
Hong Kong
Minority Shareholder Rights
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[Contact](#)

Ying Shen

Zhong Lun, Hong Kong

shenying@shonglun.com

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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?

This guide focuses on private companies incorporated in Hong Kong, and public companies incorporated in Hong Kong and listed on the Main Board of The Stock Exchange of Hong Kong Limited (the Exchange). It will not discuss the rules and regulations of public companies listed on the Growth Exchange Market (GEM) of the Exchange. In general, the Rules Governing the Listing of Securities on the GEM of the Exchange have similar provisions as provided in the Rules Governing the Listing of Securities on the Exchange on the Main Board (the Main Board Listing Rules).

The protection for minority shareholders arises from various sources under the following laws of the Hong Kong Special Administrative Region (Hong Kong).

The Companies Ordinance

The Companies Ordinance (Cap. 622 of the Laws of Hong Kong, hereinafter referred to as the Companies Ordinance) provides fundamental protection by stipulating different types of rights which minority shareholders of private and public companies may enforce, subject to the articles of association of the company and any other contractual agreements between the shareholders (for example, a joint venture or shareholders' agreement). Please note, in the Companies Ordinance, a shareholder is referred to as a 'member'.

The Companies Winding Up Ordinance

The Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32 of the Laws of Hong Kong, hereinafter referred to as the Companies Winding Up Ordinance) provides the mechanism for shareholders (not just minority shareholders) to petition for the winding up of companies. It also contains provisions relating to insolvency of companies and disqualification of directors.

Common law

The principles developed under common law operate to supplement the statutory protection of minority shareholders. The established common law principles originated from the courts of England have been largely adopted by the courts in Hong Kong.

Main Board Listing Rules

Public companies listed on Main Board of the Exchange are subject to the Main Board Listing Rules, which prescribe the requirements for the listing of securities, and the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong). The standards thereunder are designed to maintain a fair, orderly and efficient market for the trading of securities – in particular, that:

- applicants are suitable for listing;
- the issue and marketing of securities is conducted in a fair and orderly manner;
- investors and the public are kept fully informed by listed issuers;
- all holders of listed securities are treated fairly and equally;
- directors of a listed issuer act in the interests of its shareholders as a whole, particularly where the public represents only a minority of the shareholders; and
- all new issues of equity securities by a listed issuer are first offered to the existing shareholders unless they have agreed otherwise.

The person who enforces these rights will depend on the nature and intended purpose for enforcing such right. For example, the statutory derivative action regime allows a shareholder of a company, with leave of the Hong Kong courts, to bring or intervene in legal proceedings on behalf of the company. In some cases, the Financial Secretary may apply for an injunction restraining any person from engaging in conduct which constitutes contravention of the Companies Ordinance or a breach of his fiduciary or other duties owed to the company.

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?

Aside from a pro rata offer made to the existing shareholders of the company in proportion to their shareholdings, the directors of a company must not allot shares (including the grant of rights to subscribe for, or to convert any security into, shares of the company) without prior approval of the company by an ordinary resolution (ie, more than 50 per cent must vote in favour) in a general meeting (Sections 140 and 141 of the Companies Ordinance). These provisions give some protection to existing shareholders from a dilution of their shareholding without their consent, but it only requires an ordinary resolution to approve such an allotment.

For private companies, there is no other statutory protection on anti-dilution unless the shareholders agree to insert an anti-dilution provision in the articles of association of the company.

Apart from the remedies listed above, shareholders have certain personal rights attached to their shareholding that allow them to bring an action against those who infringe upon such rights. The personal rights may include the right to restrain improper dilutions of voting power by the board (*Fraser v Whalley* [1864] 2 Hem & M 10).

Under Rule 13.36 of the Main Board Listing Rules, the directors of the issuer must obtain the consent of shareholders in a general meeting prior to allotting, issuing or granting any shares, securities convertible into shares or options, warrants or similar rights to subscribe for any shares or such convertible securities (subject to certain exceptions, as discussed below). However, no such consent is required if:

- a listed issuer offers the new shares to its existing shareholders on a pro-rata basis;
- the existing shareholders have, by ordinary resolution in a general meeting, given a general mandate to the directors to allot or issue such shares or to grant any offers or options which would require the issue, allotment or disposal of shares during the continuance of such mandate. Such general mandate is subject to a restriction that the number of securities allotted or agreed to be allotted must not exceed the aggregate of:
 - 20 per cent of the existing issued share capital of the issuer; and
 - if so resolved separately by the shareholders, the number of such securities repurchased by the issuer since the granting of the general mandate (up to 10 per cent of the existing issued share capital).

