England and Wales
Minority Shareholder Rights
IBA Corporate and M&A Law Committee 2022

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SOURCES OF PROTECTION AND ENFORCEMENT

Please provide an overview of the sources of protection for minority shareholders in your jurisdiction. Who enforces these rights?

The laws of England and Wales give protection to minority shareholders in a number of different ways. Many of the rights and protections are found in the Companies Act 2006, which is the primary source of law for companies in the UK. In a number of places, the protections are subject to modification in companies' articles of association, so the 2006 Act must always be considered alongside the statutes of the company in question.

Public companies (and listed companies in particular) are subject to even stricter requirements. These range from compulsory shareholder protections in the Listing Rules, Disclosure Guidance and Transparency Rules (DTRs) and (subject to the potential for derogations and waivers) the City Code on Takeovers and Mergers (the Takeover Code), to those where compliance is only recommended in the context of investor practice (such as with the Pre-Emption Group Statement of Principles).

Finally, minority shareholders may derive protection from a number of common law rules which often operate where statutory provisions are silent on a particular issue. Although it is less common to see case law as a primary source of minority shareholder rights, it should nonetheless be given due attention alongside the various statutory sources.

As might be expected with such a varied range of sources, the question of who enforces these rights will depend upon the nature and intended purpose of the right in question. For example, some of the protections under the 2006 Act are enforceable by the minority shareholder because they are intended to redress balance of power concerns, whereas certain rules applying to public companies might provide protection to minority shareholders, but they are enforceable by the Financial Conduct Authority (FCA) as the broader legislative purpose is to regulate market conduct.

PROTECTION AGAINST DILUTION

Are there any mechanisms in your jurisdiction to protect against dilution of shareholdings? For example, are existing shareholders granted any rights on the issue of new shares in a company?

Shareholders are afforded several different kinds of protections to help ensure that the value of their shareholdings is maintained relative to other shareholders in the same company.

One such protection takes the form of the requirement, under sections 549 and 551 of the Companies Act 2006, that directors must not allot shares in the company without being authorised to do so by the shareholders. Although not technically a protection specifically for minority shareholders (authorisation may be given by majority shareholder vote), it nonetheless brings the potential for dilution of shareholdings on an allotment to the attention of existing shareholders.

This requirement does not apply to private companies with only one class of share or where the allotment is in relation to an employee share scheme (sections 550 and 549(2)(a) respectively), though these exemptions may be disapplied in the company's articles of association.

Holders of ordinary shares also have a right of 'pre-emption' when shares are allotted (section 561, Companies Act 2006), effectively granting them first refusal over the new shares in question. These pre-emption rights operate in proportion to the existing shareholdings in the company, allowing minority shareholders the chance to purchase enough of the new shares to maintain their relative shareholdings in the company.

Private companies may exclude this requirement in their articles of association. Alternatively, shareholders in a private company with only one class of share may vote to disapply pre-emption rights by special resolution (requiring a 75 per cent majority) or where the directors have already been authorised to allot the new shares under section 551 of the Companies Act 2006.

Listed companies will also have to consider the Pre-Emption Group Statement of Principles. The Pre-Emption Group is a body representing the interests of listed companies, investors and intermediaries, and its Statement of Principles provides guidance on the likely position institutional investors will take when a listed company wishes to disapply pre-emption rights. Companies are encouraged only to issue shares non-pre-emptively up to a maximum of 10 per cent of the company's issued share capital in any one year. Disapplications above this threshold are not ruled out completely, but will be subject to scrutiny by institutional shareholders on a case-by-case basis.

Although the above rights and protections have general applicability to all shareholders, they nonetheless operate to protect minority shareholders by requiring their input where their shareholdings are at risk of being diluted.

RIGHTS TO APPOINT DIRECTORS

Do minority shareholders have any special rights to appoint directors to safeguard their interests? Are other protections available to minority shareholders in this context (such as general duties of directors)?

Unless provision has been made for the appointment of directors in a shareholders' agreement or the articles of association of a company, minority shareholders in England and Wales have no specific rights to appoint directors.

