Shareholder Dispute Briefs |

When Quorum Requirements Are Used to Create Deadlock

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In Malaysia, a members' meeting serves as the primary forum for decision-making by shareholders and the exercise of their rights.

Generally, a member is entitled to request that a members' meeting be held, subject to compliance with the requirements under the **Companies Act 2016 ("CA 2016")** and the company's constitution.

These members' meetings are vital because there are matters of utmost significance that often require sanction or approval from the members under, amongst others, the **CA 2016**. For example, under **Section 223(1)(b) CA 2016**, the disposal of a substantial portion of the company's property is not to be carried into effect unless the disposal has been approved by the members.

Quorum Requirements: The Potential Abuse

Pursuant to **S.328(1) – (2) CA 2016**, the default requisite quorum for a members' meeting is two members (save for a single-member company), unless otherwise provided in the company's constitution.

In a scenario where there are only two members, a deadlock may occur when one of the two members deliberately refuses to attend the meeting, thereby resulting in the lack of the requisite quorum for the meeting to convene.

This will give rise to a decision-making deadlock.

Pursuant to **S.328(4) - (5) CA 2016**, without the requisite quorum, no business shall be transacted, and the meeting shall be either dissolved or adjourned.

What happens if a resolution is passed without the requisite quorum?

In Malaysia, it has been held by the Courts[1] that a meeting convened without the requisite quorum would be a nullity, rendering any resolution passed in the said meeting to be invalid.

Without the requisite quorum to convene the meeting, this may jeopardise the company's operation due to the inability to pass a resolution to, amongst others:

- approve directors' remuneration;
- appoint the company's auditor;

[1] *Geointelligence Sdn Bhd v Azhar bin Hj Ismail & Anor [2022] MLJU 2881; Lee Nyuk Heng & Anor v Pembangunan Ladang Hassan Sdn Bhd & Ors [2002] MLJU 684*

- approve the company's annual audited financial statements;
- reappoint the directors who are retiring.

What is designed as a procedural safeguard, if misused, may be deployed by a minority member as an instrument of obstruction capable of paralysing the company's operations.

Judicial Intervention: The "Impracticability" Test

In such a scenario, an aggrieved shareholder cannot be left without recourse.

Under **S.314 CA 2016**, the Court may order a meeting to be called in any manner that the Court thinks fit, including a direction that the presence of a single member shall be deemed to constitute a sufficient quorum. (**See: S.314(2) & (4) CA 2016**).

That said, such a remedy is not available as of right. The Court generally expects the members to first exhaust the internal mechanisms under the ***CA 2016***.

Judicial intervention under **S.314 CA 2016** will typically only be invoked where it is **impracticable** to convene or conduct a meeting in the usual manner (**See: S.314(1) CA 2016**).

This raises the critical question: **what amounts to "impracticable"?**

It has been held that impracticability is not narrowly confined. It will *"*cover a potentially wide range of factual situations, including but not limited to a case where the members have deliberately failed to attend a general meeting so that a proper quorum cannot be constituted…"[2]

Quorum provisions, after all, are not intended to operate as a veto mechanism in the hands of a minority where a deadlock exists.

In ***Tamabina Sdn Bhd & Anor v Nakamichi Corporation Berhad [2016] 10 CLJ 148,*** the ***Malaysian Court of Appeal*** held that:-

> *"[22]… to show impracticability it is necessary to show evidence of attempts or efforts to call and hold a meeting and such attempts or effort have been futile. The reason for the futility in calling or holding a meeting must be attributed to some circumstances that make it almost impossible to hold the meeting. These circumstances could be due to a deadlock situation, an intentional un-cooperative attitude of the directors, a persistent effort to derail the meeting or deliberate non-attendance at meeting after a proper and valid notice had been issued so as to force the meeting to be called off for want of quorum. The categories of such reasons are never closed*."

2 Tan Swee You v Sahiron bin Mohd Yunus & Anor [2021] MLJU 2244, para [28]

The Malaysian Courts have demonstrated a willingness to step in to exercise their power to order a meeting to be held as follows: -

Lee Yee Wuen v Kien Yiap Trading [2020] 1 LNS 236

→ The Court affirmed that a minority cannot use the quorum provisions as a '*veto*' to deny the majority rights.

Abdul Halim bin Mutaref v ALM Autoserve Sdn Bhd & Anor [2023] MLJU 2358

→ The Court intervened where a shareholder's acknowledged "deliberate refusal to attend the meeting" resulted in a lack of quorum, thereby creating an impasse.

Golden Crescent v PDC Associates [2025] CLJU 915

→ Judicial Intervention was warranted as the Court found strong evidence of a genuine deadlock arising from a member's "*systemic non-attendance at properly noticed meetings*".

Key Takeaways

Review the Company's Constitution

⟶ Certain companies may have different provisions regarding the number of members required for a meeting to be convened. It is important to review the constitution before seeking to convene a meeting.

Ensure that the documents to convene meetings are in order, and proper records of the same are kept

⟶ Parties that seek a meeting to be convened must first ensure that they comply with the relevant requirements under the law and the company's constitution. This includes, amongst others, ensuring that the notice of requisition is in order, properly issued and duly served.

⟶ Do keep a copy of the documents issued in relation to the proposed meeting, as they would be used as evidence for an application under **S.314 CA 2016**.

Act Early

⟶ Prolonged governance paralysis may jeopardise the company's operations.

Alternative to Members' Meeting: Written Resolutions

Under the new ***CA 2016***, members of a private company may pass resolutions by way of a **written resolution**, without the need to convene a members' meeting. This is governed under, amongst others, ***S.297 to S.308 CA 2016***.

A key advantage to this mechanism is that it is not subject to the quorum requirement[3], unlike the resolutions sought to be passed in a members' meeting.

In the circumstances, where a company is unable to pass a resolution due to the inability to convene a valid meeting for want of quorum, it may consider utilising the written resolution procedure.

This provides a practical alternative mechanism to effect members' decisions without the need for a meeting.

That said, this remains subject to the company's constitution, which may modify or restrict the use of written resolutions and compliance with any applicable legal requirements.

Looking Ahead: Other Possible Instances

Quorum-related deadlock is only one of several challenges that may arise in convening meetings. Other scenarios where a meeting cannot be convened may include, amongst others, a director's refusal to convene a meeting requested by the members – an issue we will explore in a future article.

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[3] *LGB Engineering Sdn Bhd & Ors v Rayston Resources Sdn Bhd [2023] 1 MLJ 649*