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PREFACE

The 1st International Symposium on Law and Innovation (ISLI 2021), themed "Re-Modelling Law and Justice in Creating Innovative Solutions: Challenges and Sustainability" serves as a platform to help the undergraduate's community to explore and review the latest research in law and innovation as well as explore its critical role in sustainability and growth in societies. The research ideas and studies that we received for this symposium are very promising, unique, and impactful. I believe these research and studies have the potential to address key challenges to creating innovative solutions in the law. The undergraduates and scholars attending and presenting at this symposium will certainly find it helpful in refining their own research ideas, finding solutions to basic and applied problems they face, and interacting with academics and legal industries for possible future collaborations.

I am really thankful to our reviewers and judges for spending much of their time reviewing and judging the abstracts and posters for this event. Their valuable thoughts and views will surely open the horizon of new research and practice for the symposium participants.

The success of the symposium was also due to the collective efforts of a large number of individuals. To the ISLI 2021 Secretariat and Multimedia University Law Society (MULS), a very special thank you for your time in selecting the best abstract and poster awards; and for helping the participants in publishing their respective research. I also owe a debt of gratitude to all the session chairs who volunteered their time and lent their support to make this event a success.

Last but not least, I am thankful to all the participants for your contribution to creating an environment of knowledge sharing and learning.

Thank you.

Director 1
Asmida Binti Ahmad
Faculty of Law
Multimedia University
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CONTENTS

CATEGORY B: POSTER

CATEGORY A

EXTENDED ABSTRACT

1

A STUDY ON CHALLENGES AND SOLUTIONS OF CYBERSECURITY AMONG COMPANIES

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Abstract

This paper will first evaluate the challenges faced by companies pertaining to cybersecurity and will then establish solutions for companies to overcome the challenges in cybersecurity. The data were collected from court judgments and statutes to explain the law on cybersecurity and the practice of cyber hygiene in companies. Cybersecurity is beneficial as a safeguard for companies in establishing strategic plans to enhance profitability and production of goods and services. In the analysis, a comparison is made on the challenges faced in cybersecurity from the perspectives of Malaysia, the United Kingdom, and Canada. Later, the analysis will discuss the solutions from the perspectives of the said countries, and the practices are compared as well. This paper will benefit companies since it will give a solution to the company's cybersecurity challenges. Based on the findings of this research, a company may be able to boost its competitiveness and better understand the problems that arise, and then improve by applying cybersecurity and practicing cyber hygiene in a corporation.

Keywords—challenges, companies, cybersecurity, cyber hygiene, solutions

I. INTRODUCTION

When an employee of a company or government agency reports misconduct to the public or a higher authority, they are known as whistleblowers. (Merriam-Webster, n.d.) Internal whistleblowing occurs when an employee of a firm tells his superiors in the company's top positions about unlawful conduct. External whistleblowing occurs when an employee reports misconduct to someone outside of his organisation. Whistleblowing is intended to eliminate unethical behaviour in the workplace. Being labelled a whistleblower may make it more difficult to be employed at a new business in the future.

II. METHODOLOGY

This paper will adopt the comparative research methodology and the doctrinal research methodology. According to the comparative research methodology, a comparative analysis is made from the different perspectives of countries, their practices in cybersecurity in companies as well the domestic laws (Smelser, 1973). Whereas the doctrinal research methodology provides concrete data gathered through the research of court judgments and statutes to explain the laws on cybersecurity in companies from different perspectives of domestic laws (Kharel, 2018).

This paper will study the challenges faced in cybersecurity and cyber hygiene practised from the perspectives of Malaysia, the United Kingdom, and Canada. The

challenges are researched thoroughly and compared amongst companies from the three different countries.

Additionally, this paper will be discussing the solutions provided in all these countries as a whole and discuss whether certain solutions can be practised in a country that already has a different solution of its own. Not only the comparison but all these matters will be discussed with reference to different cases from the different countries providing explicit data on the challenges each country is facing in cybersecurity. The solutions are also discussed by referring to court judgments and statutes providing a detailed discussion on cybersecurity amongst companies and their cyber hygiene practices as well.

III. RESULTS/FINDINGS

Challenges of Cybersecurity Among Companies

Malaysia

Malaysia was identified as one of the top five prime targets for cybercriminals with a threat exposure rate of 17.44% (Haris, Sarijan & Hussin, 2017). The cybersecurity challenges faced by companies in Malaysia can be grouped into three categories: people, process, and technology.

Under the people category, the first challenge is the lack of skills or lack of knowledge of employees. Managing cybersecurity attacks requires extensive knowledge and abilities. Therefore, it is critical for organisations to train and expose their human capital. This will help organisations understand current cybersecurity threats (Fadzline, 2019). Next is the lack of responsibility. For effective cybersecurity, the effort should come collectively as it affects everyone in the company. However, many employees are unaware of their organisation's cybersecurity duties and accountability (Teoh, Mahmood & Dzazali, 2018).

For the process category, the challenges are the lack of budget or lack of security investments. Organisations frequently fail to see a cyberattack as a serious danger. Thus, they do not feel compelled to invest more in cybersecurity. Also, cybersecurity tools and services are costly. Hence, budgeting can be challenging. (Tamyez, 2019). The next challenge is data management and integration**.** The vast amount of information and data makes it challenging to secure data integrity (Tamyez, 2019). Multiple data sources have different concepts and forms, making it challenging for analysts to combine them.

Under the technology category, the challenge is the failure of companies to upgrade their software security frequently. Moreover, software upgrades are extremely pricey for companies (Tamyez, 2019).

Ransomware is one of the biggest cybersecurity threats faced by Malaysian companies. In *PP v Roslan and Anor* (2016), the accused, a system analyst, was convicted under Section 5(1) of the Competition and Consumer Act 2010 (CCA) for altering pilgrims' entries in the database without authorisation. Besides that, the managing director of IMB Malaysia reported a 40% rise in open-source malware whereas Cybersecurity Malaysia reported 62 ransomware incidents over the last year. An example of a ransomware attack on Malaysian companies is the *WannaCry attack* (2017) when they struck two Malaysian companies in 2017 (Chan, 2017).

The United Kingdom

First, companies lack preparation and knowledge regarding cybersecurity and cyberthreats. 92% of United Kingdom ("UK") organisations knew of weaknesses in their cybersecurity but only 40% actively addressed the problem. Second, companies do not understand the repercussions (Tara Geoghegan, 2021). There exist multiple types of cyber threats like ransomware, data breach, and fraud.

Ransomware is malware that encrypts the victim's data at ransom. In the *WannaCry ransomware case* (2017), ransomware disrupted over a third of England's NHS trusts and caused over 6,900 NHS appointment cancellations (National Cyber Security Centre, 2017). The offenders, if caught, would have been charged under Section 3 of the Computer Misuse Act 1990 which provides for unauthorised acts that are intended to impair computer operations.

Next is a data breach. An example is in *Google v Vidal Hall* (2015), where Google collected information of the claimants (without their knowledge) for advertisers which was seen by a third party. The claimants commenced proceedings alleging breach of the Data Protection Act 1998 ("DPA"). It was held that damages may be recovered for distress as per Section 13(2) of the DPA.

Lastly is fraud. In the Tesco *Bank cyber-attack case* (2018), Tesco Bank was attacked by fraudsters who engaged in thousands of unauthorised debit card transactions. The bank had failed to exercise due skill, care, and diligence in protecting its personal current account holders and was fined £16.4m by the UK financial regulator pursuant to Section 206 of the Financial Services and Markets Act for failings surrounding a cyber-attack on its customers. (Financial Conduct Authority, 2018).

Although these threats exist, the UK has laws to deter it. For example, the DPA which involves personal and national data protection and the NIS Regulations which imposes obligations on all operators of essential services and relevant digital service providers.

Canada

In *Lozanski v The Home Depo* (2016), a breach of data occurred at Home Depot known to be a retailer of home improvement and construction products in Canada. Criminal intruders utilized custom-built malware to breach the computer system. Home Depot submitted 58,605 emails to the customers informing them that their email addresses were stolen in the Data Breach which led to financial harm. A class action was filed. Home Depot sorted this out by offering the customers free credit monitoring and identity theft insurance. Justice Perell held Home Depot not liable for the breach since it encountered the matters by handling it firmly but is still responsible for giving settlements to the customers. The Ontario Superior Court granted a settlement agreement. After the data breach was informed, Merchant Law Group created a webpage for claimants involving Mr. Knuth, which turned out to be the definition of over-inclusive. Since only specific purchasers were affected, which are people who used payment cards by swiping the magnetic chip through card readers that have been infected with the malware.

Home Depot estimated around 500,000 Canadian customers had been affected by the data breach. The main challenges were the vulnerability of technology of payments in their card readers which Mr. Knuth and Mr. Lozanski alleged the criminal breach by payment card system in Home Depot has caused information leaked and financial losses. Professor Archer stated three main damages occurred in a cyber threat namely (1) the risk of fraudulent charges on personal credit cards, (2) identity theft risk and (3) the nuisance of

checking a person's credit card statements. This case proves that although Home Depot managed to handle the data breach incident by offering benefits and did not cover up for the mistakes, there is still a flaw in the security management framework and in terms of security access control that need to be improved. (Dykeman & Piovesan, 2021)

Solutions of Cybersecurity Among Companies

Regarding solutions, each country namely Malaysia, Canada and the United Kingdom has enacted their own legislations to combat the challenges of cyberthreats and to enhance cyber security. Regarding Malaysia, legislations enacted to combat cyber threats include the Computer Crimes Act 1997 that is used to deal with the misuse of computers for the purpose of committing offences. Next, the Digital Signature Act 1997 is used to offer legal validity to digital signatures and establishes a framework for the authorization and regulation of Certification Authorities. Besides, in more serious crimes and cyberthreats, the Penal Code will be used to determine the offence and the punishment. ("NACSA | Legal", 2021). Next, in the United Kingdom, the laws protecting cyber security include the Computer Misuse Act 1990 that governs matters such as unauthorised access to computers. ("UK", 2021). Next, in Canada the Criminal Code of Canada is used to govern matters of cybercrimes. This code stipulates provisions in relation to cybercrimes such as hacking, phishing, denial of service attacks, ransomware and others. (Group, 2021).

Besides these legislations, solutions include encryption. Encrypting critical records and messages in travel and capacity is an effective and necessary method for computer security. Besides, cyber forensics is also another solution to combat cyber threats. In the examination of computerised violations, cyber forensics is the most fundamental option. Digital signature is also a good solution. This is a procedure that can be used to protect electronic data so that the originality of the data, as well as the data's honesty, can be verified. Authentication is another term for this process of validating the data's origin and reliability. Security audit is another solution. A complete audit of the structure's physical setup and condition, programming, information dealing with systems, and customer house is conducted on a regular basis. (Fadzline, 2019).

IV. CONCLUSION

In a nutshell, it is fair to say that many developing countries do face cybersecurity issues and establish the appropriate solutions. Cybersecurity being recognized as of the corporate governance aspect in the Malaysian Code on Corporate Governance 2021 (MCCG 2021), clearly proves its significance and impact as well to companies. Companies in fact all over the world shall be able to pinpoint such cybersecurity issues and also come up with compatible cyber hygiene practices to further grow a company.

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2

A STUDY ON DESTRUCTIVE NEPOTISM AND THE RESOLUTION WITHIN CORPORATE GOVERNANACE

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Abstract

Nepotism is a common practice in small family firms. However, it is still present in bigger companies, where families use their authority to favour their family members and friends over other unfamiliar associates with better qualifications, causing discontent at the workplace. This paper will first focus on discussing the existence of destructive nepotism in a workplace within a company, its recognised categories and why we should highlight the term 'destructive' in front of nepotism. This paper will then ascertain why destructive nepotism brings harm to a company, listing out how the cons outweigh the pros of practising nepotism in a company. Next, it will closely examine how companies have the power to prevent destructive nepotism from occurring. Subsequently, it will consider the relation as to how the Malaysian Code on Corporate Governance (MCCG) dictates that the Board of Directors (BOD) must be committed in promoting a healthy corporate culture where integrity, transparency and fairness are requirements to good business practices or dire consequences would be the end result if the BOD failed to commit. Finally, this paper will focus on establishing the Code of Conduct and Ethics for companies, with policies and procedures that will subvert any acts of destructive nepotism within the workplace and how this affects the moral of a company as the total outcome.

Keywords— destructive nepotism, company, prevent, policies, moral

I. INTRODUCTION

Destructive Nepotism

It must be noted that nepotism is actually a frequent implementation within job employment. The words favouritism and nepotism typically intertwine with one another in practice. Choices taken by those in higher positions who prefer loyalty for their benefit over quality could lead to nepotism. The term destructive nepotism must be highlighted here. While nepotism is an active occurrence, consciously and subconsciously done around us, destructive nepotism results in detrimental actions that directly cost the well-being of the company.

Different categories of destructive nepotism such as reciprocal nepotism and entitlement nepotism can be identified. The former is when the position is accepted by a family member out of loyalty, financial considerations, to better familial ties or it was the norm. While the latter happens when the one accepting feels a sense of entitlement to receive it due to having family members within the company (Proctor, 2021). An example

of the former is where the employers, such as managers, would circumvent formal job interviews requirements by making special appointments with the ones they favour, hence perpetuating nepotism. (Ombanda, 2018)

Dangers of Destructive Nepotism

There are certain things that may prevent a company from treating all employees with dignity. Nepotism is one of them, deriving from the Latin word 'Nepot'. It is defined as an unprofessional act of favouring relatives. While it is not wrong to hire friends or even family members, employing or promoting them over other more qualified candidates is a misuse of power which harms the organization.

Firstly, the unfairness to the other employees. An organization that practices nepotism will always make their relatives their priority instead of other employees (Miranda Brookins, 2017). A clear example is when someone in a management position hires a family member and provides them with perks that other employees do not receive. This action causes resentment towards the manager and the family member.

Furthermore, it lowers employees' morale (Virginia, 2008). A worker may have worked diligently to prove their worth for a promotion. However, the employer may hire a lesser qualified family member for the job. One, of course, will feel defeated, sadden, and unappreciated, pondering why his best is not good enough to succeed in the company. This leads to employees losing their motivation to accomplish their task.

Next, it increases the employee resignation rate (Ann Snook, 2020). Talented employees will look for employment opportunities elsewhere if nepotism is prevalent since it is employees' desire to work with companies that cherish and value skills over a familial relationship. The loss of employees will affect the company's success.

Based on the drawbacks mentioned, nepotism and favouritism are not suitable to be implemented in a working environment. It lowers effective competition and impedes high performers' careers; showing unprofessionalism committed by higher management. Hence, inference should be drawn that nepotism greatly affects organizational development.

II. METHODOLOGY

Identifying Powers Vested in Companies to Prevent Destructive Nepotism

Companies and directors are in a position to employ individuals to work for their companies. Certain companies tend to value relationships over skills and dedication which leads to nepotism. Companies hold the power to avoid destructive nepotism by implementing certain approaches.

Essentially, they must have an accurate job description when recruiting employees. This allows qualified employees to work in family firms without favouritism. Employees should possess the requisite abilities to be considered for any job within the company. For instance, the Recruitment and Selection Policy of the City of Manchester furnishes that fairness and customer care must be shown by recruitment managers of companies. A proper framework must be drafted to enable managers to recruit staff in a fair manner. It is argued three standards of hiring are needed to avoid nepotism in the recruiting process (Aronoff Ward, 1992).

Additionally, companies hold the power to craft anti-nepotism policies to govern and limit family members, friends and relatives operating together in a company. This policy avoids conflict of interest and increases the diversity of the workforce (Ali Bavik, 2006). A study shows 500 companies are family-owned firms and there should be some form of anti-nepotism policies (Colarelli, 2012). Leadership training for managers or directors of companies is crucial as leadership development directly addresses nepotism issues (Proctor, 2021).

Managers and directors need to avoid favouritism as they hold the responsibility of an entire department. Good leaders must behave professionally. As an illustration, The Model Code of Conduct highlights that supervisors must be held accountable for acts or omissions relating to nepotism and managers must be able to build trust and show leadership without being prejudiced or biased.

Studying Malaysia Code on Corporate Governance (MCCG) Involvement

In MCCG, the Board of Directors (BOD) is committed to encouraging ethical business practices and maintaining a positive corporate culture that values honesty, transparency, and fairness. The Code of Conduct and Ethics outlines the procedures for dealing with actual or potential conflicts of interest, preventing corrupt practices like giving and receiving of gifts and other forms of benefits, encouraging the reporting of illegal or unethical behaviour, and protecting and ensuring the proper use of the company's assets, as well as ensuring compliance with laws, rules, and regulations.

The Code of Conduct and Ethics makes the BOD responsible for setting the company’s tone and standards. The BOD should set out appropriate activities which serve as a guide for directors, managers, and employees. Standards that should be integrated into company-wide management procedures and evaluated on a regular basis.

Additionally, employees are encouraged to bring legitimate concerns to the BOD regarding legal infractions within the workplace, such as negligence, criminal conduct, breach of the law that is a danger to the health or safety of the environment, and covering up illegal acts. The BOD must ensure whistleblower procedures dictate that credible complaints will be reviewed and dealt with honestly. Individuals are able to call out on illegal, unethical, or questionable behaviour without fear of retaliation. The BOD must note that shareholders have sufficient notice and time to consider the resolutions examined and decided during the General Meetings.

Nepotism exhibits negative repercussions on organisational effectiveness in several studies conducted in different countries. In general, these types of organisational corruption are inextricably tied to society’s tolerance or intolerance of unfairness. All societies possess nepotism, as stated in Hudson and Claasen (2017), but perceptions and severity of consequences vary depending on cultural norms and the country’s economic growth. It is worth noting that emerging countries undergoing political and socioeconomic transitions frequently grab scholars’ attention while looking into various forms of corporate corruption, including nepotism.

According to Donnelley (1988), family members with a good reputation can lend it to the organisation, which can help increase or establish trust in the community. Family bonds can give an organisation numerous potential benefits that non-familial partnerships can take years to acquire. Research conducted in Canada and Denmark have found similar results (Ferlazzo & Sdoia, 2012). They discovered that 6% of the employees polled worked

for the same companies that had hired their parents. As a result, the parents' employment acts as a safety net. Managers at for-profit firms reported less nepotism in their organisations in Saudi Arabia than managers in governmental organisations, which had lower performance pressures (Al-Aiban & Pearce, 1993). This shows that, even when culturally accepted, such practices are considered to be detrimental to organisational performance. One of the reasons could be that in this country, family members have strong cultural obligations to protect and advance them.

III. RESULTS/FINDINGS

MCCG Resolution to Curb Destructive Nepotism

To prevent destructive nepotism within the workplace, MCCG has established the Code of Conduct and Ethics as a tool for companies. It normally takes the form of a document that has many rules which must be adhered to not only for employees but also for management itself. There is a difference between the code of conduct and the code of ethics. The former is used to guide the management to solve problems and formulate strategies while the latter encompasses various corporate values and ethical principles. However, both are interrelated.

There are two important aspects that must be looked into in order to make the Code effective. The first is the content of the Code itself and the second is the enforcement of it. When it comes to the content of the Code, the most important area that must be included is the qualifications that a candidate must possess in order to become a member of the BOD. Furthermore, the Code must expressly state that any candidates must not be affiliated or connected with the members of the BOD. There must also be performance evaluation from time to time to make sure that the candidate is capable of doing his or her tasks. This important task of choosing the right person for the company should not be handled by the BOD to avoid any conflict of interest. Instead, it should be handled by an independent Human Resource Department. As a result, it can help to prevent nepotism and promote job security for the employees in the company.

The second aspect is the enforcement of the Code. To what extent the Code is capable of influencing the members of the company depends very much on the people who are enforcing it. The first crucial step that must be taken is to set the tone from the very beginning (Landry & Lapierre, 2016). This helps to shape a positive corporate culture that takes the Code seriously. For example, the candidates opting for top managerial roles in the company must be warned that nepotism is strictly prohibited in the company. This should cause them to think twice before committing any wrongful acts against the company. The Code must also be disseminated widely to all stakeholders. Next, periodical workshops and training must be conducted regularly to enhance knowledge and skill at applying the Code.

Moreover, the company must also establish an Ethics Committee to investigate ethical issues like nepotism. The whistleblower policy must be in place so that the inferior ones like the low-level employees have the courage to report when they see any hint of malpractice or misconduct like nepotism by their superiors. In addition, these complaints must be treated as confidential so that this policy will be effective. In the Ethics Committee, an ombudsman must be created to find out whether the allegations are true or not before taking any further actions (Arrigo, 2013). Last but not least, in the event of violations, the management must undertake timely disciplinary action. As the saying goes, justice delayed is justice denied.

Key Findings on Malaysian Stand with Destructive Nepotism

Results show that corporate governance in Malaysia is well equipped at dealing with destructive nepotism. The MCCG encourages ethical business practices and maintains the positive corporate culture that values honesty, transparency, and fairness via the actions of the BOD. Moreover, establishing the Code of Conduct and Ethics as the guide in companies sends a clear message that Malaysia does not tolerate any acts of destructive nepotism within corporations.

IV. CONCLUSION

Nepotism is a normal practice but destructive nepotism is harmful to organizational bodies. That is why companies require the power to prevent it and the Malaysian Code on Corporate Governance is a beneficial guide for Malaysian offices to deal with this issue. Hence, Malaysian corporate governance possesses the unique capabilities to control the acts of destructive nepotism within companies by upholding reliable principles.

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3

ATTRIBUTES OF HOMEBUYER'S TRIBUNAL IN MALAYSIA AND WAYS TO ENHANCE ITS EFFICACY

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Abstract

In today's modern society, many types of houses have been built by housing developers all around Malaysia yet there exists a common problem among the homebuyers. Regardless of the type of houses built by housing developers, the defects to the houses will always be there. Following that, the Tribunal for Homebuyer Claims is established to protect the home buyer's rights against housing developers. This research aims to identify the advantages and the disadvantages of the Tribunal. Ways to overcome the disadvantages laid down will also be discussed in this paper. To accomplish this research, the authors will rely on primary sources such as legal provisions, case laws and comparative study as well as secondary sources. The findings of this study show that the advantages of the Tribunal for Homebuyer Claims include expeditious and inexpensive proceedings, availability of dispute resolution via negotiation, and special extension of jurisdiction to hear and determine claims valued at RM50,000 and above. Whereas, the disadvantages consist of poor enforcement of awards granted, lack of accessibility to rural homebuyers, the decisions of the Tribunal are subject to judicial review, as well as unequal position between parties involving corporate representatives with legal knowledge against laymen in negotiation. In short, the authors are of the opinion that its disadvantages have outweighed its advantages. Hence, it is hoped that this paper will be able to help homebuyers to evaluate the worthiness in bringing a claim in the Tribunal as well as to provide a review to relevant authority on the Tribunal's efficacy in protecting homebuyers.

Keywords: homebuyers, Tribunal for Homebuyer Claims, advantages, disadvantages, suggestions

I. INTRODUCTION

Tribunal for Homebuyer Claims was established on 1 December 2002 under Section 16B of the Housing Development (Control and Licensing) Act 1966 ("HDA 1966") by the Malaysian Government to aid homebuyers in initiating affordable claims against housing developers. A "homebuyer" is a purchaser and includes a second-hand buyer of the housing accommodation. "Housing accommodation" refers to buildings, tenements and dwelling houses which are constructed or intended for humans to live in. Both are legal meanings derived under the HDA 1966 where the former is provided in Section 16A while the latter is found under Section 3.

There are a few factors that interested homebuyers should consider and fulfil before they bring the dispute to this Tribunal. Firstly, they must be a homebuyer to file a claim. The homebuyer must have entered into a sale and purchase agreement (SPA) between the homebuyer and a licensed housing developer. Second, by virtue of Section 16N(1) of HDA

1966, the Tribunal will most likely entertain all claims filed by the homebuyers except those related to recovery of land or interest in land; entitlement of an individual under a will, settlement or intestacy; goodwill; chose in action; and intellectual property right. Third, the homebuyer must bring the claim to the Tribunal within 12 months computed from either the date on which certificate of completion and compliance of the property is issued; the expiry date of the defects liability period as set out in the SPA, or the termination date of the SPA before the certificate of completion and compliance of the property is issued, as provided under Section 16N (2) of HDA 1966.

II. METHODOLOGY

This research employs qualitative research that adopts primary and secondary sources, applying legal research methodology extracted from legislations, case laws and comparative approach.

III. RESULTS/FINDINGS

Based on the research findings, the first advantage of the Tribunal for Homebuyer Claims concerns the swiftness of the Tribunal's proceedings. Under Section 16Y(1) of HDA 1966, the Tribunal will need to speedily and practically make an award 60 days after the first hearing in the Tribunal. By comparison, civil courts normally spend at least 6 months in arriving at the grant of remedies.[1] It is therefore evident that the Tribunal is relatively efficient in handling cases alike to those dealt by civil courts.

The second advantage is that the proceedings in the Tribunal are inexpensive.[2] This is inferred from Section 16U (2) of HDA 1966 where generally, both parties to a hearing are prohibited from being represented by a lawyer. This indicates that the parties could save up a huge amount of money for other expenses. Besides, in relation to the first advantage, by virtue of Section 16Y (1) of HDA 1966, since awards in the Tribunal are to be made speedily, this helps to reduce both parties' financial burden by minimizing their budget for legal fees when they are being represented by attorneys during the hearing in the Tribunal.

The third advantage is that where it is appropriate for the issue(s) to be resolved without going through arbitration in the Tribunal, the Tribunal is responsible to assist both of the parties to negotiate an agreed settlement in relation to the claim, as provided under Section 16T(1) of HDA 1966. In short, a negotiation for settlement serves as an advantage because it maximizes public interest where both parties may arrive at a win-win situation as opposed to the hearing in the Tribunal where there will surely be a winning party and a losing party.

The fourth advantage is that the Tribunal may also hear and determine claims of which value of subject-matter therein exceeds RM50,000 if the parties to the proceeding have previously agreed in writing to confer upon the Tribunal such jurisdiction, by virtue of Section 16O (1) of HDA 1966. Furthermore, Section 16P of HDA 1966 denotes that if the amount of a claim exceeds RM50,000 yet the claimant is willing to neglect the amount

[1] Denise Lim and Clinton Tan Kian Seng, 'What You Need To Know About Homebuyer's Tribunal' *(Thomas Philip Advocates and Solicitors, 13 February 2019)* <www.thomasphilip.com.my/articles/what-you-need-to-know-about-homebuyerrs-tribunal/> accessed 9 October 2021.
[2] *Ibid*

exceeded in order to bring housing developers to the Tribunal, the Tribunal shall also have the jurisdiction to hear and determine such claims.

On the other hand, the first disadvantage is the enforcement of the awards of the Tribunal. If a party refuses or neglects in complying with the awards granted by the Tribunal, the winning party has to file an execution order through the ordinary courts, complicating the process. This step makes the ease of the Tribunal redundant as it slows down the efficiency.[3]

Another issue which shackles the Tribunal is the non-accessibility of the court in rural areas as there is only one Tribunal that is established throughout the nation by virtue of Section 16(B) of HDA 1966. Homebuyers from rural areas who decide to use the Tribunal will also have to make a trip to a major city. This conflicts with the idea of the Tribunal being accessible to all.

One of the disadvantages uncovered in this research is that the award given by the Tribunal is subject to judicial review. This is carried out by the superior courts where they exercise their supervisory jurisdiction to scrutinize the decisions of public bodies. As the Tribunal is established under the Section 16B of HDA 1966, this public body is subjected to the High Court's power to review decisions made by the Tribunal. As affirmed recently by the High Court of Penang in *BHL Waterfront Sdn Bhd v Tribunal Tuntutan Pembeli Rumah Pulau Pinang & Anor*[4] where the High Courts are vested with the power to review the decisions made by the Tribunal of Homebuyer Claims on several grounds, including procedural impropriety, illegality, irrationality, and proportionality.

The last disadvantage identified is that, based on Section 16U(3)(a) of HDA 1966, the negotiation process that will be held prior to the Tribunal proceeding allows the housing developers to be represented by their employees, who might possess legal knowledge. This will place the homebuyers at a disadvantageous position as they might not have the relevant knowledge about the negotiation.

IV. CONCLUSION

In conclusion, the Tribunal for Homebuyer Claims has some benefits for the homebuyers. However, it also has certain disadvantages that demand a change in order to offer more comprehensive protection to consumers. In relation to the issue of the enforcement of awards, the authors would suggest that the Tribunal be vested with the power to enforce the award that has been granted as practised by the India Consumer Disputes Redressal Agencies. In relation to the issue of accessibility towards the Tribunal, there should be more Tribunals of a similar nature to be established in the State and District levels as practised in India. Besides, the authors suggest that the use of technologies and modern innovations to conduct the Tribunal on virtual platforms like Google Meet or Zoom, similar to what has been transitioned for court hearings in Malaysia during the Covid-19 pandemic. In relation to the issue of judicial review, a change to the current situation can be made by offering legal aid and financial support to homebuyers. Moreover, the courts should also exercise their discretionary power carefully while granting certiorari to quash the decision of the Tribunal. In relation to the issue of representation by legal

[3]Ariff Shah R.K., 'Homebuyers still at a disadvantage' *(New Straits Times, 6 April 2021)* <www.nst.com.my/opinion/letters/2021/04/679932/homebuyers-still-disadvantage> accessed 11 October 2021.

[4][2021] 1 LNS 582.

personnel during the negotiation process, it should be addressed by the HDA 1966 by amending its provisions to prevent the representation of an employee with legal knowledge.

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Housing Development (Control and Licensing) Act 1966

4

CEO DUALITY AS A CORPORATE PRACTICE: FOR BETTER OR FOR WORSE

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Abstract

CEO duality is the practice of the Chief Executive Officer (CEO) who also holds the position of Chairman of the Board of Directors. A debatable issue nowadays is whether CEO duality is better for corporations. Intended outcome 1.0, Practice 1.3 of MCCG provided that the Chairman of Board and CEO are to be held by different persons. This paper aims to determine whether CEO duality is better or worse for a corporation. To study the CEO duality's impact on corporate performance, desk-bound research was done. Previous research was gathered and analysed to derive a more comprehensive knowledge on this topic. The authors examine articles which opted and rejected the CEO duality and their reasons for doing so. The results showed there are three approaches of practising CEO duality: the practice of it brings negative impact towards the corporate performance, the practice of it brings positive impact towards corporate performance, and the practice of it brings no effect to the corporate performance. There is also a finding of new directions in CEO duality research. These results showed that there is no right or wrong Board structure, instead the impact of practising CEO duality varies according to companies' circumstances. Companies shall decide themselves on whether to practise it by taking into account their own circumstances and concerns. This paper outlines CEO duality's impact on corporate performance.

Keywords— CEO duality, relationships, corporate performance

I. INTRODUCTION

Chief Executive Officer (CEO) refers to one who carries out day-to-day management of the company. Chairman of the Board of Directors (BOD) is the one in charge of ensuring the effective functioning of the BOD including the collective oversight of management. CEO duality refers to the practice of the same person holding positions of both the Chairman of BOD and the CEO. The CEO duality as a corporate practice and its impact on corporate performance has been extensively debated. Malaysian Code on Corporate Governance (MCCG) urges companies to avoid CEO duality that will lead to excessive power concentration. The study will discuss the CEO duality's impact on corporate performance and new direction for CEO duality research.

II. METHODOLOGY

This study was done through desk-bound research. In Malaysia, the MCCG's urge on CEO duality is but a mere guideline. Looking into other countries' legislation, the only relevant law will be the Sarbanes-Oxley Act 2002 (SOX 2002) from the United States. However, it is also not a really relevant law as it merely covers the corporate governance reforms but does not really address the issue of CEO duality. To examine whether Intended outcome 1.0, Practice 1.3 of MCCG is a suitable guideline for corporations, the authors collected a list of past research and analyzed them to find out whether CEO duality

correlates with corporate performance, whether the theories used by previous researchers to generate the hypothesis are sufficient to provide a more complete understanding of the knowledge on this topic and is there any new direction for future CEO duality research.

III. RESULTS/FINDINGS

CEO Duality Negatively-related to the Corporate Performance: Agency Theory

Shareholders and governance experts frequently pressurise companies to divide their leadership structure by emphasizing that CEO duality will eventually result in ineffective management (Larcker & Tayan, 2016). This is in line with the agency theory which emphasizes that the denial of CEO duality will avoid managerial entrenchment (Finkelstein & D'Aveni, 1994). Under the agency theory, the managers (CEO) who acts as an agent for the principals, namely the shareholders, may pursue their own interest rather than the shareholders' interest. CEO duality enables the person who retains both positions to choose the directors who are in favour of him, thus leading to no solid checks and balances mechanism (McGrath, 2009). Besides, the agency theory presumes that CEO duality is likely to cause abuse of power because the CEO will be very powerful as there is no effective check and balance that could control him (Ramdani & Witteloostuijn, 2010). Dalton and Kesner (1987) hypotheses that when the CEO is also the Chairman, the Board may have a certain level of tolerance towards managerial abuse. Mallette and Hogler (1995) discover that the representation of independent directors is ineffective when the CEO duality is practised, because the independent directors' interests tend to be aligned with managers rather than with shareholders due to some governance issues.

In Malaysia, CEO duality causes the Board's monitoring over the management to be ineffective, consequently leading to poor corporate performance (Rahman & Haniffa, 2005).

CEO Duality Positively-related to the Corporate Performance: Stewardship Theory

The findings showed that the most common rationale for practising CEO duality is "Unified leadership" (Goergen et al., 2018). This is in line with the stewardship theory which assumes that the CEO is not an opportunist who shirks the responsibility (Donaldson & Davis, 1991), but someone who is motivated for his or her job and insists to be a good steward for the company (Ramdani & Witteloostuijn, 2010). Under the assumption that the CEO will ultimately uphold the companies' interest, the stewardship theory argues that CEO duality brings positive impact to corporate performance (Finkelstein & D'Aveni, 1994). McGrath (2009) found that duality fosters unity between the company's managers and the Board which enables efficient and effective corporate management. CEO duality ensures an unambiguous leadership and a clear sense of direction that will advance corporate performance, because it prevents confusion from having two spokespersons (Lam & Lee, 2008). Researchers found out that CEO duality may foster top management's unity and prevent the relevant risk faced by the companies, e.g., top management team dissolution (Ballinger & Marcel, 2010). S&P 1500 firms illustrated that CEO non-duality has negative effects following strong performance, and operates in line with stewardship theory (Krause et al., 2013). Mallette and Fowler (1992) hypothesizes that a CEO who is also the Chairman is more willing to adopt antitakeover measures to secure their position from a hostile takeover. Besides, a CEO is less likely to risk his career by acting against the shareholder's interest as they would like to promote his job satisfaction and reputation (Lam & Lee, 2008). Krause et al. (2013) state that a CEO who retains dual roles will take strategies to avoid his exposure to risk.

The investors reacted positively to CEO duality; negative reaction was only found towards the consolidation of all three positions, i.e., CEO, Chairman and President (Davidson et al., 2001).

No Linkage Between CEO Duality and Corporate Performance

Balinga et al. (1996) found that although CEO duality may increase the possibility of managerial abuse, it is unlikely to result in tangible manifestations of that abuse. Therefore, the authors suggest that the determinants of a corporate performance are more complex. Instead of merely being affected by CEO duality, duality is less significant towards corporate performance. Ramdani and Witteloostuijn (2010) found out that CEO duality's impact towards corporate performance is affected by the initial corporate performance, some of them may even render CEO duality insignificance towards a corporate performance. The authors also suggest that the attitudes of the independent directors are also essential in determining the impact of CEO duality upon corporate performance. Other factors such as mediating roles of capital structure and market competition were discussed by Mubeen et al. (2020).