Companies' articles of association often grant the board a power to appoint directors. This is reflected in the default Model Articles for private companies limited by shares (under the Companies (Model Articles) Regulations 2008), though companies may choose to adopt different articles.

Similarly, Article 17 of the Model Articles provides that shareholders may appoint a director by an ordinary resolution requiring a simple majority (ie, more than 50 per cent must vote in favour). In any event, shareholders have an inherent right to appoint directors under common law where the articles are silent on this issue or purport to restrict this ability (*Worcester Corsetry Limited v Witting* [1936] Ch 640).

The court may also intervene to appoint directors in cases of 'unfair prejudice'. Section 994 of the Companies Act 2006 permits any shareholder to apply to the court on the basis that an action (or proposed action) of the company is unfairly prejudicial to the interests of the shareholders generally or to some of their number (including, at least, the applicant). A wide range of remedies may be awarded by the court on a successful application, and these include granting aggrieved shareholders the ability to appoint directors to represent their interests (*Re Neath Rugby Ltd (No. 2)* [2009] 2 BCLC 427).

Directors are also subject to general duties under sections 170–177 of the Companies Act 2006, which should help to ensure that directors appointed by majority shareholders do not act in such a way that favours their appointors at the expense of minority shareholders. For example, directors must promote the success of the company 'as a whole', and must avoid situations where a given course of action may result in them having a conflict of interest.

PROTECTION AGAINST TAKEOVER BIDS FOR THE COMPANY

Do minority shareholders have any protection in your jurisdiction where the company is the subject of a takeover bid?

Where a takeover offer is made in relation to a UK public company whose shares are traded on a regulated market (such as the Main Market of the London Stock Exchange) or a multilateral trading facility (such as AIM), or if their place of 'central management and control' is otherwise in the UK, the offeror and target company will be subject to the Takeover Code. The Takeover Code has a statutory basis under section 942 of the Companies Act 2006 and is administered by an independent regulatory body – the Panel on Takeovers and Mergers.

At a basic level, General Principle 1 of the Takeover Code mandates that all shareholders of the offeree company must be treated equally during a takeover bid, and if control is acquired by an offeror, the remaining shareholders 'must be protected'. This helps ensure that certain shareholders do not receive preferential treatment and encourages the equal sharing of information about the bid amongst all shareholders.

A central protection for minority shareholders in the Takeover Code is the concept of 'mandatory offers' (Rule 9). Where any party (either alone or acting in concert) acquires 30 per cent or more of the voting rights in a company, or acquires more shares when their overall shareholding is between 30 per cent and 50 per cent, they must make an offer to purchase the remaining share capital of the company. This gives minority shareholders a chance to exit the company if they do not wish to remain involved post-takeover, with the Takeover Code also providing rules on the minimum price that must be offered for these shares.

Minority shareholders have another means of exit in the form of the 'sell-out' procedure under sections 983–985 of the Companies Act 2006. Where an offeror manages to acquire 90 per cent or more in value of the shares in the company during a takeover bid, the holder of any of the remaining shares may require the offeror to purchase them on the same terms as the offer.

However, minority shareholders not wishing to exit the company in this situation may still be 'squeezed out' by the offer. Section 979 of the Companies Act 2006 gives the offeror a right to buy out remaining minority shareholders once the 90 per cent threshold has been reached. As with the sell-out procedure, the minority shareholder must be paid the same consideration as on the terms of the original offer. The shareholder may apply to the court for an order that the offeror is not entitled to acquire the shares in this way, though it may be difficult for the shareholder to succeed as they must demonstrate that the offer was 'unfair', such as where the squeeze-out procedure is being used solely to evict the minority shareholders (*Re Bugle Press Limited* [1961] CH 270).

More generally, compliance by listed companies with the DTRs should help to keep minority shareholders informed of significant changes in the other shareholdings in the company. DTR 5 provides that shareholders must notify the company where their shareholding exceeds or falls below 3 per cent (and every 1 per cent thereafter up to 100 per cent), and the company must then make this information public as soon as possible.

