic value. Without first consulting either the board or the management team, the Chairman and CEO Jerome Van Gorkom arbitrarily decided on a buyout price of $55 per share (this being a $17 premium on the market trading price of $38. The Delaware Supreme Court examined whether the merger was successfully executed based on whether the directors applied an informed and deliberate judgment. Consequently, BJR defence was not available because the directors were hasty in making the decision without having adequate documents, valuation information or making proper inquiries. This case revealed the framework's riskiest aspect: the importance and finality of the transaction demanded a more thorough process. Since the directors did not acquire "all material information reasonably available", the court concluded that their decision had not been an informed one. The comparative lesson is somewhat limited. Smith v. Van Gorkom addressed Delaware's stance on uninformed merger decisions and gross negligence. It does not imply that Malaysian directors are required to obtain all material information or to commission a valuation in every instance. The Malaysian inquiry continues to be guided by the contextual language of section 214(1)(c).

In ASIC v Rich [2009] NSWSC 1229, the Australian Securities and Investments Commission (ASIC) claimed that Jodee Rich and Mark Silbermann, who had previously been executive directors of the telecommunications company One.Tel had breached its duty of care in the months leading up to the company's collapse in May 2001. It was asserted that Rich and Silbermann had failed to meet the statutory duty of care and diligence required by section 180(1) of the Australian Corporations Act 2001; specifically, ASIC argued that they knew, or should have known, that One.Tel's financial and liquidity position was considerably worse than the information given to the board and that they had not disclosed the company's real financial situation, performance and prospects. Nevertheless, the Supreme Court of New South Wales

rejected the claims, ruling that ASIC had not proved its case against either director. When judging the sufficiency of the information available to the directors, account was taken of a number of factors, including the significance of the decision, the time available, the cost of obtaining further information, the directors' level of confidence and expertise, the state of the company, other pressing demands and the availability of information. This approach directly supports adjusting the extent of the inquiry in light of the importance and circumstances of the decision.

Scholars emphasise that BJR protection hinges on demonstrating good faith, informed decision-making, and the absence of conflicts of interest (Bainbridge, 2004). Decision-making is a continuous process that may require several decisions before the final decision. These include decisions regarding the amount of information directors should obtain to understand the nature of the company's business and to make properly informed decisions (Keay & Loughrey, 2018). Also, in discharging their fiduciary duties when making decisions serving the interests of stakeholders, directors should conduct a cost-benefit analysis and disclose, in general terms, the basis for that analysis (Spercel, 2024). This involves assessing both the anticipated costs and benefits associated with a particular decision or strategy. By weighing these factors, directors can make more informed choices that align with the organisation's long-term goals while also considering the interests of its stakeholders. A thorough cost-benefit analysis, paired with transparent communication, supports effective decision-making and strengthens the relationship between directors and stakeholders. As such, this article offers the steps to employ before a certain significant decision can be made.

Calibrating the Inquiry

Firstly, when deciding what level of scrutiny to apply in their investigations, directors should take into account a number of important factors which have a significant effect on their method. The value of the transaction and its materiality are of the utmost importance; the bigger and more important the deals are, the more detailed the investigation should be. It is essential for directors to appreciate the possible impact on the company and its stakeholders.

Secondly, it is important to first consider whether the venture is in line with the company's main business. In cases where the transaction differs significantly from the organisation's principal activities, the directors will probably need to examine the risks and consequences in more detail. The complexity of the deal also calls for careful deliberation. Transactions that are new and complicated and which involve unexplored territory or innovative arrangements require greater scrutiny to make sure that all possible risks are properly assessed. Directors should also verify the reliability and independence of the information they obtain from others. For sound decision-making, accurate and unbiased data is important, and if there are any doubts about the sources, this should lead to further investigation. Finally, transparency on the part of the other party to the transaction is also very important, as it enables clearer communication. On the other hand, if there is any lack of clarity, it could cause alarm and call for a more detailed investigation. Directors must stay alert to anything that indicates the transaction might not be as beneficial as it appears. Moreover, the urgency of the situation and the time available to make a decision can have a significant effect on how in-depth the inquiry should be. When decisions must be made quickly, it is necessary to strike a balance between the need for thorough due diligence and the need to meet the commercial urgency.