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)?

The statutes or case law do not specify any special rights for minority shareholders to appoint directors for the purpose of safeguarding their interests.

Upon the incorporation of a limited company, a company may adopt the provisions of the model articles prescribed for the type of company to which it belongs under the Companies (Model Articles) Notice (Cap. 622H of the Laws of Hong Kong) or a company may adopt different articles of association, or amend the articles of association after it is incorporated.

Under the model articles of association for private companies limited by shares, a person may be appointed as a director by shareholders by ordinary resolution with a simple majority of shareholding or by the directors to fill a vacancy (for example, a director needs to be appointed as a result of the resignation of another director) or to appoint a director as an addition to the existing directors if the total number of directors does not exceed the number fixed in accordance with the articles.

Under the Companies Ordinance, a director may only be removed through an ordinary resolution before the end of the director's term of office, notwithstanding anything in its constitutional documents or any agreement between the company and the directors. These provisions give shareholders the right to appoint (subject to the articles of association) or remove a director, but it only requires an ordinary resolution to approve such change of directors.

To protect the interests of the minority shareholders, the statutory unfair prejudice remedy empowers a shareholder to petition to the court if the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of one or more shareholders. An actual or proposed act or omission of the company that is or would be so prejudicial would also suffice. Accordingly, the court may make any order that it thinks fit as a relief including making such an order for regulating the conduct of the company's affairs in future (Sections 724 and 725 of the Companies Ordinance). However, the court will only interfere to determine the composition of the board in very special circumstances and only if it is absolutely necessary to do so, as it is difficult for the court to select those who would be appropriate to conduct the commercial affairs of the company.

The directors as agents of the company owe fiduciary duties to the company, requiring them to act honestly, in good faith and in the best interests of the company as a whole (*Kishimoto Sangyo Co Ltd v Oba* [1996] 2 HKC 260). The directors must exercise reasonable care, skill and diligence which may reasonably be expected from a person with similar knowledge and experience. While carrying out their duties, the directors should ensure that there is no fraud or oppression on the minority shareholders (Section 465 of the Companies Ordinance; *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407).

The Companies Ordinance provides certain protection to shareholders relating to the conduct of and appointment of directors, some of which have already been included in this guide and others of which are listed below:

- it has clarified the standard of directors' duties of care, skill and diligence and set out a mixed objective and subjective test in the determination of the standard. The objective test applies to ensure the

director was required to attain a minimum standard of care and the subjective test applies to place a higher standard of care on directors if they were appointed due to their specific knowledge, experience or skill. The consequences of breaching this duty (or threatening a breach) are civil penalties derived from common law and equity principles;

- it has imposed other obligations on directors such as obligations to ensure that proper accounts are kept and that requisite documents are filed with the Companies Registry;
- it has introduced various measures to avoid directors' conflicts of interests; and
- directors' employment contracts which exceed or may exceed three years will have to be approved by shareholders by ordinary resolution (Section 534 of the Companies Ordinance).

Similarly, the board of directors of a listed company is collectively responsible for its management and operations. The Exchange expects the directors to fulfill the fiduciary duties and have the duties of skill, care and diligence to a standard at least commensurate with the standard established by the laws of Hong Kong. In particular, a director must act honestly and in good faith in the interests of the company as a whole and avoid actual or potential conflict of interests.

Failure to discharge their duties may lead to disciplinary action brought by the Exchange and attract civil and/or criminal liabilities (Main Board Listing Rule 3.08). Further, for listed companies, there are also further restrictions dealing with connected transactions.

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?

The Codes on Takeovers and Mergers and Share Buy-backs (the Takeovers Codes) apply to takeovers, mergers and share buy-backs affecting public companies in Hong Kong and companies with a primary listing in Hong Kong. The general principles under the Takeovers Codes are essentially statements of good standards of conduct to be observed. Some examples of the general principles are listed below:

- all shareholders are to be treated even-handedly and all shareholders of the same class are to be treated similarly;
- if the control of a company changes or is acquired or consolidated, a general offer to all other shareholders is normally required;
- shareholders should be given sufficient information, advice and time to reach an informed decision on an offer;
- rights of control should be exercised in good faith, and the oppression of minority or non-controlling shareholders is always unacceptable; and
- directors should only consider the shareholders' interest as a whole when advising the shareholders.

