SINGAPORE

Law and Practice

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Bih Li & Lee LLP

Contents

Bih Li & Lee LLP was founded in 1992 and has a stellar reputation in both contentious and non-contentious corporate matters. The firm and its lawyers have been ranked and cited in international legal publications and the lawyers are well respected as subject matter experts in their areas of practice. The litigation team regularly advises and acts on shareholder-related matters, such as shareholder disputes and minority oppression, as well as corporate insolvencies and restructurings. The firm's corporate team has extensive experience in all areas of corporate law, including shareholders' agreements, joint ventures and M&A. With a dedicated desk dealing with corporate secretarial matters, Bih Li & Lee LLP has in-depth expertise in handling corporate governance, board and shareholder issues, and attending to matters with various regulatory bodies in Singapore.

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1. Types of Company, Share Classes and Shareholdings

1.1 Types of Company

There are essentially four main types of business structures to choose from:

- sole proprietorship or partnership;
- limited partnership;
- limited liability partnership; and
- company.

A sole proprietorship is a business owned by one person, while a partnership is a business where there is an association of two or more persons carrying on business in common with a view to making a profit. A limited partnership is a partnership consisting of two or more persons, with at least one general partner and one limited partner. A limited liability partnership is one where the individual partner's liability is generally limited; there must be at least two partners within said structure. A company is a business structure that is a legal entity separate and distinct from its shareholders and directors.

Sole Proprietorship or Partnership

A sole proprietorship or partnership is not a separate legal entity, and the owner or partner (as applicable) would have unlimited liability – ie, be personally liable for the debts and losses of the business. A sole proprietorship can only sue or be sued in the owner's own name, and may own property in the owner's name. Similarly, a partnership cannot sue or be sued in the firm's name, and the firm cannot own property. Every partner in a partnership is jointly liable with the other partners for all debts and obligations of the firm incurred while they are a partner.

Limited Partnership

A limited partnership is also not a separate legal entity. A general partner in a limited partnership is responsible for the actions of the limited partnership and is liable for all its debts and obligations. A limited partner is not liable for the debts and obligations of the limited partnership beyond their agreed contribution, provided they do not take part in the management of the limited partnership. A limited partnership cannot sue or be sued in the firm's name, and the firm cannot own property.

Limited Liability Partnership

A limited liability partnership is a hybrid of a partnership and a private limited company. It gives the partners the flexibility of operating as a partnership while having the benefit of being a separate legal entity, like a private limited company – ie, the partners in a limited liability partnership would not be personally liable for any business debts incurred by the limited liability partnership. However, the partner may be personally liable for claims from losses resulting from their own wrongful act or omission, but will not be held personally liable for any wrongful acts or omissions of any other partner of the limited liability partnership. A limited liability partnership is capable of suing or being sued in its name, and of acquiring and holding property in its name.

Company

The company structure can be split into the following:

- private company –
  - (a) exempt private limited company;
  - (b) private company limited by shares;
  - (c) unlimited private company; and
  - (d) unlimited exempt private company;
- public company –
  - (a) public company limited by shares;

(b) public company limited by guarantee; and
(c) unlimited public company; and
• variable capital company (VCC).

Private and public companies

As set out above, there are seven types of private and public companies. For the purposes of doing business, the exempt private limited company and the private company limited by shares are the most commonly adopted entities. The exempt private limited company can have up to 20 shareholders, but none of the shareholders can be a corporation. A private company limited by shares can have up to 50 shareholders, and corporations can be shareholders. Shareholders' liability to creditors of the company is limited to the capital originally invested by the shareholders. The exempt private limited company or private company limited by shares is a separate legal entity from its directors or shareholders and can sue or be sued in the entity's name, and can own property in its name.

The variable capital company

The VCC is a new corporate structure specifically for investment funds, constituted under the Variable Capital Companies Act 2018, which came into effect on 14 January 2020. A VCC has a variable capital structure that provides flexibility in the issuance and redemption of its shares. A VCC would have to be managed by a Singapore-licensed fund manager, and can be set up as a single standalone fund or an umbrella fund with two or more sub-funds, each holding a portfolio of segregated assets and liabilities.

