MINORITY SHAREHOLDERS – LEGAL RIGHTS, CORPORATE CHALLENGES AND THE RISE OF ACTIVISM

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In the corporate world, power predominantly rests with the majority. Majority shareholders dictate strategic direction, board composition and the company's overall direction, often leaving minority shareholders, *i.e.* those holding less than 50% of a company's shares, at a disadvantage. The ambit of what constitutes a minority shareholder is wide and covers, for example, a regular commercial investor who may own a small fraction of the shares available or a venture capital firm who has obtained 40% shares in a company and everything in between.

Although minority shareholders may have limited influence, there are legal frameworks in place to safeguard their interests. The Companies Act 2016 (CA 2016) provides various statutory protections to address these imbalances in corporate governance. The enforceability of these rights, however, depends on a multitude of other factors such as legal procedures, judicial interpretation, and the presence of a well-drafted shareholders' agreement.

Beyond statutory protections, shareholder activism has also become an increasingly powerful mechanism for navigating and influencing corporate behaviour. This article explores the extent to which minority shareholders are afforded rights, the enforceability of these rights and the evolving role of shareholder activism in corporate governance.

Statutory Rights of Minority Shareholders

Corporate governance generally operates on the principle of majority rule, which may promote efficiency but end up sidelining minority shareholders and their rights. The CA 2016 provides several safeguards to strengthen the position of minority shareholders and ensure that their interests and concerns are adequately considered in corporate decision-making. These statutory rights provide an avenue for minority shareholders to participate in key company decisions and access to legal recourses if or when their rights are infringed upon. However, the extent of these protections may vary depending on whether the company is private or public, as each operates under distinct regulatory frameworks and governance structures.

Power to Convene a Meeting of Members

One of the fundamental rights minority shareholders hold is the ability to requisition

a meeting of members. Under Section 311 of the CA 2016, shareholders in a public listed entity who are holding at least 10% of the paid-up capital that have voting rights have the right to request the board to convene a meeting of members. If the board fails to call for a meeting within 14 days from the date of requisition and hold the meeting within 28 days after the date of the notice to convene the meeting in accordance with Section 312 of the CA 2016, the shareholders may call the meeting themselves within three (3) months of the date that the requisition was communicated to the directors of the company pursuant to Section 313 of the CA 2016.

The threshold is lower in the case of private companies, requiring the shareholders to hold a minimum of only 5% of the total voting rights to convene such a meeting.

The High Court case of *Majlis Amanah Rakyat (MARA) v Dato' Abd Rahim bin Abd Halim & Ors* [2018] MLJU 1008 highlights the application of Section 311 of the CA 2016. In this case, MARA submitted a requisition notice to convene an extraordinary general meeting (EGM). However, the board rejected the requisition notice on the basis that the proposed resolution required a special resolution rather than an ordinary resolution. The Court held, inter alia, that once a shareholder has met the required threshold and properly requisitioned an extraordinary general meeting, the company's directors have a duty to comply. The Court further held that the rejection of the requisition notice by the relevant directors in this case was a breach of duty under Section 311 of the CA 2016.

This ruling reinforces the importance of Section 311 of the CA 2016 as a safeguard for shareholder rights. It ensures that minority shareholders have a proper path to challenge corporate decisions, especially if they suspect that the board's actions may not be in the company's best interests.

Oppression Action & Derivative Action

The CA 2016 also provides protection against oppressive conduct under Section 346. If a company's affairs are conducted in a manner that is oppressive or prejudicial to minority interests, affected shareholders can seek relief from the High Court. An aggrieved minority shareholder who opts for this redress has various equitable remedies available to them.

Under Section 347 on the other hand, minority shareholders may apply to the Court for leave to initiate legal action on behalf of the company if they are of the view that the directors have failed to act in the best interests of the company. This derivative action applies to both private and public companies and allows the minority shareholders to further hold the decision makers of the company accountable, ensuring that the overall direction of the company is in line with the constitution of the company.

The recent Federal Court case of *Low Cheng Teik & Ors v Low Ean Nee* [2024] 5 MLJ 580 provides guidance on distinguishing between oppression and derivative actions. The Court held as follows:

1. A cause of action under Section 346 of the CA 2016 lies where the nature of an act, omission or misconduct was oppressive or unfairly prejudicial to a shareholder, and the resulting injury and loss could be classified as having been suffered directly and specially or separately and distinctly by the shareholder in such capacity, as opposed to loss or injury suffered by the company or all the other shareholders.