Dalton et al. (1998) meta-analyzed correlation between CEO duality and corporate performance. The findings showed that the duality–performance correlation was slightly negative when accounting-based performance measures were taken; and slightly positive when market-based measures were taken. Each correlation was not obvious enough to be meaningful, resulting in no convincing and conclusive support for either the agency theory or stewardship theory prediction about performance implications. Although Dalton et al. (1998) work is an excellent example to show that CEO duality has no meaningful impact upon corporate performance, it shall be carefully referred as such work did not extend into the twenty-first century.

Abdullah (2004) found that there is no significant relation between CEO duality and Malaysia corporate performance. Although CEO duality may have no direct linkage to corporate performance, the separation model will promote independence, transparency and balance of power to the whole corporate governance of the company (Palanissamy, 2015).

New Directions in Future Research

Mubeen et al. (2020) concluded that all researchers who tried to explore the direct association between CEO duality and corporate performance are imprecise and incomplete. This study proves that no theory could comprehensively explain CEO duality's impact on corporate performance. Every theoretical perspective showed the effect of CEO duality in different views and making contributions to the governance debates.

Despite CEO duality, there are also many manipulated variables such as board composition, cross-directorship, and audit committee that would also affect corporate performance (Rahman & Haniffa, 2005). These variables needed to be excluded to achieve an accurate result. Krause et al. (2013) suggest that the researchers shall immerse themselves in activity of the Board and conduct in-depth interviews with executives and chairmen. Then they may discover that the lack of evidence for a duality–performance relationship was greater associated with an incorrect specification of the Board leadership construct, instead of the validity of either agency theory or stewardship theory. Besides, past research is only limited to the analysis of covariates of CEO duality choices. They instead reason that a corporate opting or rejecting for CEO duality is essential (Goergen et al., 2018).

Moreover, the applicability of agency theory and stewardship theory has begun to wane as majority research was done based on them. Krause et al. (2013) suggest that institutional theory holds the most promise although it receives little empirical attention so far. Institutional theory assumes that researchers' researches were to disclose whether boards are choosing for CEO duality out of a genuine interest in board independence, or to achieve a greater legitimacy in the financial community.

IV. CONCLUSION

The results in current studies showed that the practice of CEO duality and its impact is situation-dependent, therefore corporations shall have freedom to adopt the Board structure they deem to be strategically beneficial for them. Results found seem to contradict with MCCG's position that separation of position could prevent an abuse of power and promote a more effective corporation's management. Nevertheless, previous researches are far insufficient to serve as reliable references to the issues of CEO duality as they relied solely on agency theory and stewardship theory in generating their hypothesis, which both theories reflect somewhat extreme and simplistic views of human nature that will lead to limitation of the results found. New directions shall be employed in doing CEO duality research to avoid the arrival to a rigid approach.

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5

CITIZENSHIP IN MALAYSIA: A FORM OF GENDER DISCRIMINATION

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Abstract

Malaysia's ratification of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995 was hailed as a stepping stone for women's rights in Malaysia. Thus, the word 'gender' was inserted into Article 8(2) of the Federal Constitution, which advocates equality and prohibits discrimination. Despite this adoption of 'gender' as a criterion for non-discrimination, Malaysia has still not amended constitutional provisions on citizenship that discriminate on the basis of gender within the Federal Constitution. Therefore, the objective of this paper is to examine in detail two discriminatory citizenship provisions under both the Federal Constitution as well as Malaysia's obligations to uphold gender equality under international law. The impact of these unfair provisions on families, especially children who are at risk of being stateless as a result of these laws will also be discussed. The last part of this paper tackles the issue of reforms and recommendations to solve the issue of citizenship as a form of gender discrimination in Malaysia.

Keywords— Gender discrimination, CEDAW, Article 8 FC, citizenship, CRC, statelessness.

I. INTRODUCTION

The institution of citizenship in a democratic nation is based on the rule of law that all citizens must be treated equally before the law and have equal rights to bestow their citizenship on their offsprings and spouses, regardless of their gender. However, the law on citizenship in the Federal Constitution expressly discriminates by gender and runs contrary to the principle of equality laid down in Article 8. In fact, it goes against the fundamental purpose and object on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

II. METHODOLOGY

Within the Malaysian Federal Constitution, there is an internal inconsistency which leads to inequality between Malaysian men and women in the conferment of citizenship on foreign spouses. Malaysian women are denied the same right to have their non-citizen spouses registered as citizens, with their spouses having to petition for citizenship through naturalisation under Article 19(3) of the Federal Constitution instead. This impacts on discrimination in conferring citizenship on children who are born overseas. The process undergone by Malaysian mothers whose rights to confer citizenship upon their children is limited by Article 14 and Sections 1(b) and 1(c) of the Second Schedule of the Federal Constitution. Malaysian mothers who have children born overseas must undergo the long and tiresome registration process for the application of citizenship based on the status of the father.

III. RESULTS/FINDINGS

The then Deputy Minister of Home Affairs Dr. Haji Wan Junaidi Tuanku Jaafar responded to a question on the matter in the Senate in April 2015, saying that a significant percentage of the Malaysian citizenship awards granted to foreigners between 2004 and 2014 (16,702) went to non-citizen wives (Nuradzimmah Daim, 2015). Besides, in April 2010, the Malaysian government announced that Malaysian women married to foreign spouses could apply for citizenship for their children born abroad and can be submitted to Malaysian embassies or high commissions (WAO & JAG, 2018).

IV. CONCLUSION

In accordance with Malaysian obligation under CEDAW, the Malaysian legislature should advocate a more complete and clear procedure for stateless children, because of the lack of formalized coordination on government bodies. This calls for amendments to the Federal Constitution as international treaties must be incorporated into the municipal law. Besides that, Malaysia has maintained reservations to Article 2 and Article 7 of the CRC which guarantees the right of a child to acquire nationality. Thus, without constitutional amendments, there will always be doubt as to whether local courts will consistently choose to obey Malaysia's obligations as ratified under CEDAW and CRC.

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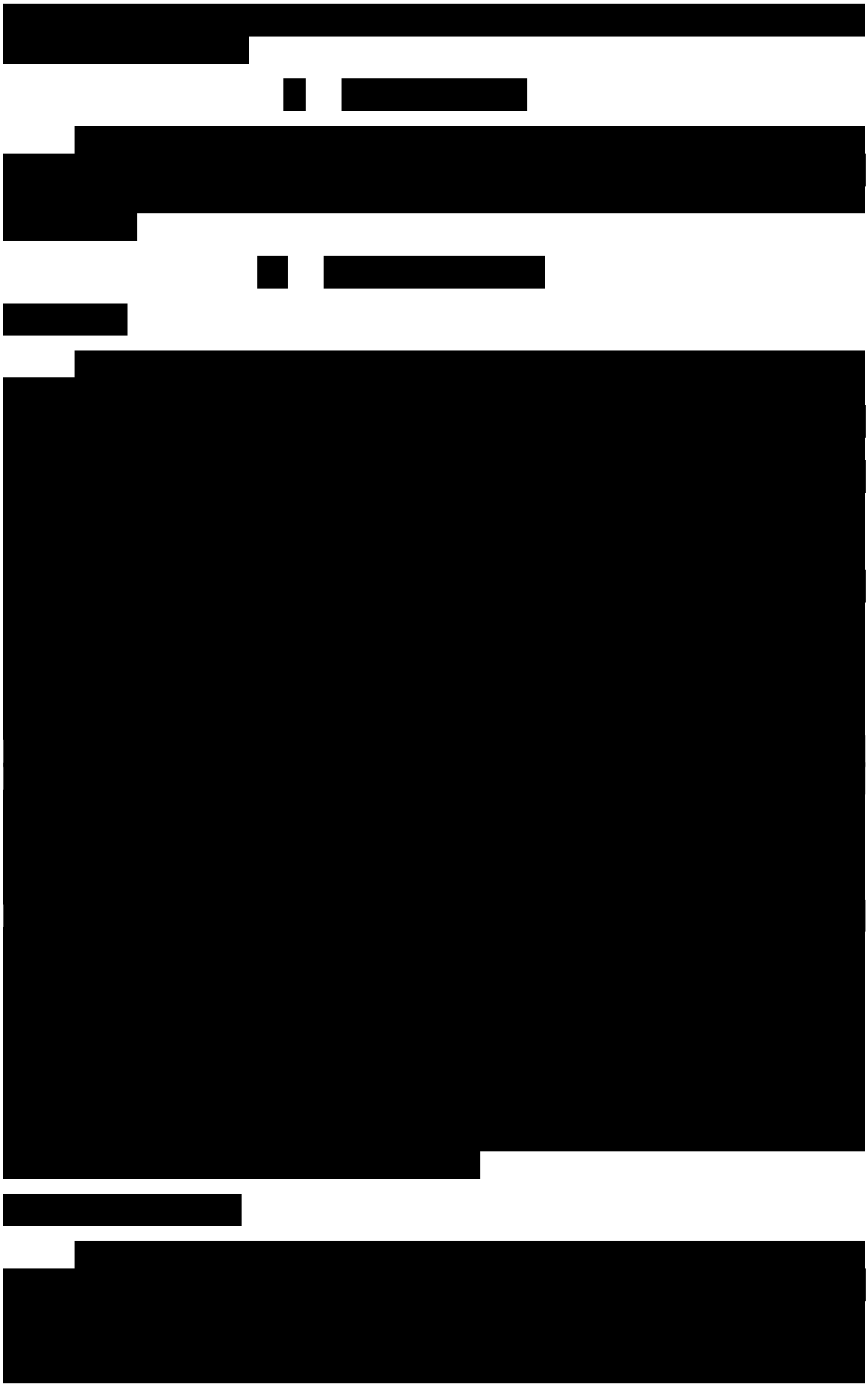
6

CONSUMER PROTECTION AGAINST UNFAIR CONTRACT TERMS: IS IT IDEAL?



7

CONSUMER PROTECTION: LEGAL CHALLENGES FOR CONSUMERS IN MALAYSIA DURING THE PANDEMIC

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Abstract

Covid-19 has enlarged the extent of these obstacles and heightened the urgency of conquering e-commerce in Malaysia. This essay addresses and analyses these challenges in light of the unexpected and essential shift for consumers to adopt e-commerce as a result of the pandemic lockdowns. Documentary research is utilised as a methodology in this study to explore the primary e-commerce challenges created by Covid-19 pandemic, which include technical issues, trust and confidence, right to information, consumer protection, quality of goods and some suggestions for the consumer on how to overcome the challenges. The paper will examine the aforementioned concerns in relation to the Malaysian Consumer Law, which is the Consumer Protection Act 1999 (CPA), identifying the reasons for each issue as well as the deficiencies in the law. This report suggests that Contracts Act 1950 and the Sale of Goods Act 1957 are obviously in need of major revamp to suit modern business practices and companies should provide websites designed to provide sufficient information on the goods sold.

Keywords — Consumer protection, e-commerce, pandemic, e-consumer, rights to information

I. INTRODUCTION

Since many governments have enforced social distancing and travel restrictions on citizens, as well as forced the closure of many commercial and retail shops, the best option to conduct business is through internet platforms, or e-commerce. E-commerce is described by the World Trade Organization (WTO) as "the manufacture, advertising, sale, and distribution of items over telecommunication networks."[5] Since the outbreak of Covid-19, many businesses have shifted to doing business online, and some are even considering adopting an internet-only company strategy until a long-term solution is discovered. Prior to the pandemic, businesses operating online could return to brick-and-mortar stores if they encountered major problems with their online platforms, such as consumer protection issues, technical issues, a lack of trust and confidence, the consumer's right to information regarding goods and quality, and so on. However, in order to thrive economically, they must now focus on solving these difficulties rather than ignoring them. Although e-commerce in Malaysia has the potential to thrive during the Covid-19 pandemic, it must

[5] World Trade Organization, 'Electronic Commerce', https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm accessed 10/10/2021.

first overcome certain severe problems, which we shall highlight on the legal challenges throughout this research. In fact, businesses should not make any deceptive, misleading, fraudulent, or unfair representations or omissions, or participate in any practice that is likely to cause such acts. Hence, adequacy of laws on consumer protection is significant in order to solve the challenges faced by consumers in this pandemic.

II. METHODOLOGY

The purpose of this study is to highlight the challenges in e-commerce for consumers in Malaysia that have been aggravated by the increased demand for e-commerce during the Covid-19 pandemic. The paper will next make some recommendations for developing the field of e-commerce and its legal framework in Malaysia. To accomplish this, the paper uses documentary research as a methodology to develop a comprehensive grasp of the challenges regarding e-commerce in the context of the pandemic.[6] We will be using public documents on the internet to do some analysis in order to obtain a clear understanding on the issues of e-commerce for consumers in Malaysia during the pandemic. This article will look at primary legal documents which are original legal texts and policy papers as well as secondary materials such as journal articles. Thus, legal doctrinal study entails analysing and understanding the law in a certain field.[7] Because of the complex nature of e-commerce, the research will also examine non-legal documents such as magazine articles on technology and social issues.

III. RESULTS/FINDINGS

Trust and Confidence

As Covid-19 has spread around the world, so have internet frauds attempting to capitalise on the problem. The implementation of personal data protection legislation is administered by a Personal Data Protection Commissioner which is appointed by a Minister from the Ministry of Information, Communication, and the Arts Malaysia under Section 47.[8] However, security and privacy have always been issues with e-commerce. Phishing, malware, and identity theft schemes have lured consumers to submit their data under false pretences, posing as representatives of health or disease control organisations such as the World Health Organization. By doing this, consumers later get scammed to pay if they do not want their information leaked. Other schemes attempt to swindle people financially, such as phoney charity scams and renowned corporate impostor frauds, such as promoting "free" Netflix memberships. At times when scams like these happen, consumers will unknowingly provide their bank information and get scammed online. Other examples include advertising hygiene goods that were never delivered or providing bogus Covid-19 testing.[9]

Aside from online transactions, other reported fraud incidents include profiteering, failing to show pricing, false representation, and deceiving consumers about the product,

[6] Frans Leeuw and Hans Schmeets, Empirical legal research: A guidance book for lawyers, legislators and regulators (Edward Elgar Publishing 2016) 3.

[7] 'Library Guides: Research Methodologies Guide: Documentary' (Instr.iastate.libguides.com, 2021) <https://instr.iastate.libguides.com/c.php?g=49332&p=318070#:~:text=Documentary%20research%20is%20often%20conducted,to%20Content%20Analysis%20research%20methodologies.> accessed 9 October 2021.

[8] Section 47 of Ministry of Information, Communication, and the Arts Malaysia

[9] 'Protecting Online Consumers During The COVID-19 Crisis' (*OECD*, 2021) <https://www.oecd.org/coronavirus/policy-responses/protecting-online-consumers-during-the-covid-19-crisis-2ce7353c/> accessed 9 October 2021.

selling counterfeit items, and pyramid scheme-type businesses. According to figures from the Domestic Trade and Consumer Affairs Ministry, online shopping frauds were widespread under the movement control order, which ran from March to June 2020. According to its Enforcement Command Centre, e-commerce scams were at the top of the list of complaints received in the federal territories of Kuala Lumpur and Putrajaya, followed by Selangor. According to the data up to June 30, 2020, internet scams were at the top of the list, with a total of 6,187 complaints in Malaysia itself.[10] Thus, it can be seen that a lot of consumers easily get scammed online by believing the words of the online retailers or imposter frauds.

Right to Information

Consumer information rights legislation requires merchants to provide customers with information before they purchase products or services. Consumers must be notified of the retailer's identity and location, the features of the products, the price or method of calculation, and any relevant delivery charges. However, online merchants that sell during the pandemic fail to include product labelling and safety warnings.[11] Products with safety features, such as children's car seats, infant carriers, and rockers, are widely available without adequate safety warnings. Some do not even fulfil the minimum safety requirements. Manufacturers must comply with the provisions of these statutes, namely the Poison Act 1952[12] and Dangerous Drugs Act 1952,[13] Control of Drugs and Cosmetic Regulation 1984,[14] in terms of product description and ingredients utilised.

Besides, the Food Act 1983 applies to food products, including infant food and products that are reportedly beneficial to children's growth and development.[15] Chemical products, such as cosmetics and food, are now widely available on the internet, with little regard for national regulations. Hence, consumers are frequently misled by fancy ads with over-promised statements and when they shop during the pandemic they do not get the labelling needed.[16] Next, most online vendors with a trademark or patent do not adhere to the Consumer Protection Regulations 2012 in terms of business name, product description, price, and payment method.[17] The Price Control Order (Indication of Price by Retailer) 1993 and the 2012 Regulation both require price tagging.[18] However, when it comes to the necessity to specify the price, vendors who use social media and mobile media frequently fail to do so. Hence, consumers lose their right to ascertaining certain information. due to sellers which are hesitant to reveal information about the goods they are selling.

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[10] Bavani Mahalingam, '6,187 Scammed By Online Sellers' (*The Star*, 2021) <https://www.thestar.com.my/metro/metro-news/2020/07/20/6187-scammed-by-online-sellers> accessed 9 October 2021.

[11] 'COVID-19 & E-Commerce: Top 10 Legal Issues For Online Retailers' (*Williamfry.com*, 2021) <https://www.williamfry.com/newsandinsights/publications-article/2020/05/15/covid-19-e-commerce-top-10-legal-issues-for-online-retailers> accessed 9 October 2021.

[12] Poison Act 1952

[13] Dangerous Drugs Act 1952,

[14] Control of Drugs and Cosmetic Regulation 1984

[15] The Food Act 1983

[16] 'E-Commerce In The Time Of COVID-19' (*OECD*, 2021) <https://www.oecd.org/coronavirus/policy-responses/e-commerce-in-the-time-of-covid-19-3a2b78e8/> accessed 9 October 2021.

[17] Consumer Protection Regulations 2012

[18] The Price Control Order (Indication of Price by Retailer) 1993

Quality of Goods

During the pandemic, consumers preferred purchasing goods from online stores rather than physical stores as online businesses offer convenience to consumers as they can just place their orders and wait for the goods to be delivered to their home. However, consumers may also face legal challenges through online shopping during the pandemic as they are not able to control the quality of goods received as the products received by consumers may be defective in nature.[19] In an e-commerce transaction, consumers are unable to see the items before purchasing them but are able to read the seller's description provided on their site. A defective product, as defined under Section 67 (4) of CPA,[20] is a product that causes damage or injury to a person as a result of a defect in the product itself. The defences available to manufacturers and suppliers under Sections 68(4) and Section 72(1)of CPA may jeopardise a consumer's rights as with the defences available, the manufacturers and supplier may avoid liability. Thus, this forms another legal challenge for consumers to raise a complaint against the manufacturer.

Furthermore, the essential doctrines of the Contracts Act 1950 and the Sales of Goods Act 1957 apply to consumer and seller rights. In order to interpret and decide whether a product is faulty under the CPA, the tribunal and the court must place a higher focus towards the product itself than the problem a reasonable customer can expect. However, customers can return the goods purchased from established e-commerce companies but not goods purchased from social or mobile media platforms. In the case of *Wee Lian Construction Sdn Bhd v Ingersoll-Jati Malaysia Sdn Bhd,*[21] it was held that the law enables a purchaser to inspect the items delivered to him and he cannot reject them until a reasonable period of time has passed. *In Universal Cable (M) Bhd V. Bakti Arena Sdn Bhd & Ors*[22] the court held that if a purchaser does not notify the seller within a reasonable time that the goods are not in accordance with the specifications, quantity, time, and price as set out in the purchase orders, the purchaser has waived its right to reject those goods.

Suggestions and Recommendations

Despite the measures and actions on consumer protection, consumer protection agencies still continue to encounter new and increased challenges as a result of the pandemic situation namely consumer protection in digital markets, with a special focus on vulnerable and disadvantaged consumers. The outdated legislation such as the Contracts Act 1950 and the Sale of Goods Act 1957 are obviously in need of major revamp to suit modern business practices. To a large extent, e-consumers have the same requirements and needs as traditional consumers. However, in many ways, e-consumers are more vulnerable as they typically cannot examine the product prior to purchasing it and may not know who they are buying from. In light of this, it could be suggested that the need for 'trust' is even greater in e-commerce than in offline trade.

[19] (2021) <https://www.researchgate.net/publication/337003147_The_impact_of_e-service_quality_and_customer_satisfaction_on_customer_behavior_in_online_shopping/fulltext/5dcd889da6fdcc7e13818aad/The-impact-of-e-service-quality-and-customer-satisfaction-on-customer-behavior-in-online-shopping.pdf> accessed 10 October 2021.

[20] Consumer Protection Act, s 67(4)

[21] [2010] 4 CLJ 203

[22] [2000] 3 CLJ 375

Overall, Malaysian law currently includes repair, replacement, refund, and compensation for products that are defective or of poor quality. If all of the remedies are available to brick-and-mortar customers, they should also be available to online customers. E-consumers must likewise be treated similarly to face-to-face customers in terms of "return and refund policies". The CPA offers remedies and solutions to e-consumers who are experiencing problems with low-quality or faulty goods. As a result, practically everyone in the chain of distribution of goods from the seller, supplier, designer, and manufacturer is required to comply with implied guarantees under the CPA. Despite the fact that the CPA was enacted to protect consumers' interests, it does not guarantee that a consumer's legal action against a distribution chain will be without difficulty. A redress system must strike a compromise between the interests of e-consumers and their expectations with the sellers' desire for transaction closure. In truth, the current CPA's scheme of guarantees is based on the New Zealand CGA 1993, which has been considered as being more consumer friendly. However, the CPA's accessibility, understandability, compliance promotion, and enforceability have yet to be established, particularly when it comes to e-consumers' claims in this matter.

IV. CONCLUSION

Malaysia consumer legislation, Consumer Protection Act 1999 has many flaws that need to be addressed, and is not keeping up with rapid technological changes. There is also a lack of technical and institutional improvements. The Covid-19 pandemic has highlighted the difficulties in e-commerce by restricting transportation and rapidly increasing dependency on online buying for necessary items. Consumer protection, technical concerns, trust and confidence, right to information, and quality of goods are all challenges to e-commerce. As more individuals utilise the Internet, these challenges grow more pronounced. Experts throughout the world feel that e-commerce is the way of the future, thus Malaysia should work to address the issues listed above so that businesses may thrive and deliver during times when people are compelled to stay indoors, as during the current Covid-19 pandemic. Therefore, e-commerce sees the need to include consumer protection into the law because there is no genuine equality in the bargaining strength of the contracting parties.

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8

CONSUMER PROTECTION: LEGAL CHALLENGES FOR CONSUMERS IN MALAYSIA DURING THE PANDEMIC

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Abstract

Due to the outbreak of Covid-19 pandemic in Malaysia, online shopping has become the main platform for consumers to purchase their daily essential goods. The objective of this study is to outline the relevant issues or challenges that are faced by consumers during their purchases online. The three main points that we are going to discuss in this paper are misleading information provided by the online sellers, the safety of data and the delivery issue that is faced by consumers.

Keywords—COVID-19, misleading information, safety of data, delivery, e-consumers

I. INTRODUCTION

The COVID-19 threat has accelerated the expansion of e-commerce to new businesses, consumers, and product variations. This allows consumers to have easy access to a diverse range of goods and services while also protecting themselves from the virus. Business companies, on the other hand, are able to continue operating their businesses despite contact restrictions and other limitations. However, e-commerce might bring problems to consumers, such as misleading information, safety of data, and delivery issues.

II. METHODOLOGY

This paper uses the qualitative research method to obtain the information relating to the topic "Problems faced by e-consumers in Malaysia during the pandemic". The information used to complete this paper was taken from online sources such as online journal, online article, online newspaper and so on. The discussion of this paper also referred to the statutory provision such as Consumer Protection Act 1999 as authority in order to provide a strong argument to support the points raised. Besides, relevant points that are related to the topic and some recommendations to solve the problems are also raised in this paper.

III. RESULTS/FINDINGS

With the growth of e-commerce during the pandemic, there are many legal challenges faced by consumers. One of the challenges is the increasing cases of false and misleading information online. It includes the security on authentication where it is difficult for e-consumer to ascertain whether the product is genuine. For example, there were some online sellers offering hand sanitizers, or face masks that are fake or unsafe for sale. Some sellers would state that the face masks that they are selling are three-ply surgical masks but in reality the quality of the mask did not reach the standard given by the Health Ministry to protect against the coronavirus. For the issue of misleading discounts, even though Section

12 of Consumer Protection Act 1999 prohibits misleading discounts where it states that it is an offence to mislead a consumer as to the price of the goods available, there are still numerous products advertised as having promotion but in fact the seller had marked up the original price of the product before the promotion to exaggerate the discounts offered.

In addition, another challenge faced is safety of data. Although the Personal Data Protection Department (PDPD) of Malaysia has checked the processing of personal data of individuals when commercial transactions are carried out safely by the user, however, there are still problems such as the leakage of data and personal information during the online transaction. Further problems include that of fraud and cyber security. According to reported news, the number of cases of fraud has increased by 66% in 2020 during the pandemic. It often begins with bogus websites, mobile apps or social media advertisements, mimicking trusted retailers and a URL. There are also sellers who do not send the goods to the consumers after receiving the payment.

Consumers have also been deeply affected by courier services during the pandemic. Courier service falls within the ambit of Consumers Protection Act 1999. However, in regards to delay in goods delivery on online platforms, there are no proper channels to report against late deliveries. There are many cases where the courier company avoids liability for the delay of goods by claiming that there is no contractual relationship between the buyer and the courier company. For the situations where there is a stolen or damaged parcel in the process of shipping, most of the protection plan offered by the courier company normally takes up a lengthy process for internal investigation until successfully resolved.

There are a few suggestions given where consumers may file a complaint to the shopping platform or National Consumer Complaints Centre that helps the consumers to solve problems faced by them. Besides, consumers have to be extra careful and not to click on an anonymous link or insert personal information to the seller when making a purchase online. Consumers can also seek help from the customer service when they face any problems in relation to the products' delivery.

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9

CORPORATE GOVERNANCE IN FAMILY BUSINESS IN THE PERSPECTIVE OF BOARD OF DIRECTORS

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Abstract

This paper will first examine the lack of independence of board of directors in family business, and will then provide solutions on the stated issue. This study is conducted through the library-based research method, where we identify issues and search for the solutions by thoroughly perusing online journal articles and cases. The findings of our study are establishing a family council to separate family affairs with business, bringing in experienced independent directors into family business, carefully recruiting members to be in board of directors, and enforcement of shareholders' agreement in family business to specify the scope of the interest of the family members. In conclusion, there is a difference in corporate governance between the family business and other conventional businesses. These solutions should be implemented in order to have effective corporate governance within a family business. Hence, there must be a different regulatory framework to regulate the corporate governance of such family businesses due to its difference in nature.

Keywords—corporate governance, family business, board of directors, independence, solution

I. INTRODUCTION

Family business is a business where it involves family members on the management of the company. The family members would have the control and ownership of the company, for example they are the shareholders of the company. In this modern era, family businesses are concerned about the independent directors, where it is discovered that there is a lack of independence of board of directors in their companies.

II. METHODOLOGY

The library-based research method is used to gather information from online articles, and case studies. The solutions mentioned in this paper are found from these various articles and reproduced in a descriptive manner.

III. RESULTS/FINDINGS

Establishing a family council to separate family affairs from business matters is the first solution. Family council is a forum that the family can use to handle family matters, but it may be necessary in relation to the family business. The solution to this said issue can be found in Boyden's case study ("U.S. Edition: The Role of Governance in Family Business Leadership Succession", 2021) which shows us that while their family business was facing a dilemma, they established a family council. And the family council had advised them to identify independent directors as they would ensure objective leadership.

Next solution is appointing experienced independent directors into the family business to overcome the lack of independent directors in the family business. Independent directors should come from a diverse spectrum of professional backgrounds with experience in the company's operations. During the selection process for new directors, the nominating committee should take into account key personal attributes, such as experience. In a report that two-thirds of the enterprises in Malaysia's East Asian region are family-owned, implying that family owners have a significant influence on board member selection as per Claessens ("Corporate Governance In Family Run Business – A Malaysian Case Study", 2009) opinion.

The way to overcome such challenges is by carefully recruiting members to be in the board of directors. Directors should be recruited through a thoughtful manner and should they have no desire nor any power to 'take over' the business. The members of a board of directors should be selected by their knowledge and experience that will bring a benefit to the business as a whole. When selecting an outsider to be a member of the board of directors, business owners must first clarify with all shareholders and get their input on what they wish to achieve by getting independent directors ("Planning Guide for Transforming Family Business Boards", 2021). Another way to ensure a smooth recruiting process is by establishing a small committee of around three or four people that will be responsible for managing the recruitment process in the form of a nominating committee. Besides, in-person interviews must be conducted to determine the most suitable candidate for the role.

It is important to have a shareholders' agreement in family business. It is a document where it helps to solve conflicts among the shareholders. For instance, in the agreement, it would state the provisions about the composition of the board of directors, provisions about the independent directors, etc. Furthermore, this agreement would come in to make the decision by adopting the resolutions provided when an argument exists. Another example is that, when comes to the voting rights, the provisions stated in the agreement could make effect on it, for example, the voting percentage has to be above 50% in deciding a statement or a discussion ("Shareholder agreements in family companies | Deloitte Ireland | Deloitte private", n.d.). Provisions on general assembly meetings are compulsory. Furthermore, regarding the corporate governance, representation of the company should also be included in the shareholders' agreement. For instance, the limitation of powers by the family directors and the rights of the independent directors.

IV. CONCLUSION

These are the viable solutions which can be used to improve the corporate governance of a family business. To give effect to such improvements, it is advised to implement these features into the legal regulatory framework of company law to enforce these features in a mandatory manner.

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10

CRIMINALISING MARITAL RAPE IN MALAYSIA

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Abstract

While women's rights have had significant progress in the last century, it is evident that Malaysian laws are still plagued by the olden perception that wives are the property of their husbands. The exception under Section 375 of the Penal Code has explicitly exempted husbands from the conviction of rape in Malaysia and the introduction of Section 375A has been criticized to be ineffective in safeguarding the integrity of married women. This assignment aims to firstly identify the shortcomings of marital rape laws and their development in Malaysia and to secondly, propose solutions and improvements to our marital rape laws. The methodology applied in this assignment is doctrinal research, which mostly relies on the studies of statutes and case laws. Overall, this assignment highlights the gaps between the universal standards of gender equality as laid down in the UN Convention on the Elimination of All Forms of Discrimination Against Women and the current status quo in Malaysian laws.

Keywords: rape, marital rape, Australian marital rape law, Penal Code, domestic violence.

I. INTRODUCTION

Domestic violence has always been a pertinently deep-rooted issue in Malaysia, where it has increasingly gotten worse particularly in the recent time of pandemic that does not seem to come to an end. Marital rape is perceived as intimate partner rape and is defined as any non-consensual sexual acts that are directed to the victim by their married partner (US Legal, n.d). The term "marital rape" is also well recognized under Article 2(a) of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), where it is classified as a category of violence that occurs in a family.

In the Malaysian context, marital rape was never considered a crime as it was never recognized or acknowledged in any local legislation. Many may appear to have strived for veritable change when it comes to rape yet being oblivious to the entirety of the term "marital rape". This is unequivocally reflected when the majority of the people are seemingly unaware of the vast discrepancies between the charges of rape by a stranger and a perpetrator husband, therefore concluding that marital rape is far less severe than ordinary rape, if not that it was not rape at all. Despite the fact that the Malaysian government is a signatory to the CEDAW, they have yet to ratify the criminalization of marital rape as reckoned by the Convention (Augustin, 2018). The government has been very reluctant and obtuse to push for laws to be codified till today.

Marital Rape Under Section 375 And 375a of Malaysian Penal Code ("PC")

It is pertinent to note that the Malaysian PC provides a clearer legal definition for rape under Section 375 of PC, which states that a man is said to have committed "rape" when

he has sexual intercourse against the woman's will or without her consent. However, the PC explicitly exempts a husband from being convicted of rape for having sexual intercourse with his lawful wife during the subsistence of a valid marriage. To further elaborate, a certain degree of comprehensiveness was observed in Section 375 of PC. By virtue of Explanation 1 of Section 375 of PC, this provision shall only be applicable in the special circumstance, where the husband committed the act of rape during the course of decree nisi or judicial separation granted by the court. Besides, an injunction order that prevents the husband from having sexual intercourse may also give rise to the availability of Section 375 of PC, to press charges against the husband. Therefore, it is clear that rape could only stand in the non-marital context in Malaysia. Such a situation subsequently created an issue, where lawful wives are deprived of their rights to rely on Section 375 PC, to hold their husband accountable for having to perform sexual intercourse without their consent or free will.

The term "marital rape" is absent within the framework of Malaysia's legislation. Thus, Section 375A of PC was introduced in 2007, through the Penal Code (Amendment) Act 2007. The purpose is mainly to provide a remedy to the deficient Section 375, in which married women's rights were grievously negated. It is clear that this provision addresses acts of husband causing hurt, intimidation and threats in order to have sexual intercourse with his lawful wife. However, Section 375A was rarely referred to and cited in casespite the fact that the Malaysian government is a signatory to the CEDAW, they have yet to ratify the criminalization of marital rape as reckoned by the Convention (Augustin, 2018) es relating to rape, since its inception, with the case of *PP v Mahathir Abu Bakar* [2016] 10 CLJ 567 being the only exception. The defendant, in this case, was charged under Section 375A for causing hurt to his lawful wife in order to have sexual intercourse. The court sentenced the defendant to a year of imprisonment, by virtue of Section 375A. Hence, it can be judged from the limited case laws available, marital rape in Malaysia is not well-apprehended, thus resulting in a surge of reported forced sex in domestic violence. The women in Malaysia tend to shy away when faced with marital rape due to the fact that the Malaysian Laws are not sufficient to provide them with confidence, so as to encourage them to sound out their displeases.

The Flaws of Section 375a In Protecting Married Women

Section 375A of PC was enacted to provide remedy for the inadequacy of Section 375 of PC (Balasingam & Sabaruddin, 2015), however, there seem to be some flaws in protecting the rights of married women. This is because Section 375A of PC fails to take into consideration the following matters: -

1. The possibility that rape could occur without the presence of imminent threats of injury or death. It is principally remote to only think that rape only occurs through the commission of violence by a husband perpetrator on his wife. The issue of consent to sexual intercourse should be better comprehended to better protect the rights of married women.

2. The issue of consent is nowhere to be found in section 375A. The issue of consensual intercourse is only brought to attention, according to section 375(b) of PC, which only protects women in the non-marital context. The absence of consideration for consent in Section 375A fails to delegitimize sexual intercourse done without lawful consent.

3. The absence of a minimum term for imprisonment. The said section only provides a vaguely constructed law, which states that imprisonment may extend to five

years upon conviction. No minimum level of punishment was explicitly written down, which poses possibilities whereby perpetrators may only be punished lightly or get away with minimal punishments. Such uncertainty may not become an effective deterrence for marital rape. The punishment for Section 375A should mirror the punishments under Section 376, which imposes a more serious offense and punishments upon conviction for rape.

To conclude, it is evidently clear that marital rape in Malaysia is deemed to be a crime of lesser offense, as compared to rape. The absence of consent and insufficient punishment under Section 375A has made it very clear that women's rights in Malaysia are not well-developed and reasonable protection is not sufficiently rendered.