ACTIONS AND SEEKING REMEDIES ON BEHALF OF THE COMPANY

Are shareholders in your jurisdiction able to bring actions and seek remedies on behalf of the company? For example, is there any mechanism for a judicial or other official representative to oversee or intervene in the management of the company?

Although minority shareholder protections are often framed in terms of rights for the benefit of minority shareholders, minority shareholders may also benefit from rights enforced on behalf of the company. Section 260 of the Companies Act 2006 allows any shareholder or those to whom shares have been transferred by operation of law (eg personal representatives of the estate of a deceased shareholder) to bring a 'derivative claim' on the grounds that the company itself has a cause of action.

This cause of action must involve some negligence, default or breach of duty on the part of a director and may be brought against a director or another person involved in the breach. There is no need to show that the company suffered financial loss, so derivative claims may be brought for causes that more directly benefit minority shareholders. For example, directors who have acted preferentially with regard to a majority shareholder may have contravened their duty to promote the interests of the shareholders as a whole. The company may not have suffered a direct 'loss', but a cause of action may still exist as the directors have not behaved even-handedly as between the shareholders.

However, a derivative claim under section 260 may not be an especially attractive option on several grounds. Firstly, it may prove difficult to successfully make out the grounds for a claim. A court will not allow an application to proceed if a person acting in accordance with the general directors' duty to promote the success of the company would not seek to continue the claim. Similarly, a derivative claim will not be available if the behaviour under scrutiny had already been ratified by a majority of the shareholders of the company. This latter bar may make matters particularly difficult for minority shareholders if the director in question has strong ties to a majority shareholder willing to ratify their actions.

In practice, a claim for unfair prejudice under the procedure in section 994 may be more desirable. Unlike with derivative claims, there is no need to seek the court's permission to proceed, ratification is not a bar to a claim and the potential causes of action for unfair prejudice are more widely drawn than those for derivative claims under section 260. Unfair prejudice also makes an especially broad range of remedies available to the court (directly for the benefit of the applicant shareholder). An aggrieved shareholder will have to consider whether these will be suitable, however, as they may not wish to risk the court ordering a sale of their shares (which is a distinct possibility with unfair prejudice claims).

RIGHTS TO PARTICIPATE IN DECISION-MAKING

To what extent do minority shareholders have rights to participate in the decision-making of companies in your jurisdiction?

A key element of participation in the operation of a company is the ability of the shareholder to express their opinions and vote on matters at general meetings. Under the procedure in sections 303–306 of the Companies Act 2006, shareholders representing at least 5 per cent of the paid-up voting capital in a company may require the directors to call a general meeting. If the directors fail to do so within the prescribed time limits, these shareholders are given the right to convene the meeting themselves. This procedure is calculated to ensure that directors (potentially acting on the instruction of majority shareholders) are not able to prevent minority shareholders from tabling a resolution by refusing to call a general meeting.

As it may be difficult in such circumstances to hold a meeting in accordance with the company's usual rules and procedures, section 306 provides that the court may require a meeting to be called and held in any manner deemed fit. This may be especially useful for minority shareholders where the non-attendance of directors or majority shareholders would otherwise result in the meeting not achieving the company's quorum requirements.

Provisions also exist to ensure minority shareholders are given sufficient information about the company's decision-making activities. A copy of every written resolution proposed by the directors must be sent to the shareholders entitled to vote on the resolution (section 291, Companies Act 2006). Similarly, if the shareholders propose a written resolution, the company is required under sections 292–293 of the Companies Act 2006 to circulate a copy of the resolution to the shareholders, if requested to do so by shareholders representing at least 5 per cent of the voting rights of those entitled to vote on the resolution.

All shareholders must be given notice of a general meeting, which should include details of the time and location of the meeting, as well as a statement of the nature of the matters to be considered at the meeting. If shareholders wish to have more information about the proposed content of the meeting, those representing at least 5 per cent of the total voting rights may require the company to circulate a statement of up to 1,000 words providing detail of the matters to be considered.