Subject to the granting of a waiver by the Executive Director of the Corporate Finance Division of the Securities and Futures Commission (the Executive), when any person (or two or more persons acting in concert) acquires 30 per cent or more of voting rights of a company, or acquires 2 per cent in addition to the existing shareholding of not less than 30 per cent but not more than 50 per cent, that person(s) must make an extended offer to the holders of each class of equity share capital of the company (Rule 26.1 of the Takeovers Codes).

Moreover, if an offeror of a share transfer has acquired or contracted unconditionally to acquire at least 90 per cent of the shares or at least 90 per cent of the shares of any class to which the offer (the Takeover Offer) relates, the offeror must give notice to any other shareholders to which the Takeover Offer relates. The notice in the specified form (Form NRE1) must be given by the offeror to such other shareholders within three months after the offer period or within six months from the Takeover Offer, whichever is earlier. If such notice is given, the offeror is entitled to and bound to acquire the shares on the terms of the Takeover Offer, or as the court thinks fit to order subsequent to any application by the shareholder, within two months after the date on which the notice was given.

The minority shareholders have the right to be bought out by the offeror. The holder of any shares or any shares of a class to which the Takeover Offer relates may write to the offeror to require it to acquire such shares. If such shareholder exercises the right to be bought out within the specified period, the offeror is entitled to and bound to acquire the shares on the terms of the Takeover Offer, on other terms as may be agreed or as the court thinks fit to order subsequent to any application by the shareholder or the offeror. Under these circumstances, the offeror must give notice in the specified form (Form NRE2) to such shareholder, stipulating the terms of the takeover offer and its particulars (Sections 700 to 703 of the Companies Ordinance).

Sections 712 to 718 of the Companies Ordinance also provide for the compulsory acquisitions after a general offer is made by a listed company in relation to a share buy-back (buy-back offer). If the repurchasing company has bought back or contracted unconditionally to buy back at least 90 per cent of

shares or at least 90 per cent of shares of a class to which the offer relates, the repurchasing company may give notice in a specified form to the holder of any other shares or any other shares of a class to which the offer relates, stating that it desires to buy back those shares.

Under section 718 of the Companies Ordinance, the holder of any shares to which the offer relates who has not accepted the offer before the end of the offer period may, by a letter addressed to the repurchasing company, require that company to buy back those shares if:

- the repurchasing company has bought back, or contracted unconditionally to buy back, some but not all of the shares to which the offer relates; and
- at any time before the end of the offer period, the shares in the repurchasing company controlled by that company represent at least 90 per cent in number of shares of the repurchasing company.

Where such shareholders exercise their rights to be bought out, the repurchasing company is entitled to and bound to buy back such shares on the terms of the buy-back offer, or as may be agreed, or as the court may order upon any application by the shareholder or the repurchasing company.

Upon an application for a ruling under the Takeovers Codes, the Executive may make a ruling requested by an interested party or shareholder subsequent to any breaches of the Takeovers Codes. The Executive may also institute disciplinary proceedings before the Takeovers and Mergers Panel (the Panel) when it considers that there has been a breach of the Takeovers Codes or of a ruling of the Executive or the Panel. If the Panel finds such a breach, it may impose sanctions and require relevant actions to be taken as the Panel thinks fit.

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?

A shareholder may bring an action and seek remedies on behalf of the company under common law or by statute.

Common law remedies

The two fundamental commercial law principles are:

- the right to commence legal action belongs to the company as a separate legal entity and not to individual shareholders; and
- where such act or omission may lawfully be ratified by an ordinary resolution of disinterested shareholders in the general meeting, the courts may be reluctant to intervene.

An exception of the two principles under common law is that a shareholder of the company may be entitled to institute proceedings on behalf of the company against a wrongdoer where the wrong constitutes a fraud on the company and that the wrongdoers are in control of the company. Such an action is referred to as a derivative action.

Also, if the company has engaged in a conduct which is *ultra vires* such that it is unlawful for the company to do the act, a shareholder may also bring a derivative action on behalf of the company to seek for remedies on behalf of the company. Such a derivative action can be brought without showing that the wrongdoers are in control of the company and as such preventing the company from suing. However, the court may strike out such an action if a majority of the independent shareholders are not in favour of such proceedings.