It is important not to overlook the quality of the board's discussions and the documentation. Careful discussions together with thorough records of the decision-making process increase transparency and accountability, making sure that all views have been taken into account before any action is taken. When these points are considered, the directors will be better able to deal with complicated decisions and thus protect the interests of the company and its stakeholders. To apply this framework, a court should examine the adequacy of inquiry without substituting its preferred commercial choice. This does not eliminate the separate requirement in section 214(1)(d) concerning a reasonable belief in the company's best interest.

Distinguishing boardroom complacency from legitimate reliance

Boardroom complacency can be understood as an analytical concept that highlights a significant issue within

corporate governance rather than a specific legal cause for action. It describes the situation where board members fail to engage thoughtfully with important uncertainties that warrant serious consideration. Various signs of complacency can manifest in different ways. For instance, board members may recklessly approve decisions without critical examination, overlook crucial contradictions in the information presented, or allow the assertiveness of another executive to overshadow their own judgments and instincts. Maharaj argued that that possessing information is not equivalent to critically assessing it. A formally informed board may remain complacent if directors do not question assumptions or express contrary views (Maharaj, 2008). He examined how groupthink, dominant personalities and defective communication can suppress the sharing and critical evaluation of information within boards and proposed clearer information channels and stronger attention to directors' knowledge and behaviour to reduce groupthink. Westphal and Bednar demonstrated that pluralistic ignorance may cause directors to suppress privately held concerns because they mistakenly assume that other directors support the prevailing strategy (Westphal & Bednar, 2005). Similarly, Forbes and Milliken emphasise that board effectiveness depends not merely on director independence or expertise but also on cognitive conflict, effort norms and the quality of group deliberation (Forbes & Milliken, 1999) . These insights indicate that a board may possess relevant information while nevertheless failing to subject that information to adequate critical scrutiny.

It is important to note that mere expressions of optimism, brief meetings that lack depth, or a blanket trust in a capable officer do not, in themselves, constitute complacency. Real engagement requires more than surface-level behavior; it necessitates a genuine commitment to scrutinizing the complexities and challenges that the organization may face. As such, understanding and addressing boardroom complacency is vital for effective decision-making and governance in any organization. An experienced director demonstrates engagement by identifying underlying assumptions, testing explanations against existing knowledge, and acknowledging the limitations of that knowledge. A deliberate choice to accept an understood risk is distinctly different from a passive failure to consider it. Similarly, a well-considered decision not to act may constitute a valid business judgment; it is important that mere neglect is not retrospectively reclassified as such. The practical value of this framework lies in clarifying this distinction without transforming directors into guarantors of commercial success.

CONCLUSION

The Malaysian business judgment rule reflects a legitimate policy choice to protect directors from liability arising merely because an honest commercial decision subsequently proves unsuccessful. Petra Perdana and Iris Corporation appropriately affirm that courts should not evaluate directors' decisions with the benefit of hindsight. Nevertheless, judicial deference must remain conditional upon a meaningful decision-making process. If prior experience and general familiarity are treated as sufficient in nearly every case, the requirements of informed judgment and independent assessment may become largely formal.

Sections 214 and 215 establish a framework for conducting a contextual inquiry into the information and assessments that underlie a business judgment. Factors such as materiality, novelty, complexity, and identifiable warning signs can clarify when further inquiry is warranted, while also recognising the genuine constraints of time and resources. This framework maintains necessary flexibility and prevents the categorisation of every missing report as a breach. Boardroom complacency could arise when relevant uncertainties are not adequately examined or justified through further investigation. Nevertheless, informed entrepreneurship is preserved when directors confront these uncertainties and make well-reasoned decisions to move forward, even if the venture ultimately fails.

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