1.2 Types of Company Used by Foreign Investors

Foreign investors should consider the purpose of their investment, and which structure would address their needs best, taking into account whether there would be other co-investors, the proportion of shareholding, shareholders' rights, etc.

The most common vehicles for foreign investors are the exempt private limited company or the private company limited by shares. These types of company offer the protection of separate legal liability, and flexibility in the types of shares that can be issued, depending on the role(s) or commercial objectives of the foreign investors.

1.3 Types or Classes of Shares and General Shareholders' Rights

Ordinary shares are the most common type of shares. They typically carry voting rights, but do not give shareholders rights to demand dividends (although they do carry a right to receive dividends). Dividends are usually declared at the discretion of the directors, provided that there are profits in the companies to do so. The rights of an ordinary shareholder would also generally include the following:

• the appointment and removal of director(s);
• receiving accounts and financial reports from the company;
• deciding whether or not a company is to be wound up;
• varying the rights attached to a specified share and conferred on the holder; and
• attending and voting at the company's AGM.

The rights of the shareholders are usually set out in the constitution of the company and the Companies Act 1967. Besides the general rights set out above, shareholders may create other general or special rights pursuant to the constitution.

1.4 Variation of Shareholders' Rights

The manner in which shareholders' rights may be varied depends on the constitution (or any

prevailing shareholders' agreement) and the Companies Act. Generally, shareholders' rights can be varied by way of a special resolution – ie, approval by holders of 75% of the issued shares.

However, pursuant to Section 64 of the Companies Act, the following shareholders' rights may not be negated or altered:

- a resolution to wind up the company voluntarily under Section 160 of the Insolvency, Restructuring and Dissolution Act 2018; and
- a resolution to vary any right attached to a specified share and conferred on the holder.

1.5 Minimum Share Capital Requirements

The minimum share capital is SGD1 or its equivalent in such other currency when incorporating a company. As there is no concept of shares in a sole proprietorship or partnership, there is no minimum capital requirement.

1.6 Minimum Number of Shareholders

The minimum number of members in the various entities is as follows:

- Sole proprietorship – there can only be one owner, who has to be an individual.
- Partnership – there must be at least two partners, who have to be individuals.
- Limited partnership – there must be at least two partners, with at least one general partner and one limited partner. The partners can be individuals or corporate bodies.
- Limited liability partnership – there must be at least two partners, who can be individuals or corporate bodies.
- Company – there must be at least one shareholder, who can be an individual or a body corporate. For companies, there must be at least one locally resident director. In addition, every company must appoint a company secretary within six months from the date of incorporation.

1.7 Shareholders' Agreements/Joint Venture Agreements

Shareholders' agreements/joint venture agreements are commonly used for private companies, to govern the relationship between shareholders and investors. There is no limit to the provisions included in such documents, as this would generally depend on the commercial agreement between the parties and their objectives.

Shareholders' agreements would typically set out the agreement among the shareholders as regards:

- the composition of the board of directors;
- reserved matters;
- the restriction or variation of share rights;
- deadlock provisions;
- pre-emption rights;
- the right of first refusal;
- drag-along and tag-along rights;
- restrictive covenants; and
- information rights.

Joint venture agreements would set out:

- the scope and purpose of the joint venture;
- capitalisation and funding arrangements;
- the policy pertaining to the distribution of profits;
- the role of the parties in the joint venture; and
- management powers.

If validly executed, shareholders' agreements/joint venture agreements are binding and enforceable. Generally, these agreements are private and confidential, although some terms

in the shareholders' agreement may be reflected in the constitution of the company, which is a publicly accessible document. The constitution of the company represents a contract between the company and all its shareholders and among the members between and among themselves. It binds the company and its shareholders, and each shareholder is bound to observe all the provisions of the constitution. The constitution would usually set out provisions relating to:

- the company's name;
- the extent of liability of the company and its share capital at incorporation;
- the company's objections, powers and privileges; and
- internal regulations of the company regarding meetings, shares and officers of the company.