It is difficult for the existing common law derivative claim as mentioned above to succeed as the aggrieved minority shareholder must prove standing as a preliminary issue before the trial.

Statutory remedies

Part 14, Division 4 of the Companies Ordinance provides the statutory derivative action as the alternative and potentially wider remedy for aggrieved minority shareholders. If misconduct is committed against a company but the company itself does not institute the proceedings, then a shareholder of the company or of an associated company of the company may, with the leave of the court, bring proceedings on behalf of the company before the court in respect of the misconduct. The court may grant leave, if on the face of the application of a shareholder of a company or its associated company that:

- on the face of the application, it appears to be in the company's interest that leave is granted to the shareholder;
- there is a serious question to be tried in the case of an application for leave to bring proceedings or the company has not diligently continued, discontinued or defended the proceedings in the case of an application for leave to intervene in proceedings;
- the company has not itself brought the proceedings; and
- a written notice has been served on the company at least 14 days before application of leave by the shareholder (Section 733 of the Companies Ordinance).

The courts of Hong Kong tend to adopt a more flexible approach in this aspect. Misconduct is defined in Section 731 of the Companies Ordinance to mean fraud, negligence, breach of duty, or default in compliance with any ordinance or rule of law of Hong Kong. The approval or ratification of conduct of the shareholders does not prevent a shareholder of the company or a shareholder of an associated company from bringing the statutory derivative action. A related company includes a holding company, a subsidiary or a subsidiary of a holding company of the subject company.

Thus, multiple derivative actions are now permissible in Hong Kong and the statutory remedy may be sought by a shareholder of the company or the shareholders of the associated companies (*Waddington Limited v Chan Chun Hoo Thomas and Others* [2006] 2 HKLRD 896 (CA); *East Asia Satellite Television (Holdings) Ltd v New Cota, LLC & Ors* [2011] 4 HKC 115). The statutory provisions as stated above do not displace the common law derivative action (section 732(6) of the Companies Ordinance). Shareholders have a choice whether to bring a derivative action either under common law or pursuant to the statutory provisions. However, one person may not bring both a common law derivative action and a statutory derivative action in respect of the same matter.

The statutory unfair prejudice petition under Part 14 Division 2 of the Companies Ordinance is another useful remedy for minority shareholders. This remedy empowers a shareholder of a company to petition to the court, where their interests have been unfairly prejudiced by the act or omission in respect of the company. The court has the power to make such order as it thinks fit in respect of the granting of relief. The reliefs may include an order for the buy-out of shares from the minority shareholder at a fair price, granting of a mandatory or prohibitory injunction order or awarding damages and interests for any loss suffered by the shareholder personally. The dilution of equity interest, the exclusion from management, the lack of participation in profits and the lack of access to information about company's affairs are some examples which may give rise to a claim of unfair prejudice.

The above remedies are applicable to both private and public companies incorporated in Hong Kong.

In relation to a listed corporation, where it appears to the Securities and Futures Commission (the Commission) that the business or affairs of the company have been conducted in a manner oppressive to its shareholders, involving misfeasance or other misconduct towards the shareholders, or unfairly prejudicial to its shareholders, the court may make an order:

- restraining the carrying out or requiring the carrying out of any act or acts;
- order a person to be, or continue to be, a director; or
- take part in the management.

Also, if it appears to the Commission that it is desirable in the public interest that the corporation should be wound up, the Commission may present a petition for the listed corporation to be wound up on the ground that it is just and equitable to do so. For other contravention of the provisions under the Securities and Futures Ordinance, the courts have the power to grant injunctions and to make any other order that it considers appropriate for regulating the conduct of the business or otherwise (Sections 212 to 214 of the Securities and Futures Ordinance).

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?

For both private and public companies, minority shareholders may not have an effective involvement in or control over decision-making or management. Subject to the Companies Ordinance and the articles of association of the company, the business and affairs of the company are generally managed by the directors unless otherwise specified in the articles of association or shareholders' agreement (in the case of private companies) or required to be approved by shareholders at general meetings (in the case of listed companies).