II. RESULTS/FINDINGS

Marital rape can be considered a distinctive crime as the victim and perpetrator are within a solemnised marriage. Due to the flaws, we strongly suggest the following: -

a) Complete removal of the Exception of Section 375 of PC which provides that a man shall not be considered as raping her wife during sexual intercourse should the marriage be valid under any written law in Malaysia.

b) There should be no bias in terms of evidence against the victim.

c) All rape laws should be gender-neutral where it is applicable to both males and females.

d) The incorporation of restorative justice into the Malaysian criminal justice system.

Even if restorative justice does not work for the parties, the victim may still resort to lodging a police report regarding the matter and seek compensation under Section 10 of Domestic Violence Act 1994. The current efforts of the Malaysian government are still insufficient in dealing with marital rape. Marital rape is in dire need of a legal solution but if Malaysian law ignores and treats it indifferently, so would society. Article 5(a) of CEDAW urges the Government of Malaysia to modify the socio-cultural patterns of conduct of men and women, with the purpose of eliminating prejudices, customs and practices. We are of the opinion that social norms would change in a significant and rapid manner following the four suggestions we have proposed. Ultimately, organic change can only happen when the legislature is willing to take action.

III. CONCLUSION

All in all, marital rape is a category of domestic violence in itself, where methods are exerted to coercively influence one's emotions, body and mind while disallowing them to live a dignified life. Hence, women are often being placed in a very awkward situation. They are silenced by the dilemma between having to preserve the marriage from collapsing or taking actual steps to come forward, though knowing that the present law could never be of much help. Hence, the criminalization of marital rape needs to be implemented and enforced desperately.

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11

CRYPTOCURRENCY IN MALAYSIA: REGULATORY FRAMEWORK & FUTURE DEVELOPMENT

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Abstract

Due to the vast globalization and digitalization, cryptocurrencies such as Bitcoin, Dogecoin, Ethereum, and many others were introduced to provide an alternative payment method. Cryptocurrencies have been acknowledged by some states such as El Salvador as an alternative currency through the acceptance of their usage. However, the blockchain system applied in cryptocurrency exchange has gained much attention from various sectors where the issuance of cryptocurrencies is governed by private entities and this simply means that it is beyond the control of state authority. Therefore, this paper aims to explore the legal status of cryptocurrency in Malaysia and its lacunae in tax policies. This paper employs qualitative research that adopts normative legal research methodology based on statutory, conceptual, and comparative approaches at the same time analysing other reputable secondary sources such as experts' opinions as well as the governing policies in Australia and Singapore to complement the output. The result of the research is expected to provide an overview of the regulatory framework for cryptocurrency and its weaknesses in regulating tax policies. The research concludes by proposing relevant practical amendments to Malaysia's tax law so as not to rigidify the future amelioration of cryptocurrency in our country.

Keywords: Cryptocurrency, blockchain system, legal status, tax policy, practical amendment

I. INTRODUCTION

Due to the vast globalization and digitalization, cryptocurrencies such as Bitcoin, Dogecoin, Ethereum, and many others were introduced to provide an alternative payment method. Generally, cryptocurrency can be described as an electronic cash which allows online payments to be sent directly from one party to another without going through a financial institution or public-governed entity. Although it has been recognized as legal tender in certain countries such as El Salvador, Malaysia has yet to give the similar recognition due to the lack of sophisticated legal framework.

II. METHODOLOGY

This paper seeks to provide an overview on the current regulatory framework for cryptocurrency in Malaysia and explore the possible legal reforms especially in terms of tax legislations to govern the income generated from the cryptocurrency. This paper employs a doctrinal legal research based on local statutory law and case precedent at the same time analysed the governing tax policies in Australia and Singapore to complement the output.

III. RESULTS

In Malaysia, the closest statutory interpretation of 'cryptocurrency' can only be referred to as 'electronic money' as provided under Section 2(1) of the Financial Services Act 2013 ("FSA 2013"). Although certain characteristics of electronic money are also acquired by cryptocurrency, it is noteworthy that cryptocurrency is in contrast with electronic money as the latter one can be acknowledged as an electronic legal tender where it is subjected to the regulatory controls of the Bank Negara Malaysia ("BNM") whereas cryptocurrency appears otherwise. The non-recognition of cryptocurrency as a form of legal tender is also in tandem with s. 63 of the Central Bank of Malaysia Act 2009 which provides that only currency notes and coins issued by BNM are regarded as legal tender. However, cryptocurrency is recognized as a form of "securities" which is supervised by the Securities Commission of Malaysia in pursuant to the Capital Markets and Services (Prescription of Securities) (Digital Currency and Digital Token) Order 2019 ("CMS Order 2019"). Its legal recognition by court interpretation can be seen in *Robert Ong Thien Cheng v Luno Pte Ltd & Anor*, where the Malaysian High Court classified cryptocurrency as a form of "security" by virtue of Section 3 of the CMS Order 2019. It is also noteworthy that the court also held that cryptocurrency is a form of 'commodity'.

Similarly, in Singapore, cryptocurrency is not recognized as a legal tender. With regards to the cryptocurrency tax policy, it is enforced in pursuant to Inland Revenue Authority of Singapore ("IRAS") e-Tax Guide: Income Tax Treatment of Digital Token. In this set of guidelines, IRAS classes Bitcoin, Ether and other similar cryptocurrencies as Digital Payment Tokens. The IRAS also states that profits coming from mining and trading of virtual assets in exchange for money are also subject to income tax provisions as stipulated in The Singapore Income Tax Act.

In Australia, the Australian Tax Office ("ATO") does not recognize cryptocurrency as a form of money. Instead, it is viewed as a 'property'. The tax obligation is determined by whether a person is a cryptocurrency investor or trader. In general, if a person purchases cryptocurrency to hold with the view for long term gains and is subject to Capital Gains Tax ("CGT"). CGT would be imposed when a person disposes of his or her cryptocurrency.

IV. CONCLUSION

The legal framework on cryptocurrency in Malaysia is still developing from time to time. For the purpose to improve the tax policy on cryptocurrency in Malaysia, this research proposes several recommendations:

a) Reverting the tax policy in Singapore into Malaysia, the decentralized cryptocurrency earnings under our own Income Tax Act can be specified by amending Section 4(f) of Income Tax Act 1967 ("ITA 1967") as this section mentioned 'other income' to be taxed under this Act. Along with that, if the income from Bitcoin earnings were to be taxed under Section 4(f) of ITA 1967, it follows that the expenses for the earnings should be eligible for tax deductions pursuant to Schedule 3 of the ITA 1967.

b) As cryptocurrency is recognised as a commodity in Malaysia, then it can be taxed under Real Property Gains Tax by enacting a special section specifying the tax rates of gaining from the sale of cryptocurrency as enforced by ATO for their CGT.

c) The status of cryptocurrency investor and trader must also be stipulated in a

clear guideline as to impose the proper tax policy with regards to different utilizations.

d) The FSA 2013 needs to be amended to include the statutory interpretation of cryptocurrency.

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12

DIGITAL PROPERTY IN MALAYSIA LEGAL FRAMEWORK

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Abstract

'Digital property' is a term that has emerged since the digital era. 'Digital property' also recognised as 'digital asset', is defined in Urban Dictionary as an information resource derived from a right that is circulating as a unique identifier in distributed ledger. This digital property in the form of digital data of "1" and "0" may have value attached to it. The objective of this research is to identify the concept of 'digital property' or 'digital asset' in Malaysia legal framework. This paper will use a qualitative method of research. Doctrinal approach is adopted to collect and analyse data by referring to the relevant statutes, articles and conference papers available in the library online database. 'Digital property' is found to be a property to define the rights and liabilities between the user and service providers in contract law, intellectual property law, and privacy law. Due to the nature of digital property and Malaysia legal framework did not provide a comprehensive definition, digital property is scattered around Malaysia legal framework. There is a need to have a specific comprehensive law and regulations in the legal framework to protect this 'digital property' in Malaysia.

Keywords— Digital Property, Digital Asset, Contract Terms and Services, Intellectual Property, Privacy Law

I. INTRODUCTION

Ever since digital technology was used in various economic activities, the digital asset has become a significant term in this rapid development digital economy. However, the terms 'digital property' or 'digital asset' does not have a comprehensive definition, especially in the legal framework. Aleksandrovich (2019) has defined 'digital asset' as an information resource derived from a right that is circulating as a unique identifier in a distributed ledger. He defines it by using the combination of 'digital' and 'asset' which become 'digital asset' as "a set of digital data that are autonomous, uniquely identifiable and have a certain value" (Aleksandrovich).

In Malaysia legal framework, there is no comprehensive legal definition of 'digital property', however, the property which has the attribution of digital property can be found in several statutes. In this paper, we will discuss 9 types of digital properties that can be found in statutes or the interest of such digital properties is recognised by the law of Malaysia. They are phone numbers, email addresses, social media accounts, gaming accounts, digital products (digital goods or digital services), digital signature, e-wallet (digital money), cryptocurrency, and non-fungible tokens

II. METHODOLOGY

The methodologies used in this paper are qualitative research and a doctrinal approach to look into various statutes, case law, and terms and services agreements by service providers. This paper research is library-based research.

III. RESULTS/FINDINGS

The digital properties are recognised by different laws in Malaysia by the nature of the digital properties. Digital property may be protected as property because of its monetary value, but at the same time, it can also be protected because of intellectual property rights, privacy rights, or any other contractual rights.

The digital properties with monetary value directly linked to them are protected in Malaysia and recognised as a type of property. These digital properties are e-wallet (digital money) and cryptocurrency. E-wallets are protected under Financial Services Act 2013, the balance of e-wallet is protected as a trust held by the issuer of designated payment instruments according to section 125(3) of the said act. In recent case law, *Robert Ong Thien Cheng v Luno Pte & Anor*, the court recognises cryptocurrency as 'commodity' as there is a value attached to the cryptocurrency, therefore, affirms the judgement to order the appellant for returning the Bitcoins to the respondent. The non-fungible token is a newly emerged digital product, currently, there are not many discussions on it but it can be regarded as a type of collectible (Wee & Young).

The digital properties, which are the interest from contractual rights are phone number, email address, social media account, gaming account, digital products, digital products (digital goods or digital services), digital signature. Phone number and digital signature are digital properties by referring to the Communications and Multimedia Act 1998 and Digital Signature Act 1997. Both of them are governed by the statute. While other digital properties in this paragraph are governed by the terms and services agreement by service providers. Some of the agreements recognise the account as personal property of users, but most of them have clearly stated the user only be granted a license to use the service, they do not own the digital property.

However, the rights of digital properties which store data are protected as part of intellectual property law and privacy law. Although a user may not own digital properties like email address, social media account, gaming account, digital products, however, if the user creates content in such digital properties, he may claim the rights to the contents under intellectual property law. Furthermore, personal privacy data is protected under Personal Data Protection Act 2010.

IV. CONCLUSION

'Digital property' is a type of property that defines the rights of the user to digital products. Digital property with monetary rights is protected in Malaysia through statute or case law. Although contract law is the main regulation for digital products or services provided by service providers, intellectual property law will protect users' interest in the contents created by them and privacy law protects the personal data of users. The digital property in Malaysia legal framework is scattered over different legal fields. There is a need to have specific comprehensive laws and regulations in the legal framework to protect this 'digital property' in Malaysia.

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13

ENGAGEMENT AND PARTICIPATION OF SHAREHOLDERS AT THE COMPANY'S GENERAL MEETINGS DURING THE COVID-19 PANDEMIC

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Abstract

The shareholders' participation and engagement are significant in the general meetings of a company. Yet, because of the separation of ownership and control in a company, during the pandemic, shareholders might not participate in making informed voting decisions and could not have an effective engagement with the board and senior management. The question is whether the shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at general meetings during the pandemic? This paper aims to address the issue by analyzing how the shareholders could ensure their participation and engagement in a company's general meeting during the pandemic. This paper uses a doctrinal approach which focuses on statutes, case law and other legal sources to analyze the participation and engagement of shareholders in a company's general meeting. A comparison approach is also adopted in a manner that a comprehensible analysis can be achieved. This paper will first address how a company can leverage technology to conduct virtual meetings. Next, it focuses on the requirements to conduct a fully virtual meeting. Then, it will closely examine the underlying problem for conducting such a meeting. Next, it will address the steps of ensuring good cyber hygiene practices. It will then justify the reason for using fully virtual meetings instead of hybrid and physical meetings. In the end, this paper will reiterate on whether sufficient opportunities are provided to shareholders in the participation and engagement of general meetings in a company during the pandemic**.**

Keywords — shareholders, pandemic, general meetings, company, participation, engagement

I. INTRODUCTION

General meeting is an important platform for the shareholders to have a better understanding about the company's business. Shareholders have the right to participate and make informed voting decisions at general meetings. However, shareholders are unable to participate in the physical general meeting during the pandemic Covid-19 currently. This will definitely infringe the rights of shareholders to engage the company's board and senior management. Instead of postponing the meeting to a later date after this pandemic, most of the companies intend to conduct a virtual general meeting. Virtual general meetings are gaining wider acceptance in many countries due to pandemic Covid-19 nowadays, such as Singapore and the United Kingdom. For the former, at least 13 listed companies had conducted their general meetings virtually, whereas for the latter, at least 920 listed companies made announcements to conduct their meetings online. In light of Covid-19 pandemic, listed companies in Malaysia can either choose to conduct a fully virtual or a

hybrid general meeting with compliance to the local regulations related to COVID-19. Otherwise, they may postpone their meetings and apply for extension of time to hold their annual general meeting (AGM) within six months of the company's financial year and not more than 15 months after the last preceding AGM as prescribed in the Companies Act 2016 (CA 2016).

II. METHODOLOGY

This study is about the conduct of general meetings by companies during the pandemic of Covid-19. A comparative approach was adopted in this project. Our leader drafted an outline based on the question given, and we divided the parts among ourselves. We completed this study by doing research and data that were collected from the Internet. The main statute this study referred to was Companies Act 2016 (Act 777).

III. RESULTS/FINDINGS

Fully Virtual General Meetings

Fully virtual general meetings are meetings held online whereby all the members may participate at their own place respectively. Due to the Covid-19 pandemic, the listed companies are not able to conduct their general meetings physically. Most of the listed companies conduct their general meetings in fully virtual mode instead of postponement as it will affect the rights of shareholders to be updated with the companies' performance. It is important to hold general meetings on time so that it won't affect the distribution of final dividends and corporate transactions in progress. (Conventus Law, 2021) Therefore, the best way to conduct general meetings during this pandemic is to leverage technology to host virtual meetings. Companies can make use of the online platforms such as Zoom, Google Meet, and GotoMeeting which would provide high quality audio and video conferencing functions. Companies can also leverage other features such as desktop sharing so that all the participants can view the same thing at the same time.

For example, Bursa Malaysia Bhd held its 43rd AGM in fully virtual mode on 29 April 2020. The company used the remote participation and voting facilities (RPV) for their shareholders to participate and vote in the AGM. Bursa was the first company in Malaysia to conduct its AGM fully online during the movement control order period. (Malaysiakini, 2020) Subsequently, many companies chose to do the same, including Nestle (Malaysia) Bhd, Eco World Development Group Bhd and Westports Holdings Bhd. (Malaymail, 2020)

Requirements to Conduct Fully Virtual Meeting

In order to host a fully virtual meeting, companies should comply with the requirements according to the law. S327 of the CA 2016 laid down the basic requirements to convene virtual meetings. However, no virtual meeting is allowed if the company's constitution prohibits it. Hence, they should review their constitution to enable the use of technology. S341 of CA renders it necessary for the company to record and keep all the meeting procedures and resolutions passed at the meeting.

Furthermore, the Securities Commission Malaysia has issued the Guidance and FAQs on the Conduct of General Meetings for Listed Issuers to list out several requirements to carry out a meeting online. A listed company is required to ensure there is reliable infrastructure to conduct the meeting and allow the participants to speak and vote. It should also make sure the shareholders know the method of participating in the meeting and

identify the broadcast venue. It has to make sure that no other people but only the eligible members can join the meeting. It is essential to stick to the Standard Operating Procedures and any precautionary measures to prevent the spread of Covid-19.

Problems

Transitioning to tech-driven meetings has often taken place during a multi-year transition period. With so many companies wanting to make the switch to virtual meetings, several unexpected problems may ensue. Common drawbacks such as poor connection and broadcasting delays that might make it difficult or impossible to follow the meeting. It is discovered that the shareholders and company cannot communicate as easily as they do in person. For example, interruptions during meetings caused by individuals wanting to voice their views at the same time. These can all be difficult to deal with. Importantly, there may be worries about cyber-security and data protection, as well as regarding the dependability of the technological platform servers. It further can lead to the issue of the accuracy of the electronic voting. The number of the voting may be forged intentionally or unintentionally thus it will cause the shareholders' right to be questioned.

Solutions

Overcoming the difficulties isn't difficult, but there are several matters that need to be taken into consideration. First of all, companies may cooperate with telecommunications companies and provide free mobile packages with unlimited high-speed data to the shareholders. It will ensure every shareholder will not have difficulties attending the meeting. Companies may practice good cyber security hygiene to keep away intruders, secure the shareholders and safeguard data privacy all at the same time. Before implementing a virtual meeting, the company should undertake a data protection impact assessment. This allows the company to evaluate and control the different data protection risks that occur in each process. Companies have to verify each member's identity to ensure there is no intruder. Also, shareholders have to ensure there are no unnecessary people to listen and watch the meeting in order to uphold confidentiality. (Zurich, 2021) Aware that the shareholder's video or voice may be collected during the meeting, the company must ensure that such video or voice is safeguarded. It must be notified to the shareholders and obtain express approval from shareholders to record meetings. Additionally, every shareholder must be given equal opportunity and sufficient time to raise questions and express their opinions. Moreover, sensitive concerns may be discussed during the meeting and these might be recorded. Companies must thus have contractual provisions that prohibit such meeting recordings from disclosing. (DPEX Network, 2021) When it comes to the most important session, which is the voting session, accuracy and transparency must be upheld so that the shareholder's right will not be violated. Despite the e-voting system, companies may also adopt the postal voting system at the same time. Even though the meeting is online, it is not necessary to rely solely on it. Companies may send the ballot paper to the shareholders and mail it back after the meeting. It can reconfirm the results of the voting. If there is impeachment of the result of the e-voting, the ballot papers can be treated as evidence.

Hybrid

Hybrid general meetings are the general meeting where the company utilises both hardware and software to conduct their general meeting. The meeting will be held at a physical venue and broadcast online. The benefit of having a hybrid general meeting by comparison to a physical meeting is that it may increase the engagement of the members

by giving them the option to attend the meeting physically or remotely. (Practical Law Corporate and GC100, Rós Ni Dhubhain, & Freshfields Bruckhaus Deringer LLP, 2021) Plus, the communication is efficient as every member may participate and submit questions on the platform immediately. And the real-time votes would also be cast through the online platform.

In Malaysia, the laws during the pandemic are very blurry, the government never allows physical or hybrid general meetings by law. In fact, Movement Control Order has prohibited people from gathering; lockdown and the restriction on state crossing put a barrier to hybrid general meetings since shareholders are unable to participate physically. (Christopher, Lee, & Ong, 2021) Generally, hybrid meetings may be held after MCO, but companies are still subjected to many difficulties. Fully virtual meetings are more compatible than hybrid or physical meetings during the pandemic, since it is hard for members to maintain social distance at a physical venue. Moreover, the higher cost the company needs to bear by holding a hybrid general meeting. Besides the cost to maintain the broadcasting system, the company also needs to spend the cost to maintain a safe environment at a physical venue.

In the United Kingdom, the temporary law known as Corporate Insolvency & Governance Act (CIGA) has allowed the general meeting to be held in virtual and hybrid form as long as the company's constitution allows. For example, Marks and Spencer Group plc held their annual general meeting in 2019 in hybrid form. During the pandemic, they changed to the fully virtual form of the general meeting in 2020 and 2021. Marks and Spencer Group plc restricted the shareholders from attending the meeting in person although the laws never prohibit it. (Marks and Spencer Group plc, 2021)

Thus, it is more suggestible to have a fully virtual general meeting during the pandemic since hybrid general meetings are challenging to be held.

IV. CONCLUSION

Shareholders should have the right to pose questions and respond to the resolutions tabled at the general meeting. Shareholders shall be given sufficient opportunity to participate in the board and senior management effectively and make decisions at meetings during the pandemic Covid-19. As mentioned above, companies must comply with the regulations and guidelines to conduct a virtual general meeting during the pandemic. The board should leverage a channel, for example, by using Zoom meetings, to communicate with the shareholders. There may be some problems that arise when a company conducts meetings online such as poor internet connection, cyberthreats and issues relating to accuracy of e-voting. Steps should be taken by the company to ensure the data connection of shareholders, cybersecurity and transparency of e-voting. In light of the pandemic, a listed company may choose to conduct a full virtual or hybrid general meeting. However, during CMCO or EMCO, the companies are prohibited to conduct a hybrid meeting since it is still requiring some shareholders to physically gather at the same venue. Instead, every general meeting shall be conducted in a full virtual mode to ensure the participation of the remote shareholders during the pandemic Covid-19.

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14

ENGAGING WITH STAKEHOLDERS DURING THE PANDEMIC – A CASE STUDY

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Abstract

This paper will focus on how corporations conduct their relationships with their stakeholders during the pandemic. Physical engagement with stakeholders was impossible due to global pandemic, thus companies are required to be innovative to fulfil its commitments to understanding and interacting with stakeholders in accordance with the Intended Outcome 12 of the Malaysian Code of Corporate Governance which is continuous communication with stakeholders and enabling them to make informed decisions. With this in mind, the purpose of this study is to discuss the purposes of stakeholder engagement, outline the difficulties faced by companies to engage with their stakeholders during a pandemic, and observe the alternatives made by the companies to overcome these obstacles. To achieve this purpose, this paper examines three companies and compares its approach in stakeholders' engagement in the previous year to its current approach. This would involve review of annual reports of the companies besides its communications with its stakeholders including employees, customers and communities. The results that were obtained were analysed and further elaborated to provide takeaways as to the outlooks for companies even during the pandemic. Much of the analysis was positive and displays viable alternatives for companies such as digitalisation, relief aids, and meaningful contributions to assist in curbing the pandemic. As a conclusion of this research, stakeholders could benefit significantly from the new approaches taken by the companies even during the pandemic.

Keywords— Stakeholders, Pandemic, Comparative, Digitalisation

I. INTRODUCTION

In running a business, regular communication is essential between the company and its stakeholders, who provide different perspectives to the company for decision-making. (What is Stakeholder Engagement, and Why is it Important for Strategic Planning?, 2021) Intended Outcome 12 of the Malaysian Code on Corporate Governance clearly describes the importance of active engagement with stakeholders. The feedback from all sides will be analysed to create an effective strategic plan. However, the outbreak of Covid-19 has made it impossible to conduct stakeholder engagement as before. Online tools have been extremely helpful for the companies to engage and consult stakeholders under the new circumstances. Hence, the authors have selected three main stakeholder categories, which are employees, customers and community for the analysis on digitised stakeholder engagement.

The purpose of this paper is to discuss why stakeholder engagement is vital to the development of a company, especially at times of Covid-19. Throughout the study, the authors are able to outline the difficulties faced by companies to engage with their stakeholders during a pandemic and observe the alternatives made to overcome these obstacles.

II. METHODOLOGY

Three companies were selected as samples for examination, namely Telekom Malaysia Berhad ("TM"), Berjaya Corporation Berhad ("Berjaya"), Top Glove Corporation Berhad ("Top Glove"). These companies were chosen due its similar size yet different industry as a means of diverse comparison. To understand the status quo of the relationship between the companies and its stakeholders before the pandemic, the annual reports as well as past activities of the companies for the year 2019 and 2020 were researched and recorded. to gain insight as to how companies adapt to the post COVID-19 norm. The findings were categorized into employees, customers, and community.

III. RESULTS/FINDINGS

The first category, the employees, witnessed a rise in health concerns and tighter movement restrictions as employers were monitored closely by the government agencies. As companies are allowed to operate with lower capacity physically in office, companies take more measures for work from home policy and adaptable working hours. In TM's case, in 2019, the company initiated the Flexible Working Arrangement (FWA), in which the employees are able to choose their working hours and days, annual leave purchase, and self-declared recovery leave. ("TM, the enabler of Digital Malaysia aspiration. Be part of …", 2020) In 2020, the company aimed at protecting its employees from the outbreak by releasing several guidelines that could maintain their productivity in the new working environment. For instance, they activated work from home policy for all the employees during the movement control order until 31 October 2020 and provided free swab tests and strictly implemented social distancing. ("TM Takes Action to Curb Further Covid-19 Spread; Continues to Serve the Nation With Essential Services", 2020)

For Berjaya, in 2019, the company launched their Employee Engagement Committee (EEC) with the aim to promote teamwork and interactions amongst employees by organizing health-oriented, sports tournaments or entrepreneurial activities. One of the examples include EEC Charity Bazaar 2019 in the which the employees are able to develop their entrepreneur skills. Communication among employees was through their Berjaya intranet (BFamily), quarterly newsletter and meetings. ("Berjaya Corporation Berhad Annual Report 2019", 2019). The engagement method with the employees were more digitized in 2020 as compared with 2019. First of all, work from home has been introduced to its employees. For instance, QR Code for Facility Maintenance Reporting and the in-house mobile app "Buzz" were introduced for purposes such as announcements, events, surveys, promotions and most importantly, to welcome new staffs and recognise the employees' achievements. Besides, the communication of employees has been conducted on platforms such as "Buzz" Mobile App, "Beritajaya" quarterly newsletter and synergy meetings for regular training programmes and orientation for new staffs. ("Berjaya Corporation Berhad's Quarterly Newsletter – Issue 2, 2020", 2020) This also acts as a more effective engagement method now that the company can reach out to their employees via their mobile app for any updates.

Top Glove took measures that minimized travel whilst in its digital transition. In 2019, there were daily management lunches, annual dinners and talks for the employees. Meanwhile, a Subsidised Vegetarian Meal Programme was launched to reduce the risks of travelling for lunch in 2020. Covid 19 preventive measures such as regular body check-ups and social distancing were implemented in the workplace to ensure their safety. The company has also provided in-house training and encouraged them to participate in

volunteering projects. Employees were given the right to form unions for collective bargaining, and they can use TG ResQ to lodge police reports on crime-related activities.

From the perspective of a customer, the year 2020 meant that they could not physically voice out their feedback to the companies or even visit the stores. Thus, companies have set to upgrade their already digitized platform to cater to more traffic flow. This was especially true for TM. During the pandemic, there was an increase of internet users by 45% that urged the company to improve its services. ("TM maintains FY21 capex at 14%-18% of revenue, sees growth in internet usage", 2021) For instance, TM has provided several digital platforms such as myunifi apps, social media and websites for the customers to have constant access. Other than that, TM has also established digital customer platforms by collaborating with San Francisco-based platform, MoEngage to provide the best experience to the customers through personalized engagement across multiple digital touchpoints. ("Telekom Malaysia Berhad Partners with MoEngage to Drive Digital-first Customer Marketing", 2021)

Berjaya began to ride the digitalization wave as more and more companies ensued. In 2019, social media was used mainly for greetings and updates on promotions, whereas in 2020, additional posts such as interactive posts, information on reopening of premises and the Standard Operating Procedures were posted regularly to keep in touch with the customers. It can be seen from its subsidiaries' Instagram accounts that there have been more regular and consistent postings during 2020 than the year 2019. (Berjaya Times Square Hotel KL, n.d.) (Berjaya Times Square Theme Park, n.d.) Customers can get in touch with the respective companies via telephone, email and websites, and interactive posts such as polls and giveaways have been part of the routine of social media. Since Berjaya has its main focus on the tertiary sector of industry, especially hospitality services, hence customer engagement is important to maintain relevance.

Top Glove had conducted customer satisfaction surveys once in half a year before pandemic to make necessary improvements. Top Glove solicited ratings and feedback for areas which customers were most concerned with: price competitiveness, product quality, delivery and services, and new product development. Currently, the engagement with customers has been conducted through emails and digitilized marketing offices to connect their customers from all over the world. They also delivered gloves to their customers globally. ("Top Glove Corporation Bhd Integrated Report 2020", 2020) Employees are also encouraged to give back to the community by volunteering in (Top Glove Foundation) TGF's activities, which range from community engagement activities to environmental conservation activities. However, due to the COVID-19 pandemic, TGF has reduced physical activities to reduce risk and focused on a crucial mission: glove donation.

For communities, contribution by corporations can mean a lot especially during these trying times. In 2019, TM engaged with the community by dedicating an online team to update relevant information and service catalogues. It also conducted huddles to understand the different expectations among communities. During the pandemic, TM has established flagship community development programmes. For instance, TM has helped distribute a total of RM2.7 million of Family Care packages which consist of dry foods and essential items to those who are in need. Furthermore, TM has allocated 50 complimentary units of 5G Fixed Wireless Access which is free of charge in Malaysia Agro Exposition Park and Sungai Buloh's quarantine centres. This effort enables the frontliners to respond quickly to any emergency situation while the patients are able to stay connected with their family at

the quarantine facility. ("TM Deploys 5g Base Stations At 2 Covid-19 Quarantine Centres", 2020)

In 2019, Berjaya embraced the values of corporate social responsibility (CSR) and carried out visits and festive celebrations with the less fortunate, charity and awareness campaigns on health-related, community and environmental issues. For instance, collaboration with Tzu Chi Foundation Malaysia to showcase an exhibition conference to raise environmental awareness amongst the public on sustainability. It is a tradition for its subsidiaries to spread festive cheer in which they organised gatherings during the festive celebrations for the underprivileged. The biggest change after the pandemic for Berjaya is the focus on rebuilding the community by providing food aid, monetary aid and necessary medical equipment to the frontliners and the needy. The collaborations with NGOs include the invitation of local NGOs to set up bazaars at BCorp's Corporate Office, and partnership with HOPE Worldwide Malaysia to distribute 375 boxes of Chewy Kurma Cookies to low-income families.

To give back to the society, Top Glove's projects such as donation of mattresses and Rise Against Hunger for dry rations to the underprivileged community were unchanged and only digitalised. They also had repair and maintenance works for roads and drainage, as well as donations of 3 million pieces of medical gloves worth RM700,000 and supplies to government ministries and charity organisations such as Tzu Chi Foundation Kuala Lumpur. Other than that, they showed their support towards PEMANDU initiative on a COVID-19 tracking software (Global COVID-19 Index) by pledging RM800,000. Also, the company donated RM300,000 worth of medical equipment and supplies to the Ministry of Health Malaysia as part of a joint initiative with Tropicana Corporation Berhad.

IV. CONCLUSION

To review the points made from the findings, companies are slowly but surely adapting to the changing norms as the world begins to coexist with the pandemic. And this could not be truer as companies need to engage with its stakeholders to grasp the business environment and continue its responsibility to give back to the society. Digitalisation is the main drive for many of the adaptations, and it has always been in progress although the new normal has accelerated its adoption. The findings of the research indicated that it is possible for a productive transition for companies to suit the new environment. Thus, the authors would like to propose for companies that have yet to digitalise to be more flexible when it comes to engaging its stakeholders.

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15

EXPLOITATION OF MIGRANT WORKERS: MODERN DAY SLAVERY

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Abstract

Despite their contributions to nation building, migrant workers in Malaysia are susceptible to maltreatment or abuse. Although seen as protected in some employment laws, they are neglected in other employment, immigration and human rights laws. Some of the issues involve human trafficking, modern day slavery, exploitation, forced labour and abuse. It was seen in numerous cases that although they are victims, their rights were not upheld by the law or the courts. This leaves them vulnerable. In addition to examining the above-mentioned issues, this study examines the approach by fellow Commonwealth nation, New Zealand to understand their approach to migrant workers. This is followed by several recommendations to address the aforementioned weaknesses. As a whole we find that although there are serious lapses in the fundamental human rights of migrant workers in Malaysia, we believe with awareness and political will, Malaysia would be able to right this wrong for migrant workers.

Keywords— Migrant workers, Malaysian law, contemporary issues, exploitation, modern day slavery

I. INTRODUCTION

Migrant workers are those who leave their country, in order to earn a living in another country. Art 2(1) of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families defines migrant worker as a person engaged in work in a State of which he is not national. It was reported in 2019 that there are around 1.9 million migrant workers in Malaysia who make up 25% of our labour sector and one-third of our service sector (TRIANGLE in ASEAN, 2021). This shows that although migrant workers are not citizens of Malaysia, they play a vital role in ensuring the growth of the country's economy by filling the demand for low-skilled jobs. Regardless of their contribution to Malaysia, it is unfortunate to note that these people are being subjected to cruel treatment and are being exploited by the very same people who employ them. This is because it was reported by SUHAKAM that there were 13 human rights complaints received in regards to migrant workers (SUHAKAM, 2019). This research aims to study the issues regarding human rights abuses of migrant workers in Malaysia. Comparisons were made to New Zealand and a recommendation for improvement was developed in a bid to improve the situation.

II. METHODOLOGY

Two main methods which are doctrinal research and non-doctrinal research were used to conduct this research. Doctrinal research method was used to analyse the laws and cases related to migrant workers. In addition to statute and reported cases, analysis of various data points, statistics and reports were done, focusing on materials related to the

contributions of migrant workers to our country, the issues surrounding them and the exploitation they face. A comparative study was done with New Zealand law. Non-doctrinal research methods were used to further enhance the study. As a result of this research, recommendations were made to address the issue of exploitation of migrant workers.

III. RESULTS

Although Malaysia has not ratified the Migrants Workers (Supplementary Provisions) Convention, the federal court *Ahmad Zahri bin Mirza Abdul Hamid v AIMS Cyberjaya Sdn Bhd* [2020] 5 MLJ 58, referred to this Convention to decide that migrant workers are to be treated equally with local workers. Another protection is provided through laws that require details of the migrant workers to be registered. In *Pendakwa Raya v Wong Haur Wei* [2008] 1 MLJ 670, where the court penalised the employer for employing migrant workers without a work pass under the Immigration Act. Migrant workers are also entitled to benefit under the Workmen's Compensation Act 1952. This is seen in *Alamgir v Cass Printing & Packaging Sdn Bhd* [2015] 7 MLJ 270 where the migrant worker from Bangladesh was entitled to compensation under the Act for injuries suffered at work.

According to the United Nations, human trafficking is defined as the "Recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception with the aim of exploiting them for profit" (United Nations, 2021). It is a form of slavery which is prohibited under Article 6 of the Federal Constitution and criminalised under Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007. In 2018, Malaysia was elevated to the Tier 2 watchlist by the US Department of State Trafficking in Persons report due to the increase in fundings for NGOs, enforcement and conviction rates of traffickers. This can be seen in cases such as *Kong Kok Kyt dan satu lagi lwn Pendakwa Raya [2014] 10 MLJ 99* and *Chang Kar Fei v Pendakwa Raya* [2018] MLJU 1594 where the accused in both these cases were found guilty of human trafficking after coercing their migrant female victims to work as sex workers through debt- based coercion. However, enforcement has stagnated and in 2021 Malaysia has been reverted back to the Tier 3 watchlist by the US Department of State Trafficking in Persons in its report which is the worst ranking (Parkaran, 2021) This shows that there is a dire need for the Malaysian government to refocus its efforts in combating this issue once more.

