ZOOM MEETINGS : ABSOLUTE POWER? (PART 1 OF 2)

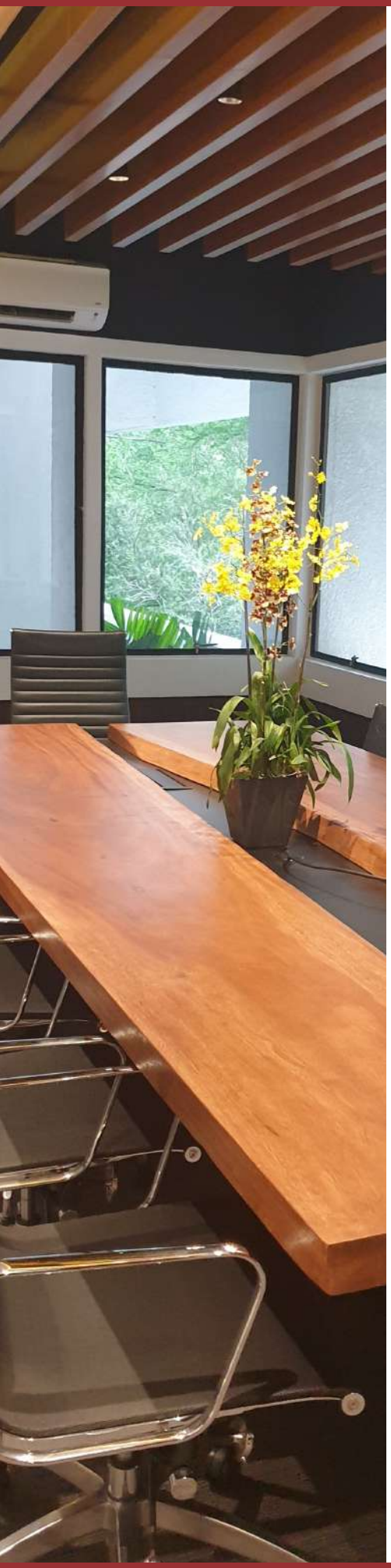
> *"You don't get it. l built this place. Down here l make the rules. Down here l make the threats. Down here... l'm God."*
>
> -The Trainman to Neo
> [Matrix Revolutions]

When the barbarians of majority are at the gate, the Board of Directors who wish to avoid a resolution on their removal sometimes adopt the strategy of first mover advantage to prevent the resolution by any means necessary. In Chess, White is statistically more likely to win, all else equal.

By most companies' constitutions, the Chairman of the meeting is by default picked from the Board. And in most constitutions, the Chairman retains the power of adjournment.

Various technical reasons are usually first provided as to why the resolutions cannot be put to a vote. This is then followed by lengthy dispute from among the floor on legal issues. Invariably, the Chairman will start indicating he is minded to adjourn the meeting pending clarification on the validity of the meeting.

He is then asked by the floor if he has taken legal advice on the technicalities. The Chairman says he has not. The members then point to the board's legal adviser seated next to him. The Chairman says he will not. Sometimes the members ask the legal adviser what his views are. The legal adviser then cites client privilege, and does not answer.



The Chairman then adjourns the meeting. Like orderlies, the Board then immediately marches out of the meeting. Only the floor remains. It is a brutal strategy meant to pull the rug from a majority. Even if the adjournment was invalid, a Court declaration would merely repeat the same process : another meeting has to be called. The shareholders have learnt how to immediately counter. After the Board's exodus, the remaining attendees agree among themselves that the adjournment was invalid. They then raise and appoint one of their own as Chairman. He takes a seat on the vacant Chair across the room, and puts the resolution to a vote, which passes.

The dispute is then put before the Court as to whether the adjournment was valid. As derived from the English case of National Dwellings Society v. Sykes [1894] Ch 159 and adopted in Malaysia, the law is that a Chairman cannot put a stop to meetings at his own will and pleasure. If the adjournment is found invalid, the Court inevitably declares the resolutions validly passed; there is no need to repeat the process, with the Board's first mover advantage.

All this requires physical presence. We live in a physical world, and the Board cannot prevent the members from entrenching themselves in the venue after the purported adjournment is declared.

But the Chair can do that in a Zoom meeting at the click of a button. And this issue will bear its ugly head more prevalently in the era of Covid-19 and requirement of virtual meetings. While his actions may be declared invalid eventually, the damage is already done. The first mover advantage is secured in a loop. This is Problem 1.

Problem 2 is Section 327 of the *Companies Act*, 2016. While it allows meetings to take place by using technology, it nevertheless requires a '*main venue*', and that the Chair '*shall be present at the main venue*'. This raises questions as to whether the Chair elected from the floor after the Board's exodus needs to enter the '*main venue*'.

How are shareholders to deal with such obstacles? In Part 2 of this topic, we discuss the means available to shareholders to overcome such disenfranchisement.

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