Shareholders cannot, by ordinary resolution, give directions to the board of directors in respect of the matters entrusted to them under the articles of association. In pursuance of the model articles of association for private companies limited by shares, residual power is conferred upon the shareholders with the majority of voting power to direct, by special resolution, the directors to take or refrain from taking a specified action. If the board is ineffective, the power – which in effect has been delegated by the articles of association to the directors – reverts to the shareholders who delegated such powers in the general meeting (*Miracle Chance Ltd v Ho Yuk Yah David* [1999] WLR 186). The Main Board Listing Rules and the constitutional documents of listed companies provide that certain important transactions would require the approvals of shareholders at general meetings.

To ensure the effective participation of all shareholders, every shareholder of the company is entitled to receive notice:

- at least 21 days prior to an annual general meeting (AGM);
- at least 14 days prior to an extraordinary general meeting (EGM) in the case of a limited company; and
- at least seven days prior to an EGM in the case of an unlimited company.

If the company's articles of association require a longer period of notice than specified above, a general meeting of a company (other than an adjourned meeting) must be called by notice of that longer period. It is possible for the shareholders to accept a shorter notice if the notice is in writing, and that the shorter notice is agreed by all shareholders in the case of an AGM, or by shareholders representing 95 per cent or more of voting rights in the case of an EGM (Section 571 of the Companies Ordinance).

A notice of meeting must state the place and time of the meeting and the nature of matters to be discussed at the meeting. (Sections 574 to 576 of the Companies Ordinance). The discretion of the directors to determine the particulars of a meeting must be exercised in the best interest of the company as a whole. An invalid notice or a notice that does not adequately describe the nature of business of the meeting may render the meeting invalid (*Cannon v Trask* [1875] 20 Eq 669; *Byng v London Life Association Ltd* [1990] Ch 170, CA; *Kaye v Croydon Tramways Co* [1898] 1 Ch 358).

Shareholders with at least 5 per cent of the total voting rights may request a meeting and include in such request the resolution that is intended to be moved at the meeting. If the directors fail to call a meeting within 21 days from the date when the board receives the requisition, the shareholders representing over 50 per cent of the total voting rights may call a meeting by themselves. Also, if a company that does not have any directors, or does not have sufficient directors capable of acting to form a quorum, two or more shareholders holding 10 per cent or more of the total voting rights may call a general meeting. The courts

also have the discretionary power to order a meeting where it is impracticable to call a general meeting in the manner prescribed in the legislation or the constitution of the company. (Sections 566 to 570 of the Companies Ordinance).

Subject to the articles of association, except where the company has only one member, the quorum for a general meeting is two. Every shareholder has the right to vote by show of hands unless a poll is demanded. If voting on poll is demanded, each shareholder has one vote for each share such member is holding. Important decisions such as alteration of the articles of association, dispensing with the requirement to hold an AGM and reduction of the share capital must be passed by a majority of 75 per cent or more of votes or by a special resolution at a general meeting. The articles of association may also specify a list of matters which require the unanimous consent of all shareholders, thereby protecting the interests of the minority shareholders with 25 per cent or lower of voting rights.

For listed companies, the procedures for general meetings are provided in the constitutional documents of the company. Listed companies must also comply with the Main Board Listing Rules relating to meetings of shareholders. Generally, an AGM of a listed company shall be called with at least 21 days' notice in writing and an EGM shall be called with at least 14 days' notice in writing (in each case exclusive of the day on which the notice is served or deemed to be served and of the day for which it is given). The notice shall specify the place, the day and the hour of meeting and, in the case of special business, the general nature of that business. Rule 13.39 (4) of Main Board Listing Rules provides that any vote of shareholders at a general meeting must be taken by poll except where the chairman, in good faith, decides to allow a resolution which relates purely to a procedural or administrative matter to be voted on by a show of hands.

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?

Section 177(1)(f) of the Companies Winding Up Ordinance stipulates that a company may be wound up by the court upon the application of a minority shareholder, if the court is of opinion that it is just and equitable to do so. Minority shareholders may exercise this right when a company is experiencing financial difficulties and it is reasonably foreseeable that the situation will persist. Other examples where it may be just and equitable for a company to be wound up include:

- deadlock in management;
- lack of confidence in the conduct and management of a company's affairs arising from grave misconduct or potential grave misconduct by those in control of the company;
- suspected fraud or wrongdoing, such that the company's affairs require scrutiny by the process of compulsory winding-up order; and
- significant losses incurred such that there is no reasonable hope that the object of the company of earning profit is attainable.