1.8 Typical Provisions in Shareholders' Agreements/Joint Venture Agreements

See **1.7 Shareholders' Agreements/Joint Venture Agreements**.

2. Shareholders' Meetings and Resolutions

2.1 Types of Meeting, Notice and Calling a Meeting

Unless exempted or unless the shareholders agree to dispense with an AGM, it is mandatory for the company to hold an AGM at which it would present the financial statements to the shareholders so that the shareholders can raise queries regarding the financial position of the company.

Pursuant to Section 175 of the Companies Act, the following applies:

- a listed company must hold an AGM within four months after the company's financial year end and must file an annual return with the Accounting and Corporate Regulatory Authority (ACRA) within five months after the company's financial year end; and
- a non-listed company must hold an AGM within six months after the company's financial year end and file the annual return with ACRA within seven months after the company's financial year end.

Pursuant to Section 175A of the Companies Act, there must be at least 14 days' notice provided for AGMs, which are usually called by the board of directors. However, as long as the matter falls within the shareholders' power to decide, any number of members who represent not less than 5% of the total voting rights of those entitled to vote on the matter may requisition the company to circulate notice of resolutions concerning the matters which the members intend to table at that meeting, with the agenda for the next AGM.

At an AGM, the following matters are usually discussed:

- the laying of the financial statements (also known as "accounts") and/or the directors' report before the shareholders so that they can raise any queries regarding the financial position of the company;
- the appointment and/or fixing of the remuneration of auditors;
- the retirement and appointment of directors;
- the authorisation to issue shares; and
- dividend declaration.

Apart from the AGM, all other general meetings are known as extraordinary general meetings (EGMs). Generally, EGMs pertaining to matters requiring ordinary resolution (ie, approval by

shareholders representing more than 50% of the total voting rights of all of them) would require at least 14 days' notice. The constitution would provide for how EGMs are to be convened. However, under the Companies Act, members are also given the right to requisition or call an EGM as follows:

- On the requisition of at least one member holding at the date of the deposit of the requisition not less than 10% of the total voting rights at general meetings or, in the case of a company not having share capital, of members representing not less than 10% of the total voting rights of all members having at that date a right to vote at general meetings. Such EGM must be convened within two months by the board of directors after the company's receipt of the requisition. Directors are required to take steps to convene an EGM within 21 days of the deposit of the requisition to proceed to convene a meeting.
- Two or more members holding not less than 10% of the total number of paid-up shares (excluding treasury shares) or, if the company has no share capital, not less than 5% in number of the members of the company or such lesser number as is provided by the constitution, may call a meeting of the company.

Notices of meetings must be served in accordance with the manner provided under the company's constitution. The notice given must include the following matters:

- the date, place and time of the meeting;
- the agenda of the meeting;
- a statement that a member entitled to attend and vote is entitled to appoint a proxy or proxies to attend and vote on their behalf;
- subject to the constitution, that a proxy need not also be a shareholder of the company; and
- any other matters as contemplated under the constitution.

Notice periods can be shortened as follows:

- for an AGM, by all the members entitled to attend and vote at the meeting; or
- in the case of any other meeting, by a majority in number of the members having the right to attend and vote at the meeting, being a majority that together holds not less than 95% of the total voting rights of all the members having a right to vote at that meeting.

2.2 Notice of Shareholders' Meetings

See **2.1 Types of Meeting, Notice and Calling a Meeting**.

2.3 Procedure and Criteria for Calling a General Meeting

See **2.1 Types of Meeting, Notice and Calling a Meeting**.

