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A co:^^?ATr:^ STUDY.

by

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The law is discussed as it stands from the date of the paper.

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INTRODUCTION

"It is not the business of the court to manage the affairs of the company. That is for the shareholders and directors."

"It (the just and equitable provision) does, as equity always does, enable the court to subject the exercise of legal rights to equitable consideration; consideration, that is of a personal character between one individual and another, which may make it unjust or inequitable, to insist on legal rights, or to exercise them in a particular way." Per Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd.*"

The above dicta expressed by the two of England foremost commercial judges represent judicial thinking on the rights of the minority shareholders, and demonstrate the progress made by such shareholders in securing greater protection over the years, culminating in the landmark decision of the House of Lords in *Ebrahimi v Westbourne Galleries Ltd.*³

It is axiomatic that a company acts in accordance with the decisions taken by the majority of its members, willing and able to vote yet, the minority cannot be completely ridden sough-shod. Hence, a proper balance of the rights of the majority and the minority is essential for the smooth functioning of the company, yj

Scrutton U in *Huttleworth v Cox Brothers Ltd.* (1927) 2 K.B 9,23 (C.A).

² (1987) AC 360, 379 D (HL)

⁵ *Ibid.*

Since the passing of the Joint Stock Act 1856 in England most Acts in the common law countries have extended the protection of the minority. The Malaysian Companies Act, 1965 closely follows the UK Companies Act 1948 and the Australian Uniform Companies Act, 1961. Apart from considering the position in Singapore is very similar to the position in Malaysia and hence does not require separate consideration. The object has been to dwell on principle majority rule, but limiting it, at the same time by a number of well-defined minority rights.

1.1 Majority Rule

The members of a company can express their rights at general meeting by voting for or against the resolution proposed. However the will of the majority of the members usually prevails and if the appropriate majority is obtained a resolution binds all the members, including those who voted against it. Sometimes the majority is a simple and sometimes it is in three-quarters majority, a special resolution is the first to be an example of majority rule.

Further it should be remembered that subject to a few restrictions the articles of a company which constitute a contract-binding the company and the members, can be