Forced labour is defined by coercive techniques like these, and employers can be charged under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 [Act 670]. In the High Court case of *Pendakwa Raya lwn Baharruddin bin Hamzah* [2019] MLJU 826, an operation to rescue eight Indonesian citizens was carried out. The authorities found that the victims did not have their passports as it was kept by their employer. One of the victims, Muhammad Syafrizal, claimed that they were not paid full salary, there was no work permit, and no employment contract. Here, the respondent was charged under section 12 of ATIPSOM 2007. On 10th of August 2021, Harian Metro reported that a Police officer had arrested a 39-years-old employer for allegedly abusing and failing to pay the salary of his employee, a 27-years-old Indian man who worked for approximately 1 year 6 months. Preliminary investigations found that the victim was not given any salary, was beaten and his passport was held by the employer (Zakaria, 2021). Furthermore, The Straits Times in June this year reported that three Indian nationals were discovered abused in Lipis, Pahang. Their passports and cellphones were confiscated upon arrival at KLIA, and they were compelled to work for 12 hours a day, without pay, for a total of RM600 (S$195) every month (Bernama, 2019).

Migrant workers frequently die as a result of harmful working conditions, such as living in filthy and unsanitary rooms with little air, and cramming a large number of people into a tiny space, or living in the same house with an abusive employer. In the case of *PP v Soh Chew Thong & Anor And Another Appeal* [2016] 5 CLJ, the deceased was a Cambodian national who was employed by the accused as a domestic maid. The deceased had been subjected to multiple physical abuse and prolonged deprivation of food and water until she died. The Court of Appeal convicted both the accused persons for murder but the Federal Court convicted them to 10 years of imprisonment (The Straits Times, 2018). Sinar Harian on 14 July 2019 reported the terrifying incident of three workers from Tamil Nadu who had been chained using a heavy lock and one of them had been abused for a month until he had a broken arm (Sadiq Abdullah, 2019).

For comparison, both Malaysia and New Zealand have ratified the ILO Convention 97, which covers the general rights and protection of Migrant Workers. Apart from that, New Zealand's domestic law plays a vital role in protecting the interest of migrant workers. For instance, the Immigration Act 2009 (IA) has included offences by employers and exploitation of unlawful employees and temporary workers. As per S.9(1) of IA, an unlawful person is interpreted as someone without a visa and not given permission to stay within the territory. Plus, S.351(1) IA has laid out various categories of exploitation of unlawful migrant workers and temporary workers as an offence. However, the Malaysian domestic laws did not include the rights of migrant workers. In New Zealand, right to association for migrant workers is available under The Bills of Rights Act 1990 while in Malaysia, Art 10 of the Federal Constitution did not guarantee such right. Lastly, New Zealand provides the right to access the court for civil and criminal suits for both lawful and unlawful migrant workers while in Malaysia only a lawful migrant worker can bring both criminal and civil proceedings.

For suggestions, we will tackle changes to be made by governmental bodies and the societies. Firstly, for legislative changes, Employment Act 1955 and the Industrial Relations Act 1967 needs to be amended so that employers cannot withhold salaries and passports of migrant workers. Another amendment could be made to s28(1)(a) and 29(2)(a) of the Trade Unions Act 1959 to allow meaningful participation of trade unions by migrant workers. It is recommended that the Executive branch of Government implement equitable policies with regards to migrant workers. Furthermore, the Judiciary must be sensitive to the situation of issues with migrant workers and provide the necessary support to migrant workers or victims of human trafficking. Society also has to treat everyone including migrant workers with fairness and equality and must be willing to identify and report such violations and not turn a blind eye.

IV. CONCLUSION

The aforesaid issues on human trafficking, forced labour and poor standard of living should be tackled, with inspiration from fellow Commonwealth nation, New Zealand, through legislative approach, executive and judicial action and societal changes in order to prevent the exploitation of migrant workers.

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16

IMPACT OF REINFORCING WHISTLEBLOWING POLICIES IN CORPORATIONS TOWARDS INTEGRITY OF COMPANY

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Abstract

This paper was initially prompted from the article "Whistleblower Protection Act 2010: Sustainable a Decade on?" by Kuok Yew Chen, Tan Yi Li and Tracy Wong Tyng Wueh. It will focus on the enforcement of whistleblowing policies in Malaysian companies in establishing integrity among company members and management. First, this paper will be dissecting the guidelines set under the Code of Conduct and Ethics to understand the vital role it plays to foster good practices among a company's management in overcoming certain issues as well as the necessity of the board to periodically evaluate its policies to demonstrate the company's commitment towards maintaining an ethical workplace culture. Next, a study on several companies' whistleblowing policies and Code of Conduct and Ethics will be conducted through doctrinal research methodology to evaluate the company's transparency towards the company members. Subsequently, this paper will assess the importance of reinforcing these guidelines and policies in companies in promoting acceptable values and standards to ensure that its obligations are maintained by the board and stakeholders are understood for the well-being of the company, in reference to the Whistleblowing Protection Act 2010. Finally, this paper will prove that the integrity of the board and the company members are inherently affected by the implementation of properly reinforced Code of Conduct of Ethics and the whistleblowing policies in the company.

Keywords— whistleblowing policies, doctrinal research methodology

I. INTRODUCTION

This project starts off with a brief introduction on the third outcome of the Malaysian Code on Corporate Governance. The third intended outcome of the MCCG is one that embodies fairness, integrity and transparency.[23] This practice requires a code of conduct to be created in order to foster good ethics and prevent relevant issues. Whistleblowing is also a relevant part of the established policies. This brief overview is then followed by an analysis on the intricate methodologies used such as the online research method of primary materials. Finally, the core elements of the outcome are researched and deduced through the results. One such use of the third outcome is to expose malfunction within the company. This is done through whistleblowing which reveals the corporate practice of the organisation. Besides that, it provides for the protection of whistle-blowers against detrimental action that may be taken against them. Moreover, our results have inferred that the principles in this outcome enhances the effectiveness of internal control by promoting

[23] Securities Commission Malaysia. (2021). Malaysian Code on Corporate Governance (pp. 24-25). Kuala Lumpur: Securities Commission Malaysia.

efficiency and reducing the risk of asset loss through the implementation of whistleblowing. Finally, it was also observed that it urges the implementation of risk management to identify potential obstacles that might be faced by the company and take relevant measures to prevent the risks from manifesting. In conclusion, we had analysed the code of conduct, ethics and whistleblowing policy of three different companies to determine how well the integrity of the members of the company are shaped due to the implementation of these policies.

II. METHODOLOGY

The data collected consists of information gathered through online research and this study also focused on three Malaysia listed companies and analyzed their approach on the code of conduct and whistleblowing policies. The method used is mainly primary research where online text is analyzed to derive insights from content available online.

This research design of this project is heavily influenced by Shanthy Rachagan & Kalaithasan Kuppusamy research about 'Encouraging Whistle Blowing to Improve Corporate Governance? A Malaysian Initiative' where this research elaborates on the whistle-blowing laws in Malaysia and suggests alternate ways to encourage whistleblowing in Malaysian companies. Furthermore, this project also relied on the Institute of Chartered Accountants in England and Wales view on 'How whistleblowing helps companies Corporate Governance: Connect and Reflect' which provides five benefits of whistleblowing and an action plan to implement the whistleblowing policies and further the research by Keren Mekonnen & Rica Sundh on 'To have or not to have : A qualitative study on the incentives of implementing or not implementing whistleblowing systems in Swedish listed companies' was also referred where in this research it describes the incentives for organisations to put in place a whistleblowing system, as well as the incentives for organisations not to put in place a whistleblowing system. Since, this project is focused on the impact of reinforcing whistleblowing policies in corporations, thus the aim of this project is to evaluate the company's transparency towards the company members through the companies' whistleblowing policies.

III. RESULTS/FINDINGS

Whistleblowing is increasingly important in Business Ethics and that is why the MCCG is encouraging companies to implement proper policies and procedures on whistleblowing to ensure improper conduct of board such as misappropriation of trust and criminal breach of trust will not occur at workplace. In the case of *Enron v. Worldcom*, whereby two employees exposed the misconduct of their company, for the best interest of their stakeholders.[24] Section 6 of the Malaysian Whistleblowing Protection Act 2010, defines whistleblowers as an informant who exposes the wrongdoings of an employer to the authorities.[25]

Expose Malfunction

Whistleblowing can be considered as an internal control mechanism to misconduct within the company. Whistleblowers will always face criticism because of the fiduciary relationship they have with their company. Whistleblowers are regarded as "biting the hand that feeds you", but if we do not curb this issue then the wrongdoing and transparency of

[24] Securities and Exchange Commission v. WorldCom Inc., Civil Action No. 02-CV-4963 (SDNY) (JSR)

[25] Whistleblower Protection Act 2010, Section 6

corporations will not improve, it is for the greater good.

Protection

Whistleblowers in exposing the wrongdoing of corporations may be detrimental to their personal and work-related position. In 2010 the Whistleblowing Protection Act 2010 was enacted to ensure whistleblowers will be protected throughout the investigation; this can be seen under Section 7(1) here; where the whistleblower will receive immediate protection once receipt of disclosure is received by the authorities.[26] These protections include immunity from legal proceedings, protection against any harm which they may encounter. Based on the same Act, Section 15 will ensure whistleblowers will receive remedies if they face any detrimental actions.[27]

Enhance Effectiveness of Internal Control

Organizations should prioritize whistle-blowing as a key towards a better structured company that agrees that managers shall make decisions and control risks and whistleblowers could positively and bravely take a step to ensure that they are heard.[28] Professional corporate alert strategies reflect transparency and conduct of ethics and that whistleblowing mechanisms generally reveal their composite nature of practice, indicating resistance to the effects of the desired benefit and the limitations of this strategy.[29]

The common definition of requirements to report any illegal practices corresponds to the good faith of the complainant.[30] This means that the benefits of whistleblower protection can be emulated from those who report harassment. “In good faith” can be defined as the contributor had believed he had acted with honesty and it was a right thing to do at the time the information was provided, even if it later turns out to be in error. The protection of the complainant is also exercised in good faith, even if the reality of the harassment is not established, nor is the bad faith of the complainant proven. The informant in bad faith is responsible for the sanctions applicable to the accused.[31]

Enterprise Risk Management

Having a policy is a good step in encouraging employees to stay alert; however, organizations should educate and provide a clean lineup of rules to their employees on the policy and make sure the procedures are clear and easy to comply with. If an organization recognizes a union, it can develop a policy in consultation and in a way, it is a good idea for organizations to regularly share information with the employees to ensure policies and

[26] Whistleblower Protection Act 2010, Section 7(1)

[27] Whistleblower Protection Act 2010, Section 15

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procedures are reminded and to inform new employees.[32] Providing training at all levels of an organization on how to effectively implement whistle-blowing agreements helps to develop an open and supportive culture within the company.[33]

When someone reports, an organization should explain its disclosure procedures and explain whether the reporter can expect feedback. Essentially, a whistleblower is highly likely hoping that it influences the actions of the organization as to whether a problem has been resolved such expectations must be managed.

IV. CONCLUSION

In conclusion, it is necessary for companies to constantly review their whistle blowing policies to be in line with their Code of Conduct and Ethics to ensure that their companies will obtain outstanding performance in their respective industries. The ability of companies to maintain or achieve substantial outcomes in terms of productivity of employees lies within the need to revamp and assess the laws within the company as a good company is a direct result from a functional and authoritative management and members. Due to the increasing demands to ameliorate sustainable practices from not only consumers but also the public at large, incorrigible companies must be held accountable as the hazardous footprints left in the community and environment may be directly or indirectly resulted from their negligence. Hence, by granting the employees a platform to succinctly report on illicit acts committed by companies, such corrupted practices by the management or employees may be apprehended.

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Whistleblowing Protection Act 2021

17

INADEQUACY OF WHISTLEBLOWING MECHANISMS IN RELATION TO ITS STRICT REQUIREMENT OF DISCLOSURE UNDER WHISTLEBLOWER PROTECTION ACT 2010

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Abstract

This paper will examine the inadequacy of whistleblowing mechanisms in relation to its strict requirement of disclosure. The purpose of this study is to prove that the shortfall with Whistleblower Protection Act 2010 can bring disastrous effects to whistleblowers so as to undermine corporate governance. In June 2010, the Whistleblower Protection Act 2010 was enacted by the Malaysian government to encourage the disclosure of improper conduct in a company and to protect whistleblowers from any detrimental action. However, there are several inadequacies of the Malaysian Whistleblower Protection Act 2010. Amendments should be proposed to the Act for betterment of the whistleblowing system in Malaysia. The research methodology used in this paper includes black letter research methodology, library-based research methodology and desk research. In this paper, the researchers focus on the three main inadequacies of whistleblowing mechanisms under Whistleblower Protection Act 2010. Firstly, the limitation to the channel of disclosure. Secondly, the harshness of the required information. Thirdly, the phrase "improper conduct" for which its definition is too vague. All of this is done in the hope that the shortcomings associated with whistleblowing will be addressed in order to preserve a healthy corporate culture which is in line with MCCG that upholds integrity, transparency and fairness by reviewing policies and procedures of whistleblowing.

Keywords—Whistleblowing, Whistleblower, Inadequacy, Disclosure, Whistleblower Protection Act 2010

I. INTRODUCTION

According to Malaysian Code on Corporate Governance (MCCG), in order to have good corporate governance, it is vital for a company to implement a whistleblowing policy. Whistleblowing is a mechanism which allows whistleblowers to report the misconducts committed by the employer or corporation to the authorities. It helps a company to check and balance the system. Although it imposes a risk to the companies that their reputation may suffer damage, it is a positive practice to ensure good corporate governance. In Malaysia, the government has taken a commendable step by passing the Whistleblower Protection Act 2010 (WPA) to protect the whistleblowers from detrimental actions. The main objective of the Act is to eradicate corruption, the abuse of powers, money laundering, etc. However, it is found that some disclosures are not protected under the Act when it has strict requirements to the disclosure; thereby becoming insufficient to protect the whistleblowers.

II. METHODOLOGY

There are three research methodologies adopted in this research paper. Firstly, the researchers adopted the "black letter" research to produce a descriptive and detailed analysis of legal rules found in primary sources i.e. cases and statutes. By using this method, the researchers could identify the legal rule and construct the provisions in Whistleblower Protection Act 2010. After having a critical analysis of the Act, it was found out that the provisions are not comprehensive. The researchers then used the library-based method and identified that there are insufficiencies in our existing regulations. Finally, we used a desk research method in our project to review the prior research findings in order to gain a broad understanding of the field.

III. RESULTS/FINDINGS

Through the research, there are three results and findings to the strict requirement of disclosure under WPA 2010. One of them is the limited channel of disclosure (Aik, 2017). Section 2 of WPA 2010 refers enforcement agency to the office or place of authority where the whistleblower can disclose any misconduct committed by the employer or corporation (Tan, Choong, Kuek, Choe, Lim & Tho, 2016). Enforcement agencies are authority bodies consisting of a ministry, department, agency, or other body at the federal, state, or local level that have investigative and enforcement powers under any existing law. There are five major enforcement agencies in Malaysia which are Royal Malaysian Police, Royal Malaysian Customs, Immigration Department of Malaysia, Road Transport Department and Malaysian Anti-Corruption Commission (Amanuddin Shamsuddin, Nur Hazierah Kasturi, Nur Hidayah Mohd Ramlan, Nur Fitri Zawani Zamros & Nur Husna Mohd Sekri, 2015). Hence, it is clear that the disclosure to enforcement agencies is restrictive as the Act does not mean to include corporations as one of the channels. (Tan & Ong, 2011). Having said that, the body corporates' ability to deal with the whistleblowing will be hampered because WPA prohibits corporations from resolving issues internally or advising whistleblowers on the best course of action. Furthermore, it must be noted the protection may be revoked if the whistleblower accidentally disclosed secret information to a third party as he will lose his whistleblower status. For example, in the case of *Rokiah Mohd Noor v Menteri Perdagangan Dalam Negeri, Koperasi & Kepenggunaan Malaysia & Ors and Another Appeal*, the appellants made disclosures to two enforcement agencies and third parties. The court held that the appellants did not qualify as whistleblowers as they disclose to third parties which were not within the meaning of enforcement agency and thus lose their whistleblower status (Aik, 2017). The purpose of WPA is to encourage whistleblowers in providing valuable information, thus it shall not discriminate against disclosure to parties other than the enforcement agencies (Kuok, Tan & Tracy Wong, 2021). It is crucial to have both internal and external channels so that the employee can choose to either disclose to an external enforcement agency or to disclose internally in a corporation.

Apart from that, the lengthy process and inefficiency of enforcement agencies will also discourage a whistleblower from disclosure of improper conduct. It is imperative to have more transparent and effective channels other than the existing channels. In contrast, UK Public Interest Disclosure Act 1998 allows multiple channels for whistleblowers to make disclosure, such as employer or any person in charge, Minister of the Crown and legal advisor. (Azlin Namili, Aspalella, Nurli Yaacob, 2018)The more the alternative channels are given, the more convenient it is for the whistleblower to disclose.

The disclosure's requirement under WPA 2010 is considered harsh when it is expressly provided under S 6(1) of the Act that the information leak should not be prohibited by any other existing law. In this regard, there arises the conflict of law towards the act of whistleblowing. For instance, S 203A (1) of Penal Code imposes sanctions over any person whose disclosure involved information obtained in the course of his duties performance or in exercising his functions under any written law. Taking both Sections in a literal way, it is said that the protection under WPA only intends for whistleblowers who whistleblowing outside his duties and functions. Ironically, most of the secret information can only be obtained during one's course of work. (Leong, 2017)Furthermore, S 6(2)(c) of WPA 2010 allows for disclosure in which the information was acquired as an officer in the public sector. However, S 8 of Official Secrets Act (OSA) 1972 stipulates that a wrongful communication of official secret such as government documents, data, and other secret information can incur incarceration for a term between one and seven years to one who disclose it without authorisation. The vague definition of 'official secret' rendered the protection under WPA meaningless since the Minister can declare anything to be an official secret as he wishes. The prominent example is where the Auditor General's report on 1MDB, a State-owned company, was classified as an official secret when the leakage of such a document can never jeopardize national security or defence. (Hunt, 2016) It is submitted that these conflicting legislations deter the officers from either public or private sector from making disclosure of improper conduct in any event of corruption or abuse of power. As illustrated in case *Khairul Azwan Harun v Mohd Rafzi Ramli,* though the defendant claimed no whistleblower protection from WPA, he pointed out the downside of the said Act as to its restriction of information required for a qualified disclosure in order to be guaranteed the protection under the WPA. As such, he should not be subjected to defamation law. Simply put, it is such a major flaw of WPA when it requires the disclosure must not be against any law.

Under Whistleblowing Protection Act 2010, the definition of "improper conduct" is provided in S2, where it refers to the act which constitutes a disciplinary offence or a criminal offence. While the term "disciplinary offence" is further explained in the same S2. It means any action or omission made in a public body or private body, which caused a breach of discipline as stated in the law or in a code of ethics, a code of conduct, or circulars or a contract of employment.

Normally, the disclosure of "improper conduct" will be filed or complained by the whistleblower himself, hence, the whistleblower shall have the clear idea in determining whether the particular act does fall under the definition of "improper conduct" or not. Nevertheless, the provision in WPA is too technical and ambiguous, which may cause hardship to the whistleblower, especially those who come from non-legal backgrounds. (Aik, 2017) S2 of WPA merely indicates disciplinary offence and criminal offence but does not clearly categorize which criminal acts will be covered. For example, S1 of UK Public Interest Disclosure Act 1998 inserts S43B into Employment Rights Act 1996, listed down five categories that are allowed to be complained of. It does not only include criminal offence and disciplinary offence, but also the offence of miscarriage of justice, danger to health or safety of any individual and damage of the environmental. Also, Australian Corporations Act defines the misconduct to be disclosed including fraud, default, negligence, breach of duty and breach of trust (Abigail Gail, Richard Flitcroft, Claire Brattey & Peter Anderson, 2019). It is clear, precise, and more understandable for laymen.

When one is unable to certainly confirm that the act done by the employee, employer or any third party of the company is an improper conduct, it may cause failure to

disclose or even worse, the protection over him can be barred. As a result, whistleblowing can be merely an act of wasting time and of incurring loss to one company, in particular its reputation.

IV. CONCLUSION

In order to improve the efficiency of WPA, some initiatives shall be taken by the government, for instance, to amend the flaw in WPA. First and foremost, it is provided that the only channel of disclosure under WPA 2010 is the enforcement agency. Also, the Act has excluded corporations itself to deal with the whistleblowing. However, it is necessary to have the corporation become aware of the issue and stop the wrongdoing as soon as possible in order to prevent reputational damage. Hence, an internal whistleblowing channel shall be provided. Moreover, the external whistleblowing channel other than the prescribed enforcement agencies also plays a crucial role. For example, the EU Whistleblower Protection Directive grants the whistleblowers' rights to report the suspected breaches to the media when the authority fails to proceed with the complaint. Therefore, it is suggested that the Act provide multiple channels of disclosure. (Hadders, 2020) The channel should now include categories of persons, bodies, departments and commissions.

Moving on, it is recommended that the current WPA2010 should expressly exclude the application of these conflicting legislations such as OSA 1972 to the whistleblowing action of bona fide. The proviso attached to S 6(1) of WPA2010, especially the phrase 'any written law' which has severely limited the scope of WPA should be removed in order to reduce the harshness of required information for disclosure. It can thereby facilitate the disclosure of any kind of misconduct by both private and public servants since they are granted with the legal protection under S 7 of WPA2010 but subject to S 11 of it.

Besides, the definition of "improper conduct" in S 2 of WPA 2010 shall be expanded and provided in a precise way, which is easier to be understood by laymen. For instance, WPA may refer to UK laws which categorized the improper conduct into five groups. In UK law, it does not only include the criminal offences, but also extended to the offence of environmental damage, miscarriage of justice and danger to public health and safety. Other than that, the amendment may refer to Australian Corporation Act which explicitly indicates the offences that fall under the ambit of "misconduct".

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18

LEGAL CHALLENGES FACED BY E-CONSUMERS DURING THE COVID-19 PANDEMIC IN MALAYSIA

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Abstract

As the pandemic hits the world, the world is forced to put it on hold. Goods and services that were disrupted caused the rise of many legal issues. This paper will focus on legal challenges faced by e-consumers during the pandemic. The first legal challenge that the consumers have to face is that there is a rise in online fraud or scam, as a lot of consumers have shifted to e-consumers due to the pandemic. The scammers are taking advantage of this newly born e-consumer who are not used to the new platform and as they are hardly detectable, it is difficult to take action against them. The second legal challenge for e-consumers is the technical difficulty in accessing the online Tribunal and that the online process of litigation takes a longer time due to movement constraints. The third legal challenge that the consumers have to face during the pandemic is the insufficient consumer protection given to e-consumer.

Keywords—e-commerce, e-consumers, covid-19, pandemic, consumer protection

I. INTRODUCTION

The discovery of a highly infectious novel strain of the coronavirus known as SARS-Cov-2 virus in December 2019 in Wuhan, China has put the whole world on a high alert risk of a pandemic. On 11th March 2020, the World Health Organization (WHO) declared a pandemic on the COVID-19 with essential strict operational procedures such as the use of face masks and hand sanitizers in public places with the practice of social distancing. Countries around the world have prohibited their citizens to travel domestically and internationally in order to curb the spread of the virus. People across the globe were asked to stay at home, shifting sectors such as business and education are to proceed online. The world has never been that dependent towards the internet up until the pandemic hits. Consumers have also shifted their purchase method from going to the stores physically to online shopping. For this reason, businesses have shifted their business operation from physical store to online store as a countermeasure to local government's regulation that prohibits the non-essential stores to be open in order to curb the spread of the virus. This

paper will have a look at the legal challenges that the consumers have to face during the pandemic, as a lot of things have changed during the pandemic.

II. METHODOLOGY

This paper took the approach of qualitative research by analysing the primary and secondary sources such as statutes, research papers, newspapers and analysing the current situation of the pandemic. The result of this paper is expected to base on what the consumers, with emphasis to e-consumers on what they have to face as a consumer during the pandemic that has brought many changes to consumerism as well as possible solutions that can be taken by the legal authorities.

III. RESULTS

The first legal challenge that the e-consumers have to face during the pandemic is that there is a rise in online fraud or scam. A lot of consumers have shifted to e-consumers due to the pandemic. The scammers are taking advantage of these newly born e-consumers who are not used to this new platform and as they are hardly detectable, it is difficult to act against them. Consumer fraud is described as misleading commercial activities that create financial or other damages to customers. When the victims are scammed, they feel they are engaged in a legitimate and valid commercial transaction. Consumer fraud is frequently associated with misleading promises or erroneous claims made to customers, as well as actions that actively defraud customers of their money. The perpetrators are known as ‘Scammers’.

According to Bukit Aman Commercial Crime Investigation Department (CCID) director Comm Datuk Zainuddin Yaacob, there has been a surge in scammer-related crimes in Malaysia, particularly during the epidemic, with 5,725 instances recorded in 2019 totalling RM254.5 million in losses. In 2020, the number of cases grew to 6,003 cases, resulting in a total loss of RM287.3 million. So far, 1,392 cases have been filed in 2021, with losses totalling RM38.1 million. [1]

According to the Ombudsman for Financial Services (OFS), internet usage increased throughout the Movement Control Order (MCO) and the National Recovery Plan (NRP) era. People spent more time online doing things like buying, banking, chatting, and being amused. Scammers have additional possibilities to find victims as a result of this. Fraudsters are also taking advantage of the uncertainties that have arisen as a result of the Covid-19 epidemic, such as financial uncertainty, to look for victims. Scams using phone calls (telephone scams), have been the most common since the MCO and the NRP that began in mid-March. The Macau scam, two-factor authentication (2FA) scams, and package or prize scams are all examples of telephone scams. It is believed that a lack of knowledge is a major contributor to Malaysia's rising number of financial fraud incidents. [2]

With the high dependency on online shopping and high usage of the internet during the pandemic, this situation is worrying as many are falling for scams and being robbed in daylight. The only action that can be taken by e-consumers after being scammed is by reporting it to the authorities. However, there is a high chance that the e-consumers might not get back what they have lost in the scam.

There are four channels that e-consumers can lodge reports of being scammed, mainly by reporting it to the police at the police station. Besides making a police report

after being scammed, the consumers may seek help from Bank Negara for financial scam, Malaysian Communications and Multimedia Commission (MCMC) for cyber fraud, and the Ministry of Domestic Trade and Consumer Affairs, (KPDNHEP) for consumer-related scams. Except for police reports, all the other three channels provide an online platform or phone number for consumers to file a report remotely, suitable to be used during the pandemic, as physical meetings are discouraged in order to curb the spread of virus.

A possible solution to this problem that the Malaysian government can reminisce about is what has been laid out by the Organisation for Economic Co-operation and Development (OECD). The OECD that comprises 38-member states have passed a policy response to protecting online consumers in the midst of pandemic. Within the policy, OECD has called upon businesses and governments to play a key role in maintaining consumer trust: During the pandemic, online marketplaces may help to build consumer trust by supporting responsible behaviour among third-party merchants on their platforms. They would need to aggressively check their platforms for scams, exorbitant pricing, and false health claims, deleting listings and/or suspending accounts as needed, and they also have to persuade for more government aid to detect rogue traders. Several in the European Union, for example, have set up routes to alert member states' authorities about unlawful content. [3] Simultaneously, consumer protection authorities all around the globe have reacted rapidly to warn consumers about the crisis's major risks, and several are considering specific steps to combat them. Faced with the problem of combining consumer health and safety with company support and worker protection, several governments have allowed exemptions from consumer protection legislation where it is in the public interest. In combating misinformation and lack of knowledge by citizens, the OECD pleas recommendation to its members to prevent COVID-19 scams, governments are urged to educate consumers about the various types of fraudulent conduct and to take action against them including filing a report and avoid misinformation, based on behavioural insights, establish a dialogue with online businesses about scams and misleading conduct, share information to help identify rogue traders to the extent possible, and foster cooperation between agencies with relevant consumer protection mandates, such as through inter-agency task forces. [4]

The second legal challenge that the consumers have to face during the pandemic is the technical difficulty in accessing the online Tribunal and that the online process of litigation takes a longer time due to movement constraint. Since the pandemic hit our country, case proceedings had to be conducted online and this took a bit longer time for the litigation process specifically for consumer claims as physical hearings were not conducted. This is such as if a consumer claim is brought to the consumer tribunal, the matter may be resolved in a shorter period compared to the case being conducted online. The process of litigation is now where after filing of claim at the tribunal, each of the involved parties will be sent a sealed form informing them of the complained issue and they will be subsequently given a hearing date for the complaint lodged. [5] After the completion of hearing process, the order will be delivered all through the designated online medium. At the tribunal, the related parties would be needed to be present physically for the case and unlike being conducted online where there might be issues such as connection problems and technical problems which may prolong the litigation process of a case.

Moreover, there are complaints on the inability to access the online Tribunal platform that was serving to receive consumer claims online. As stated before, the Bank Negara, MCMC, KPDNHEP provides an online platform to lodge a report regarding financial, cyber security and consumer matters. However, the e-consumers find it hard to

get hold of these three agencies on their platform as the provided platform was not able to handle the increasing number of e-consumers who wanted to file a report. A consumer can file a complaint online at the Tribunal for Consumer Claims portal and they will be guided by the relevant information as well as its procedures. [6] All this hardship faced by e-consumer regarding the reporting and proceedings of cases has constituted a clear legal challenge for consumers in our country during the pandemic.

The third legal challenge that consumers have to face during the pandemic is the insufficient consumer protection governing e-consumer. The Consumer Protection Act 1999 (CPA 1999) provides protection to consumers in which the law has gazetted regulation in regards to misleading and deceptive conduct, false representation and unfair practice. By the amendment of CPA 1999 in 2007, consumer protection provided under the Act has been extended to e-consumers as well. The government should show greater urgency in protecting online shoppers, but at the moment there is a lack of comprehensive guidelines protecting consumers from exploitation by online businesses.

Customers are vulnerable in a number of ways such as when they perform online transactions such as the risk of losing crucial financial information, credit card information, bank passwords and others that were used during the online transactions. For example, their online transactions for goods might be waived or pawned by scammers and another example where sellers send substandard goods that differ from those displayed on their website. If a consumer faces such an issue, their only recourse would be to report to Bank Negara, MCMC, KPDNHEP and the police as discussed above. There is a need to improve regulations on cyber laws in order to prevent such things from happening to the e-consumers, and providing the e-consumers in our country with adequate protection. A suggestion to be considered in preventing e-consumers from being exploited when shopping online is by having online business registered. Currently, according to Consumer Protection (Electronic Trade Transactions) Regulation 2012, the regulation imposed on online marketplace operators is that they must disclose the business' information on the website, and there is no need to register their business to any relevant authorities.

All of the problems mentioned here existed before the pandemic but have been made more acute by COVID-19's impact on the growth of e-commerce and the failures of businesses adopting e-commerce for selling their goods. Commercial risk during these uncertain times constitutes a significant threat to businesses, consumers, and the country. The business sector has been late in developing e-commerce, and the legal system has fallen short in regulating cyberspace. As consumers increasingly shop online, businesses are faced with the[7] limitations of cybersecurity and the possible implications that follow. Therefore, online businesses need to take advanced measures from now on to adapt to protect their online operations. However, implementing cybersecurity is often costly and uncertain, and only large companies can afford effective security systems. Thus, the government should invest significantly in cybersecurity to protect businesses within its jurisdiction. We need a place that regulates cybersecurity, such as the National Cyber Security Centre that many countries around the world adopt. Growing concerns have prompted countries in the Gulf region [8] to discuss the best strategies for dealing with cybersecurity jointly. This is because, in practice, no one country or organisation alone can adequately address this issue. Even huge companies like Facebook have had their systems compromised recently. The general realisation is that the cybersecurity sector is still a long way from assuring companies of a safe digital ecosystem. The current pandemic has made the situation trickier due to the increased use of the Internet for work, school, shopping and

entertainment. The increased importance of the internet to society poses a higher likelihood of cyberattacks.

IV. CONCLUSION

In conclusion, the changes in the situation of the world has also changed the way consumerism works. With so many restrictions imposed upon us by the authorities, many consumers changed their shopping platform from physical to online. The challenges that e-consumers have to face are immense and different from traditional consumers. The Consumer Protection Act must broaden its wings in protecting consumers. The Tribunal Court has also to adapt to the new environment of the online litigation process, in order to fit in the pandemic situation better.

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19

LEGAL CHALLENGES FOR CONSUMERS IN MALAYSIA DURING THE PANDEMIC

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Abstract

This article aims to explore how the pandemic and its surrounding issues impact Malaysia's consumers and whether the existing Malaysia legislation is adequate to shelter consumers' rights. This paper employs analytical legal research through various sources. Due to the post-covid new normal, online retailers tend to practise unethical or illegal advertising pricing to attract customers. The current laws implemented are inadequate to safeguard the consumers from misleading or fake pricing. Furthermore, consumers may find it hard to provide supportive evidence as the online description can be deliberately amended by certain parties after the payment is made. Despite refund and payment claims being governed under CPA 1999, it's not widely known by the consumers which leads to consumer's ignorance. Although CPA covers implied guarantee of goods and remedies, it doesn't deal with the loss and destruction of delivered goods. This article also analyses e-consumers' data and privacy which can be related to the situation when the e-consumers shop online or digitally were worried that their data privacy may be exploited. The conclusion drawn from this article is that every individual and departments are equally responsible to ensure consumers' rights are protected and to accelerate the development of consumer protection in Malaysia.

Keywords—consumers, pandemic, challenges, consumer protection, adequacy

I. INTRODUCTION

The pandemic has greatly affected e-consumers and traditional consumers as many supplies of goods and services are now cut short or outright terminated. Our research aims to explore the legal challenges faced by Malaysia's consumers amidst the pandemic and the effectiveness of Malaysia consumer legislations in tackling these challenges.

II. METHODOLOGY

This paper employs analytical legal research based on statutory, case law, data collection, and online news to form an opinion on the prospects of legal challenges consumers face in Malaysia during the pandemic.

III. RESULTS/ FINDINGS

Malaysian Consumers faced fake and misleading discount evidence during the pandemic. According to Minister Datuk Seri Alexander Nanta Linggi, among the increased complaints of 112.5% included misleading consumers through fake or misleading

discounts. Our current laws, such as Section 145 of Consumer Protection Act 1999 (CPA) and Section 7A of Trade Description Act 1968, protect consumers by prohibiting misleading advertisements. Nevertheless, the evidence of the misleading or fake discount by the seller is a prerequisite for making the seller liable. Consumers might have no evidence to prove the changed price as they would not have cautions when the discount price of goods changes.

Misleading discounts are common in Malaysia's advertisements. It is difficult to prove the products advertised with a discount are the original price but marked up combined with a discount percentage at the checkout point. Thus, consumers failed to show fake or misleading evidence as advertisements and internet descriptions were changed or erased.

Furthermore, the consumers faced challenges on refunding issues from service providers who have accepted deposits or payments for various services but have yet to fulfill the promised services. One of instances are the consumers faced refund issues after buying trip tickets through airlines and travel agents. A recent Malaysian case, *Dato Vijay Kumar Natarajan & Anor v Malaysia Airlines Bhd*, the plaintiff's flight was canceled due to the implementation of the MCO and sought a full ticket refund, but Malaysia Airlines refused to issue a refund. The court dismissed the plaintiff with the rationale that the pandemic qualifies as an "exceptional circumstance" which allows airlines to not provide compensation.