2. A derivate action can be brought where the act, omission or misconduct was an injury done to the company, resulting in loss to the company.

Right to Oppose Variation of Class Rights

Beyond the ability to call for meetings and take legal action against oppressive conduct, minority shareholders are also protected against unilateral changes that could alter their rights attached to specific share classes. Section 91 of the CA 2016 ensures that any proposed variation of class rights requires either the consent of at least 75% of the shareholders in that class or a special resolution passed by that class of shareholders. This safeguard prevents arbitrary or unwanted amendment of the class rights of minority shareholders.

However, even if such an approval is obtained, Section 93 of the CA 2016 allows minority shareholders representing at least 10% of the voting rights in that class to apply to the Court to challenge the variation within 30 days from the date of variation.

Right to Call for Winding Up

While minority shareholders have several avenues to protect their interests, there may be circumstances where continuing as part of the company is no longer viable. In such cases, shareholders may seek to wind up the company on just and equitable grounds under Section 465 of the CA 2016. This legal remedy, while it may be viewed as a drastic recourse, provides legal relief where the company's operations have become untenable for the minority shareholders, or where the shareholders believe that the company's affairs can no longer be carried out fairly or in accordance with its original purpose.

The just and equitable principle is broad, allowing the Court to determine whether a winding-up order is necessary based on the specific circumstances of the case. Common grounds for such an order include deadlock in management, exclusion of minority shareholders from participation, misuse of company assets and loss of substratum – where the company can no longer fulfil the purpose for which it was originally established.

However, courts are generally cautious and prudent in making such orders given its significant consequences. This was evident in the Court of Appeal case of *Suki Mee v Far Origin Sdn Bhd* [2020] MLJU 1408, where the Court aptly stated, *'It cannot be that every minor infraction would warrant a winding up. After all, it is well recognised that the winding up of a company is a drastic measure.'*

Varying Degrees of Influence

Not all minority shareholders wield the same level of influence. The extent of their power is often tied to the size of their stake in the company. Smaller minority shareholders, typically holding 9% or less, may find their ability to influence corporate decisions to be significantly limited. While they retain the right to attend and vote at general meetings, their votes alone may not be sufficient to alter the outcome of resolutions or challenge decision made by the majority. Their role is often passive, relying on statutory protections and broader shareholder movements to safeguard their interests.

In contrast, larger minority shareholders, those holding between 10% and 49%, generally have greater leverage. They possess statutory rights that allow them to requisition a meeting of members (which requires 10% of paid-up capital carrying voting rights for public companies and 5% of total voting rights for private companies), block special resolutions (which require 75% approval), and initiate derivative actions, making them more influential in the overall corporate governance of a company.

Enforcing Minority Shareholder Rights

The CA 2016 provides a strong legal framework to protect minority shareholders, but the effectiveness of enforcement depends on judicial interpretation, procedural requirements and the willingness of shareholders to act. While oppression claims and derivative actions offer legal remedies, shareholder activism is proving to be a powerful driver of corporate accountability.

Beyond litigation, minority shareholders can rely on alternative enforcement mechanisms to safeguard their interests. Negotiation is a key tool, particularly in private companies, where direct engagement with majority shareholders may yield quicker and more pragmatic resolutions compared to court proceedings.

In public companies, regulatory oversight provides additional avenues for enforcement. Minority shareholders can lodge regulatory complaints with governing bodies such as Bursa Malaysia or the Securities Commission Malaysia. These regulators play a pivotal role in ensuring corporate accountability, particularly where governance concerns arise.

While these mechanisms may appear tangential to litigation, they often serve as critical enforcement tools that allow minority shareholders to assert their rights without resorting to legal action immediately.

Shareholder Activism in Malaysia

Company law and corporate governance in Malaysia has undergone notable shifts in recent years, with minority shareholders becoming increasingly proactive in challenging corporate decisions, demanding transparency and pushing for stronger governance frameworks. While legal protections under the CA 2016 provide some safeguards, it is increasingly evident that statutory rights alone may not be sufficient

to influence corporate behaviour. This has led to the rise of shareholder activism, where minority shareholders leverage their influence to hold boards accountable and advocate for governance reforms.