2.4 Information and Documents Relating to the Meeting

All shareholders are entitled to attend general meetings of the company. Subject to any special rights or restrictions as to voting pursuant to any shareholders' agreement or the constitution of the company, each shareholder entitled to vote may vote in person or by proxy. The constitution usually sets out the voting rights of shareholders. A shareholder can also speak on any resolution at the meeting.

Parties entitled to attend general meetings of the company would be entitled to receive notice of said general meeting. Usually, notice may be given by the company to any shareholder either

personally or by sending it by post to the shareholder's registered address or to the address supplied by the shareholder to the company for the giving of notices to the shareholder.

Shareholders of the company are entitled to be provided with a copy of the financial statements of the company. Financial statements should generally comply with the requirement of the relevant accounting standards.

Pursuant to Section 12 of the Companies Act, any persons may, on payment of a prescribed fee:

- inspect any document, or any existing microfilm of any such document, that is filed or lodged with the Registrar of ACRA;
- require a copy of the notice of incorporation of a company, any certificate issued under this Act and any document or extract from any document kept by the Registrar to be given or certified by the Registrar of ACRA;
- inspect any register of directors, chief executive officers, secretaries or auditors kept by the Registrar under Section 173(1) of the Companies Act or require a copy of or an extract from any such register; and
- inspect the register of members of any private company kept by the Registrar under Section 196A of the Companies Act or require a copy of or an extract from any such register.

A shareholder of the company may carry out the last two actions without incurring a charge.

Pursuant to Section 189 of the Companies Act, on payment of the prescribed amount, any member is entitled to request in writing a copy of the minutes of all proceedings of general meetings and of meetings of the company's directors and of its chief executive officers.

Pursuant to Section 183 of the Companies Act and upon the requisition of such number of members of the company, the company must provide notice to the members of the company of any resolution that may be properly moved or is intended to be moved at that meeting, or must circulate to members entitled to have notice of any general meeting sent to them any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting.

The scope of information the shareholders may access in writing may be curtailed by the constitution or a shareholders' agreement.

2.5 Format of Meeting

Since 1 July 2023, the Companies Act has allowed for meetings to be held:

- at a physical place;
- at a physical place and using virtual meeting technology; or
- using virtual meeting technology only (unless such format is excluded by the company's constitution or otherwise).

2.6 Quorum, Voting Requirements and Proposal of Resolutions

Unless otherwise provided by the constitution (or by any shareholders' agreement), the following generally applies:

- the quorum for meetings would be two shareholders of the company;
- any member elected by the members present at a meeting may be chairperson thereof; and
- voting would be by a show of hands or by way of a poll.

In the event of voting by a show of hands, each member who is present and entitled to vote

would have one vote. In the event of voting by a poll, each member has one vote in respect of each share held by the member; where all or part of the share capital consists of stock or units of stock, each member has one vote in respect of the stock or units of stock held by the member that is/was or are/were originally equivalent to one share.

If a meeting is held by using virtual meeting technology, voting can be by electronic means or any other means permitted by the constitution of the company, and in compliance with the Companies Act. Generally, voting by a person by electronic means or any other means permitted by the constitution of the company can be carried out only if the person can be identified:

- by any method that may be prescribed relating to the verification or authentication of the identity of persons attending the meeting; or
- if no method is so prescribed, by any method that the directors of the company may determine.

2.7 Types of Resolutions and Thresholds

There are primarily two types of resolutions:

- ordinary resolutions; and
- special resolutions.

Pursuant to Section 184 of the Companies Act, a resolution is a special resolution when it has been passed by a majority of not less than three quarters of such members as, being entitled to do so, vote in person or, where proxies are allowed, by proxy present at a general meeting for which the following notice periods specifying the intention to propose the resolution as a special resolution have been duly given:

- in the case of a private company – not less than 14 days' written notice; or
- in the case of a public company – not less than 21 days' written notice.

A resolution is an ordinary resolution when it has been passed by a majority of the shareholders who, on the date of the resolution, represent a majority of the total voting rights of all the shareholders who on that date would have the right to vote on that resolution at a general meeting.