Another incident was the consumer was unable to get a refund for their reservation of a wedding hall during MCO. Although CPA protects consumers' interests, refund issues continue to occur in Malaysia as the government fails to provide comprehensive guidelines to deal with the issue of services during the pandemic. In short, there are still ambiguities in regards to refunds and payments. With online shopping on the rise, bought goods are now delivered to the purchaser's desired destination primarily via delivery services. These services have long been plagued by issues of damage, destruction or loss of goods during delivery.

CPA itself does not expressly provide for the issue of damage of goods in transit. In fact Section 43(1)(d) of CPA provides that consumers shall lose their right to reject goods if the goods were damaged following delivery to the consumer due to factors unrelated to the goods' condition or state when supplied. However, Part V of CPA does safeguard numerous

implied guarantees as to goods, ranging from S31 to S37of CPA, and manufacturer's express guarantee under S38. The supplier's failure to comply with the implied guarantees provided will entitle the consumer to a right of redress under S39 and remedies as provided under S41.

However, issues arise when the delivered goods are destroyed or lost, as S43(1)(c) of CPA provides that a consumer's right to reject goods is inapplicable if the goods were destroyed or lost while in the possession of a person who is not the supplier. Thus, if delivered goods were lost or damaged in transit, or stolen after being delivered to the consumers, the consumers will be stripped of any remedies available to them under CPA.

The matter is primarily resolved via e-commerce websites. Consumers may only choose to apply for refunds from suppliers through the online traders. The dispute will then

be solely investigated and dictated by the e-commerce websites, where if the claims were rejected, the request will be cancelled, cutting the consumers off any path of remedying the issues, making the consumers vulnerable to package theft, loss and destruction of goods.

As the years passed by, data breaches cases had arisen. The e-consumers had also faced the same issue. The happening of a string of high-profile data breaches taught society a valuable lesson that anyone has the potential of being the victim of cybercrime.

These breaches are mostly resulted in when the e-tailers utilised the third party vendors in providing the key functionality on their respective websites. The Parliament had enacted laws such as the Communications and Multimedia Act 1998 (CMM), Communications and Multimedia Commission Act 1998 (CMC) and *Personal Data Protection Act 2010* (PDPA) to curb the issue of privacy and data protection. Incidents still frequented such as the ShopBack 2020 event where the system storing the personal information of the customers were accessed unauthorizedly.

IV. CONCLUSION

Although consumers are protected by the legislation enacted, it is still inadequate to safeguard their rights. All parties such as the government, non-governmental bodies should provide continuous effort to accelerate the development of consumer protection in Malaysia to curb the legal challenges faced.

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20

LEGAL CHALLENGES FOR CONSUMERS IN MALAYSIA DURING THE PANDEMIC

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Abstract

The pandemic has brought about massive adjustment to the convention of commercial dealing and innumerable merchants have brought their business online. The norm may be detrimental to consumers in the legal context. Having said that, this academic article aims primarily to identify the legal challenges faced by the consumers in Malaysia during the pandemic. Four main legal challenges that would possibly be faced by the consumers during the pandemic will be discussed thoroughly in this project. Suggestions to resolve the legal hurdles will also be given in the ending of this project.

Keywords—consumers, pandemic, challenges, consumer protection, Covid-19

I. INTRODUCTION

In the light of the recent pandemic, the Malaysian government had implemented the Movement Control Orders (MCO) over different phases to minimise the spread of the COVID-19. However, the pandemic alongside the orders issued in respect of it has caused consumers in Malaysia to face many legal challenges. In general, the legal challenges faced by consumers in Malaysia during the pandemic are unreasonable price hikes, deficiency of post-sale service, challenges arising from online shopping and closure of Tribunal for Consumer Claim (TCC) during the pandemic. Following which, we are going to support our argument with the relevant provisions as well as to provide suggestions that could possibly prevent such an awful situation from happening again.

II. METHODOLOGY

The paper in question makes use of high-quality research on statutory laws, news about recent events, government implemented policies in Malaysia, and also daily faced problems by various industries primarily having to do with commerce. The result of the research mentioned above is foreseen to be able to provide a general overview of the issues that suppliers and consumers face during the COVID-19 Pandemic, legal challenges and also the laws which govern such instances.

III. RESULTS/FINDINGS

The first legal issue is the unreasonable price hikes of certain consumer goods as can be seen in the price of chicken meat in December 2020 that has further been increased by 95 sens recently.[34] Other than that, it was also reported that the Consumer price index has

[34] Ramli, N. N. (2021, April 15). Curtailing Food Price Hikes. *The Star*. https://www.thestar.com.my/opinion/letters/2021/04/15/curtailing-food-price-hikes

increased a total of 1.4% as of February 2021.[35] It is understood that price increases of consumer goods are unavoidable. However, there are instances where individuals and enterprises have taken advantage of the recent pandemic to illegally price hike the consumer goods. To further support this point, there were numerous reports made in regards to cooking oil, sugar and many other commodities that were allegedly price hiked unreasonably. There are two laws which mainly govern in regards to this which is the Competition Act 2010, the other being Price Control and Anti-Profiteering Act 2011.

Secondly, it is the deficiency of post-sale service. The Prevention and Control of Infectious Diseases (Measures within the Infected Local Areas) Regulations 2020 was enacted pursuant to s 11(2) of the Prevention and Control of Infectious Diseases Act 1988 and was made effective from 18 March to 31 March 2020.[36] According to the Regulation, only activities that are falling within the category of essential service are permitted to operate. Since the maintenance and repair industry is not being listed in the essential services, consumers may struggle if the goods bought are damaged. It would be more unpleasant if the subject matter is an electronic device or appliance, for having the damage fixed amid the pandemic is no easy task. In such an event, the consumers will only be left with 2 choices, ie, to have the goods repaired after the restriction has been lifted; or to buy the same new device even though there is just a minor damage. Nevertheless, if the damage is attributed to the breach of implied guarantee of acceptable quality by the supplier as required under s 32 of the Consumer Protection Act 1999 in e-commerce dealing, the consumers will be exasperated.[37] As the technical and repair department may not be operable due to the legal restriction, it is highly likely that the supplier will be excused from the liability after the pandemic after the strict legal limitation has been lifted by contending that the guarantee as to quality has ceased to apply due to whatsoever argument that can be premised on s 32(5) of the Consumer Protection Act 1999.[38]

Another legal challenge that is often faced by Malaysian consumers during the pandemic is in relation to the problem that ensued from online shopping. The issue arises as there is no statutory law that expressly provides protection to the interest and rights of e-consumers. Although e-consumers are protected through the extensions given to certain Acts such as the Consumer Protection Act 1999 and the Sales of Goods Act 1957, the main objective of these Acts is still to counter physical sales. It would definitely be ideal if an exclusive e-consumer protection statute can be made available. Additionally, the inability of the current legislation to deal with online scamming is also another legal challenge that is often faced by consumers due to the change of shopping mode. In fact, there are many modes of scamming in an online transaction. One of them is the usage of false advertisement by the suppliers. Suppliers will often employ false advertisement to attract the attention of online customers and can often escape the legal liability. Although numerous laws are available to tackle the usage of false advertisement such as ss 9 and 10 of the CPA 1999,[39] they are often insufficient when it comes to e-commerce. This is due to the difficulty to track the supplier as they might not even have their company registered and what more if the information by the supplier is false. Other than that, in most instances,

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[35] Traders under probe over price hike of controlled products. (2021, October 2). *The Star*. https://www.thestar.com.my/news/nation/2021/10/02/traders-under-probe-over-price-hike-of-controlled-products

[36] *Prevention and Control of Infectious Diseases Act 1988*, s 11(2).

[37] *Consumer Protection Act 1999*, s 32.

[38] *Consumer Protection Act 1999*, s 32(5).

[39] *Consumer Protection Act 1999*, ss 9 and 10.

the goods or services purchased online are also not fulfilling the implied guarantee as to their quality and description which are provided by ss 34(1) and 32 of CPA 1999.[40] Although the laws have provided guarantees to the consumers, they are often ignored by the online suppliers, considering that the transaction was done online.

Furthermore, the consumers might also face challenges when the descriptions provided by the online suppliers are in line with the actual goods obtained. The inaccurate information provided by the suppliers, be it in good faith or otherwise, would be deemed to be a misleading conduct and misrepresentation. If the consumers had suffered loss and damage due to the information given, the court is empowered to grant ancillary relief to victim in pursuant to s 29 of CPA 1999,[41] by ordering to have the money refunded and loss or damages to be compensated. Moreover, there is an implied guarantee of description imposed upon the supplier as s 34(1) of the CPA 1999[42] provides that where goods are supplied by description to a consumer, there shall be an implied guarantee that the goods must correspond with the description. Furthermore, challenges may also arise when the goods purchased online do not meet the expectation in terms of its quality and/or the purpose for which the goods were acquired. On some occasions, despite the purpose of acquiring the goods having been conveyed to the seller, the awful experience is still inevitable. This happens as online customers will not have the chance to review and/or experience the goods before purchasing them unlike physical purchase. S 32(1) of CPA 1999[43] emphasises that there is an implied condition for which the goods being supplied to the consumer must be of acceptable quality. Furthermore, regarding implied guarantees, s 39 of CPA 1999[44] provides that consumers have the right to redress against suppliers and sellers who had failed to comply with implied guarantees. S 41 of CPA 1999[45] states that, in instances where the goods have failed to comply with implied guarantees, the consumer may require the supplier to remedy. However, in instances where it cannot be remedied, the consumer may reject the goods or obtain compensation.

Lastly, procedural and operation changes have been brought to the TCC in Malaysia. During the implementation of MCO, all claims in the TCC can only be filed through the e-aduan system by the Ministry of Domestic Trade and Consumer Affairs. With the unavailability to file a claim physically at the counter of the TCC, it would definitely hinder some consumers, especially elderly from upholding their rights as consumers. Notwithstanding that, there will also be no claims heard in the TCC amid the MCO. Before putting forward our argument that this would render a legal challenge to the consumers in Malaysia, it is imperative to note that the TCC was meant to be a speedy redress mechanism for consumers. This is evident in *Hazlinda bte Hamzah v Kumon Method of Learning Centre*,[46] where Gopal Sri Ram JCA held that the CPA 1999 has provided greater benefits compared to the Sale of Goods Act 1956 with a speedy relief. It is also explicitly provided in s 112(1) of CPA 1999 that the TCC has to make its award within 60 days from the first day of the hearing without any delay.[47] The words "expeditious" and "without delay" clearly show the central theme of the CPA 1999 is to provide speedy disposal of consumer

[40] *Consumer Protection Act 1999*, ss 34(1) and 32.

[41] *Consumer Protection Act 1999*, s 29.

[42] *Consumer Protection Act 1999*, s 34(1).

[43] *Consumer Protection Act 1999*, s 32(1).

[44] *Consumer Protection Act 1999*, s 39.

[45] *Consumer Protection Act 1999*, s 41.

[46] *Hazlinda bte Hamzah v Kumon Method of Learning Centre* [2006] 3 MLJ 124 (CA).

[47] *Consumer Protection Act 1999*, s 112(1).

claims. Having established that the TCC is created with a sole purpose of providing a speedier redress mechanism to the consumer, the unavailability to grant award to the consumer within 60 days as promised by the law has become a legal challenge to the consumers. As a result, it would hamper them from filing a claim in the TCC, for the statutory promise for a speedy redress has been broken.

IV. CONCLUSION

In conclusion, it is undeniable that consumers are facing a lot of legal challenges during the COVID-19 pandemic. Hence, it is important for the relevant authority to take initiatives in overcoming these legal challenges. Enactments or amendments of law should be done in order to redress the laws to suit the current norms amid the pandemic. The laws made prior to the pandemic might not be suitable any further especially when the new norm has emerged. The hurdles faced by the consumers have shown the need of having new laws and regulations to uphold the consumers' rights in the midst of the COVID-19 era. Aside from that, it is also pertinent to have a specific regulatory body to be established to regulate the policies made by the government without depriving the rights of the consumers. In short, with proper implementation, these suggestions would be immensely important to assist the consumers in overcoming the above-mentioned legal challenges

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21

LEGAL GENDER RECOGNITION: A COMPARATIVE ANALYSIS BETWEEN UNITED KINGDOM AND MALAYSIA

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Abstract

More often than not, an individual's gender identity will be correlated with the biological sex assigned at birth. However, some people suffer from gender dysphoria as distress engulfs them when there is a mismatch between their gender identity and biological sex. They are commonly labelled as transgenders and endeavor to make themselves conform to their own gender identity via various means. In spite of the escalating global effort in legally recognizing the transgenders, Malaysia continuously denies their existence. As a result, the transgenders encounter daily discrimination in various aspects such as employment and education, which eventually push them to the fringe of the society. This paper aims to explore the current Malaysian legal framework and how it has put the transgenders through legal limbo when seeking legal recognition of their perceived gender identity. This paper adopts a qualitative pure legal research approach based on statutory law and case precedent. Therefore, this paper seeks to suggest ways to enhance legal protection to transgenders in Malaysia through the comparative analysis between the legal framework in United Kingdom and Malaysia.

Keywords: Transgender, legal gender recognition, discrimination, legal protection, gender identity

I. INTRODUCTION

More often than not, an individual's gender identity will be correlated with the biological sex assigned at birth. However, portion of people suffer from gender dysphoria as distress engulfs them when there is a mismatch between their gender identity and biological sex. They are commonly labelled as transgenders and endeavor to make themselves conform to their own gender identity via various means. In spite of the escalating global effort in legally recognizing the transgenders, Malaysia continuously denies their existence. Due to the absence of legal gender recognition, the transgenders encounter incessant daily discrimination in various aspects such as employment and education, which eventually push them to the fringe of the society.

II. METHODOLOGY

This paper aims to explore the current Malaysian legal framework and how it has put the transgenders through legal limbo when seeking legal recognition of their perceived gender identity. This paper adopts a qualitative pure legal research approach based on statutory law and case precedent. Therefore, this paper seeks to suggest ways to enhance legal protection to transgenders in Malaysia through the comparative analysis between the legal framework in the United Kingdom and Malaysia.

III. RESULTS

Even though Article 8(2) of Federal Constitution prohibits discrimination on the ground of gender, it is not clear whether the word "gender" encompasses gender identity as well as it has yet to be discussed by the Malaysian judiciary. Currently, there is no expressed law in Malaysia which permits the transgenders to change the gender marker on their legal documents as according to Section 27 of Births and Deaths Registration Act 1957 and Section 6(2)(o) of National Registration Act 1959, information stated in the Birth Certificate and National Registration Identity Card can only be corrected if there is error. As a result, Malaysian court tended to follow the UK case of *Corbett v Corbett* [1970] 2 All ER 33 (Case of Corbett) which held that an individual's sex assigned at birth can never be changed and three biological factors can be taken into consideration in assessing it, namely chromosomal, gonadal and genital factors. The earliest Malaysian case concerning about the alteration of gender marker will be *Wong Chiou Yong (P) v Pendaftar Besar/ Ketua Pengarah Jabatan Pendaftaran Negara* [2005] 1 MLJ 551, where the application was dismissed by referring to the case of Corbett even though the applicant had undergone gender reassignment surgery ('surgery'). The court acknowledged the applicant's plight but expressed its inability to assist due to the absence of law and impliedly called for the Parliament to take corresponding action. A glimmer of hope was witnessed when the application in the case of *Re JG, JG v Pengarah Jabatan Pendaftaran Negara* [2006] 1 MLJ 90 ('case of Re JG') was granted as based on the medical evidence, the applicant lived as a woman with psychological thinking as a woman. It was further emphasized that such recognition constitutes an individual's right to life enshrined under Article 5(1) of the Federal Constitution. Based on the past judicial decision, it can be observed that medical evidences have become the primary guidance for the court as in the case of *Kristie Chan v Ketua Pengarah Jabatan Pendaftaran Negara* [2013] 4 CLJ 627, even though the case of Corbett was acknowledged, the primary reason for the dismissal of application was the applicant's inability to adduce medical evidence by Malaysia experts. In spite of the successful application in the case of Re JG, the application in the case of *Fau En Ji v Ketua Pengarah Jabatan Pendaftaran Negara* [2015] 1 CLJ 803, culminated with failure due to the non-fulfilment of chromosomal and genital factors. In the most recent case of *Tan Pooi Yee v Ketua Pengarah Jabatan Pendaftaran Negara* [2016] 12 MLJ 370 (Case of Tan Pooi Yee), by referring to the medical evidence, the court granted the application by criticising the requirement of chromosomal factors as an individual's chromosome is immutable. However, upon appeal to the Federal Court, the decision was overruled due to the non-fulfilment of chromosomal factors even though the case of *Corbett* had been overruled in the case of *Christine Goodwin v The United Kingdom* which was decided in the European Court of Human Rights in 2002 as the requirement of chromosomal factor was no longer justified in the light of the development in the field of medical science**.** The circumstances in the UK were remained controversial even though the Gender Recognition Act (GRA) 2004 allowed trans people whose birth was registered in the UK to have their acquired gender (either male or female) recorded on their birth certificate as it often producing conflicts with the enforcement of Equality Act 2010 in protecting the rights of trans community.

IV. CONCLUSION

Conspicuously, absence of law dealing with legal gender recognition has caused the dichotomy in the past judicial decisions, which place the transgenders' lives in jeopardy. In order to ensure all transgenders in Malaysia can enjoy all human rights in spite of their gender identities in accordance with Principle 1 of Principles on the Application of

International Human Rights Law in relation to Sexual Orientation and Gender Identity ('Yogyakarta Principles'), the recommendations are:

a) Gender Recognition Bill to be tabled before the Parliament as soon as possible by referring to Yogyakarta Principles and foreign legislations such as UK Gender Recognition Act 2004.

b) Constitutional amendment to be made towards Article 8(2) of FC to prohibit discrimination on the ground of gender identity.

c) Right to life enshrined under Article 5(1) of FC to be recognised by Malaysian judiciary as including an individual's right to be legally recognised according to his or her gender identity which had been shown in the case of *Re JG* and *Tan Pooi Yee*.

d) Discriminatory Syariah cross-dressing law to be repealed.

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Wong Chiou Yong (P) v Pendaftar Besar/ Ketua Pengarah Jabatan Pendaftaran Negara [2005] 1 MLJ 551

22

LEGAL PROTECTION TO CORPORATE WHISTLEBLOWER IN MALAYSIA

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Abstract

Whistleblowing is an act to attain a healthy corporate environment by implementing an internal control system in the company. The employees who have the right of speech to report the misuses of power of the employers in the company are called the whistleblowers. This paper closely outlines the issues that arose in relation to corporate whistleblowing. This study aims to encourage more voluntary whistleblowing in order to create a healthy corporate culture and promote good business conduct by examining the legal protection provided to the whistleblowers. Next, methodology of library-based research and 'black-letter law' will be used to examine the legal protection provided by the Malaysian legislations such as Whistleblower Protection Act 2010, Companies Act 1965, Capital Markets and Services Act 2007, Malaysian Anti-Corruption Commission Act 2009, Witness Protection Act 2009 and other relevant authorities to employees who whistleblow on their employers and will then clarify that whether the legal protection is sufficient enough to protect the whistleblowers. The preliminary results of the research show that although many legislations are being enacted to protect the whistleblowers, there are still deficiencies in the legislations which cause inadequacy in providing legal protection to the whistleblowers. Finally, the conclusion which can be drawn from the findings is that more sufficient legal protection should be provided to the whistleblowers to prevent malpractice and unhealthy corporate culture in the company. Some recommendations for the legal protection of the whistleblowers will also be presented in this paper.

Keywords—*employee, abuse of power, whistleblower, whistleblowing, legal protection*

I. INTRODUCTION

When an employee of a company or government agency reports misconduct to the public or a higher authority, they are known as whistleblowers. (Merriam-Webster, n.d.) Internal whistleblowing occurs when an employee of a firm tells his superiors in the company's top positions about unlawful misbehaviour. External whistleblowing occurs when an employee reports misconduct to someone outside of his organisation. Whistleblowing is intended to eliminate unethical behaviour in the workplace. Being labelled a whistleblower may make it more difficult to be employed at a new business in the future.

II. METHODOLOGY

This extended abstract will be adopting a library-based approach to examine the information gathered from primary sources and secondary sources including articles and journals online to determine the legal protection of corporate whistleblowers. It is also based on 'black letter law', that are legal rules and principles established specifically the Malaysian legislation in affording protection for whistleblowers. Analytical research was

performed to identify the issues arising from the whistleblowing act, the efficacy of the legislation in protecting the interest of whistleblowers, will be critically discussed.

III. RESULTS/FINDINGS

Whistleblower Protection Act 2010 ('WPA')

According to Section 6 of WPA, whistleblowers will not be protected by WPA if the disclosure is prohibited under other written law.

One of the legislations that largely affect the protection to the whistleblower is the Official Secrets Act 1972 ('OSA'). OSA always used to prohibit the spreading of cabinet documents or official documents which are classified as 'top secret' or 'confidential'.

This is shown in *Mohd Rafizi Bin Ramli v Public Prosecutor* (2014) 3 MLJ 114, where Rafizi Ramli, a Member of Parliament who revealed information to the media about the National Feedlot Corp case. He was not only unable to seek protection under WPA but also charged under Banking and Financial Institution Act 1989 for disclosure of secrecy. This restriction should be removed as it clearly goes against the purpose and spirit of this Act.

According to Section 7 of WPA, it is implied that whistleblowers will only be protected if the disclosure is made to the enforcement agency. This in fact reduces the willingness of whistleblowers to report any abuse of power. This is because employees prefer to report to the employer when they realize there is any misconduct by other colleagues because there is better trust between employers and employees. Employees are also afraid that the report they lodged to the enforcement agencies will be in violation of any law without their knowledge. (Meng and Fook, 2011).

Unfortunately, currently there is no compulsory requirement under WPA that every company must set up a whistleblowing system in their organization. Even Corporate Governance Guide issued by the Bursa Malaysia requires every listed company to have this policy in their organization, this is not sufficient as there are many private limited companies which did not implement this policy.

WPA should have a reform according to Australian Whistleblower Protection Act 1993. In Australia, the disclosure of information is an appropriate disclosure as long as it was made to appropriate authority that is reasonable. Section 11 (1)(a) of WPA should be amended because even someone may participate in the wrongdoing and he should be punished for that wrongdoing, but this should not affect his right to be protected for blowing the whistle. This section in fact discourages the person who regrets his wrong doing and intends to withdraw from his conspiracy (Leong, 2017).

Companies Act 1965 ('CA')

According to Section 368B (1) of CA, an officer may notify any violation of the corporation's regulations to the Registrar. The corporation is forbidden from removing or interfering with the livelihood or employment of an officer who makes a 'protected disclosure' under Section 368B (2) of CA. CA provides little and insufficient protection.

To begin with, there is no provision in CA that guarantees the secrecy of a whistleblower. This would make the employee afraid of being revealed if they become a whistleblower.

Second, the Registrar of Companies and the Securities Commission are not required to investigate the officer's complaint. This is critical because executives of businesses will have more trust if their issue is taken seriously and examined. Otherwise, if a person believes that the appropriate body is unlikely to examine his complaint, he may be hesitant to speak out.

Capital Markets and Services Act 2007 ('CMSA')

The whistleblower protection in CMSA is quite similar to Section 368B of CA. Disclosure of information is governed under Section 321 of CMSA. Section 367(1) of CMSA states a representative of a company's body corporate is responsible for any violation of CMSA. CMSA provides little and insufficient protection.

Firstly, CMSA does not specify whether an officer who makes a "protected disclosure" is entitled to civil law remedies such as damages. This will undoubtedly cause an employee to consider whether or not to file a complaint, since he will be greatly exposed and may find it difficult to get work in the future.

Second, whistleblower's protection applies only if he develops a reasonable belief while performing his duties. With no protection, an employee will naturally be hesitant to report any wrongdoings about his employer, fearing losing his source of income.

Malaysian Anti-Corruption Commission Act 2009 ('MACCA')

MACCA imposes duty to report the offence of bribes under Section 25. In respect of protection for whistleblowers, the MACCA makes the identity of the information provider a secret between the whistleblower and officer.

According to Section 65(1) of MACCA, it is the duty not to disclose any relevant information of the whistleblower. Bursa Malaysia, in relation to the corporate liability for corruption by virtue of Section 17A of MACCA, had required listed issuers to, inter alia, encourage whistleblowing. It is to provide greater transparency to investors. The MACCA is considered as sufficient enough to act as a supplementary statute to WPA.

Witness Protection Act 2009 ('WPA 2009')

The Witness Protection Act 2009 incorporated the witness protection programme in Malaysia. Generally, a whistleblower who has witnessed a corruption activity in the corporate will be considered as a witness and will be protected under the WPA 2009.

However, in the implementation of the programmes under WPA 2009, the authority is lacking resources for manpower and finances, which caused major impact on the subsequent procedures, such as relocating and amending the identity. Furthermore, WPA 2009 does not give definition to who constitutes "family" to the witness despite that the witness protection often includes the family. It would be more appropriate if it can provide clear provisions.

Law of Dismissal of Employees

The whistleblower as an employee in the company is protected by Industrial Relations Act 1967 ('IRA'). They have the security of tenure and cannot be terminated unjustly. If the whistleblower has been unjustly treated by his employer due to the act of

whistleblowing about the misconduct of his colleagues, he can choose to resign and claim remedies from the company by reason of the constructive dismissal. Section 20(1) of IRA allows the whistleblower to make representations in writing to the Director General of Industrial Relations to be reinstated in his former employment.

Section 20(3) of IRA provides that the Minister of Human Resource can bring the employee's complaint to the Industrial Court for an award if the dispute between the company and employee is unsettled. If the whistleblower is terminated as he has disclosed evidence of his employer's misconduct or malpractice, he can contend that it is unjust termination. It is now the responsibility for the company to justify that it is a just dismissal as he still will be terminated even without whistleblowing, but not the revenge for the conduct of whistleblowing.

IRA will provide the remedies such as compensation in lieu of back wages and reinstatement to the whistleblower if he has been dismissed without just cause. However, the shortcoming of the IRA is that the remedies provided by the IRA do not order costs, which cause the whistleblower who is involved in the dispute with the company has to pay for his own legal costs in the legal action under Section 20(3) of the IRA. They will also lose their income if they are dismissed which causes hesitation to whistleblow.

Corporate Governance Guide ('CGG')

CGG pushed for companies to incorporate whistleblowing policies into their code of conduct. (Bursa Malaysia, 2009) Such incorporation has helped in affording protection to whistleblowers for both public and private companies. For example, the Bank Negara Malaysia has given a clear definition on what amounts to improper conduct and in the policy stated the proper procedures and channels to whistleblow. Similar practice is made by CIMB Bank.

However, there are shortcomings from this. Firstly, the incorporation of whistleblowing policy is only encouraged but not made compulsory. Although the adherence to CGG is encouraged to instill faith in investors, smaller organisations might not have a complete policy in place (Rachagan & Kuppusamy, 2012). Secondly, most companies require whistleblowers to disclose their identity, some companies will not entertain the complaint if the identity of the whistleblower remains anonymous.

This can be seen in the case of *Shahruddin bin Zainuddin v Bank Pembangunan Malaysia Bhd* [2020] ILJU 173, where the bank as defendant stated that based on their company's whistleblowing policy, it is put forward that the bank will not entertain any anonymous complain unless the whistleblower reveals their identities then only the bank will proceed to consider the content in the complaint letter.

This practice can lead to hesitation and fear as the employees might be scared about losing friends and receiving judgment. More than 50% of employees are hesitant in expressing their opinion openly in the workplace (Wong, 2020). Thus, employees can be reluctant to whistleblow when they stumble through the misconduct of their colleagues. This is especially when the person of interest is someone of a higher position in the company, employees might be afraid of any backlash of actions taken by the company against them as a form of retaliation (Tan Pei Meng & Ong, 2011).

IV. CONCLUSION

The following recommendations are based on the comparative analysis on England and Malaysian laws for whistleblower protection. In England, the governing statute is the Employment Rights Act 1996 ('ERA').

Firstly, the definition of "detrimental act" in WPA, which originally covers positive act, is suggested to include the expression provision as in Section 47B (1) of ERA to include any "failure to act".

Secondly, the WPA is recommended to include a time frame for the claim. As "time is of essence", it should limit the time for a whistleblower to bring a complaint to the relevant agency that he experienced from detrimental action due to his protected disclosure. For example, Section 48(3)(a) of ERA provides a three-month limit for the worker.

Lastly, Section 47E(c) of ERA imposes vicarious liability on employers for those who act detrimentally against the whistleblower. The WPA should transform the "personal liability" to "vicarious liability" of employers for such wrongful acts. The rationale is that it encourages the employer to take necessary action to protect the whistleblower.

In conclusion, there are several statutes incorporated in Malaysia to protect whistleblowers, but they are insufficient and incomplete. Owing to the aforementioned weaknesses existing in the statutes, it is still a long journey for Malaysia to tide over the difficulties in order to achieve standard good corporate governance practices.

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23

ONLINE ACTIVISM: THE FREEDOM OF SPEECH AND EXPRESSION IN MALAYSIA

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Abstract

The advancement of technology has brought about many advantages such as the rise of many information sharing platforms which can be utilised to bring awareness and one prominent part of this rise is online activism. Online activism has benefited the society in many ways particularly in Malaysia where the rise of online activism has encouraged Malaysians to make use of their freedom to speech and expression by using relevant information sharing platforms such as social media. In a democratic country like Malaysia, every citizen has the right to freely express their opinion and expression online. However, the citizens' rights are being repressed with the use of draconian laws to further silence any attempts of advocating through online activism though it is recognised as an inherent right of every individual provided under the Universal Declaration of Human Rights. Thus, the main aim of this paper is to discuss and analyse the freedom of speech and expression through online activism in Malaysia.

Keywords: Freedom of speech and expression, online activism, draconian laws, Malaysia, technology

I. INTRODUCTION

Online activism is known as the Internet activism that takes place within the online platform by way of online petition, hosting campaigns or by way of verbal protests connecting thousands of people with the same goal to bring about a social or political change.[48] Online activism and the freedom of speech and expression are interconnected because only with free speech can a person freely protest online. This freedom of speech and expression is an inherent and a fundamental right given to every individual to voice out and express his own opinion and belief through any appropriate channel without any intervention by any party. Many users use the online platform as a means of activism to bring about changes in the political scene and also to express their opinion on how reforms about a certain matter can be done such as the *Bersih* Movement.[49] Be that as it may, online activism has been very much restricted by the draconian laws such as the Sedition Act 1948

[48] Guobin Yang, 'Online Activism' (*Core.ac.uk*, 2009) <https://core.ac.uk/download/pdf/76382715.pdf> accessed 27 September 2021.

[49] 'Malaysia'S Bersih Movement Shows Social Media Can Mobilise The Masses' (*The Conversation*, 2016) <https://theconversation.com/malaysias-bersih-movement-shows-social-media-can-mobilise-the-masses-63725> accessed 27 September 2021.

and the Communications and Multimedia Act 1998 of which the freedom of speech and expression on the internet is curtailed.

II. METHODOLOGY

The research was carried out by largely relying on secondary data sources, which we found to be the most appropriate for our issue. We gathered data from a variety of sources including journals, statutes, articles, and case studies. The approach used were the descriptive research and explanatory research methods. The former research is used to describe situations, problems or information about the issues faced in online activism and the latter research is to explain the situations between repeated occurrences of a situation. As for descriptive research we explained about the functions of the law, and why these laws shall be amended or repealed because these laws can be abused by executive powers to cripple Article 10(1)(a), (b) and (c). In addition, we used case studies, which is the qualitative research method to picture the actual experience of real-life events faced by activists because of these acts. The advantage of case study is that it can help us to understand a situation or issue and shed light on a new situation or add information. As for explanatory research is about finding explanations of events, for example for matters on why the Sedition Act was enacted and why it needs to be appealed.

Besides, the applied research method was applied as well, whereby, this research method is about real-life events, such research is of practical use to current activity. For example, draconian laws used to repress the voices of activists in Malaysia. Politicians and activists are threatened under the Sedition and Communication and Multimedia Act, from the moment they question or criticise the acts of the government.

III. FINDING

Discussion on the position of freedom of speech and expression under the federal constitution and the draconian laws

Malaysian Federal Constitution ("FC")

Malaysia upholds the right to freedom of speech and expression under Article 10(1) of the Federal Constitution. This constitutional right enables the citizens to express their opinions on various aspects and the provision is wide enough to cover various modes of communication. According to the case of *Public Prosecutor v Ooi Kee Saik & Ors*[50], it is stated that "the right to freedom of speech is simply the right which everyone has to say, write or publish what he pleases so long as he does not commit a breach of the law." In other words, the right may cover any verbal or non-verbal communication.[51] The right however is not absolute. Article 10(2)(a) of the Federal Constitution empowers Parliament to impose laws where the restriction is deemed to be necessary.[52] If the Parliament believes it is essential and expedient for a variety of reasons, the laws may be passed. However, it is certainly not an exaggeration to state that Malaysians have the right to freedom of expression and speech, but not to freedom after speech. The Federal Constitution also provides restrictions on classified sensitive matters and for the sake of security or public

[50] [1971] 2 MLJ 108

[51] Mohd Azizuddin Mohd Sani (2008) Freedom of Speech and Democracy in Malaysia, Asian Journal of Political Science, 16:1, 85-104

[52] Mohd Azizuddin Mohd Sani , Balancing Freedom of Speech and National Security in Malaysia , (2013) , 10.11.11

order. Citizenship, national language, Malays' privileges, and Rulers' sovereignty are among the topics discussed as they could easily lead to racial tension in Malaysia, given the context of the plural society.[53]

Draconian laws such as the Communications and Multimedia Act 1998 and Sedition Act 1948 Communications and Multimedia Act 1998

The Communications and Multimedia Act 1998 (CMA) is a legal statute that provides governance over internet crimes and legal proceedings. Throughout the years, this act has received an abundance of backlash due to its restrictive nature that tends to curb the freedom of speech and the right to voice one's opinions.

The issue with online activism stems from its restrictive nature that is brought about by none other than the CMA. Provisions under this act limits the public from sharing their honest thoughts and opinions as they will be labeled as defamatory and malicious in nature. The CMA works hand in hand with the Penal Code's provisions on defamation which in turn curbs online activism.

In reference to Section 233(1) of the Communications and Multimedia Act 1998,[54] it can be observed that mere comments, suggestions and other forms of expression may be considered as offensive. The threshold within which an offensive statement falls is very low. A relevant example can be found in the case of *Mohd Fahmi Reza v PP*,[55] wherein the offender was accused and charged under the aforementioned section for uploading a clown caricature of a former prime minister on his social media account. The sketch was done as a form of protest towards the latter due to his major scandal involving billions of ringgit. and how it can be used against them as well as deter online activism.

The crux of online activism is that everyone gets to participate in order to fight for justice and push for change. This basic right is being stripped away by harsh legislation such as the Communications and Multimedia Act which is meant to bring about solutions instead of being used as a façade to minimize activism. Also, certain provisions under these acts need to go through either major amendments or be abolished altogether. For instance, Section 233 of the CMA is too broad in a sense that it can be interpreted in many ways. Its generality makes room for manipulation and misinterpretation such as when MCMC blocked 'The Malaysian Insider's' page due to 'confusion' even though it was probably not how the section was supposed to be interpreted and applied.

Sedition Act 1948

At no time in the history of Malaysia has an act generated faced much criticism, and controversy as the Sedition Act 1984. The Sedition Act is a colonial law from colonial India into Malaya, its purpose was to combat threats from Communist's revolution. The Sedition Act 1984, has no place in a democratic Malaysia, as it has only been used as a tool to silence the voices of our activists fighting for a better Malaysia.