Minority shareholders should note that, although the courts do not bar a petition presented on the basis of just and equitable grounds when another remedy is available, the just and equitable winding-up order is treated as the last resort. The courts have shown reluctance in granting a winding-up order where an alternative remedy is adequate for the petitioner unless there is a particular reason for doing so. A remedy for unfair prejudice may constitute an alternative remedy and may be more appropriate in some situations even when it is just and equitable to wind up the company.

As set forth above, the Commission may present a petition for the listed corporation to be wound up on the ground that it is just and equitable to do so.

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?

The company's articles of association form an enforceable contract to be observed between the company and each shareholder, and between a shareholder and each other shareholder (Section 86 of the Companies Ordinance). Accordingly, the articles of association are enforceable by a shareholder against each other shareholder. However, if the majority of shareholders can make a decision in compliance with the articles of association and the view of the majority is clear, no remedy will be ordered in favour of the minority shareholder in relation to the conduct complained of.

Where a wrong is done which infringes upon the personal rights of a shareholder, the shareholder is entitled to a personal right of action to enforce the personal rights conferred under the articles of association, shareholders agreement, statute or common law. Remedies may be sought for the sole benefit of the shareholder. Below are some examples of wrongdoing by a majority shareholder which may entitle a minority shareholder to bring a personal action against a majority shareholder:

- if a majority shareholder has committed fraud on a minority shareholder by passing a resolution authorising the issue of shares for the purpose of diluting the minority shareholder's shareholdings, or altering the articles of association which is not *bona fide* for the benefit of the company as a whole; or
- if the majority shareholders intend to pass a resolution resulting in the destruction of the economic value of other shareholders' shares for no rational reason, a minority shareholder may bring a personal action to seek an injunction restraining such majority shareholders from voting.

Sections 728 to 729 of Companies Ordinance set out the general power of the court to grant an injunction to restrain any breaches or contravention of the Companies Ordinance or any breach of fiduciary duties by the directors or any breach of the articles of association, upon the application by an affected person or a relevant authority. The court may also grant an interim and/or final injunction on such terms as the court thinks fit or order the person to pay damages in addition to or in substitution for the injunction.

Shareholders of private companies may consider entering into a shareholders' agreement amongst themselves and the private company that covers the transfer, disposal or transmission of shares, the settling of managerial and policy disputes and the protection of interests of minority shareholders.

SUMMARY OF RIGHTS

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

Shareholding (per cent)	Description	Reference
25	Alteration of articles of association (except an alteration to the maximum number of shares that the company may issue) must be passed by a special resolution (which requires at least 75 per cent or more of eligible shareholders present and voting at the meeting to vote in favour). Therefore, an alteration of the articles of association (other than the exception set forth above) may be blocked by shareholders representing more than 25 per cent of the eligible shareholders present and voting.	Section 88, Companies Ordinance
	The majority shareholders cannot alter the objects of the company without a special resolution, of which notice has been given to all the members of the company. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 89, Companies Ordinance
	An alteration of conditions in the memorandum of association which could have been contained in the articles must be passed by a special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 90(1) and (3), Companies Ordinance
	A company may not change its company name without a special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 107, Companies Ordinance
	Re-registration of an unlimited company as a company limited by shares must be passed by special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 130, Companies Ordinance
	If there are no provisions in company's articles for the variation of class rights, the written consent of holders representing at least 75 per cent of the total voting rights or a special resolution passed at a separate general	Section 180, Companies Ordinance

	meeting of holders of shares in the class sanctioning the variation is required to vary the class rights. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	
	A company may reduce its share capital by a special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 215, Companies Ordinance
	An unlisted company may buy back its own shares under a contract that is authorised in advance by special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 244, Companies Ordinance
	An agreement by a company to release its rights under a buy-back contract must be authorised in advance by a special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Sections 243 and 251, Companies Ordinance
	A company may make a payment out of capital in respect of the redemption or buy-back of its own shares by special resolution. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 258, Companies Ordinance
	A company may be wound up by the court if the company has, by special resolution, resolved that the company be wound up. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 177(1), Companies (Winding Up and Miscellaneous Provisions) Ordinance
	A company may be wound up voluntarily if the company resolves by special resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 228(1), Companies (Winding Up and Miscellaneous Provisions) Ordinance
	A company may, by special resolution, appoint a person to investigate its affairs. As such, shareholders representing more than 25 per cent of the eligible shareholders present and voting may block this.	Section 892, Companies Ordinance
10	If the rights attached to shares in any class of shares in a company are varied, holders representing at least 10 per cent of the total voting rights of holders of shares in the	Section 182, Companies Ordinance