Resolutions can be passed at a meeting attended by the shareholders or by way of written means (in accordance with the regulations in the Companies Act or the company's constitution).

Members' resolutions to be passed by written means have to comply with Sections 183 to 184G of the Companies Act.

Under the Companies Act, certain matters require special resolution, such as:

- the amalgamation of companies;
- (for a private company), altering the rights of shares, including placing restrictions on the right to transfer shares;
- amendments to the constitution of the company (including the objects of the company);
- a change of company name; and
- a share capital reduction.

2.8 Shareholder Approval

Subject to the company's constitution (and any prevailing shareholders' agreement) and the Companies Act, the following matters would require shareholder approval:

- the appointment and removal of directors;
- the appointment and/or fixing of the remuneration of auditors;

- the issuance of shares;
- the re-denomination of shares;
- disposal of the whole or substantially the whole of the company's undertaking or property;
- the amalgamation of companies;
- (for a private company), altering the rights of shares, including placing restrictions on the right to transfer shares;
- amendments to the constitution of the company (including the objects of the company);
- a change of company name; and
- a share capital reduction.

See **2.7 Types of Resolutions and Thresholds** regarding matters that require special resolutions to be passed.

2.9 Voting Requirements

See **2.6 Quorum, Voting Requirements and Proposal of Resolutions**.

2.10 Shareholders' Rights Relating to the Business of a Meeting

See **2.1 Types of Meeting, Notice and Calling a Meeting**.

2.11 Challenging a Resolution

As mentioned in **2.4 Information and Documents Relating to the Meeting**, a shareholder can speak on any resolution during a meeting. A shareholder can challenge a resolution passed at a general meeting, but this depends on the basis for challenging the resolution. Generally, if there is a procedural irregularity (ie, the absence of a quorum or a defect, irregularity or deficiency of notice or time), then such irregularity does not invalidate the meeting unless the irregularity has caused or may cause substantial injustice that cannot be remedied by any order of the court. Any challenge would generally be by way of an application to the General Division of the High Court of Singapore.

2.12 Institutional Shareholder Groups

Generally, institutional investors and shareholder groups would regulate the company's actions by way of a shareholders' agreement, which would set out, among other matters, their rights to information, the composition of the board of directors and how dividends are to be declared. If not, the shareholders would be able to monitor the company's actions by way of the rights set out in **2.4 Information and Documents Relating to the Meeting**.

2.13 Holding Through a Nominee

Nominee shareholders should inform the company of that fact and provide the particulars of their nominators. In addition, nominee shareholders must inform their companies when they cease to be a nominee and of any change to the nominator's particulars.

Companies have to maintain a register of nominee shareholders and keep the following information:

- the name of the nominator;
- the address of the individual or entity;
- the nationality/legal form of the entity (including the jurisdiction where the legal entity was formed or incorporated);
- the individual's identification number;
- their date of birth; and
- the date the shareholder became a nominee.

A nominee shareholder would have the same rights as a shareholder of the company, and the nominator may have to consider how to regulate the manner in which its nominee exercises the rights by way of a separate document (ie, trust deed or contractual agreement).

2.14 Written Resolutions

See **2.7 Types of Resolutions and Thresholds**.

3. Share Issues, Share Transfers and Disclosure of Shareholders' Interests

3.1 Share Issues

Pursuant to Section 161 of the Companies Act, directors of a company must not exercise any power of the company to issue shares without the prior approval of the company in a general meeting.

3.2 Share Transfers

The restrictions on the transfer or disposal of shares are often set out in the constitution of the company (or any prevailing shareholders' agreement). Section 126 of the Companies Act requires a proper instrument of transfer to be delivered to the company before the company can lodge a transfer of shares. In the transfer of a share in a private company, the company must lodge a notice of the transfer of shares in the prescribed form with the Registrar, and such transfer will not take effect until the electronic register of members of the company is updated by the Registrar.