Throughout the colonization of Malaya, there were no prosecution under the Sedition Act and only after we gained independence in 1957 was the act used to prosecute.

[53] Haidar Dziyauddin , A Comparative Study of Freedom of Expression and Right to Privacy in Relation to the Press in Malaysia and The United Kingdom ,June 2005 , L8213 , <https://core.ac.uk/download/pdf/153776225.pdf> accessed by September 18 , 2021

[54] Communications and Multimedia Act 1998, s 233(1)

[55] [2019] 1 LNS 120

Ironically, this act has been used against members of opposition political parties like Nurul Izzah, journalist Susan Loone, and social activists.[56] Recently, Malaysian artists Mr. Zunar and Mr. Fahmi Reza were arrested for criticising the government through art, yet art should not be considered seditious.

Living in a democratic country requires the right to receive and access information, as it is a medium to a diverse source of opinion. Through multimedia platforms, ordinary citizens like us are able to articulate their opinions on various political issues and opinions from our social media.

In order to repress the voices of online activists, the government will impose fear towards them, that will cripple their freedom of expression. *Sarah Irdina*, founder of *MISI Solidariti* was arrested for alleged sedition and detained overnight in Jinjang by the police, because of her "tweet" about the upcoming *Lawan* protest.[57] Therefore, as long as the Sedition Act is not repealed then it will be used as a tool by the executive bodies to silence voices of people who dare to question the government.

There is absolutely no justification for the Sedition Act to exist, as the sedition act lies solely on the executive body to silence the voices of people, which moves towards authoritarian or communist countries rather than democratic countries. Thus, with the use of such draconian laws to repress the freedom of speech and expression, it is an unconstitutional encroachment of freedom of expression and freedom of liberty.

Discussion on how online activism empowers the freedom of speech and expression in Malaysia and the importance

Online activism has brought massive traffic towards important causes as social media gives netizens a platform to voice out their opinions and dissatisfaction against the corrupted system. This can be observed through the rampant propagation of information among netizens regarding certain movements through social media while keeping others up to date with the latest developments. This in turn has made the people well-informed with current affairs in the country, waging opportunities especially for the oppressed and marginalized groups, urging changes to be made in the legal and political spheres as well as in social scenarios.

There has been a number of instances where social media is used as the best platform for online activism and it could be seen through the following campaigns and movement: -

1. Bersih movement
2. #Lawan campaign
3. #BenderaHitam campaign
4. #Migranjugamanusia

[56] Civicus, 'Rights in Reverse: One Year Under the Perikatan Nasional Government in Malaysia: 2021'< https://www.article19.org/wp-content/uploads/2021/03/2020.03.02-A19-CIVICUS-Rights-in-Reverse-report-March-2021.pdf> accessed 27 September 2021

[57] Focus Malaysia, 'This is the Malaysia we have netizens react to the arrest of MISI: Solidariti activist: 2021' < https://focusmalaysia.my/this-is-the-malaysia-we-have-netizens-react-to-the-arrest-of-misi-solidariti-activist/> accessed on 29 September 2021

5. #Benderaputih campaign

To conclude, a variety of campaigns and movements have led to the shift in political and social atmosphere. These proactive movements signify the willingness to change the current state of the people in the country since their livelihoods have deteriorated. The youth are especially active in the sphere of online activism to promulgate important agendas including the #Undi18 to lower the minimum voting age from 21 to 18 and the #MakeSchoolASaferPlace, which combats sexual harassment issues against students in schools.[58] [59]

Discussion on solutions and remedies

With the position of freedom of speech and expression repressed under the means of online activism, there are several ways to remedy the situation. They are as follows: -

Repeal the Sedition Act 1948

One of the many ways is to repeal the Sedition Act of 1948 in its entirety which is used to restrict freedom of speech and expression online and to prosecute any form of critical speech as it does not reflect well on the current environment in which we have long evolved and to continue using such oppressive law to further repress freedom of speech and expression, particularly on an online platform, is upsetting, especially in the democratic society we live in today. Thus, repealing the Sedition Act 1948 is a great way to improve the current situation in which online activism is being criminalised for simply having an opinion, and it contradicts Article 5 of the Federal Constitution, which states that no one shall be deprived of his personal liberty.

Reform the CMA 1998

As the meaning of Section 233 of the Act is very broad and ambiguous that could lead to abuse.[60] This section clearly reflects a very broad and ambiguously worded law that can be openly abused by any officials who believe any of the content or opinion posted is critical of the government and further restricts online freedom of expression. Thus, we propose that the CMA 1998 be amended to encourage all Malaysians to exercise their right to free speech and expression online, particularly on matters that bring about good reforms to the government or society, without having such expression online curtailed. Not only that, but we advocate for transparency in the reformation, particularly with regard to vaguely worded laws, where there should be no room for abuse of the laws, and the reform should be in accordance with international human rights standards.

Ratify the International Covenant on Civil and Political Rights (ICCPR).

Malaysia should ratify the International Covenant on Civil and Political Rights[61]

[58] 'About' (Undi18.org, 2021) <https://undi18.org/about-us> accessed 30 September 2021.

[59] Noor Azimah Abdul Rahim, 'Edunation: Make School A Safer Place' (The Edge Markets, 2021) <https://www.theedgemarkets.com/article/edunation-make-school-safer-place> accessed 27 September 2021.

[60] 'Why Are The Sedition Act And CMA Being Used Against Fadiah?' (*Malaysiakini*, 2018) <https://www.malaysiakini.com/letters/434323> accessed 26 September 2021.

[61] 'Creating A Culture Of Fear' (*Human Rights Watch*) <https://www.hrw.org/report/2015/10/27/creating-culturefear/criminalization-peaceful-expression-malaysia> accessed 26 September 2021.

to lessen the restriction, which will aid in the improvement of the situation. We believe that Malaysia's ratification of the ICCPR will help to ensure that all of its citizens have access to freedom of speech and expression, particularly in the online media, without fear of such expression or opinion being restricted, as such a right is an inherent right of every citizen under international human rights standards.

IV. CONCLUSION

In conclusion, online activism in Malaysia has led to a number of positive outcomes where it unites the Malaysians to speak for the truth in wanting a better government. The freedom of speech in Malaysia is not absolute due to the existence of Article 10 of Federal Constitution and the draconian laws, hence, Malaysia should take a step forward in ensuring that it meets the international human rights standards where the freedom of speech and expression is an inherent right of every citizen in a democratic country and also to make sure that its draconian laws are reviewed to ensure that it is in line with the international human rights standards.

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Mohd Fahmi Reza v PP [2019] 1 LNS 120

Public Prosecutor v Ooi Kee Saik & Ors [1971] 2 MLJ 108

Sedition Act 1948

24

POLICE CUSTODIAL DEATHS IN MALAYSIA: A CRY FOR ACCOUNTABILITY

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Abstract

Over the years, police brutality has become a prevalent issue in Malaysia by means of unjustified shootings, misconducts, custodial deaths, and excessive use of lethal weapons. As a result, most of the citizens in Malaysia have little to no faith in law enforcement. If custodial deaths persist, it can be detrimental as the lack of trust will undermine the legitimacy of the law enforcement officers which will create a division in the law and society. Hence, to shed light on this issue, we have decided to adopt the doctrinal legal research methodology. Based on our findings, at first glance, the establishment of IPCMC may seem like an obvious answer, owing to the fact that complaints on police misconduct are usually overseen by such a Commission. However, actions are only taken after the misconduct takes place, which completely overlooks the root cause of custodial deaths. Thus, our recommendation centres around the notion of awareness, specifically to educate the public on the gravity of this issue via campaigns and efficient initiatives from relevant NGOs. Besides the long-term goal, emphasis must also be made on implementing tougher sanctions and potent police supervision. Only with these implementations, will such a widespread issue be curbed.

Keywords – custodial death, police brutality, hoax, IPCMC, reform

I. INTRODUCTION

Martin Luther King once said, “to ignore evil is to become accomplice to it.” Based on this phrase, ignorance has now filled the society, for which voices are only raised when a problem is being faced. In Malaysia, cases of custodial deaths are motivated by torture, negligence and/or insufficient effort taken by the police to provide suitable actions when there are medical emergencies (Amnesty, 2019). This raises the question as to whether police brutality constitutes torture? This, in return, speaks volume of the way the police department handles their detainees. As such, the purpose of this paper is to enforce that police brutality leading to custodial deaths is wrong and should never be lawfully justified.

II. METHODOLOGY

The methodology that we have utilised is the doctrinal legal research approach through which we have relied on the primary sources of law, particularly statutes and cases. We have also relied on scholarly articles as our secondary sources of law to better support our argument.

III. RESULTS/FINDINGS

Legal Aspect

Article 1 of the UN Convention Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) specifies torture as an act given intentionally to cause pain and suffering. Malaysia, being a member of the UN, does abide by such a Convention. This is evident in the case of *Nurasmira Maulat bt Abd Jaffar v Ketua Polis Negara* [2015] 3 MLJ 105, whereby, the court prohibited the police from unlawfully killing by means of fake encounters, which is a clear violation of the rule of law. This verifies that although the powers of the police are enshrined under the Police Act 1967, they are barred from acting beyond such powers. Therefore, the police can be held accountable under Regulation 2(a)(22) and 2(a)(23) of the Police Regulations 1952, which highlights the hindrance on police officers from exerting any unnecessary violence to any prisoners or detaining anyone without any reasonable cause.

Is it Just a Hoax?

Despite the laws providing a semblance of hope on police accountability, custodial deaths resulting from police brutality still exist. Although there were numerous victims of custodial deaths like Syed Azlan, Kugan, Cheah Chin Lee, etc, it was only after the case of George Floyd in 2020, which sparked the debate on the potency of the police system in Malaysia. It came as a shock that even though the functionality of the Royal Malaysia Police is assured, there are central flaws in the matter of police custody. This was further fuelled when the case of A. Ganapathy surfaced in 2021 which caught the attention of many. Nonetheless, among all the cases of custodial deaths, the common defence used by the police to justify their actions is by clinging onto the victims existing health issues. Yet, the opinions of the medical experts often prove otherwise.

Is IPCMC the Solution?

Before jumping the gun, it is prudent to acknowledge that the purpose of this paper isn't to blindly point a finger towards the police. Rest assured, the solutions to this problem have been provided by numerous authorities (Lim, 2019). For instance, the Independent Police Complaints and Misconduct Commission (IPCMC) is not unheard of. In fact, it was among the hundreds of recommendations made by the Royal Commission Inquiry in the year 2004, with the goal to 'police the police'. Sadly, the proposed Commission has yet to be taken seriously. As of now, there is still no clear information on its progress. Although the answer to police brutality might be the establishment of IPCMC, the aim of IPCMC is to only oversee police misconduct, specifically after the misconduct has taken place. By suggesting IPCMC, it seems like the root of police brutality has not been taken care of, similar to putting a band-aid on a bullet hole.

RECOMMENDATION

The best ways to tame this issue may seem straightforward and inefficacious, but with constant effort from the government and police department, there is a light at the end of the tunnel. There are two ways to consider, a short-term goal and a long-term goal. The former highlights more police training and supervisions, and tougher sanctions, while the latter includes more awareness campaigns and programs organized and endorsed by both the government and non-governmental agencies (NGOs). The reasoning behind this

accentuates the very fact that with proper education and information disseminated to the general public, the consciousness of such unacceptable conduct can be nurtured.

CONCLUSION

All in all, immediate actions must be taken to shed light on such an adverse matter. As time goes by, a significant surge in custodial deaths due to police brutality exists, which is honestly alarming. It is important to grasp the notion that police custodial deaths shouldn't be perceived as a racial issue. In fact, it should be a common goal among us to put an end to it. How many more deaths do we need to witness to finally bring this to attention? How many more Ganapathys? How many more Syed Azlans? How many more Chin Lees?

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25

RECONCILING INTENDED OUTCOME 4.0 WITH UNSUSTAINABLE INDUSTRIES: IS IT POSSIBLE?

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Abstract

The IPCC 6th Assessment Report has declared climate change as a Code Red emergency for humanity. Unless there is an immediate, rapid and large-scale reduction in greenhouse gas emission, the effects of climate change might soon become irreversible. With large-scale unsustainable industries such as the oil and gas industry being major contributors of climate change, it is crucial for these industries to take active participation in mitigating climate change. The objective of this paper is to investigate whether the Intended Outcome 4.0 of Malaysian Code on Corporate Governance (MCCG) is sufficient to lead companies, especially those within unsustainable industries to mitigate the issue of climate change. Intended Outcome 4.0 focuses on companies addressing the sustainability risks and opportunities in an integrated and strategic manner to support its long-term strategy and success. This research takes an approach of qualitative analysis of secondary data. The focus is the oil and gas companies which are listed in the Bursa Malaysia. The finding of this research indicates that the Intended Outcome 4.0 is insufficient to improve companies. The implication of this study is the need to re-examine the practice listed under MCCG, primarily an introduction of the carbon emission audit and a scoring scheme to determine the companies' compliance with MCCG.

Keywords—sustainability, climate change, competitive advantage, environmental, Malaysian Code of Corporate Governance (MCCG)

I. INTRODUCTION

Climate change is a global emergency, and it is worsening at an implausible rate. According to the Intergovernmental Panel on Climate Change 6th Assessment Report (2021), the global average temperature now is 1°C higher since 1900. Such a pattern of incremental warming will cause erratic weather changes from heat waves to severe floods. Unless there are immediate, rapid and large-scale reductions in greenhouse gas emission, the effects of climate change may soon become irreversible. With the oil and gas industry being one of the major contributors to climate change, their active participation in addressing sustainability risks is crucial in the combat against climate change.

In the Malaysian context, the Malaysian Code on Corporate Governance (MCCG) has been a significant guide for corporate governance reform. The objective of combating climate change is vested under Intended Outcome 4.0, which mainly focuses on addressing sustainability risks and opportunities in an integrated and strategic manner. Sustainability stems from the notion of sustainable development, which is explained as the ability of humanity to make development in meeting the needs of the present without compromising the ability of future generations to meet their own needs (Brundtland, 1987). Similarly, the Intended Outcome 4.0 comprises recommended practices and guidance that a company may adopt into their long-term strategy for corporate governance culture. A strategic

management of material sustainability shall be given priority, so as to integrate the company's direction to be in line with the goal of mitigating climate change.

II. METHODOLOGY

The objective of this paper is to investigate whether the practices and guidance under Intended Outcome 4.0 of the MCCG is sufficient to lead companies, especially those within the unsustainable industries, to mitigate the issue of climate change. Therefore, this paper focuses heavily on listed companies within the oil and gas industry as the nature of this industry is inherently unsustainable, given that fossil fuel is finite and could be exhausted in the foreseeable future (Lorenz, 2020). The other reason for choosing the oil and gas industry is the fact that this industry is one of the largest contributors to climate change due to their greenhouse gas and carbon emission. Since active participation from this industry is crucial in the fight against climate change, the purpose of this paper is to analyse whether Intended Outcome 4.0 of MCCG is sufficient in guiding unsustainable industries to combat global warming.

Firstly, this paper will analyse annual reports from two oil and gas companies listed on Bursa Malaysia. The reason for choosing companies that are listed in Bursa Malaysia is that compliance to MCCG is compulsory for listed companies in Malaysia.

Petroliam Nasional Berhad (Petronas) and Sapura Energy Berhad (Sapura), were both chosen to be our subject of research and study. Firstly, Petronas, is a Malaysian leading company in the oil and gas industry. Being the largest oil and gas company in the country, Petronas is wholly owned by the Malaysian Government, in which it was listed in Bursa since 26th November 2010. It is only justifiable that we opted for Petronas as our first choice of a company that is comprehensively benchmarked by the MCCG. Secondly, Sapura is one of the most established integrated oil and gas services companies in Malaysia. There are two main reasons for choosing Sapura as one of our case studies. The first reason is that like Petronas, Sapura is a Bursa listed company. The second reason is that Sapura, being a business that covers a different aspect of the oil and gas industry as compared to Petronas, would provide a good comparison with Petronas so as to provide a more well-rounded representation of the oil and gas industry.

This paper takes the approach of qualitative secondary data analysis by first examining the adequacy of both companies incorporating the practices and guidance of Intended Outcome 4.0, into their long-term strategy in addressing sustainability risks and opportunities by analysing their 2021 annual reports. Then the paper critically analyses and evaluates the discrepancy between the current progress of the companies and Intended Outcome 4.0. Lastly, this paper attempts to recommend improvements for MCCG to better guide listed companies towards Intended Outcome 4.0.

III. RESULTS/FINDINGS

Petronas

There is no doubt that Petronas is in line with MCCG as it is mandated by the Code that Bursa listed companies are to fully comply with the practice set out in the Code.

First off, Petronas is in compliance with the Step Up Practice 4.5 of the Code as Petronas has its own risk management committee (Petronas, 2021a) to deal with principal risks. Specifically, the said committee deals with various emerging risks or opportunities resulting from complex internal and external concerns, these include concerns from the

aspect of environment, social and corporate governance. The mechanism of the risk management committee (Petronas, 2021a) is to identify and report critical risks to the Board for further deliberation, and once it is categorized under the Petronas Chemical Group (PCG) Corporate risk profile, such risks will be deliberated in pursuit of Petronas business objectives to ensure that risks as such do not jeopardize their business sustainability. Examples of risk management at Petronas are the evaluation of risks arising from concerns of plastic pollution, assessment of carbon pricing, social risk assessment to cover potential human rights breaches in supply chain and so on.

As of 2020, Petronas has successfully addressed (Petronas, 2021b) the prevalent risks in relation to their business sustainability from the aspect of environment, which is in line with Guidance 4.1 of the Code which emphasises the need of achieving net-zero economy. Petronas is guided by the PETRONAS Climate Change Framework in which they have formulated its own climate change policies such as the Net Zero Carbon Emissions Handbook which aims to achieve climate change targets. The said framework brought about the incorporation of climate actions in their course of business, which includes excessive usage of solar energy throughout their plants, reduction of energy by kWh annually, and increase the accessibility of cleaner energy via liquefied natural gas.

Sustainability scorecard (Petronas, 2021b, pg. 12) is one of many initiatives that is taken by Petronas without the recommendation of MCCG, which is an initiative that is worthy of being benchmarked. The sustainability scoresheet allows corporations to progress sustainably from its previous reach from the aspects of environment, social and economy. This is indeed a good initiative as it can potentially incentivize its competitor to procure better results when it comes to addressing sustainability risks and opportunity.

Sapura

Sapura Energy Annual Report 2021, which was published soon after MCCG's updates, complied with the requirements set out within the updated MCCG, and further declared their commitment to continue improving their compliance to MCCG.

Through Sapura's Blueprint for a Sustainable Future (Sapura Energy, 2021, pg. 18), the report addressed the increasing importance of Environmental, Social and Governance (ESG) factors in decision making processes amongst investors, a public acknowledgement and acceptance of Guidance 4.1 of the MCCG. The Blueprint further announced the Board of Directors' considerations and initiatives for better sustainability, including a 5-year strategic 3-phases plan to facilitate their complete shift into renewable energy. Although the strategic plans remain broad, this is a clear attempt to implement Practice 4.1, 4.2 and 4.3 of the Code, which emphasised the importance of communicating such plans and initiative to internal and external shareholders.

In addition, Sapura Energy conducted 11 training programs for their employees throughout 2020 "to ensure employees are well-equipped and informed in mitigating negative environmental impacts" (Sapura Energy, 2021, pg. 113), a great alignment with Guidance 4.2 of the Code.

Overall, Sapura Energy has performed with great compliance to the MCCG. However, compared to Petronas, Sapura Energy failed to prepare a sustainability scorecard or a carbon audit. While neither a carbon audit nor a sustainability scorecard is required by MCCG, the implications of such declarations are undeniably important to honest sustainability commitments. Studies have shown that companies which showed a readiness

to implement carbon auditing are inclined to create better carbon performance, where managers are mindful of carbon reduction practices (Ong et al., 2021). When managers are familiar with the carbon audit of their corporation, they will be able to better manage their carbon presence, organisational responsibility and guide their employees through carbon issues to better target environmental improvements (Ong et al., 2021).

IV. DISCUSSION

It is undeniable that unsustainable industries such as Petronas and Sapura contribute significantly to Malaysia's GDP. Therefore, unsustainable activities such as burning of fossil fuels and industrial by-products are almost unavoidable. However, inherently unsustainable industries would inevitably create more risks than addressing the sustainable risks and opportunities itself. Thus, it is our humblest opinion that the MCCG requires several amendments to better lead listed companies in tangibly achieving Intended Outcome 4.0.

First and foremost, we humbly recommend MCCG to include the practice of Carbon Emission Auditing to better facilitate risks of sustainability. A carbon audit is the means of measuring and recording emission of a corporation, including monthly recordings of carbon dioxide emitted. The carbon audit shall be inclusive of the sources of emission for a proper breakdown of emission to ensure it reflects commitments the corporates declared and prevent evasion from carbon-emission penalty. To further substantiate, we opine that the carbon audit shall include carbon saving and other relevant waste policy as it will be assured that the recorded emission has been effectively minimized in consequence of carrying out the policy implemented.

On this account, the government can integrate the idea of competitive advantage to further maximize the efficiency of progressing sustainably. This is simply achievable when the government sets a carbon benchmark for corporations to qualify for tax-exemption/tax-reduction. This would eventually act as an incentive for corporates to strive for the exemption whilst their efforts will indirectly contribute to addressing risks of sustainability as per the MCCG (Mohammad & Wasiuzzaman, 2021).

For the second recommendation, our humblest opinion is that MCCG should incorporate a Scoring Scheme for the Code's Intended Outcomes. Having a scoring scheme for MCCG will help companies to progress constructively over time whilst allowing investors to monitor how close they are to fully accomplishing the Intended Outcomes (Mohammad & Wasiuzzaman, 2021). Although we recognize that the MCCG is not random instructions that can be accomplished overnight, it urges listed corporations to be more competitive within one another for the end goal, that is to be in full compliance with MCCG.

Conversely, the recommendation of the Scoring Scheme will allow us to discuss more thoroughly on the aforementioned industries, which are corporates that are intrinsically unsustainable. To a certain extent, we concede to the fact that MCCG may be adequate for the majority of corporations, but it is never exhaustive in providing comprehensive guidelines towards all listed companies. This is essentially due to the nature of certain industries being inherently unsustainable to begin with, therefore, the credibility of MCCG itself should never be disputed for the sole reason of the unsustainable nature of certain categories of companies. For instance, Petronas' annual report illustrated their efforts in complying with MCCG, yet achieving Intended Outcome 4.0 is still beyond their reach due to its business nature.

Having said that, we humbly suggest for MCCG to draw up specific guidelines for businesses which cores are inherently unsustainable to effectively deal with sustainable risk and opportunities. Nevertheless, it will only be effective to implement the entirety of MCCG's guideline if MCCG is a substantive authority that is binding upon listed corporations and not merely a recommendation that should be adhered accordingly.

Ultimately, we are convinced that there is a limitation as to the authority of MCCG in making positive progress in the economic sector, which is why we strongly believe that MCCG is merely a facilitator and no longer the answer to unsustainable industries. Thus, with the urgent need for a full transition from unsustainable to sustainable businesses, it is only possible if the government is willing to take the lead in pursuing so.

V. CONCLUSION

It is evidently clear that both Petronas and Sapura have taken active initiatives in implementing MCCG, with Petronas being one step ahead than the others of the same industry through the implementation of sustainability scorecard without the lobby of the MCCG. This is a great sign that even unsustainable industries like the oil and gas industry are increasingly environmentally aware.

However, the lack of stringent order from the government incorporating sustainability values in the corporate world, may very well jeopardize the values under MCCG. Government is the only executive authority that decides and controls the direction of the country, and MCCG is merely a vehicle in delivering its values and serves as a guideline in achieving sustainable development.

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26

SIGNIFICANCE OF ETHNIC DIVERSITY IN A BOARD AND HOW NOMINATION COMMITTEE PLAYS A ROLE IN FORMING A DIVERSIFIED BOARD

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Abstract

This paper examines the importance of having a board with ethnic diversity in Malaysia as this country comprises predominantly of three major ethnic groups, namely Malay, Chinese and Indian. The purpose of this study is to prove that boards with ethnic diversity would enhance and create more value for the companies. In 1970, the introduction of the New Economic Policy implicitly stated that 30 percent of the board members of listed companies belong to the Bumiputras. However, nothing was mentioned in regards to the percentage of the other races. The methodology used in this paper is desk research and library-based research. This study then establishes that a company with directors of different ethnicity will create an impact on firm performance as an ethnic diversified board actually helps a company to increase its creativity, resources and network connections. Moving on, it also focuses on the role of nomination committees in selecting a board with ethnic diversity and examines how the composition of the nomination committee affects the formation of an ethnic diversified board. Finally, it proves that the Malaysian Code on Corporate Governance 2021 (MCCG) is lacking as both MCCG and Bursa Securities Listing Requirements (BSLR) do not emphasise much on ethnic diversity in a board as compared to gender diversity. Not only that, both documents are also silent on composition of the nomination committee and merely provide brief information on it.

Keywords—board of directors, ethnic diversity, nomination committee, Malaysian Code on Corporate Governance 2021, Bursa Securities Listing Requirements

I. INTRODUCTION

A study by the Institute of Corporate Directors Malaysia (ICDM) has shown that board diversity is necessary to create an effective board as a diverse board helps to prevent groupthink and provides better input to the management. This paper focuses on the significance of having an ethnic diversified board of directors. Based on the aforementioned study by ICDM, it was found that out of the 312 listed companies that have participated in their data collection, only 34% of the companies are having boards with more than two ethnicities (The Malaysia Board Diversity Study & Index, 2021). However, according to the 2021 statistics by the Department of Statistics Malaysia, Malays, Chinese and Indians remain to be the three major ethnic groups of the country (Current Population Estimates, Malaysia, 2021, 2021). Therefore, it is questionable when a listed company operating in such a multiracial country does not form an ethnically diverse board when it should have done so (Abdullah & Ismail, 2013).

II. METHODOLOGY

Secondary data has been used as these data are readily available on the Internet. Secondary data are data that have been collected by others. We have accessed this data by way of desk research and library-based research.

III. RESULTS/FINDINGS

Board with ethnic diversity in Malaysia

An ethnic diversified board can be beneficial for financial reasons (Shamsul & Ku, 2013). Directors from different ethnic groups have a better understanding of their own ethnic group which helps in developing the corporate's strategies in order to draw the intention of the customers from their group (Shamsul & Ku, 2013).

In 2015, McKinsey conducted a global study over 366 public companies and the result shows that companies with ethnic diversity are 35% more likely to outperform (Corporate Governance Guide, n.d.). Besides that, the study by ICDM also indicated that the price to earnings multiple of a company with boards that consists of more than three cultures have increased by 30% (The Malaysia Board Diversity Study & Index, 2021).

However, most of the Malaysia policies were launched with the purpose to provide benefit to one single ethnic only, namely Bumiputras. For example, after the 1969 racial riots, Malaysia's New Economic Policy declared an explicit target to let the Bumiputras to have at least 30% ownership and control in the corporate sector (Trang, 2013). Furthermore, NEP has officially supplanted the National Development Policy, and then the National Vision Policy with the main protagonist of 30% Bumiputera equity target (Jomo, 2004).

The presence of these Malaysian policies has shown that it is difficult to implement a board with ethnic diversity in Malaysia as the policies are silent on the maximum percentage of Bumiputras on a board as well as the interests of the other ethnics. As a result, this has encouraged companies to elect more Bumiputras as that is what the government has emphasized throughout the years, rather than emphasizing on the selection of an ethnically diversified board.

Apart from that, the adoption of policies for the benefit of sole ethnicity-based is recognised as a violation of Article 153 of Federal Constitution (FC) which provides for the safeguarding of the legitimate interests of other communities, notwithstanding the Malays' special status. It further violates the fundamental notion of equality as enshrined in Article 8(1) of FC (The Vibes, 2020).

The discussions above have proven that a board with ethnic diversity would be an excellent corporate governance. A board with ethnic diversity will protect and take into consideration other communities' interest instead of one sole ethnic interest within a corporation which is in compliance with Article 153 of FC. Besides that, an ethnic diversified board also fulfils the basic concept of equality based on Article 8 of FC as the director from every ethnic has the equality to a corporate governance.

Next, we also found that the Malaysian Code on Corporate Governance 2021 (MCCG) does not emphasize on ethnic diversity. MCCG did suggest the elements that can

be taken into consideration when formulating diversity policy. MCCG also recognised that the diversity should be in numerous dimensions which included ethnicity, skills, age, experience and gender. Unfortunately, MCCG failed to provide explicit guidelines when it comes to ethnic diversity. It only focuses on gender diversity by mentioning that the percentage of women needed to be presented in board of directors is 30 percent. MCCG Practice 4.5 required large companies in Malaysia to meet this 30 percent target and provide measures to make sure the companies hit the said target (Securities Commission Malaysia , 2021). This has confused companies that wished to boost their performance through an ethnic diversified board as they can only refer to the aforementioned policies.

A research that studies several diversities found that sole emphasis on one aspect of diversity will result in weakness. The effect of each individual diversity cannot be addressed on other diversity dimensions. Due to the nature of diversity which is multidimensional, correlation between ethnic diversity and other aspects of diversity should be considered. Effective research is recommended to be done on the relationship between different aspects of the firm's board diversity to allow the development of a profound understanding of the mixed and cumulative effect of diversity on organization outcomes (Pirzada, 2017). To better enhance ethnic diversity, useful guidelines from other diversities should be learnt and applied.

Nomination committee affect formation of a diversified board

The Nomination committee (NC) plays an important role in forming an ethnic diversified board. The involvement of the nomination committee (NC) in the appointment of candidates of diverse ethnic groups for board composition has expanded dramatically due to the global financial crisis of 2008 (Pirzada, Mustapha, & Alfan, 2017, p. 103). MCCG has emphasized the significance of the NC which is tasked with selecting and acknowledging candidates from various backgrounds to the board and committee (Securities Commission Malaysia, 2021, p. 32). Bursa Malaysia's Corporate Governance Guide Pull-out I provide boards should, by way NC, take steps to ensure that the appointment exercise should include a diversified board (Bursa Malaysia, p. 10).

The NC's composition would directly affect the board diversity, including in terms of ethnicity (Pirzada, Mustapha, & Alfan, 2017, p. 116). The most appropriate theory in studying the effect of the NC on boards is the social identity theory as this theory suggests that people categorize themselves and others according to different social groups. The theoretical evidence supports that the psychological and cultural features of a particular social group have a part in the appointment process of candidates for board. The research theorizes that directors in NC of certain ethnic tend to appoint candidates from the same ethnic group (Pirzada K., 2017, p. 42). The balanced combination of ethnic groups in the NC is of great importance in promoting a diversified board in the Malaysian corporate sector. Research demonstrates that high diversity of ethnic groups in the NC appears to encourage a diversified board (Pirzada, Mustapha, & Alfan, 2017, p. 105). The Nomination Committee Report shows Nestlé [Malaysia] Berhad's NC consists of different ethnicity i.e., Malay, Chinese and Dutch (Nestlé [Malaysia] Berhad, p. 1), while the Board of Directors appointed consist of Malay, Chinese, Spanish and Australian (Nestlé (Malaysia) Berhad, n.d.).

The intended outcome in MCCG is silent on the composition of NCs (Securities Commission Malaysia, 2021). In addition, there is no guideline on how to form NC in the listing requirements of Bursa Malaysia (as at 1 June 2020) (Bursa Malaysia, 2020).

Bursa Malaysia's Corporate Governance Guide Pull-out I provides that the NC should set measurable goals to attain gender diversity (Bursa Malaysia, p. 10). Para 15.08(3)(a) of Bursa's Listing Requirements stipulates that listed issuers must make a revelation of their policies regarding board composition in their statement on NC's activities, considering the combination of skills, independence and diversity (particularly gender diversity) needed to serve their purposes (Bursa Malaysia, p. 94). Looking at Bursa Malaysia's Corporate Governance Guide Pull-out I as a whole, it seems to emphasize gender diversity more than ethnic diversity. At the same time, it gives recommendations, for the development of a diversity policy by referring to the Australian Stock Exchange Corporate Governance Council's Corporate Governance Principles and Recommendations 2014, regarding the meaning of diversity and acknowledge that diversity encompasses variety of aspects such as ethnicity, gender, skills, age, and experience (Bursa Malaysia, p. 96).

Besides, although NC is important in the formation of an ethnic diversified board, researchers have paid less concern to the NC than the audit committee and remuneration committee, despite the fact that they are all sub-committees in corporate governance settings (Pirzada, Mustapha, & Alfan, 2017, p. 104). It is unable to systematically review and verify the appointment process of NCs in Malaysia's publicly listed companies because of the shortage of study in this field (Pirzada K. , 2017, p. 61).

In short, ethnic diversity is a crucial agenda in Malaysia which comprises various ethnic groups. As the NC's duty is to appoint the company's future directors, every member of the NC is important in determining the composition of the board. Based on the social identity theory, directors of NC will tend to select candidates from the same ethnic group. Thus, the increase in ethnic diversity in the NC enhances ethnic diversity on board. Nevertheless, researchers and current corporate governance code do not pay much attention to the composition of NC members. This issue requires more attention as the composition of NC would have a positive impact in determining the level of ethnic diversity of the board. To some extent, NC itself should be regulated. It is recommended that more research on NC will be conducted in the future.

IV. CONCLUSION

To conclude, the study has found that firm performance can be boosted by practicing ethnic diversity in a board but the presence of Malaysian policies which are in favor of the Bumiputras has somehow affected the rights of the other ethnic groups during the appointment of a board. Therefore, the MCCG which does not emphasize the need to promote an ethnic diversified board should be reformed in order to ensure that the crème de la crème of each race can be appointed to the board of directors in a company. Besides that, the code should pay more attention to the composition of the nomination committee as studies have shown that there is a relationship between the composition of the committee and the formation of an ethnic diversified board. In short, the concept of ethnic diversity should be practiced in the appointment of boards especially when we are living in a multiracial country.

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27

THE ADEQUACY OF THE CONSUMER PROTECTION ACT 1999 IN PROTECTING MALAYSIAN CONSUMERS AGAINST UNFAIR CONTRACT TERMS

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Abstract

This paper analyzes the Law of Unfair Terms of Contract in Malaysia and the United Kingdom. We did a comparative study based on the Laws of Unfair Terms of Contract in Malaysia and the United Kingdom to answer this question. We had referred to several mediums as our references, namely the Consumer Protection Act 1999, Unfair Contract Terms Act 1977, Consumer Rights Act 2015, case laws and journals. Similarly, we had also compared to the Australian Law, namely the Australia Consumer Law, under Schedule 2 of the Competition and Consumer Act 2010. Based on our analysis of the comparative study between the Laws of Unfair Terms of Contract in Malaysia and the United Kingdom, our results showed several differences in the Laws of Unfair Terms of Contract. Furthermore, our results have revealed that these two countries have a different approach towards dealing with Unfair Terms of Contract. Moreover, the laws which legislate the Laws of Unfair Terms of Contract are entirely different. In the United Kingdom, there is specified legislation that governs unfair contract terms. However, in Malaysia, unfair contract terms are included under the Consumer Protection Act. From a perspective, this study emphasizes the need for Malaysia to take into account the room for improvement in the field of laws regarding unfair contract terms.