	class may apply within 28 days after the date on which the variation is made to the court to have the variation disallowed.	
	Where the company does not have any directors, or does not have sufficient directors capable of acting to form a quorum, any two or more members representing at least 10 per cent of the total voting rights are entitled to call a general meeting.	Section 569, Companies Ordinance
	On an application by at least 100 members or members holding at least 10 per cent of the shares issued, the Financial Secretary may appoint a person to investigate a company's affairs.	Section 840, Companies Ordinance
5	An application to cancel an alteration of the objects of a company may be made by the holders of at least 5 per cent of the issued shares in the company or any class of the company's issued share capital.	Section 91, Companies Ordinance
	Members holding at least 5 per cent of the total voting rights may, within 28 days after the day on which a resolution for the giving of financial assistance is passed under section 285(1)(d), make an application to the court for an order restraining the giving of financial assistance	Section 286, Companies Ordinance
	Subject to the articles, a company must circulate a resolution proposed as a written resolution by a member, and any statement if it has received requests that it does so from the members of the company representing not less than 5 per cent of the total voting rights of all the members entitled to vote on the resolution.	Section 552, Companies Ordinance
	Members holding at least 5 per cent of the total voting rights are entitled to request the directors to call a general meeting.	Section 566(2), Companies Ordinance
	Any notice period of a general meeting (other than an AGM) that is shorter than the statutory provisions must be agreed by not less than 95 per cent of all the members who are entitled to vote at the general meeting. As such, shareholders representing more than 5 per cent of the eligible shareholders present and voting may prevent a general meeting (other than an AGM) to be held within a shorter period.	Section 571(3)(b), Companies Ordinance
2.5	Members holding 2.5 per cent or more of total voting rights (or 50 members or more) may request the company to circulate a statement relating to a proposed resolution or agenda to be discussed and be approved with at the general meeting.	Section 580, Companies Ordinance

	Members holding at least 2.5 per cent of the voting rights of all members, who are entitled to vote at a company's general meeting, or at least five members of the company, may apply to court to make an order to authorise a person to inspect any record or document of the company.	Section 740, Companies Ordinance
One share	Every member of a company has a personal right to enforce the terms of the articles of the company against the company or against another member. In cases where there is an infringement of the personal right of a member, the member may bring legal action to protect their personal contractual right under the articles.	Section 86, Companies Ordinance
	A minority shareholder may apply to the court to have the company wound up on the grounds that it is just and equitable to do so.	Section 177(1), Companies (Winding Up and Miscellaneous Provisions) Ordinance
	Subject to such reasonable restrictions as the company may in general meeting impose, every register of holders of debentures of a company must be open to the inspection of the registered holder of any such debentures or any holder of shares in the company.	Section 310, Companies Ordinance
	Any notice period of an AGM that is shorter than the statutory provisions must be agreed by all the members who are entitled to vote at the general meeting.	Section 571(3), Companies Ordinance
	Directors must ensure that every shareholder of the company is given a notice about the time, place and purpose of a general meeting.	Section 574(1), Companies Ordinance
	A member has the right to inspect the register of directors, members, company secretaries, index of members' names and charges, resolution or minutes of meetings held by shareholders.	Sections 355, 620, 631, 642 and 649, Companies Ordinance
	Any member who complains that the company's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of the members generally may make an application to the court by petition for an order for the unfair prejudice remedy, where the court may make an order as it thinks fit.	Sections 723–727, Companies Ordinance; Section 214, Securities and Futures Ordinance
	The rights of an individual member also include: <ul style="list-style-type: none"> • bringing a derivative action in the event of 	Common law

	<p>misfeasance;</p> <ul style="list-style-type: none"> • requiring their interest to be purchased on a restructuring of a company or the successful buyout by share repurchase; • to receive the copy of the accounts, • the right to appoint a proxy to attend and vote at a general meeting and demand a poll; and • to apply for injunctions upon breaches of the Companies Ordinance or fiduciary duties. 	
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