Unlike jurisdictions where activist hedge funds dominate corporate battles, shareholder activism in Malaysia has largely been driven by minority investor groups, shareholder associations and regulatory bodies advocating for stronger governance. Activism in Malaysia often takes the form of legal challenges, public campaigns and direct engagement with regulators to push for changes in corporate governance.

A key example of shareholder activism is the Federal Court case of *Dato' Azizan Abd Rahman & Ors v Concrete Parade Sdn Bhd & Ors and other appeals* [2024] 5 CLJ 193. In this case, a dissenting majority challenged a business merger, including breaches of shareholders' pre-emptive rights. Although the High Court dismissed the claim, the Court of Appeal ruled in favour of the minority shareholder, temporarily halting the merger before the Federal Court ultimately reinstated the decision of the High Court. This case exemplifies how minority shareholders in Malaysia are increasingly turning to legal action to challenge corporate decisions they deem unfair or prejudicial.

Shareholder activism may take various forms, ranging from proxy battles and public pressure campaigns to regulatory complaints. Proxy battles, where shareholders rally support to contest board appointments or strategic moves, have become more prominent, particularly in markets where institutional investors hold significant stakes. When regulatory intervention is needed, shareholders may file complaints with Bursa Malaysia and the Securities Commission Malaysia, urging authorities to investigate governance breaches or questionable business practices.

Public pressure has emerged as a powerful tool, with shareholders using media platforms, open letters and investor forums to raise concerns over corporate mismanagement. The reputational risks associated with negative publicity can be a strong motivator for boards to respond to shareholder demands, especially in publicly traded companies where investor confidence directly impacts stock performance.

In private companies, activism may be less effective since influence is largely dependent on contractual agreements and direct negotiations rather than regulatory oversight. However, it is worth noting that one of the biggest barriers in relation to effective shareholder activism is aligning the interest of various different shareholders to effect change and oppose the purported erroneous actions or decisions of the majority.

Malaysia's legal and regulatory framework has increasingly facilitated and encouraged shareholder activism, highlighting the importance of minority shareholder rights in corporate governance. Over the years, key legal developments have institutionalised activism as a legitimate tool for holding companies accountable.

The introduction of the Malaysian Code on Corporate Governance in 2000 by the Securities Commission Malaysia marked a pivotal step in strengthening corporate accountability. Around the same time, the formation of the Minority Shareholder Watchdog Group provided an independent voice for minority shareholders, enabling them to challenge unfair corporate practices more effectively.

The enactment of the Capital Markets and Services Act 2007 played a crucial role in embedding activist principles within Malaysia's capital markets. In the case of *Mak Siew Wei v Dato' Dr Norbik Bashah bin Idris & Ors* [2016] 11 MLJ 772, the Court stated, *'... It is in my view both compelling and irresistible therefore that the intention of Parliament in this regard has been made crystal clear by s 357 and other similar provisions in ss 199, 201 and 210. I identified in the earlier part of this judgment that seek to promote greater shareholder activism and encourage private litigation as a means to complement the enforcement initiatives of the SC in its regulation of the capital markets in the country.'*

These developments reflect a broader trend, *i.e.* that shareholder activism in Malaysia is not merely tolerated but actively encouraged by regulators and Parliament. The underlying objectives are clear – to empower shareholders to challenge, scrutinise and proactively influence corporate decision-making, ensuring that companies remain accountable to all stakeholders, rather than being dominated by majority interests.

Commentary

Malaysia's corporate legal framework has progressively strengthened minority shareholder protections, however, the enforcement of these rights remains a complex process. While legal remedies such as oppression claims and derivative actions provide clear avenues for challenging misconduct or in appropriate cases, to wind up the company, the effectiveness of enforcement depends on procedural barriers, judicial interpretation and the willingness of shareholders to act. Regulatory engagement and alternative dispute resolution may offer pathways for resolving governance concerns, but these approaches are not always sufficient to address entrenched corporate misconduct of conflicts with controlling shareholders.

As corporate governance and its regulatory framework continue to evolve, the role of minority shareholders remains essential in upholding transparency, accountability and a balanced corporate ecosystem that safeguards the interests of all stakeholders.

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