3.3 Security Over Shares

For shares in private companies, subject to the constitution (or any prevailing shareholders' agreement), shareholders are entitled to grant security interests over their shares. The share certificates can be used as collateral for the granting of such interests over the shares. A certificate under the common or official seal of the company specifying any shares held by a shareholder of the company is prima facie evidence of the title of the shareholder to the shares.

3.4 Disclosure of Interests

In the event of any conflict of interest, shareholders should disclose said conflict and avoid taking part in the decision-making process. If there is a change in shareholding in the company, it would usually be reflected in the electronic register of members, which is a publicly accessible document (upon payment of a prescribed fee to ACRA).

Pursuant to Section 156 of the Companies Act, directors are required to disclose if they are directly or indirectly interested in a transaction or proposed transaction with the company.

Pursuant to Section 164A of the Companies Act, a company must disclose such information and lay the statement showing the total amount of emolument and other benefits paid to or received by each of the directors of the company (and any subsidiary) for the financial year immediately preceding the service of such a notice if a company is served with a notice sent by or on behalf of:

- at least 10% of the total number of members of the company (excluding the company itself if it is registered as a member); or
- a member or members with at least 5% of the total number of issued shares of the company (excluding treasury shares), requiring the emoluments and other benefits received by the directors of the company or of a subsidiary to be disclosed.

4. Cancellation and Buybacks of Shares

4.1 Cancellation

Generally, a company can alter its share capital if it is authorised to do so by its constitution and

if it is approved at a general meeting – ie, a company can cancel the number of shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person, or which have been forfeited, and diminish the amount of its share capital by the number of shares so cancelled.

4.2 Buybacks

A company can generally undertake a share buyback in any of the following circumstances:

- when making an off-market purchase of its own shares after seeking members' approval during a general meeting;
- when making a selective off-market purchase of its own shares after members pass a special resolution to approve this purchase – shareholders whose shares are being acquired must abstain from voting; and
- when making an acquisition of its own shares under a contingent purchase contract after members pass a special resolution to approve this purchase.

The main difference between a share buyback and a reduction of share capital is that the member has the option of refusing to sell their shares in a share buyback, but in a reduction of share capital some members may have their shares cancelled against their will. Also, during a reduction of share capital, shareholders may not necessarily receive any payment for their cancelled shares because the aim of the exercise may be to achieve certain corporate goals rather than to return capital to shareholders.

5. Dividends

5.1 Payments of Dividends

Subject to the company's constitution (or any prevailing shareholders' agreement), dividends can only be paid to shareholders of a company out of the company's profits. Any dividend paid out by a company will be either a final dividend (ie, dividends paid once a year calculated after the annual accounts have been drawn up) or an interim dividend (ie, dividends paid at any time throughout the year calculated before the company's annual earnings have been determined). Generally, dividends are recommended by the directors but approved by the shareholders by way of an ordinary resolution.

6. Shareholders' Rights as Regards Directors and Auditors

6.1 Rights to Appoint and Remove Directors

Section 149B of the Companies Act provides that a company may appoint a director by ordinary resolution passed at a general meeting, unless the constitution provides otherwise. Section 152 of the Companies Act provides that a public company may remove a director by ordinary resolution, whereas a private company may remove a director by ordinary resolution, unless the constitution provides otherwise.

6.2 Challenging a Decision Taken by Directors

Section 216 of the Companies Act provides that any member (or debenture holder) of the company can apply to court for an order on the ground that:

- the affairs of the company are being conducted or the powers of the directors are

being exercised in a manner that is oppressive to one or more of the members or holders of debentures, including the applicant, or in disregard of their interests as members, shareholders or holders of debentures of the company; or
- some act of the company has been carried out or is threatened, or that some resolution of the members, holders of debentures or any class of them has been passed or is proposed, which unfairly discriminates against or is otherwise prejudicial to one or more of the members or holders of debentures (including the applicant).

Section 216A of the Companies Act also allows a member of the company to apply to the court for permission to bring an action or arbitration in the name and on behalf of the company, or to intervene in an action or arbitration to which the company is a party for the purpose of prosecuting, defending or discontinuing the action or arbitration on behalf of the company.