Notice of general meetings must be given between 14 and 21 'clear days' before the meeting is due to be held, depending upon whether the company is private or public and whether the meeting is to be an annual general meeting. With the exception of traded companies, shorter notice can be given of meetings under a procedure in section 307(4) of the Companies Act 2006. In order to prevent meetings being held quickly without the knowledge of minority shareholders, shareholders holding at least 90 per cent of the shares granting the right to vote at the meeting must agree in order for the short notice procedure to be used (95 per cent for public companies).

Minority shareholders are also given a say in some of the most important decisions in the life of a company by virtue of the special resolution procedure. Certain decisions of the company may only be made with the approval of at least 75 per cent of the eligible shareholders (section 283, Companies Act 2006), potentially giving minority shareholders the ability to block decisions which would be harmful to their interests. Some of the decisions which must be approved by special resolution include changing a company's constitution, re-registration of a private company as public and reducing the company's share capital.

RIGHTS WHEN A COMPANY IS EXPERIENCING FINANCIAL DIFFICULTIES

Do minority shareholders have any particular rights or protections when a company is experiencing financial difficulties? For example, are they able to demand that the company be wound up?

Shareholders who have held their shares for at least six months of the previous 18 months may apply to court to have a company wound up on the grounds that it would be 'just and equitable' to do so (sections 122–125, Insolvency Act 1986). However, this procedure requires some proof on the part of the applicant shareholder that they have a 'sufficient interest' in the winding up, such that (for example) a surplus of funds would remain in the company after meeting its debts, which would then be paid out to the shareholders.

The question of what is 'just and equitable' will depend upon the facts of the given case, though an example of a situation which could meet this threshold would be excluding a shareholder from participating in the management of the company where the company operated on the basis that there would be an entitlement to participate (*Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360).

Petitioning for a winding up could be useful for minority shareholders concerned that the value of their investment in the company will be eroded should it continue to operate and accumulate debts, but it relies upon careful analysis of the company's present financial situation to determine whether any value is likely to remain after the company's creditors have been satisfied. Further, section 125(2) of the Insolvency Act 1986 gives the court discretion to award a different remedy even where the ground for a just and equitable winding up have been made out. For example, the court may order that the petitioning shareholder's shares be purchased, so a shareholder considering applying for a winding up should be aware that winding up is not inevitable even if they are successful in their application.

RIGHTS ENFORCEABLE AGAINST OTHER SHAREHOLDERS

Do minority shareholders have any rights or protections which are enforceable against other shareholders; for example, where the majority of shareholders act in contravention of the company's articles of association?

Unless provision has been made in a shareholders' agreement, minority shareholders do not have any specific rights or protections which are enforceable against other shareholders.

In the absence of rights or protections in a shareholders' agreement, if the majority shareholders act in contravention of the company's articles of association, the minority shareholders could only bring a claim against the company itself under the unfair prejudice procedure in section 994 of the Companies Act 2006.

SUMMARY OF RIGHTS

Below is a table providing a brief summary of the rights of minority shareholders in England and Wales, organised according to the percentage threshold at which the various protections become available.

Shareholding (per cent)	Description	Reference
25	A resolution at a general meeting to approve an amendment to the articles of the company must be passed by a special resolution (which requires at least 75 per cent of the eligible shareholders present and voting at the meeting to vote in favour). Therefore, the amendment can be blocked by shareholders representing more than 25 per cent of the eligible shareholders present and voting.	Sections 21(1) and 283, Companies Act 2006
	More generally, shareholders with at least 25 per cent of the company's voting rights are able to block special resolutions on issues such as disapplication of pre-emption rights and re-registering a private company as public.	Section 283(1) and sections 90(1), 570 and 571, Companies Act 2006
15	Where a company has different classes of shares, if the rights attaching to a class are varied, shareholders holding at least 15 per cent of that class of shares may apply to the court to have the variation cancelled.	Section 633, Companies Act 2006
5	Shareholders holding at least 5 per cent of the paid-up voting rights can require the directors to call a general meeting. The shareholders requesting a meeting may also request that a particular resolution is put before the meeting. Directors are required under this procedure to call a general meeting within 21 days of the date of the request, with the meeting to be held no later than 28 days after they have given notice convening the meeting. If the directors fail to comply with this, the shareholders who initially requested the meeting (or those holding more than half of the voting rights of those shareholders) may convene a general meeting themselves. If it is impractical for a meeting to be called in the usual ways under the Companies Act 2006 or the company's articles, a court may (on its own, or by application of a director or shareholder) order a meeting to be called and held.	Section 303(2), Companies Act 2006 Section 303(4) Section 304(1) Section 305(1) Section 306

