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Preface

This paper is an endeavour to determine the scope of protection as provided for by section 181 of the Malaysian Companies Act of 1965 by referring to cases that have interpreted the section.

Secondly, it is to discuss the need of minority protection considering the various problems encountered by minority shareholders which includes inter alia, the procedural rule as propounded in FOSS V. HARBOTTLE as exemplified in PRUDENTIAL ASSURANCE'S case.

Thirdly is to compare section 210 of the U.K. Companies Act 1948 as this was the first attempt in England to provide for direct statutory protection for minority shareholders. Although Section 210 has been replaced by a new section 75, it is felt that a study of the old section is useful to understand the scope of section 181.

In the preparation of this paper I wish to thank my project Supervisor, Mr. U.K. Menon for his invaluable help and guidance as well as for his indefatigable effort in checking the manuscript. My sincere thanks also goes to my colleagues for their kind assistance and advice in dealing with the subject matter of this paper; and not forgetting my typist.

However, the errors and omissions in expressing my views are mine. The law is discussed as it stands as from the date of the paper.

May, 1986.

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I. INTRODUCTION

Company law like any other branch of the law is not static. It changes with the aspirations and needs of the society. Nowadays, unlike the early days the scope of company law has expanded and this could be attributed to a variety of factors. The industrial revolution has played an important role in engineering and modernizing the commercial sector coupled with the advancement in the field of science and technology. If before the companies records were recorded in books they can now be inserted in the computers for a better management of the companies affairs. The economics realities have caused the natural resources to be exploited which is scarce in relation to human wants. Despite the scarcity the impact of scientific advancement and the growth of commerce and industry through its mean of specialization then helps to cease the situation making it possible for the practice of laissez-faire system of economy. The trend of interdependence arising out of scarcity of resources evolves from an individual to a nation.

Malaysia is no exception. She practices the free enterprise system of economy where the government has made an effort calling for privatization of public sectors to be taken over by the private enterprises. In addition the government has also implemented the New Economic Policy through the various budgetary plans calling for more participation of the "Bumiputeras" to be engaged in the business sector; a target of 30% to be achieved by 1990 for that

matter. To date four Malaysian economic plans have been implemented and now she is embarking the Fifth Malaysian plan.

Malaysia has also proved herself to be an ideal ground for foreign investors as she has the assurance of political and economic stability. She has established a strong economic ties with a more developed nations like Japan, China, Korea to mention but a few; thus enjoying a reciprocal benefit. Joint ventures business are often transacted particularly in the field of technology.

This therefore involve large corporations. It is important to note that the companies are not only confined to family dominated business which are plenty in the early days thus, quite simple to manage; but rather becoming more complicated and sophisticated. The number of companies has increased more considerably.

Taking into account the complexities of the affairs of the companies; the power of the companies are also affected. The growing awareness of the problems caused by the complexity of the companies concern legislators to adjust the statutory provisions to govern the establishment of companies. In Malaysia like any other country, the establishment of companies is governed by the Companies Act of 1965 which was adopted with some modifications from the English Companies Act of 1929. The English Companies Act of 1929 was based on the Joint Stock Companies Act of 1844 which laid the principle of incorporation as a basis of modern company law. Reforms have been made to the English Companies Act for quite a number of times as well as the Malaysian Companies Act though not that owing to its young age.