Prior to the commencement of any application under Section 216A of the Companies Act, the complainant must:

- have given 14 days' notice to the directors of the company of their intention to apply to the court under subsection (2) if the directors of the company do not bring, diligently prosecute or defend, or discontinue the action or arbitration;
- be acting in good faith; and
- demonstrate that the action or arbitration to be brought, prosecuted or defended, or discontinued is in the interests of the company.

6.3 Rights to Appoint and Remove Auditors

Matters that require shareholder approval include the appointment or removal of the company's auditors, and matters pertaining to their remuneration.

7. Corporate Governance Arrangements

7.1 Duty to Report

Listed companies in Singapore are required to comply with the Code of Corporate Governance (the "Code"), or to explain why they are not in compliance. The Code covers key principles and practices of good corporate governance, and deals with topics such as board matters (eg, board remuneration and composition), accountability and audits (eg, risk management and internal controls), and shareholder rights and engagement (eg, the conduct of general meetings). There is no such equivalent code for private companies in Singapore.

8. Controlling Company

8.1 Duties of a Controlling Company

See **6.2 Challenging a Decision Taken by Directors** and **7.1 Duty to Report**.

9. Insolvency

9.1 Rights of Shareholders If the Company Is Insolvent

Where the company is insolvent, the shareholders may pass a special resolution for one or more liquidators to be appointed and for the company to be wound up, on the grounds that the company is unable to pay its debts. This

may also be done by general resolution where the constitution of the company so allows. Voluntary winding-up by shareholders' resolution does not require any application or order by the courts. Apart from winding-up, the shareholders could also consider a scheme of arrangement or judicial management for the rehabilitation of the company, which require the approval of the courts and/or the approval of the creditors.

Shareholders do not have a direct role in the liquidation process when the liquidator is appointed, save for voting rights at meetings. If a shareholder disagrees with the liquidator's exercise or proposed exercise of powers, the shareholder may make an application to the courts for determination as to the validity thereof.

In the administration and distribution of company assets, the liquidator must have regard to any directions given by resolution of the creditors or shareholders at any general meeting. Shareholders with at least 10% share value of the company may request the liquidator to summon general meetings during the liquidation process. It is possible for shareholders to sit as members of the committee of inspection. It is also open to shareholders to apply to the courts for inspection of the books and papers of the company during the liquidation process, and the courts may grant this on a discretionary basis.

At the conclusion of a liquidation, the liquidator needs to give notice of an application for release and discharge to the shareholders, and to call a meeting of the creditors and shareholders for the purpose of laying the final account for the liquidation. If no objections are raised, the liquidators may proceed with the application to the court for release and dissolution of the company. On hearing such an application, the courts will take into consideration any objections raised by shareholders, and may withhold the release of the liquidator if the courts deem this fit.

For completeness, shareholders are generally protected from liability for the debts of an insolvent company, except in those cases where the court has made an order for the corporate veil to be lifted. However, as shareholders rank after creditors for distribution in liquidation, shareholders may only benefit from the distribution of any funds remaining after the creditors of the company have been paid out of the assets of the company. Any distribution to the shareholders will first take into account the rights of any preference shareholders before distribution to the ordinary shareholders.

Finally, it would be relevant to consider if any provisions of the constitution of the company or any shareholders' agreements may affect the rights of shareholders where the company is in an insolvent situation.

10. Shareholders' Remedies

10.1 Remedies Against the Company

Shareholders have statutory remedies under the Companies Act; such cases must be brought before the High Court. The action will relate to instances of:

- oppression;
- the disregarding of a shareholder's interests;
- unfair discrimination; and
- prejudice.