	Shareholders holding at least 5 per cent of the nominal value of the shares giving a right to vote at a particular meeting may object to short notice being given of that meeting.	Section 307(6)(b), Companies Act 2006
	Shareholders with at least 5 per cent of the voting rights of those entitled to vote on a particular resolution at the annual general meeting of a public company may require the company to give notice of the resolution to shareholders. This right may also be exercised by at least 100 shareholders with a right to vote on the resolution, having paid up (on average) at least £100 each.	Section 338, Companies Act 2006
	Where a public company wishes to re-register as a private company, shareholders having not less than 5 per cent in nominal value of the company's share capital (or at least 50 of the company's shareholders) may apply to court to cancel the resolution to re-register the company.	Section 98, Companies Act 2006
One share	A shareholder (who has held their shares for at least six out of the last 18 months) may apply to the court to seek a winding up of the company (ie the dissolution of the company) where the court can be satisfied it would be 'just and equitable' to do so. This may include where the company is unable to make decisions because it is in a deadlock situation; there has been mismanagement; or parties have been excluded from the management of the company. Generally, the court will only make an order to wind up a company where the applicant shareholders have no other remedies available.	Sections 122(g),124 (2) and 125(2), Insolvency Act 1986

	The articles of a company govern the rights of shareholders to inspect the company's statutory books, subject to certain minimum statutory rights of inspection. Any shareholder has the right to inspect information such as the register of directors, records of shareholder resolutions and meetings, documents relating to share buy-backs, and the company's register of members. Companies are required to keep and make available to the public a register of individuals having 'significant control' in the company (such as persons holding at least 25 per cent of the shares in the company). Any shareholder may demand a copy of the company's latest annual accounts, directors' report and audit report. However, shareholders must be sent a copy of the company's annual accounts and reports for each financial year in any event. The confirmation statement and statutory accounts and accompanying notes are publicly available documents.	Sections 116, 162(5), 358(3), 696, 699, 702 and 720(4),Companies Act 2006 Sections 81–83, Small Business, Enterprise and Employment Act 2015 Sections 431 and 423, Companies Act 2006
	Shareholders may bring a claim (known as a derivative claim) on the company's behalf in respect of an actual or proposed act or omission by a director involving (1) negligence; (2) default; (3) breach of duty; or (4) breach of trust.	Section 260, Companies Act 2006
	Any shareholder may apply to the court on the basis that an action (or proposed action) of the company is unfairly prejudicial to the interests of the shareholders generally or to some of them (including, at least, the applicant). The court has wide powers to grant a range of remedies.	Sections 994 and 996, Companies Act 2006
	Where a takeover offer is received in relation to all the shares in a company, and the shares acquired amount to 90 per cent or more of the value of the voting shares in the company (and have 90 per cent or more of the voting rights), any shareholder who has not accepted the offer may require the offeror to acquire their shares.	Section 983, Companies Act 2006
	If a company has ceased to trade and been struck off the register, any shareholder may apply to the court for the company to be restored to the register. This must be done within six years of being struck off.	Section 1029(2)(h), Companies Act 2006
	Where a special resolution has been passed to alter the company's articles of association, any shareholder may apply to the court to have the resolution set aside if it is not for the benefit of the company as a whole.	Common law