Keywords— consumer protection, consumer, unfair contract term, contract, consumer rights

I. INTRODUCTION

In Malaysia, it does not have separate legislation on unfair contract terms, but the Consumer Protection Act 1999 (CPA) includes provisions dealing with aspects of unfair contract terms. Generally, unfair contracts mean contractual terms that possess a significant advantage to sellers and suppliers and are unfair to consumers. Initially, there were no provisions in the CPA that mentioned unfair contract terms. This can be seen in *Aetna Universal Insurance Sdn Bhd v Fanny Foo May Wan* [2001] 1 MLJ 22, where the insurance company has inserted a clause at the end of the contract, which would render contract void ab initio when there is any non-disclosure or misrepresentation of facts, regardless of whether the fact is immaterial or not. In other words, it negates the requirement of the materiality of facts to avoid a contract. The High Court on appeal has held that the respondent has breached the contract according to the inserted clause. Hence the insurance company was not liable to pay. This case has clearly shown how unfair contract terms have continuously haunted Malaysian consumers for a long time. In 2010, the CPA was amended by virtue of the Consumer Protection (Amendment) Act 2010, which inserted Part IIIA titled Unfair Contract Terms (S.24A to 24J). Part IIIA of the CPA defines unfair contract terms as an imbalance of rights between consumers and businesses. The CPA seeks to

prohibit clauses excluding liability in standard form contracts. It defines "unfairness" in terms of an imbalance of rights and obligations, providing for both procedural and substantive unfairness.

II. METHODOLOGY

This paper employs qualitative research that adopts normative legal research methodology based on statutory, conceptual and comparative approach at the same time analysing other reputable secondary sources such as experts' opinions and as well on the governing policies in the United Kingdom and Australia to complement the output. The result of the research is expected to provide an overview of the regulatory framework for the adequacy of the protection of unfair terms of contract.

III. RESULTS/FINDINGS

Our Findings begin with Malaysia's position and followed by other countries' positions namely the United Kingdom and Australia. To begin with, In Malaysia, the relevant statute that governs consumer contracts is the Consumer Protection Act 1999 ("CPA"). In 2010, the CPA was amended by virtue of the Consumer Protection (Amendment) Act 2010 which inserted Part IIIA titled Unfair Contract Terms into the CPA[62]. "Unfair term" is defined as a provision contained in a consumer contract which would lay a significant imbalance in the obligations and rights of the parties, causing a detriment to consumers.[63] The courts or Tribunals established under this Act can interfere with the issue of unfair contract terms.[64] Furthermore, the CPA distinguished unfairness into procedural and substantive unfairness.[65] In *Su Tiang Joo v Tribunal for Consumer Claims & Anor*, the appellant failed to show that he had been caused any unjust advantage or lack of bargaining power. Thus, it was held that the warranty scheme was neither objectionable nor unreasonable.[66] In *Ty Auto Car Dealer Sdn Bhd v Tribunal Tuntutan Pengguna & Anor*, it was held that the "No warranties" term in the Delivery Order was procedurally unfair as the Delivery Order is a standard form and at the time of entering into the contract, the terms were not subject to negotiation and that the 2nd Respondent had not the bargaining strength on these terms.[67]

In the United Kingdom (UK), the unfair contract terms in the UK are mainly regulated by Unfair Contract Terms Act 1977 (UCTA). It regulates contracts by limiting the legality and operation of some contract terms. One thing to be highlighted is that the UCTA provides the reasonableness test with guidelines to determine the fairness and reasonableness of a contract term in its Schedule 2.[68] However, it applies only to businesses and does not apply to consumer contracts or consumer notices. Moreover, another relevant piece of legislation is the Consumer Rights Act 2015 (CRA).[69] It replaces the Unfair Terms

[62] Consumer Protection Act *1999*, s 24A to 24J.

[63] Ibid., s 24A.

[64] Ibid., s 24F & 24G.

[65] Ibid., s 24C & 24D.

[66] *Su Tiang Joo v Tribunal For Consumer Claims & Anor* [2021] 1 MLJ 411 (MY)

[67] *Ty Auto Car Dealer Sdn Bhd v Tribunal Tuntutan Pengguna & Anor* [2020] MLJU 1257 (MY)

[68] Unfair Contract Terms Act 1977, s 11.

[69] Consumer Rights Act 2015, part 2.

in UTCA in terms of the consumer contracts and notices. Besides, it applies to consumer contracts and consumer notices between a trader and consumer.[70]

This research proposed several differences between the Malaysian law and the UK law regarding unfair contract terms. Firstly, the CRA has clearly listed out the consumer contract terms which may be regarded as unfair.[71] However, this is not the case in our CPA. Hence, it caused ambiguity as it is for the judge to interpret to what extent it is called an unfair term by his own discretion.[72] Besides, as mentioned above, the UCTA provides a test for "reasonableness" and the court would refer to Schedule 2 of UCTA as an illustrative list of terms that might be considered as unreasonableness. In *Smith v Eric S Bush*, in considering if such a clause was reasonable under the UTCA, the court considered the fact that it was a modest house to be used as the family home and concluded that it was an unreasonable clause and therefore ineffective.[73] In *George Mitchell v Finney Lock Seeds*, it was held that the clause was unreasonable as the buyer would not have been aware of the fault whereas the seller would.[74] In Malaysia, the CPA does not list out the terms that might be considered as unreasonableness. It provides no example or list that clarifies to what extent it is an unfair term in the CPA. Thus, it is ambiguous as it is for the judge to interpret to what extent a term is deemed unreasonableness.

Secondly, in the UK, there is a specified legislation i.e., UCTA which governs the unfair contract terms. In Malaysia, we have no specific legislation that governs unfair contract terms. When we are not having specific legislation concerning unfair contract terms, then our laws in this aspect are not as comprehensive as that in the UK. Atiyah (1981) highly recommended the adoption of the UCTA because "it greatly restricts the use of exclusion clauses whereby contracting parties protect themselves from legal liability. The Act extends beyond consumer protection, since it also operates, within limits, where businessmen contract on standard written terms."[75]

The third part of the finding is looking at the Australian Consumer law. In Australia, the consumer law of Australia, namely Australia consumer law (ACL) under schedule 2 of Competition and consumer Act 2010, also provides various examples of situations where a term would be regarded as unfair. The particular provision that states those examples is Section 25 of ACL. For example, Section 25(1)(a) of ACL says that a term that effectively permits one party to avoid or limit their performance of the contract such as exclusion clause is considered as an unfair contract term. Section 25 (1)(b) of ACL prescribes that a term that allows one party to terminate the contract but not another party may be considered as an unfair term. This would be applicable if a term in a contract allows a business or supplier to cancel a contract in response to an inconsequential or trivial breach of contract by the customer. The case in point is *Director of Consumer Affairs Victoria v AAPT*

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[70] Ibid., s 61.

[71] Ibid., schedule 2.

[72] Abdul Manaf, A. W., & Amiruddin, N. (2018, October 1). *(PDF) Comparative study on law of unfair terms of contract in Malaysia*. ResearchGate. https://www.researchgate.net/publication/335029205_COMPARATIVE_STUDY_ON_LAW_OF_UNFAIR_TERMS_OF_CONTRACT_IN_MALAYSIA

[73] *Smith v Eric S Bush* [1990] 1 AC 831 (UK)

[74] *George Mitchell v Finney Lock Seeds* [1983] QB 284 (UK)

[75] Abdullah, F., & Shaik Ahmad Yusoff, S. (2018). *Consumer Protection On Unfair Contract Terms: Legal Analysis Of Exemption Clauses In B2c Transactions In Malaysia*. Economics and Finance Research | IDEAS/RePEc. https://ideas.repec.org/a/asi/ijoass/2018p1097-1106.html

limited.[76] It is concerned to A mobile phone contract that had an immediate termination clause for any breach potentially had an application so broad that it was considered unfair. The court found that even if the customer changes his or her address which is inconsequential, It still renders a ground to AAPT to terminate the agreement, and because these provisions are so broadly drawn, and are one–sided in their operation, they are unfair terms.

The other laws that existed in Australian Consumer law but lack in Malaysian law are in regards to the definition of a standard form of the contract. In Section 27(2) of ACL, it laid down the relevant matters that the court must take into account in deciding whether a contract is a standard form consumer contract. For example, whether the other party was given an effective opportunity to negotiate the terms of the contract and whether the contract was prepared by one party before any discussion occurred between the parties about the transaction. Those examples listed in Section 25 of ACL *a*nd the definition of a standard form of contract can be a very good reference for Malaysian Parliament to take into account in improvising the legislation so as to ascertain the magnitude of what amounts to unfair terms.

IV. CONCLUSION

In conclusion, the Malaysia Consumer Protection Act 1999 is not adequate in providing protection to consumers against unfair terms. There are still rooms to improvise, particularly in the extent to which a term is considered an unfair contract term. Thus, it is suggested that the parliament refers to the UK consumer law and Australian consumer law to fill the law's loophole. By listing the examples of unfair terms like UK and Australian law do, it serves as a guideline to the court in ascertaining and determining whether a contractual term is an unfair term. It avoids ambiguity in interpreting unfair terms. This purpose can also be achieved if the lawmaker incorporates the reasonableness test under the UK consumer law into our own consumer law. Besides, it is also suggested that there needs to be a clear legislative framework to solve the issue of unfair contractual terms. For instance, unfair terms are used in a contract as they are a standard form of a contract and are governed by a commercial nature. It is not a valuable contract if it is biased to the innocent party and reserves the right of a legal claim for the dominant party. The lack of awareness in using unfair terms in a contract causes the deficiency enforcement of law in Malaysia on the restriction and prevention of using unfair terms. Therefore, the court plays an important role in deciding when it comes to unfair terms in a contract that abuses an innocent party. It is hoped that Malaysia can undergo significant change and restrict unfair contract terms by the dominant party and protect society with adequate and clear legislation from now on. Hence, the introduction or revision of specific legislation is needed when the law has not covered the critical area in the past, current situation, and future. The law needs to protect the parties involved in the contract when dealing with the contract as a whole.

[76] *Director of Consumer Affairs Victoria v AAPT Ltd* [2006] VCAT 1493 (Austl.)

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Consumer Protection Act 1999, s 24A to 24J.

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Unfair Contract Terms Act 1977, s 11.

28

THE ETHICALITY OF WHISTLEBLOWING AND FACTORS AFFECTING ITS INTENTION IN A CORPORATION WITH RESPECT TO THE NON-COMPLIANCE OF ITS CODE OF CONDUCT AND ETHICS

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Abstract

It is known that the existence of a Code of Conduct and Ethics by the board of a company laying down its policies and procedures can prevent confusion in deciding what acceptable behavior and practice in a company is. A problem that plagues the corporate world today is not only the confusion that arises from what constitutes acceptable behavior but also the lack of adherence of employees to the set Codes of conduct and Ethics of their respective companies. This non-compliance gives other employees the right to whistle-blow in order to bring to light the wrongdoing that has occurred as well as prevent repetition of the illegal or unjust wrongdoing that may affect the corporation as a whole. This research will highlight the issues that work against the concept of whistleblowing in a company as well as the factors affecting whistle- blowing intention among employees. The research methodology would include established case law as well as real life surveys answered by employees. The importance of whistleblowing as well as understanding the factors affecting its intention will be discussed in this paper with reference to the Malaysian Code on Corporate Governance that lays down the requirement of a corporation to ensure that it's whistle-blowing policy will encourage employees to step forward and voice out wrongdoings without the risk of reprisal. This research suggests that the code be reviewed periodically in order to encourage ethical whistleblowing which will foster a healthy corporate culture that is based on transparency and fairness. This paper will first address the issue of the lack of whistleblowing in a corporation which will then be ascertained through relevant authorities as well as a survey. Next, it will closely examine the factors affecting whistle-blowing intention in corporations in relation to the whistle-blowing policy as well as the Code of Conduct and Ethics of a corporation. Finally, it focuses on the importance of encouraging ethical whistleblowing in a corporation and how this affects not only the employee-employer relationship of trust and confidence that comes with the transparency of whistleblowing but also how affects the corporate Culture of a corporation.

Keywords— Whistleblowing, Malaysian Code on Corporate Governance (MCGG), Whistleblowing Intention, risk of reprisal.

I. INTRODUCTION

There is no doubt that in today's corporate world there are injustices that take place within the walls of a company. These wrongdoings often go unnoticed, but when they are exposed, it is normally by whistle- blowers. Whistle-blowers are simply people, most of the time employees, who anonymously expose the wrongdoings of an organisation to individuals or entities believed to be able to effect action such as the organisation itself, the relevant authorities, or the public. Whistleblowing is seen as an effective way of curbing

corporate scandals involving fraud, bribery and corruption as it builds the belief that if wrongdoing is committed there will be consequences.

II. METHODOLOGY

With Regards to the methodology of this paper, we have carried out a survey regarding the awareness of people on whistle-blowing practices as well as its protections offered in Malaysia and attached a copy of the survey form as well as our responses at the end of the paper. In addition to that we have based our research on references to journals and case law.

III. RESULTS/FINDINGS

From our extensive research we have found that Whistle-blowers in Malaysia reported only 124 cases between 2015 and April 2019 to the seven enforcement agencies. This is due to the fact that the awareness level on the Whistle-blower Protection Act 2010 is still not satisfactory as people in the workforce are still fearful about reporting misconduct of their bosses.

In December 2020, while serving as deputy director of Education Malaysia Global Services, Aziz allegedly encouraged the company's chairperson to fire an employee who reported misconduct to Malaysia's Anti- Corruption Commission (MACC). The company, which promotes educational opportunities in Malaysia for international students, is officially associated with Malaysia's Ministry of Higher Education. Aziz was charged under Malaysia's Whistleblower Protection Act 2010, which makes it a crime to "incite or permit another person" to retaliate or threaten retaliation.

Besides that, in the same month of the same year, Yubaraj Khadka, a worker in Malaysia for Top Glove Corp, took two photos in May of fellow employees crowding into a factory of the world's biggest maker of medical-grade latex gloves. As the corona-virus pandemic raged, the photos seen by Reuters show dozens of workers lined up less than a meter apart to have their temperatures checked before starting the night shift as a precaution against the disease. Afraid of losing his job if he complained directly to management, Khadka, 27, sent the photos to a workers' rights campaigner in his native Nepal who sent them on to the company and the Malaysian government, without identifying who took them. On Sep 23, Top Glove sent Khadka a letter terminating his employment for sharing the photos. In the letter, seen by Reuters, the company said it identified him as the originator of the photos from CCTV coverage of workers entering the factory.

Whistle-blower protection laws in many countries now include civil and criminal penalties for targeting employees and citizens for retribution. These penalties are increasingly being seen as an effective deterrent against whistle-blower retaliation. The European Union Directive on whistle-blower protection passed in October 2019 states that criminal, civil or administrative penalties are "necessary" to ensure effective protections, and that these sanctions can "discourage" retaliation.

The results that we have obtained via our survey is that there is an overall sufficient level of awareness from most of the respondents towards the practice of whistleblowing. This can be seen in several of the survey's questions. First off in question four, regarding whether the respondents of the survey are aware of the rewards of whistleblowing. From this, 73.3% of the respondents answered, 'yes' and 26.7% of them answered 'no'. Secondly, the fifteenth question regarding whether the respondents were aware of the whistle-blower

protections in Malaysia. To this, 80% of the respondents answered ‘yes’ while 20% answered ‘no’.

However, the results also revealed a lack of support towards the practice itself despite the awareness of it. A rather interesting finding from the survey was with the eleventh question which was whether the firing of the whistle-blower once caught is justifiable or otherwise. To this the response was 70% ‘yes’ and a remainder of 30% which answered ‘no’.

Based on the findings of the methodologies carried out, we have found that even though most people are aware of whistleblowing as well as its protections, there are still a significant number of people who do not support the practice.

In order to overcome the problems relating to whistleblower intention as well as the lack of whistleblowing practices in the country, a suggestion would be to improve the protection provided to whistle-blowers through stricter legislation. For instance, Section 8(1) of the Whistleblower Protection Act 2010 prohibits anyone who has disclosed or received information regarding the disclosure of improper conduct from disclosing the information that they have shared or received with anyone else. This section aims to ensure that the confidentiality of a disclosure is maintained as well as protects the whistleblower from repercussions. This law, however, has failed us on countless occasions as seen in the cases mentioned previously by Arvin as in those cases the whistleblowers' identities were not well protected and they faced problems post whistleblowing such as being terminated. Another law that was violated in these cases was Section 10(1) of the Whistleblower Protection Act 2010 which is supposed to provide protection to whistleblowers from detrimental acts as a result of whistleblowing. This would include the protection from having their contracts terminated, having their payments withheld, as well as being prevented from entering subsequent contracts with their employers.

These laws have clearly failed to serve their purpose as seen in the previously mentioned cases. The failure of these legislations is one of the driving factors that affect whistleblowing intentions among employers in Malaysia today. Therefore, a suggestion in order to curb this problem would be to enact stricter imposition of penalties if there happens to be a breach of these laws. This would include taking actions against employers that take detrimental actions towards employees that have disclosed alleged misconduct of the employer as well as holding enforcement agencies accountable for leaking the information as well as the identities of the whistleblowers who disclose information to them.

Once better legislation is put in place in order to comprehensively protect the rights as well as identities of whistleblowers, the suggestion of introducing whistleblower reward programs can be considered. Many countries such as the United States of America as well as Ghana and South Korea have implemented such programs in order to encourage whistleblowing among its citizens. These countries have reported a surge in whistleblower reports regarding misconduct. According to the National Whistleblower Center, these programs have proven to be one of the most powerful tools in incentivizing whistleblowers and encouraging them to bring forward issues of misconduct. The existence of a compelling reward program as well as legislations that secure the protection of the rights of whistleblowers are indeed methods that will encourage the practice of whistleblowing in a country as well as help maintain healthy corporate culture in organisations throughout a country.

IV. CONCLUSION

In conclusion, we can see there is still a considerable number of people that are against the practice of whistle- blowing despite being aware of its advantages. This is mainly due to the fact that they fear the consequences they might face being whistleblowers. However, they should not be discouraged from whistleblowing as it is in fact ethical and a prerequisite to build a healthy corporate culture. In order to handle such problems, the suggestion of implementing stricter protection policies for whistleblowers as well as introducing rewards programs can be considered as done in many countries, will not only take whistleblowing to the next level in our country by encouraging the practice, but it will also directly foster healthy corporate culture throughout the nation's organisations which is an overall win for the country.

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29

THE PHENOMENON OF GENDER INEQUALITY ON THE CORPORATE BOARD OF DIRECTORS

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Abstract

The benefits of gender diversity are a subject of current debates, especially after Malaysian Code on Corporate Governance (MCCG) aims the board to comprise at least 30% women directors. Through the library-based research, it was found that the corporation with the participation of women directors would enhance firms' performance as females tend to exhibit different characteristics and preferences to their male counterparts. However, there are criticisms stating that appointing more women to the board of directors will have a negative impact on the company. Although Article 8 of the Federal Constitution and the Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) provided there shall be no gender discrimination, there is still a gap and gender inequality between men and women. The requirement of at least 30% women directors does not seem to work and the government's commitment to achieve the gender quotas fail every year. Therefore, this paper will focus on the importance of gender diversity to the firms' performance, ascertain whether the involvement of women directors will improve the diversification of decision-making information, and the solution on how to cope with gender inequality, and how to accelerate gender diversity on the board. In short, this research is aiming to bring more awareness on equal rights for women.

Keywords—women, directors, board, firm performance, involvement, gender inequality

I. INTRODUCTION

The introduction of Malaysian Code on Corporate Governance (MCCG) highlights for companies to include 30% women participation on boards level. J.F. Corkery and Madeline Taylor (2012) finds that having a gender diversity board will benefit the firm performance because both genders can contribute different ideas, perspectives and interests. Gender diversity could bring a broad range of talent. However, the personal qualities of directors are crucial for a firm's success. Therefore, there is a debate on the gender quota in the boardroom. Although Article 8 of Federal Constitution clearly provides that there shall be no gender discrimination, it can be seen that there is still gender discrimination and gender inequality happening on boards level, maybe because there is no legislation covering the promotion of diversity. This can be supported by the facts that despite the target set by MCCG, there are still companies in Malaysia who did not comply with the MCCG target. Besides that, women participation in the top 100 public limited companies in Malaysia as board of directors only stands at 25.8%. In fact, 255 public limited companies in Malaysia elect all male on board level. Hence, this study aims to promote awareness of the equal rights of women because women directors are as competent as men directors.

II. METHODOLOGY

The introduction of Malaysian Code on Corporate Governance (MCCG) highlights for companies to include 30% women participation on boards level. J.F. Corkery and Madeline Taylor (2012) finds that having a gender diversity board will benefit the firm performance because both genders can contribute different ideas, perspectives and interests. Gender diversity could bring a broad range of talent. However, the personal qualities of directors are crucial for a firm's success. Therefore, there is a debate on the gender quota in the boardroom. Although Article 8 of Federal Constitution clearly provides that there shall be no gender discrimination, it can be seen that there is still gender discrimination and gender inequality happening on boards level, maybe because there is no legislation covering the promotion of diversity. This can be supported by the facts that despite the target set by MCCG, there are still companies in Malaysia who did not comply with the MCCG target. Besides that, women participation in the top 100 public limited companies in Malaysia as board of directors only stands at 25.8%. In fact, 255 public limited companies in Malaysia elect all male on board level. Hence, this study aims to promote awareness of the equal rights of women because women directors are as competent as men directors.

III. RESULTS/FINDINGS

Gender Inequality in Malaysia

Before the Convention on The Elimination of All Forms of Discrimination Against Women (CEDAW) was published, the whole world is having a big discrimination towards the women. Not only in the workplace, but in all aspects, this is due to the traditional gender roles and persistent gender bias. Therefore, in Malaysia, Article 8(2) of the Federal Constitution of Malaysia 1957 stipulates that everyone should be treated equally, but without emphasize any criteria of the discrimination towards certain aspects. After the CEDAW had been published and Malaysia signed for the CEDAW, the Federal Constitution was revised. Under Article 8 of the Federal Constitution, they emphasized that every person shall be treated equally in the aspect of gender, religion, race, descent, and place of birth. Under the Article 1 of CEDAW, it clearly stated that the purpose of CEDAW is to eliminate the discrimination against women, even in any aspect of human rights, including women getting equal opportunities in the workplace.

Although now have CEDAW, did the discrimination of women at workplace really been eliminated? No, it does not. There are still a lot of discrimination in the public, they think that men are stronger than women in any aspect. Based on the research run by Misha Ketchell Professor, he hired 2,700 workers online to transcribe receipts and randomly assigned a male or female name to a manager. (The Conversation, 7 Oct, 2019) The results show that women and men react more negatively to criticism if it comes from a woman manager.

Factors of Failure to achieve the 30% women directors

Many jurisdictions around the world realize that it is important to have women involved in the boards. The 30% women directors on boards will be an effective mechanism to improve gender equality and reduce discrimination among woman leaders.

One of the reasons why Malaysia still failed to achieve the 30% target is because several Public Limited Companies (PLCs) now in the Top 100 companies have no women

on board (Paramasiwam, 2021). Despite the fact that Malaysia was the first state in the region to set a gender diversity goal for PLC boards in 2012, some companies and PLCs have refused to reform. Other than that, many of the investors stated that women directors will cause potential risks and obstacles to the company. This is because they think that women are more often uncaring, aggressive or abrasive but women may also act empathic, nurturing, and collaborative compared to men. As we know, the requirement of being a director is never based on gender but is the ability in managing the company. According to the same study by Professor Misha Ketchell, the workers praised and gave good comments towards female managers who had good management skills.

In regard to the word "woman", does it mean that anyone who thinks she is female, is counted as a woman director? Nasdaq's proposal on the definition of "female" mentioned a noteworthy point that is based on a person's self-identification of women and does not consider the gender of the person at birth. However, MCCG does not make such a distinction. The word "woman" is likely to refer to a person's biological sex. Regardless of the biological characteristics, it is questionable whether Malaysia will accept the concept of "self-identity".

Suggestions and Solutions

The increasing number of women directors on the board is important, further steps are needed to address gender inequality in the workplace. The government should implement a clear discrimination policy. It is undeniable that workplace sexual harassment and family pressure are also factors that caused women to refuse to hold higher position in a company. With the signing of CEDAW and the enforcement of laws, Malaysia seems to be struggling to deal with gender inequality not only in the workplace but also among the public. The public still lacks awareness, and some companies have not formulated guidelines on the appointment of women directors. Thus, it is recommended that the government can state in the National Policy on Women, that it is compulsorily required all companies to disclose the number of women directors in their annual reports. A penalty will be given to the companies that do not have at least one-woman directors on board. In Singapore, the government set a talent pool as a potential market for hire.

Furthermore, the number of female students in tertiary education fluctuated substantially in recent years. Unlike those days, the younger generations are more actively participating in education programmes. Government should adopt the training for future women directors in universities or any educational programmes. For example, Kenya's university has the Women Directors Leadership Programme. This is what Malaysia is lacking. Therefore, the criticism that appointing a female board of directors poses potential risks to the company and that those candidates are not qualified should not be an excuse for not nominating women to the board of directors. To ensure that they do not appoint women to the board just to meet the 30% requirement, companies should seek more talented women as candidates and prepare their female executives for future board participation. Currently, there are many training programmes and organisations organised by the government and non-government organisations to discover their potential in leadership. As an example, the 30% Club Malaysia, Women Directors' Programme initiated by the Ministry of Women, Family & Community Development and LeadWomen Sdn Bhd provides training for female directors of local and international companies.

IV. CONCLUSION

In conclusion, gender is not an issue in the firm's performance, because through the scientific study, men and women have different thinking perspectives. Therefore, gender diversity will improve the firm's performance, especially diversity in the decision-making. Hence, the private sectors should support the government's initiative to encourage women to be involved in corporate boards. It is still a long journey to go, however it is believed that the 30% requirements will be achieved one day. The question is how long does it take to achieve? Future studies may look into these issues. This study contributes significant inputs to the authority responsible for promoting women to become directors.

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30

THE RISING CASES OF DOMESTIC VIOLENCE AGAINST WOMEN IN MALAYSIA

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Abstract

Domestic Violence against women covers a vast range of abusive and brutal actions. Some Women sulf er dreadful physical abuse while some live with repeated verbal assault alongside with humiliations and other forms of psychological abuses including economic exploitation as well. With this in mind, the rising cases of domestic violence against women are apparent throughout the years especially when the global pandemic Covid-19 strikes andMovement Control Order was implemented nationwide confining and limiting the movement of the victims in their houses. As domestic violence is a violation of human rights, this articleshall bat around the issues of the rising cases of domestic violence against women Malaysia and the methodologies to vanquish this penetrating epidemic. Thereupon, toefl effectuate such aim, this article will be using an exploratory approach whilst observing and critically analysing current events in Malaysia by making reference to the commonwealth countries, particularly England.

Keywords: Violation of Human Rights, Movement Control Order, Domestic Violence Act 1994, Protection Orders, Reform and Enhancement of Laws.

I. INTRODUCTION

Domestic violence, has been and is still one of the primary public policies concerning the spanning the world. In virtue of the Federal Constitution of Malaysia, Article 5 protects the rights to life and liberty of a person including the rights to enjoy a quality lifestyle such as one could enjoy living in a healthy environment. Along with that, Article 8 in the same manner provides that all persons are equal before the law and entitled to the equal protection of the law. In parallel with the Federal Constitution, the main statute that regulates domestic violence in Malaysia is the Domestic Violence Act 1994. With this act, crucial or trivial matters are being incorporated and covered under this act allowing it to be read together with the Penal Code. As it is an issue regarding the violation of human rights, the UDHR and International Bill of Human Rights will also be referred to when dealing with this issue.

Factors of Domestic Violence That Spiked During The Covid-19 Pandemic

The Women's Aid Organisation in Malaysia (WAO) has categorised domestic violencefaced by women into physical abuse, psychological abuse, sexual abuse, social isolation, financial abuse and digital abuse. Since the implementation of Movement Control Order (MCO) 1.0, cases of domestic violence against women has risen drastically. As reported by the WAO, the number of distress calls received during pre-MCO and MCO1.0 was 360%higher than before. Even after the first MCO was lifted, many non-governmental

organisations continued to warn of escalating domestic violence.[77] The Women and Family Development Ministry's Talian Kasih hotline had been receiving 57% more calls from women in distress since MCO started, and many of them were involved in domestic violence.

There was also a 14% increase in the reports received by the WAO hotline.[78] In 2021, there were 902 domestic violence cases reported in the first four months. In 2020 itself, 5,260 investigation papers were opened by the police in regards to domestic violence.[79]

One of the reasons for the spike is because the victims are 'trapped' at home with the abuser due to the implementation of the MCO and the abuser may refrain them from seeking properhelp. Rubbing salt into the wound, MCO had further worsened the economic, social and psychological pressure. The Women, Family and Community Development was in the opinion that economic pressure plays an important part in the increase of domestic violence cases. Such pressures produced a high-stress environment and it is speculated that the abusers who were unemployed or affected in income tend to eliminate their emotional pressure on family members.[80]

Strength and Weakness of the Domestic Violence Act 1994

The Domestic Violence Act 1994 (DVA) is an important piece of legislation to combat domestic violence and was amended in 2012 and 2017 to improve on certain loopholes. Prior to the amendment, domestic violence is limited to threatening to cause physical injuries, causing physical injuries, committing a sexual act forcefully, confining the victim or damaging property.[81] However, the definition has been expanded to include causing distress to the victim due to financial loss, causing the victim to fear for his safety including his property, to fear for the safety of a third person, or to suffer distress, insulting modesty of victim, causing psychological abuse and emotional injury or causing the victim to suffer from delusions by any intoxicating substances.

Moreover, the current amendment of the DVA further provides greater protection regarding the Interim Protection Order (IPO) where Section 4(4)(a) makes it compulsory for police to inform the victim in writing on the investigation results and the IPO will only cease if there is no further action to be taken against the perpetrator. Apart from that, IPO will cease if the victim did not apply for a protection order within seven days after being informed by writing that the perpetrator would be charged for domestic violence and this shows a clear improvement from prior amendment where the cessation of IPO is automatic once the investigation is completed.[82] Next, the court is allowed to grant the victim Protection Order (PO) and the right of exclusive occupation of the shared residence[83]

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[77] Nurul Ezzaty Hasbullah and Sandra Chong, 'COMMENT | Do More to Protect Women, Children fromAbuseduring Lockdown' *Malaysiakini* (2 June 2021).

[78] Tharanya Arumugam, 'MCO-Linked Domestic Violence Rises' *New Straits Time* (Kuala Lumpur, 4 April 2020).

[79] 'Minister Says 902 Cases of Domestic Violence Reported from Jan-April' *Malay Mail* (Kuala Lumpur, 4 May2021).

[80] 'Minister Says 902 Cases of Domestic Violence Reported from Jan-April' (n 16).

[81] Sheela Jayabalan, Daleleer Kaur Randawar, 'The Definition of Domestic Violence in Malaysia: ACross- National Comparison' (2018) 88 Akademika.

[82] Rohaida Nordin Mohd Safri Mohammed Na'aim, Ramalinggam Rajamanickam, 'Domestic Violence Against Women: Legal Protection Under The Domestic Violence Act 1994' [2019] The European Proceedings of Social & Behavioural Sciences.

[83] Domestic Violence Act 1994, s 6(1)(a).

including forbidding the perpetrator to remove the vehicles that are normally used by the victim[84] without the requirement of having the perpetrator to be charged under the Penal Code first. Last but not least, a new form of protection that is the Emergency Protection Order (EPO) has been introduced in 2017 where victims could apply for it without the need of lodging a police report[85] and is not affected by IPO or PO.[86]

Despite the amendments that were made to the DVA, there are still loopholes in legislation itself. The first weakness is the incomprehensiveness of the definition of domestic violence despite the extension of the definition to include financial abuse, psychological and emotional abuse. The second weakness is DVA does not recognise domestic violence that takes place among unmarried couples.[87] This has been confirmed by the former Women, Family and Community Development Minister, Datuk Seri Rohani Abdul Karim where she said that unmarried offenders would only be punished under the Penal Code.[88] Lastly, Section 11(1) of the DVA on the court's power to order the perpetrator and the victim to attend the rehabilitation programme should be amended for the safety and security of the victim and to avoid the repetition of the same situation.

II. SUGGESTION AND SOLUTIONS

The task of eliminating domestic violence should be reassuring with the cooperation of all involved parties such as governmental agencies, NGOs as well as the Parliamentary legislative body, the future of women holds much potential if crucial steps are undertaken. Among such steps to be undertaken include the formation of a comprehensive FamilyCourt system, which shall preside exclusively over matters involving family law while also forming a highly-specialized 'Domestic Violence Division' (DVD) to preside over cases involving domestic violence within the purview of the DVA 1994. Furthermore, the aforementioned DVD would also incorporate the concept of the existing 'One-Stop Crisis Centre' (OSCC) model in order to allow domestic violence prosecutions as well as other matters such as application for an EPO[89] and IPO[90] to be dealt with in a swift and efficient manner in lieu of the urgency as well as safety concerns faced by the victim. Nonetheless, remedies under Section 11(1) can be further submitted where the UN Expert Group pointed out the significant number of undesired effects which may arise should mediation proceed in case of violence against women. Such mediation between the victim and the abuser would lead to the removal of judicial scrutiny as well as impart an illusion of equal bargaining power as well as equal fault on both parties for the violence that has occurred. As a result, the offender will be deemed to have a lower degree of accountability with regards to the violence that they have inflicted upon their spouse.

III. CONCLUSION

In a nutshell, the problem of domestic violence in Malaysia has been deeply embedded within the fabric of our society and with the implementation of the MCO in 2020 as well as perennial lock-downs that we continue to face this year, it is up to the Government and Non-Government Organisations to swiftly undertake some much needed

[84] Domestic Violence Act 1994, s 6(1)(e).

[85] Domestic Violence Act 1994, s 3A(6).

[86] Domestic Violence Act 1994, s 3A(9).

[87] Domestic Violence Act 1994, s 2.

[88] Ida Lim, 'After cohabiting query, minister confirms Domestic Violence Act only protects married couples' *Malay Mail* (Kuala Lumpur, 25 July 2017).

[89] Domestic Violence Act 1994, Section 3A.

[90] Domestic Violence Act 1994, Section 3A (2).

reforms to our existing laws, healthcare system as well as societal views towards women as a whole in order to eradicate the epidemic of domestic violence in Malaysia including making it a specific crime.

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31

WHISTLEBLOWING & CORPORATE GOVERNANCE: DOES WHISTLEBLOWING PROTECTION ACT 2010 PROVIDE ADEQUATE PROTECTION TO WHISTLEBLOWERS?

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Abstract

Whistleblowing is central to a company's system of checks and balances and according to the Malaysian Code on Corporate Governance Practice 3.2, companies should ensure whistleblowing policies set out avenues on matters of such. This is to ensure good business conduct and to maintain a healthy corporate culture. The public companies in Malaysia are required to publish their policies regarding whistleblowing and the policies often incorporate the Whistleblower Protection Act 2010. Therefore, this paper aims to explore the adequacy of the Whistleblower Protection Act 2010 of Malaysia to provide legal protection to whistleblowers for the sake of good corporate governance. Secondary sources such as legislations, research papers and whistleblowing policies from companies were used to achieve the research objective. As a result, we found that there are loopholes in the protection given by the Whistleblower Protection Act 2010 to whistleblowers where the protection is only conferred by the act when disclosure is made to enforcement agencies and prior involvement of whistleblower in misconduct should not automatically lead to revocation of protection. In conclusion, this research will argue that the Whistleblower Protection Act 2010 should be extensively reviewed and will give recommendations to ensure proper protection given, to ensure companies when drafting their whistleblowing policies to be bound by such act, and to cultivate good corporate governance.