10.2 Remedies Against the Directors

Shareholders do not have any direct legal remedies against the company's directors/officers. Any such remedies have to be exercised in the context of a derivative action where the compa-

ny takes action against the directors/officers for the dereliction of their duties. Generally, directors owe the following duties:

- the duty to disclose interests in transactions;
- the duty to act honestly and use reasonable diligence in discharge of their duties; and
- fiduciary duties.

10.3 Derivative Actions

Shareholders have the power to bring a derivative action under the Companies Act. Generally, permission to bring a derivative action must be sought from the High Court. When giving permission, the High Court may make such orders in the interest of justice, including an order for the company to pay reasonable legal fees and disbursements incurred by the complainant in connection with the action.

11. Shareholder Activism

11.1 Legal and Regulatory Provisions

There are two main statutes that govern/restrict shareholder activism in Singapore:

- the Companies Act; and
- the Securities and Futures Act.

The following regulations are also relevant and must be considered:

- the Singapore Code of Corporate Governance;
- the Singapore Code on Takeovers and Mergers; and
- the Listing Manual of the Singapore Exchange.

Some recent amendments to the Companies Act (which came into force on 1 July 2023) potentially help to facilitate shareholder activism.

- The compulsory share acquisition framework provides more protection to minority shareholders. The exclusion for the 90% threshold has been expanded so that shareholdings of close relatives, as well as individuals or corporate entities controlled by the ultimate controller, will not be counted when computing said 90% threshold.
- Companies can hold shareholder meetings in a hybrid manner (ie, in part at a physical place and using virtual meeting technology) or fully virtually. This better facilitates broader shareholder participation with the ability to dial in regardless of where the individual may be at the time the meeting is being held. With the current technology, it is possible for any shareholder to dial in at any time and from any place.

11.2 Aims of Shareholder Activism

The key aims of activist shareholders include:

- maximising their returns in relation to their investment in the company;
- replacing the current management/officers so as to ensure that their interests are looked after, and/or that the company is run in a manner that is satisfactory to the shareholders; and
- protecting the rights and interests of minority shareholders.

11.3 Shareholder Activist Strategies

The common strategies employed by activist shareholders include:

- exercising rights under the company's constitution and the Companies Act to requisition

an extraordinary general meeting, at which resolutions may be tabled to hold the directors accountable for matters that need to be addressed; and
- the use of social media, blogs and online platforms to share views and garner shareholder support for the matters being raised at an upcoming meeting.

The more aggressive and contentious route would involve proceedings commenced in the High Court where the minority will seek to either prove oppression by the majority or obtain permission to commence a derivative action in the name of the company against errant directors (who happen to be substantial shareholders).

11.4 Recent Trends

There is no discernible trend in terms of any industries or sectors that are targeted by activist shareholders. However, in relation to real estate invest trusts (REITs), there may be a leaning towards having the REIT managed internally as opposed to the current prevalent model where the management is outsourced. This was the case in relation to the Sabana Industrial Real Estate Investment Trust, where the unitholders voted to remove the then manager and internalise the REIT management functions. Much turns on the unitholders' satisfaction (or lack thereof) in relation to the way in which the manager has performed.

11.5 Most Active Shareholder Groups

No particular group or type of shareholder stands out as most active. However, it may well be that the fund managers, the minority shareholders and the Securities Investor Association Singapore (an investor advocacy group) are likely to play a more active role.

11.6 Proportion of Activist Demands Met

There is no available data on the proportion of activist shareholders' demands that were met in the last year.

11.7 Company Prevention and Response to Activist Shareholders

Companies should listen to and obtain shareholder feedback and keep the lines of communication with shareholders open. This will help to cultivate shareholder confidence in the management and to minimise mistrust or misunderstanding arising from the lack of communication.

Ideally, there should be an engagement plan in place where certain areas or items that might attract the attention of shareholder activism receive sufficient time and attention from the directors – eg, having meetings with major investors or affected shareholders to actively engage and address concerns.

At general meetings, the directors should act fairly and reasonably in relation to the questions or concerns that may be raised by the shareholders. They should be well prepared to answer queries and help to facilitate the discussion that will ensue.