

Dispute Resolution

Who has the Standing to Requisition an EGM?

Section 176(1) of the Companies Act 1967 ("**CA**") provides that directors of a company must, on the requisition of members of the company holding not less than 10% of the total number of paid-up shares, immediately proceed to convene an extraordinary general meeting ("**EGM**") of the company. However, does "members" include beneficial shareholders of the company who hold their shares through nominees such as brokerage houses? Would such shareholders have the necessary standing to requisition an EGM? The High Court considered this issue in *Tanoto Sau Ian v USP Group Limited* [2023] SGHC 106, finding that such shareholders do not have the necessary standing.

In *Tanoto Sau Ian v USP Group Limited* [2023] SGHC 106, various shareholders who were the beneficial owners of approximately 11% of the total issued and paid-up ordinary shares of USP Group ("**Requisitionists**") sought to replace USP Group's existing board of directors by requisitioning for an EGM under section 176(1) of the CA ("**section 176(1)**"). Their shares were held in the name of various brokerage houses and they signed off the Requisition Notice in their own names, on behalf of the brokerage houses, for USP Group to convene an EGM. Crucially, however, only the names of the brokerage houses – not the names of the Requisitionists – appeared on USP Group's Register of Members.

USP Group filed OA 218, arguing that the Requisitionists are not "members" for the purposes of section 176(1) because their names did not appear on the Register of Members. In response, the Requisitionists argued, among others, that USP Group was estopped from taking the position that the Requisitionists were not members and/or that the Requisition Notice was invalid. According to the Requisitionists, USP Group's conduct since receiving the Requisition Notice had induced the Requisitionists to believe that USP Group had no objections to the Notice's validity or the Requisitionists' standing.

Were the Requisitionists members for the purposes of section 176(1)?

The Court answered this in the negative. In particular, the Court also considered section 81SJ read with section 81SF of the Securities and Futures Act 2001 and concluded that in respect of a public listed company whose shares may be held as book-entry securities through the Central Depository (Pte) Ltd ("**CDP**"), its members are those whose names appear as account holders or depository agents in a register maintained by CDP. Here, this was USP Group's Register of Members. Since the Requisitionists' names were not on the Register of Members, they were therefore not members.

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The Court also found that the fact that the Requisitionists had submitted the Requisition Notice on behalf of the brokerage houses and with the relevant authority letters from the brokerage houses, did not enable the Requisitionists to be considered as "members". The Court also noted that nothing in USP Group's constitution permitted members (i.e. the brokerage houses) to nominate other persons to enjoy or exercise membership rights.

Was USP Group estopped from challenging the status of the Requisitionists as members?

The Court found that USP Group was not estopped from challenging the status of the Requisitionists as members. In coming to the aforesaid decision, the Court had to consider the issue of whether an estoppel can prevent the application of a statutory rule. To this end, the Court held that the issue depended on the content of the statutory provision concerned – was the statutory rule in question an "imperative" rule (i.e. a rule which is made for the benefit of someone other than the person against whom the estoppel is asserted), or was the rule a "non-imperative" rule (i.e. a rule of private law that is to be observed between individuals)? In the former case, an estoppel could not apply so as to "allow a state of affairs which the law has positively declared not to subsist", namely that the Requisitionists did not qualify as members for the purposes of section 176(1).

In this instance, the rule that only "members" could exercise the section 176(1) right was found to be an imperative rule. The restriction to "members" broadly affected the company and its shareholders as well, and was not merely for the benefit of the persons seeking to convene an EGM. As such, the Court took the view that however wrong USP Group's conduct was in leading the Requisitionists to believe that they had standing as "members", such conduct could never override the clear imperative rule prescribed by section 176(1).

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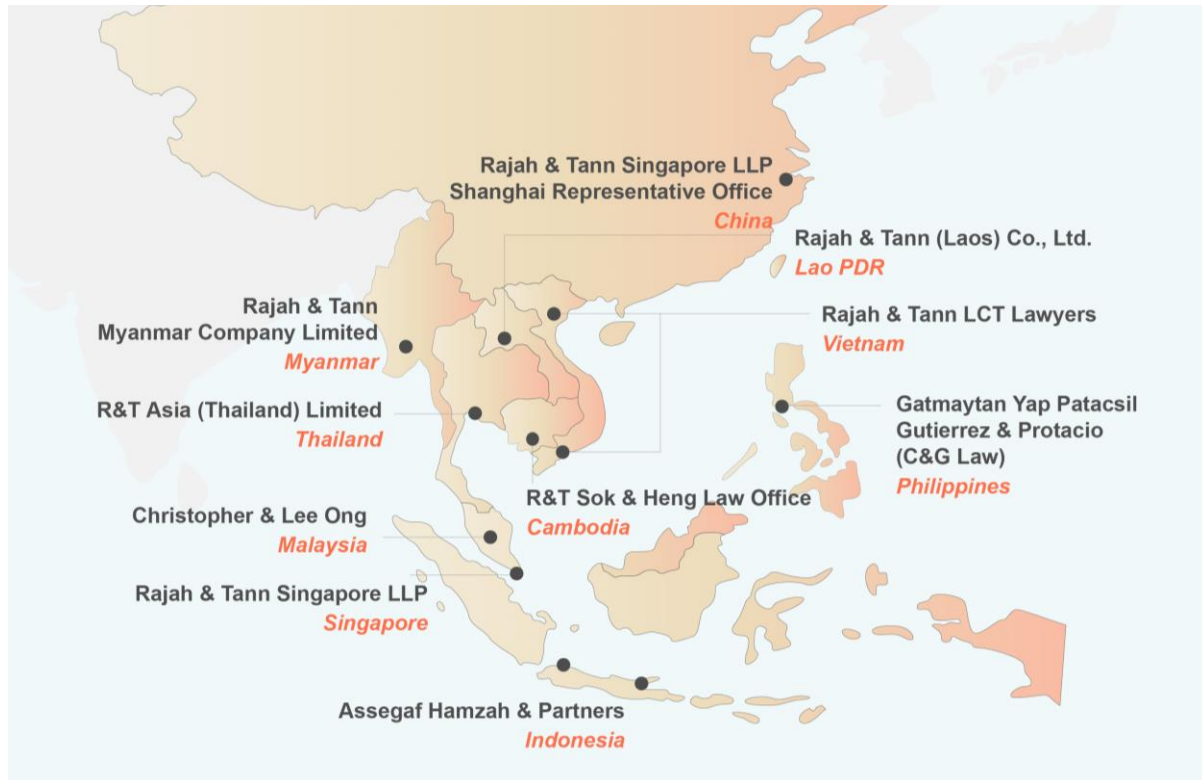
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