

M&A: Shareholders' Rights in Malaysia

Preparing a shareholders' agreement for a merger and acquisition (M&A) transaction requires an in-depth understanding of shareholders' rights and powers under the laws and the relationship between the shareholders.

The relationship between the shareholders may mean that notwithstanding the majority shareholder(s) is able to pass certain resolutions, the shareholders may agree that those matters may only be passed with affirmative votes of all or certain shareholders.

The following sets out some of the shareholders' rights and powers in respect of different levels of shareholding in a private company limited by shares in Malaysia as provided under the Companies Act 2016.

| Shareholding | Rights |
|---------------|---|
| At least 5% | The shareholder may: <ul style="list-style-type: none">• block reappointment of auditor (s. 270(1))• require the company to circulate a resolution that may properly be moved as a written resolution (section 302(1)). |
| At least 10% | The holder may require the company to pass a resolution to approve the payment of directors' fees or other benefits if the holder considers the payment was not fair to the company (s. 230(4)). |
| More than 25% | The holder may block special resolutions of the company. |
| More than 50% | The holder may: <ul style="list-style-type: none">• approve the following:<ul style="list-style-type: none">-allotment of shares;-granting rights to subscribe for shares;- conversion of any security into shares; or- allotment of shares under an agreement or option or offer (s. 75(1))• appoint directors of the company (s. 202(2))• remove a director before expiration of the director's period of office (subject to constitution) (s. 206(1)(a)). |
| 75% or more | The holder may ensure special resolutions are passed for matters including the following: <ul style="list-style-type: none">• change of name of the company (s. 28(1))• adoption of the company's constitution (s. 32(1))• amendment to the company's constitution (s. 36(1))• share capital reduction (s. 115)• voluntary winding up of the company (s. 439(1)) |

This article is authored by our partner, Ms Wong Mei Ying. The information in this article is intended only to provide general information and does not constitute any legal opinion or professional advice. If you have any questions on M&A or shareholders' agreement, please contact Ms Wong Mei Ying.