Keywords— whistleblowing, whistleblower, protection, Whistleblower Protection Act 2010, corporate governance

I. INTRODUCTION

Whistleblowing is an act where a worker passes information on the company's wrongdoing. Whistleblower as stated in section 2 of the Whistleblower Protection Act 2010 means that any person who makes a disclosure of improper conduct to the enforcement agency under section 6. Whistleblowing not only refers to the act of a whistleblower who discloses the wrongdoing act, it has also emerged in its mainstream functions and the roles in leading today's modern corporations to enforce effective whistleblowing policy. Whistleblowing policy that is effective could deliver sound governance status in the corporate governance context. In Malaysia, we have the Malaysian Code on Corporate Governance, where in practice 3.2, requires companies to have policies on this matter to ensure good business conduct and to maintain healthy corporate culture. Malaysia has also enacted the Whistleblower Protection Act 2010 to combat improper conduct performed within the ambit of the private or public sector by facilitating people who wish to expose such conducts. However, there are flaws as to these protections which will be further highlighted below.

II. METHODOLOGY

This paper uses analytical legal research methods to achieve research objectives. It analyzed secondary documents such as research papers, statutes, decided cases and whistleblowing policies of several companies in order to understand, interpret and explain selected resources. In the end of the research, the writer will conclude by giving some recommendations that can be done to improve on WPA for a more extensive protection to whistleblowers in order to uphold the intended outcome of MCCG 3.0.

III. RESULTS/FINDINGS

Corporate Governance of the Main Market Listing Requirements by Bursa Malaysia expressed that listed issuers and its board of directors must ensure that policies and procedures on whistleblowing are established and published on its website. Public companies in Malaysia have in fact, taken their steps to publish policies on whistleblowing by also incorporating the principle of Whistleblower Protection Act 2010 (WPA) into their policy to cultivate good corporate governance. Nevertheless, there are several flaws to the protection of WPA 2010 to whistleblowers.

The first shortcoming is that protection by WPA 2010 is only given to disclosures made to enforcement agencies. As section 6 states that a person may make disclosure of improper conduct to any enforcement agency. Enforcement agencies include ministry, department, agency or body set up by the Federal, State or local government. (Section 2 WPA, 2010). Also, section 8(1) expressed that any person who makes or receives a disclosure of improper conduct in the course of the investigation shall not disclose any part thereof. Hence, the protection of WPA 2010 on whistleblowers is not extended to protect employees who complain to internal management of the company. For example, in the Whistleblower Policy and Procedures of Bursa Group, in clause 2.3.2, reports on improper conduct by the market participants should be channelled to the Securities Commission which is an 'enforcement agency' under the WPA 2010 as Bursa Malaysia is not recognised as an enforcement agency, therefore, reports made to Bursa Malaysia will not be subjected to protection provided under the Act. (Bursa Malaysia, 2012) Also, according to the policy of TGV Cinemas, clause 4.3 expressed that protection by WPA is not extended to disclosures made to private organisations but the company's policy accords similar protection as per WPA. (TGV Cinemas, 2020). There have been cases where whistleblowers were not protected by the act as they had not made disclosures to enforcement agencies, which amounts to breach of section 6. (*Rokiah Mhd Noor v KPDNHEP & Ors*, 2016) Technically, WPA will not confer protection to employees should they make disclosure to their employer or in the course of seeking legal advice. Therefore, it can be detrimental to those who prefer to report wrongdoings to their employers as they may be influenced by their loyalty to the company or they fear that reporting to an external body would result in repercussions to the company. (Tan & Ong, 2011) With the immense level of stress faced by whistleblowers, they may be more comfortable to report to someone closer in relation such as lawyers, employees or civil society. Hence, it is of pertinence that the act should extend its protection to whistleblowers who decide to report to these parties instead.

The second flaw to WPA is that prior involvement in the misconduct and motive to disclose would automatically terminate protection as per section 11. The policy of Institute of Corporate Directors Malaysia and Perbadanan Insurans Deposit Malaysia, had adopted section 11(1) of WPA on the revocation of protection in the event when whistleblower had

(a) participated in the misconduct; (b) made disclosure about the conduct when he knew or believed it wasn't true, (c) disclosure was vexatious; (d) disclosure concerns government policy; (e) to avoid dismissal (ICDM, 2021) & (PIDM, 2019). The shortcoming of this part is in section 11(1)(a) and (e). Under section 11(1)(a), it should be amended to ensure protection is still given to whistleblower even there was participation so long as the whistleblower is not the mastermind. (Aik, 2016) There may be times where a corrupted practice is brought to light by a person involved, in such, there should be discretion as to whether protection should be expanded to those who participated but then decided to whistleblow. To fight against improper conduct, protection should not only be given to innocent bystanders but also participants of such conduct who then decide to repent. The inflexibility of this section would only stop more people with information to come forward. (Leong, 2017) Similarly, section 11(1)(e) should be amended to allow for disclosures by employees so long as the disclosure is not frivolous. Their motive to whistleblow should not be the first factor to deter them from protection. All whistleblowers should be considered as innocent and be given protection by WPA, until proven otherwise. The main objective of the Act is to encourage disclosure of wrongdoings, the inflexibility of this Act would only prevent the objective to be achieved. (Christopher& Lee Ong, 2021)

IV. CONCLUSION & RECOMMENDATIONS

Whistleblowing promotes good corporate governance and it serves as a watchdog to prevent wrongdoings in a company. WPA 2010 being the main act to legislate on this matter, should be amended based on the findings to grant more protection to whistleblowers and is highly recommended to be incorporated by companies when drafting the whistleblowing policy. Only with an extensive Act which confers sufficient protection, will it give confidence to whistleblowers to report concerns on breach of legal obligations so as to promote good business conduct in a company with a healthy culture that engenders integrity, transparency and fairness. (MCCG, 2021) The act should permit disclosure of improper conduct to non-enforcement agencies, including their internal management without losing the protection conferred under this act. (Leong, 2017) Despite the fact that whistleblowing policies drafted by companies do provide protection to whistleblowers in their own purview, it would be more prudent as to extend legislative protection to whistleblowers who chose to report to their internal management as certain company policies may be ambiguous. As the intention of WPA is to confer protection to whistleblowers, they should not discriminate between disclosures to enforcement agencies, 3rd parties and to both enforcement agencies and other parties. (Christopher & Lee Ong, 2021) Malaysia should refer to the Australian Whistleblower Protection Act 1993, where they do not limit disclosure to enforcement agencies, so long as disclosure is made to any reasonable and appropriate persons in these circumstances. (Australian Whistleblower Protection Act 1993). Not only so, on revocation, WPA should not focus too much on the motive and participation of whistleblowers in making disclosure. (Aik, 2016) and is recommended to refer to the UK Legislations where they decided to remove the element of good faith in making a qualified disclosure so long as the disclosure was made to fulfil the end objective of whistleblowing legislation. (Enterprise and Regulatory Reform Act 2013)

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CATEGORY B

POSTER

MMU
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Companies' Policy on Investigating Sexual Harassment Cases between EMPLOYER & EMPLOYEE

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PROBLEM STATEMENT: Do companies comply with MCCG and Code of Conduct and Ethics when dealing with cases relating to Sexual Harassment at the workplace?

PURPOSE OF STUDY : To highlight the importance of complying to the MCCG

INTRODUCTION

What is sexual harassment in workplace?

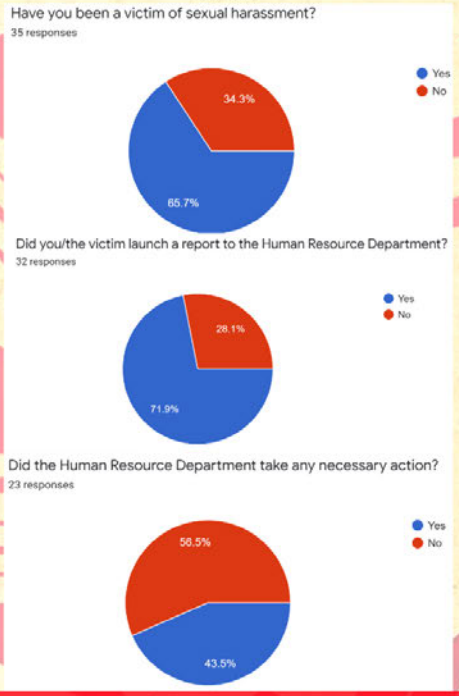
- S.2(g) of the Employment (Amendment) Act
- Mohd Ridzwan bin Abdul Razak v Asmah bt Hj Mohd Nor

3 forms of harassment

- Gender harassment
- Unwanted sexual harassment
- Sexual coercion

METHODOLODY

The methods used in researching and obtaining information was library research and surveys that was conducted within working adults



RESULTS & FINDINGS

The Laws & Cases in Malaysia regarding Sexual Harassment at the workplace

- Code of Practice on the Prevention and Eradication of Sexual Harassment in Work environment in 1999.
- S.20 of the Industrial Relations Act 1967
- Mohd Ridzwan Bin Abdul Razak v Asmah Bt Hj Mohd Nor [2016] 4 MLJ 282
- Khew Chee Sun v HSL Electrical & Electronics Sdn Bhd [2013] 2 ILJ 50
- Loganathan a/l Maniam v Murphy Sarawak Oil Co Ltd [2020] 4 ILJ 4

The Laws & Cases in United Kingdom regarding Sexual Harassment at the workplace

- S.23 & S.26 of the Equality Act of 2010
- Craddock v Fontoura t/a Countyclean
- Driskel v Peninsula Business Services

Factors of why sexual harassment cases have been increasing in Malaysia

1. Unethical work environment
2. Lopsided gender balance
3. Awareness of the sexual harassment grievance procedure
4. Sexist sentiments among coworkers
5. Workspace privacy
6. Physical attractiveness
7. Victims' dress style
8. Employment position
9. Gender relations

Solutions on how to manage the sexual harassment cases

1. Establish whistleblower mechanisms
2. Establish rules and regulations that promote ethical behaviour
3. A systematic complaint procedure
4. An investigative strategy that protects the privacy interests while providing corrective and remedial actions.

CONCLUSION

The policies involving the investigating of sexual harassment cases must be reviewed to make sure it is in accordance to the codes that have already been enforced by the Government.

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1. Malaysian Code on Corporate Governance 2021
2. Industrial Relations Act 1967
3. Code of Practice on the Prevention and Eradication of Sexual Harassment in the Work Place 1999
4. Equality Act 2010

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ENGAGEMENT AND PARTICIPATION OF SHAREHOLDERS AT THE COMPANY'S GENERAL MEETINGS DURING THE COVID-19 PANDEMIC

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The shareholders' participation and engagement are significant in the general meetings of a company. Yet, because of the separation of ownership and control in a company, during the pandemic, shareholders might not participate in making informed voting decisions and could not have an effective engagement with the board and senior management. The question is whether the shareholders are able to participate, engage the board and senior management effectively and make informed voting decisions at general meetings during the pandemic? This paper aims to address this issue. This paper uses black-letter approach. A comparison approach is also adopted in a manner that a comprehensible analysis can be achieved.

Fully Virtual General Meetings

Fully virtual general meetings are meetings held online whereby all the members may participate at their own place respectively. Due to the Covid-19 pandemic, the listed companies may leverage technology to host virtual meeting. Companies can make use of the online platforms which would provide high quality video conferencing function as well as other features.

Requirements to Conduct

Company is allowed to convene meeting using technology so that the members are able to exercise their rights to speak and vote. The chairperson of the company must be present at the main venue of the meeting, and it must be held in Malaysia as per S327(2) of CA. It is necessary for company to record and keep all the meeting procedures and resolutions passed at the meeting. The Guidance and FAQs on the Conduct of General Meetings for Listed Issuers listed out several requirements to carry out a meeting online.

Problems of Virtual Meeting

Because too many companies are converting to virtual meetings, virtual meetings providers are overwhelmed. Importantly, security concerns may occur. Concerns about cyber-security, data protection, and the reliability of technological platform servers may arise.

Cyber Security Hygiene

Companies can keep off intruders, protect employees, and protect data privacy by following proper cyber security hygiene. The company secretary should examine the list of members and authenticate each member's identification before letting them into the meeting. Evaluating the impact of virtual meetings on data protection is critical. This helps the firm to assess and control the data security threats.

Hybrid General Meetings

Hybrid general meetings are the meetings held at both physical venue and broadcast online, it gives the members options to either attend physically or remotely. Malaysia has no law to allow hybrid general meetings during the pandemic, and it can't be held currently as Movement Control Order provides the restrictions on state crossing and gathering. In contrast with Malaysia, UK has the temporary law to allow hybrid general meeting, but most of the company choose fully virtual meeting instead.

All in all, during CMCO or EMCO, the companies are prohibited to conduct a hybrid meeting since it is still requiring some shareholders to physically gather at the same venue. Instead, every general meeting shall be conducted in a full virtual mode to ensure the participation of the remote shareholders during the pandemic Covid-19.

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LIABILITY OF THE BOARD OF DIRECTORS IN TERMS OF THEIR SUPERVISORY ROLE IN RISK GOVERNANCE: THE POSITION IN UNITED STATES, UNITED KINGDOM AND MALAYSIA.

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INTRODUCTION

Diagram 1.0: Risk governance includes risk management and the implementation of internal controls.

The BOD sets the strategy & defines the culture of the company.

Risk management identifies risks associated with company and the willingness of the company to bear such risks.

Internal controls are designed to address and manage risks identified.

PROBLEM STATEMENT:

As part of the risk governance framework, the board is expected to monitor the company at all times. Hence, the question lies in whether the BOD can be held liable in the event they fail to supervise the company's affairs.

METHODOLOGY

- The Siti Hasmah Digital Library has provided substantial research materials such as recent case law, journal articles, thesis and reports.
- The Malaysian Code on Corporate Governance and Bursa Malaysia's write-up which could be accessed online, were also consistently referred.

LEGAL POSITION IN UNITED STATES

General rule: A duty of 'oversight' is owed by a director to the company.

Federal Deposit Ins Corp v Stanley – Directors owe a duty of care to take initiative in overseeing a company's affairs by joining meetings and evaluating reports to keep updated.

These duties cannot be delegated neither can it be discharged by relying on others (like an established committee or the management itself).

Inconsistencies exist – WHY?

Re Baxter Intern, Inc. - BOD owes no duty to establish an internal control system as a preventive measure if no suspicious circumstances exist. Reaffirmed in **Graham v Allis-Chalmers Manufacturing Company**.

Current Position

Re Caremark Intern Inc Derivative Litigation – Clarified the law.
Liability can only be contracted in 2 situations:

- The directors did not act in good faith
- Failed to set up measures/ control.

Observation:

- BOD has a legal obligation to oversee company affairs and although this task may be delegated, the ultimate responsibility lies with the BOD.
- Oversight by the BOD is an important risk governance mechanism as it allows the BOD address any potential risks of harm to the company.

LEGAL POSITION IN UNITED KINGDOM

Barings Plc case – BOD is responsible for the overall oversight of the company despite delegation of duty to other employees or to a committee.

Huckerby v Elliott - Impossible for director to escape liability by saying "I have delegated my duties to a servant" as it would make nonsense of the position of a director.

Land Credit Company of Ireland v Lord Fermoy - Ignorance is not a defense when the matter falls under a director's duty to know because it is for this purpose the office of director was created, and that he has been elected by the shareholders. He must KNOW of the risks!

UK's Corporate Governance Code (CURRENT) - BOD must come up with measures to manage potential risks and supervise the internal control structure.

Observation:

- Imposition of a mere duty of care isn't enough to ensure directors implement risk governance as more must be done.
- The supervising role of the BOD is a key feature in UK corporate governance practices.

LEGAL POSITION IN MALAYSIA

General Rule: The director is liable for acts/omission by a delegate in a company, that results from the director's failure to oversee the company's affairs.

Norman v Theodore Goddard - Follows common law principle.

Section 213(1)(a), Section 213(2)(a)(b) CA 2016 - A director must exercise their duty with reasonable skill and care.

Balda Solutions Malaysia Sdn Bhd v Foo Wan Seng - DOC includes the director's duty in monitoring company affairs.

Principle B II MCG - directors must be responsible to establish an effective risk management and internal control framework.

CURRENT PRACTICE: Directors are the party responsible for risk management and the establishment of internal control.
- **Amanah Scotts Properties Sdn Bhd v Ooi Meng Khin & Ors**
- **Ng Wu Hong v Abraham Verghese TV Abraham & Ors**

SOLUTIONS

- Sanctions must be imposed on directors that fail to establish and supervise an internal control system. E.g.: Section 213(3), Section 246 of CA 2016.
- MCG intended outcome 10.0 must be adhered to.
- G10.1 MCG – Risk tolerance must be determined by BOD.
- Malaysian Institute of Directors.

CONCLUSION:

BOD's supervisory role is vital in risk governance as this function is a form of internal control. Hence, the BOD is liable if they fail to supervise company affairs.

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RECONCILING INTENDED OUTCOME 4.0 WITH UNSUSTAINABLE INDUSTRIES: IS IT POSSIBLE?

Lim Sue Roe, Jonathan Lim Hsi How, Cashvyn Singh, Ong Jun Quan and Yogesh Raja Gopal (L2G13)

Abstract

Climate change is a global emergency, and it is worsening far more quickly than we feared. Although climate change is irreversible, it is never too late to stem the tide. If the world is ever going to achieve its goal in mitigating climate change, the oil and gas industry will have to play a crucial role. The objective of this paper is to investigate as to whether the Intended Outcome 4.0 of Malaysian Code on Corporate Governance (MCCG) is sufficient to lead companies especially those within unsustainable industries to mitigate the issue of climate change. Intended Outcome 4.0 focuses on companies addressing the sustainability risks and opportunities in an integrated and strategic manner to support its long-term strategy and success. The finding of this research indicates that the Intended Outcome 4.0 is insufficient to improve companies even after controlling the competitive advantage within its industry. The implication of this study is the need to re-examine the practice listed under MCCG, primarily an introduction of a scoring scheme to determine the companies' compliance with MCCG, and incentive for companies with high MCCG disclosure scores to be associated with higher competitive advantage.

Discussion

What should MCCG have included in their guideline?

01 Carbon Emission Auditing

02 Scoring Scheme for MCCG Intended Outcomes

However, there is a limit to the influence MCCG may impose on companies in Malaysia. Government will need to take the lead to facilitate the transition of industries from unsustainable business to sustainable business.

Methods

The research of this paper will heavily rely on MCCG, and the methodology applied are case studies and library-based research. The subject for our case studies are companies which are listed in the Bursa Malaysia and are associated to the oil and gas industries.

Results

PETRONAS

DATA 01 There is an actual risk management committee, which deals with principal risks. More specifically, it deals with various emerging risks or opportunities resulted from complex internal and external environmental concerns.

DATA 02 Sustainability risks were addressed from the perspective of environment, climate actions were also introduced to mitigate aforementioned risks.

DATA 03 Incorporation of climate actions during their course of business, (petronas entered long-term power purchase agreement for solar energy to be used throughout their plants, reduction of energy by 407880 kWh per year, increasing cleaner energy by making liquefied natural gas etc)

DATA 04 Sustainable management were not comprehensively discussed in the annual report.

sapura energy

By referring to their FY2020/2021 annual report, Sapura Energy has made public recognition to the latest updates of MCCG and is in complete compliance with MCCG.

What was in their annual report?

01 Public acknowledgement towards the importance of ESG among investors and sustainability risks of climate change to the business.

02 Published the Board's blueprint for a sustainable future, including a 5-year strategic plan that would be implemented in 3 phases. Sapura Energy aims to achieve 10 – 20% revenue from offshore windfarm by 2025.

03 They have also conducted 11 environmental training programmes for employees.

There was no carbon emission audit.

Carbon emission audit is crucial to hold companies accountable for the true extent of the damage they cause to the environment and climate. It is also crucial to facilitate implementation and penalty with more justice.

TM Group

RESOLVING DILEMMA OF WHISTLEBLOWING CHANNELS IN MALAYSIA

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INTRODUCTION

Whistleblowing provides for the disclosure of misconduct within a company, to promote accountability of the company upon its misconduct, while protecting the whistleblowers against sanctions for such disclosure.

Whistleblowing Channels

- **Internal (Within Company)**
- **External (Outside Company)**

(Zakaria, 2020)

- In Malaysia, such two channels for whistleblowing are not concurrent in nature.
- Malaysia does not connect the company's whistleblowing channel with governmental whistleblowing agency.
- This causes lack of accountability, and lack of efficiency in the investigation of disclosure made by whistleblowers.
- As a result, it causes low rate of whistleblowing in Malaysia.

This research will focus the flaws of 'single-layer whistleblowing model' in Malaysia, together with suggestion for a new whistleblowing model in curbing such issues, to upheld intended outcome 3.0 of Malaysian Code on Corporate Governance (MCCG) by securing a transparent and fair corporate governance.

METHODOLOGY

External desk-bound research has been applied to collect accurate and credible information, specifically relevant legal authorities and scholar's opinions in relation to different models of whistleblowing channels.

Content analysis has been used in analysing our collected Information.

It was discovered that the absence of a concurrent whistleblowing channel results in detrimental effect upon the interest of the whistleblowers, and thus portraying a need for a new model.

MALAYSIA'S LEGAL FRAMEWORK FOR WHISTLEBLOWING CHANNEL

Internal Whistleblowing Channel (Within Company)

G3.2 of MCCG obliges companies to set up avenues of whistleblowing for any individual to voice out the misconducts of such companies, without the risk of reprisal.

Only 40.9% of companies provides whistleblowing policy.

Only 7% of companies abides to such whistleblowing policy.

(Salleh, 2019)

- Internal whistleblowing are biased towards higher-ups of a company, on the ground of possible hostility in dissenting their conducts.
- Though there is biasness in decision, there is no appeal, as per S8 (1) of WPA.
- The companies which the whistleblowers complained may retaliate .
- It causes disadvantage for internal-whistleblowers, and thus they are reluctant to perform whistleblowing.

(Apadore, 2018) (Vandekerckhove, 2016)

External Whistleblowing Channel (Enforcement Agency)

S.6(1) of WPA allows a person to disclose a company's misconduct to an enforcement agency, which includes a governmental department or any legally established bodies as per S.2 of WPA.

Suruhanjaya Pencegahan Rasuah Malaysia

- Due to the prohibition of 'dual-disclosure', companies would not be informed upon the potential misconduct or have the chance to rectify the wrong immediately.
- Such on going issues are detrimental and may affect the interest of the company.
- As a result, companies may suffer adverse consequences, such as loss of sales, negative publicity as well as damage of reputation due to the external disclosure thereon.

(Syahrul, 2011). (Stephen, 2019).

PROHOBITION OF 'DUAL DISCLOSURE'

- S.8(1) of WPA provides that a person shall not disclose any confidential information once it was disclosed to an enforcement agency.
- Rokiah Mhd Noor [2016] 8 CLJ 635: Disclosure through either channels, and further disclosure through other channel is a breach under WPA.
- Malaysia's whistleblowing model is of 'single layer' where there is no connection between internal and external channels.

As a result, individual only allowed to opt either channels, which deprives their rights in reviewing the decision made via their selected channels, and to opt a better course of action.

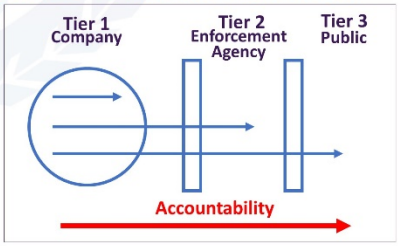
(Christopher, 2021)

3-TIERED WHISTLEBLOWING CHANNEL MODEL

Europe Recommendation on the Protection of Whistleblowers had suggested a '3-tiered whistleblowing model', where the three whistleblowing channels are connected in an escalating manners.

- Characteristic 1: Presence of 3 channels
- Characteristic 2: Accountability between tiers
- Characteristic 3: Equal and fair

(Vandekerckhove, 2016)



RECOMENDATION

Malaysia should incorporate 3-tiered whistleblowing model in reference to the EU Whistleblower Directive (EUWD).

Amend WPA by merging It with MCCG to legitimise internal whistleblowing and public disclosure as a mandatory whistleblowing channel in Malaysia.
(By incorporating Art. 7(1), 8(2), 15(1) of EUWD)

Incorporate an 'escalating' system into the WPA to specify the sequence of tiers and accountability that ought to be followed by each tiers.
(In reference to Art. 7(2), 9(1)(f), and 15 of EUWD)

(Vandekerckhove, 2014)

CONCLUSION

- It is recommendable to incorporate the '3-tiered whistleblowing model" in Malaysia.
- Such model ensures transparency in avenues, by ensuring misconducts are investigated fairly, so as to promote accountability of companies for their misconduct, thus fulfilling the intended outcome 3.0 of MCCG, to promote fair and transparent corporate governance.

SHORTER TENURE AND BOARD DIVERSITY: BETTER STEPS TOWARDS CORPORATE GOVERNANCE?

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ABSTRACT

Corporate governance refers to a regulating mechanism used to administer business operations to enhance corporate performance and yet striking a balance with the interests of other stakeholders.

The Malaysian Code of Corporate Governance 2021 introduced practices and guidance that outlined the respective obligations of executive management, shareholders and stakeholders.

Intended Outcome 5.0 of the Code highlighted the need for sufficient diversity and independence to ensure board decisions are made in the best interest of the company.

METHODOLOGY

This paper uses a doctrinal methodology that focuses primarily on the MCCG 2021, Bursa Listing Requirements and journal articles.

APPROACH

This paper examines whether the proposed recommendations in MCCG 2021 would bring effect such objectives in real-life situation.

This paper will first address the correlation between board tenure and its impartiality, then the board diversity in terms of abilities and background.

RESULTS

It is submitted that long tenure does not necessarily affect board independence and that the presence of diversity would bring better firm performance and thus enhances a value creating business structure.

The authors conclude that the practices and guidance of MCCG 2021 may be the best option to strengthen the modern practice on corporate governance

ANALYSIS

INDEPENDENT DIRECTORS

Defintion under Bursa Listing Requirements:
A person who is independent of factors that could interfere his judgement or the ability to act in the best interests of the company.

Requirements:
- Independence of mind in thought and action without being affected by influences that compromise objectivity.
- independence in appearance, to be free from any relationship or economic interests that would lead to doubts on his objectivity.

Examples: Top Glove - Related Party Transaction Policy
- Director with interest, direct or indirect, must abstain from Board deliberation and voting on the relevant resolution
- Directors and major shareholders will be required to sign a form of declaration if there are any Related Party Transactions to be disclosed

CONTD...

Cultural ethnicity
- In Malaysia's context, companies should have a board with various racial, cultural and religious background.

Age diversity
- A board of mixed older & younger generation to stay relevant in the market
- Older directors provide experience & knowledge; while younger directors provide a fresh perspective from a different point of view

Rationale of Board Diversity
- Better governance of management
- Increases market opportunity and social acceptability
- Lead to a more efficient decision-making session
- More strategies would be stimulated with a diversified group of people with different skills, experiences and values

WOMEN'S REPRESENTATIVE

Equality in workplace
- Article 23 of UDHR: all persons the right to receive equal pay for equal work without discrimination
- Article 8(2) of Federal Constitution stipulates that there shall be no discrimination against gender at any office under the public authority

Justifications
- Diversity in gender promotes different perspectives in stewardship
- A variegated board of directors will further enhance corporate's competency in every aspect
- To increase social acceptability when women are given a fair shot to break through the glass ceiling to the upper level of management
- In Malaysia, women representation on the top 100 public limited companies (PLCs) board currently stands at 25.8%

DIVERSE SKILLS & BACKGROUND

Expertise diversity
- This includes having different international expertise categories, different domain expertise categories and different industry expertise represented on board.

TENURE LIMIT OF 9 YEARS

Justification:

Long-serving directors may develop a close relationship with the management and thus entail deficiency in its monitoring and strategic advice

The relationships developed socially between directors and CEOs can lead to higher compensation and as a consequent, a reduction in firm value.

In Malaysia, as of 2021, a total of 434 independent directors were said to have served their boards for 12 years and more.

With a total of 49 directors who have served on the same board for more than 20 years.

CONTD..

Two-tier process:
- To retain an independent director with the approval of annual shareholders
- Shareholders' votes will be cast in 2 tiers:
  - Tier 1 comprises of Large Shareholder(s) votes
  - Tier 2 comprises Shareholders other than Large Shareholders votes.

TM Group

SIGNIFICANCE OF ETHNIC DIVERSITY IN A BOARD AND HOW NOMINATION COMMITTEE PLAYS A ROLE IN FORMING A DIVERSIFIED BOARD

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INTRODUCTION

"Board diversity is necessary to create an effective board."

Only 34% out of the 312 listed companies are having boards with more than two ethnicities.

Operating in a multiracial country but does not form an ethnically diverse board?

METHODS

Secondary Data

Desk research

Library-based research

RESULTS

Board with ethnic diversity

35% Company outperforms

30% Bumiputera Corporate Share

New Economy Policy | National Development Policy | National Vision Policy

MCCG does not emphasize on ethnic diversity

Corporate share benefit to one ethnic instead of multiple ethnic leads to the difficulty of corporate to elect board with ethnic diversity.

The correlation between ethnic diversity and other aspect of diversity should be further studied.

To understand the effect of diversity on its outcomes in organisation, both mixed and cumulative effect.

Composition of nomination committee affect formation of a diversified board

MCCG 2021: Responsibility of NC in the appointment of candidates (boards & committee) and recognising those with diverse backgrounds

NC's composition will create a positive impact in influencing the borad's ethnic diversity.

Large percentage of ethnic groups in the NC will facilitate diversity of the board.

Bursa Malaysia & MCCG 2021 silent on composition of NC. → NC to be regulated.

CONCLUSION

MCCG 2021 is lacking and should be reformed:

1. To ensure the existence of an ethnic diversified board
2. To emphasize the composition of nomination committee

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THE INTERNAL AND EXTERNAL IMPORTANCE OF A COMPANY'S BOARD OF DIRECTORS

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Introduction

Referred from the
MALAYSIAN CODE ON CORPORATE GOVERANCE 2021

Purpose: How MCCG identifies the distribution of rights and responsibilities among different company board of directors and the impact of this internally and externally.

Aim: Finding out a way to balance the interests of the company and directors and the long-term preservation of the corporation.

Problem question:
a) How the members of a company's board leading skills makes or breaks the company ?
b) How their roles are complementary to each other ?
c) How a well-organized board is crucial towards implementation of strategies and success of a company?

Intended Outcome 1:
Every company is headed by a board, which assumes responsibility for the company's leadership and is collectively responsible for meeting the objectives and goals of the company.

Methodology

DOCTRINAL RESERCH METHODOLODY

- **Branched out**

transformational & leadership | **trait approach** | **contingency approach**

- **Focused group discussion**

ONLINE SURVEY – COLLECT DATA

A survey was carried out in a company to understand how corporate governance in applied. The board of directors were asked to fill up an online survey. The survey contained questions on how and whether or not intended outcome 1 was practice accordingly

Results & Findings

- Carry out strategic planning and oversight responsibilities
- Every member is fully aware of their job scope & other job scope
- To prevent one person from handling to many departments
- Each role is complementary to each other. This means if one role is not carried out smoothly, other departments will face issues

Examples :
- Chairman and Chief Executive Officer (CEO) - working closely with the board and supervising other staffs to ensure everyone is meeting the board's goals and strategic plans without putting the company at danger
- Senior managers - planning and directing the work of teams and individuals

Conclusion

Successfully studied the outlines how the MCCG 2021 identifies the distribution of rights and responsibilities among different board members and impact of this internally and externally. Research methodologies provide more data for the paper's findings. One prominent part of the research is the survey interaction with the employees. The paper findings showed the importance of a company's board roles and how a well-organized board plays a vital part in implementing strategies of a successful company.

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<<WHETHER MALAYSIA LEGISLATION HAS PROVIDED AN EFFECTIVE PROTECTION TO THE WHISTLE-BLOWER? >>

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Introduction

Malaysian Code on Corporate Governance (MCCG) provides that healthy corporate culture should be maintained by ensuring integrity, transparency and fairness. The whistleblowing policy enable the employees to raise their concerns about wrongdoing or malpractice within the organisation without fear. Whistleblowing Policy will bring benefits to the organisation, however, lead hatred and disaster to the whistle-blower. The whistle-blower might face the pathetic aftermath of whistleblowing. Therefore, effective legal protection is urgently needed.

METHOD

THROUGH A SERIES ON RESEARCH ON MALAYSIA LEGISLATION ON THE PROTECTION OF WHISTLE-BLOWERS.

LEGISLATION THAT PROTECT WHISTLE-BLOWER

- **Whistleblower Protection Act 2010 (WPA)** ensures that confidential information is protected against disclosure by those who receive it, as well as the whistle-blowers.
- **Capital Markets and Services Act 2007 and Section 587(2) of Companies Act 2016** states that the officers must not suffer from dismissal, retrenchment, or prejudice against his or her employment as a result of the report submitted that discloses the unlawful conduct against the company.

CONFLICT OF LAW

Section 6(1) of WPA 2010 provides the disclosure of improper conduct may be made by anyone to any enforcement agency so long as such disclosure does not amount to a breach of any written law.

Section 6(2) of WPA 2010 allows the whistleblower to disclose information that was obtained upon his performance of duty as an officer of a public body.

Section 6(1) of WPA 2010 unable to protect the person who is a public servant when he disclose any information obtained

Section 97(1) of the now-repealed **Banking and Financial Institutions Act 1989** provides that disclosed confidential banking information pertaining to key institutions and people in National Feedlot Corporation is an offence.

Section 2(1) of Official Secrets Act 1972 required authorization to disclose government documents or data. Disclosure without authorization will caused a person disqualified from being protected under WPA 2010

Section 203A of Penal Code provides that it is also an offence for a person to disclose any information obtained by him while he was a public servant

RESULTS

In our opinion, improvement must be taken to prioritize the welfare of whistle-blowers if any conflict arises.

- Repeal Section 6(1) of WPA 2010
- Remove the restrictions on the disclosure to non-enforcement agency
- Establish the independent authority/ channel
- Set up the rule "WPA should take priority over other written laws"

CONCLUSION

Based on the analysis, the existing legislation does not appear to be as effective as it ought to be due to the various flaws in the Act as pointed before. Whistleblowing is an important part of an organization's check and balance mechanism. However, whistle-blowers often put themselves in danger by paying a high price for doing what is right. Thus, in our opinion, improvement must be taken to prioritize the welfare of whistleblowers if any conflict arises in order to ensure the individuals is able to express their concerns in regards to illegal, unethical or questionable practices in confidence.

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This symposium e-proceeding provides the compilation of selected papers and posters presented during the 1st International Symposium on Law and Innovation (ISLI 2021) held virtually on 23rd October 2021. The theme is "Re Modelling Law and Justice in Creating Innovative Solutions: Challenges and Sustainability". ISLI 2021 was organized by Faculty of Law in collaboration with Multimedia University Law Society (MULS) with the aim to explore contributions, debates and ideas from junior scholars of how to innovate, and develop, which can be fostered or hindered by existing or new legal infrastructures and justice policy. About 50 papers and 19 posters had been presented at this symposium. The topics involve various and multiple disciplines i.e. law and digital business, consumer law, corporate governance, labour law, criminal justice, human rights, gender issues, arbitration and mediation, international law, Syariah law, social legal and inter-disciplinary issues.

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