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WMH LAW CORPORATION

Shareholder – The Concept - Rights & Liabilities

Civil Litigation Practice Series





“Ownership v. Management”

Separation of Ownership & Management

Relationship Between Shareholders and the Company

The company was the first business form to enable the separation of ownership and management.

Whilst the owners of small closely-held companies are often also the directors and key employees of the company, from a legal viewpoint, the *management* of a company falls largely on the company's board of directors.

Simply, whilst shareholders “own” the company, the directors “manage” and run the company's day-to-day to operations.

Generally, if no management power is reserved for the shareholders, the shareholders may not give instructions to the directors or override their decisions.

Enshrined in the Companies Act (Cap 50) (the “Act”) is the principle / rule that directors are empowered to manage the affairs of a company.

Save for certain provisions in the Act and powers expressly reserved in the company's constitution to shareholders, this rule has few exceptions.

Where powers are reserved for the shareholders, these usually relate to important matters which *directly* affect the shareholder's rights or interests, e.g. to approve amendments to the company's constitution, or to restructure the company's share capital.

The shareholders express their collective “will” by voting at general meetings, and are therefore also regarded as a decision-making body of the company.

“Rights & Liabilities”

Shareholder – Rights & Liabilities

All shareholders have certain rights conferred upon them by the Act, the constitution or the general law. These rights may only be exercised by a person who is a shareholder.

The following are *personal* rights of each shareholder, which the company or any other person generally cannot interfere with the exercise of such right (including but not limited to the following):-

- a) **Observance of the company's constitution**; the constitution is a contract among the shareholders *inter se* and between the shareholders and the company. Every shareholder has a statutory right to have the constitution observed by every other shareholder.
- b) **Restraining ultra vires and illegal acts**; a shareholder has a right to restrain a threatened breach of the law. A shareholder also has a right to

restrain the doing of an act that is beyond the company's capacity.

- c) **Attendance at general meetings and voting**; a shareholder has a right to attend any general meeting of the company and to speak at such meetings. The power to vote is not a fiduciary power and a shareholder need not consider only the interests of the company but may vote in what he/she considers to be his/her own interests.
- d) **The right to be treated fairly**; it is necessary that there be safeguards to prevent the majority from abusing power to bind the minority. In addition to the Act, the Courts have developed rules to protect the minority. Section 216 of the Act provides recourse to a minority shareholder being oppressed by the majority – minority oppression lawsuits (to be further covered in our upcoming series).



Shareholder – Rights & Liabilities (Cont'd)

- e) **Access to records and right to information**; for shareholders to be kept informed of the company's affairs, a shareholder can inspect the registers maintained by the company. Every shareholder is entitled to be informed of the company's financial position. However, unlike a director, a shareholder does not have an “*unqualified right to [the company's] financial information*” (**Ezion Holdings v Teras Cargo Transport Pte Ltd** [2016] SGHC 175).

- f) **Residual powers of management**; shareholders have reserve powers, albeit very limited, to undertake decisions solely to resolve an impasse at the board of directors (**Chan Siew Lee v TYC Investment Pte Ltd and Ors** [2015] SGCA 40).
- g) **Commencing a derivative action (Section 216A of the Act)**; shareholders may commence proceedings for wrongs done to the company that directors, who may themselves be the wrongdoers, are unwilling to pursue. It holds errant directors to account.



For more information on the article, or if you wish to learn more about the topics discussed, please contact:-

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