**SINGAPORE UNIVERSITY OF SOCIAL SCIENCES**

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**COMPANY AND TORT LAW**

**ADVICE TO ALLISON**

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**Table of Contents**

[ANSWER TO QUESTION 1 (a) 3](#_Toc84611498)

[1. TYPES OF COMPANIES THAT CAN BE INCORPORATED IN SINGAPORE 3](#_Toc84611499)

[2. DIFFERENCES IN COMPANIES AND THEIR COMPLIANCE REQUIREMENTS 4](#_Toc84611500)

[3. ADVICE TO ALLISON WITH RESPECT OF INCORPORATION OF COMPANY FOR A FINTECH BUSINESS AND CHARITABLE PURPOSE 7](#_Toc84611501)

[ANSWER TO QUESTION 1 (b) (i) 7](#_Toc84611502)

[RIGHTS OF MINORITY SHAREHOLDERS AGAINST ALLISON (MAJORITY SHARE HOLDER) 7](#_Toc84611503)

[i. Right to observance of the constitution 8](#_Toc84611504)

[ii. Right to information 8](#_Toc84611505)

[iii. Right to attend meetings and vote 8](#_Toc84611506)

[iv. Right to fair treatment 8](#_Toc84611507)

[ANSWER TO QUESTION 1 (b) (ii) 9](#_Toc84611508)

[WAYS IN WHICH ALLISON CAN PROTECT HERSELF FROM INTERFERENCE FROM NEW INVESTORS 9](#_Toc84611509)

[i. Board composition 9](#_Toc84611510)

[ii. Governance rights (veto/control) 10](#_Toc84611511)

[iii. Lock-in provisions 10](#_Toc84611512)

[iv. Information rights 10](#_Toc84611513)

[v. Determine risk tolerance level 11](#_Toc84611514)

[vi. Government protection 11](#_Toc84611515)

[REFERENCES 12](#_Toc84611516)

# ANSWER TO QUESTION 1 (a)

Allison has graduated from the university with a degree in computing engineering and has plans to set up a Fintech business in Singapore. She will be the chief executive officer and executive director, maintaining more than 50% equity interest in the company and is expecting two other friends to join her on the board. She also wishes to set up a foundation for charitable purposes that will be detached from her business. Allison is determined that she should incorporate a company to pursue each of her business and charity ideas.

## TYPES OF COMPANIES THAT CAN BE INCORPORATED IN SINGAPORE

As per Section 17(2) of the Companies Act and Accounting and Corporate Regulatory Authority (‘ACRA’), below are the seven forms of companies that can be incorporated in Singapore, namely: [1]

1. Exempt private company
2. Private company limited by shares
3. Public company limited by shares
4. Public company limited by guarantee
5. Unlimited private company
6. Unlimited exempt private company
7. Unlimited public company

All companies should be registered by ACRA and abide by the Companies Act. [2]

1. **Exempt Private Company (‘EPC’)**

EPC companies are the most common type of companies in Singapore. They usually end with “Pte Ltd”. EPC should have at least one shareholder and a maximum of twenty shareholders, with none of the shareholders being a corporation. Financial liabilities of the shareholders to creditors are limited to the capital initially invested by the shareholders.

1. **Private company limited by shares**

A private company limited by shares is similar to EPC companies and also ends with “Pte Ltd”. In this type of company, a corporation can be a shareholder and the maximum number of shareholders allowed are fifty.

1. **Public company limited by shares**

A public limited by shares can have more than 50 shareholders. The company name ends with “Ltd”. They can be listed on the stock exchange and must first submit a prospectus to the Monetary Authority of Singapore (‘MAS’) to raise funds from the general public. The public companies limited by shares have better access to capital; they may raise funds by selling public shares, debentures, and bonds. The shareholder's liability is limited to the original capital invested.

1. **Public company limited by guarantee**

A Public Company Limited by Guarantee is an organization formed for the public welfare and non-profit objectives. This category includes societies and organizations that are registered to promote the arts or for charitable purposes. The members' liability is restricted to the amount that they agree to contribute to the company's assets in the event of its liquidation. The sum of the members' guarantee will be specified in the Memorandum of Association. The sum is generally negligible. It does not have any shares. Members are not required to contribute any capital as long as it is a going concern.

1. **Unlimited private company**

The liability of shareholders of an unlimited private company is not limited. The company name usually ends with “Unlimited”. Unlimited companies are hybrid companies and can be incorporated without share capital.

1. **Unlimited exempt private company**

An unlimited exempt private company can only have a maximum of twenty shareholders, with no shareholders being a corporation.

1. **Unlimited public company**

An unlimited public company may have more than fifty shareholders with corporations allowed to be a company shareholder.

## DIFFERENCES IN COMPANIES AND THEIR COMPLIANCE REQUIREMENTS

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Type of Company | Exempt Private Company | Private company limited by shares | Public company limited by shares | Public company limited by guarantee | Unlimited private company | Unlimited exempt private company | Unlimited public company |
| Shareholders | Can have a maximum of 20 shareholders | Can have a maximum of 50 shareholders | Can have more than 50 shareholders | Can have a maximum of 50 shareholders | Can have a maximum of 50 shareholders | Can have a maximum of 20 shareholders | May have more than 50 shareholders |
| Share capital | ✓ | ✓ | ✓  By offering shares or debentures to the public | ✓ | May or may not have share capital | ✓ | ✓ |
| Yearly Statutory Obligations (Compliance Requirements) | Yearly renewals | Yearly renewals | Must appoint a company secretary within 6 months of incorporation.  Must appoint an auditor within 3 months after incorporation, unless the company is exempt from audit requirements  Annual returns must be filed.  Statutory requirements for general meetings, directors, company secretary, share allotments must be complied with | Annual declaration of solvency/insolvency must be lodged by one of the managers stating whether the company is able or not able to pay its debts during the normal course of business.  No statutory requirement for general meetings, directors, company secretary, share allotments etc. | Yearly renewals | Yearly renewals | Must appoint a company secretary within 6 months of incorporation.  Must appoint an auditor within 3 months after incorporation, unless the company is exempt from audit requirements  Annual returns must be filed.  Statutory requirements for general meetings, directors, company secretary, share allotments must be complied with |

## ADVICE TO ALLISON WITH RESPECT OF INCORPORATION OF COMPANY FOR A FINTECH BUSINESS AND CHARITABLE PURPOSE

The best fit for Allison is incorporating a ‘Private Limited Company by Shares’ for her Fintech business in Singapore. Since the ownership may be readily transferred, either whole or partially, by simply moving the shares. In the event of a change of ownership, assets, licenses, and permits can be readily transferred. Second, while the compliance costs are higher than for a sole proprietorship, the tax obligation is much reduced due to Singapore's attractive corporation tax rates. Third, issuing new shares to new owners or issuing more shares to current shareholders is a reasonably simple way to raise money. Finally, the company's survival will not be jeopardized by the death or insolvency of its stockholders.

The best fit for her charitable business would be the incorporation of ‘Public Company Limited by Guarantee’. It does not have any shares and members are not required to contribute as long as it is a going concern. When the company is liquidated, each member is only liable to pay the amount guaranteed by him per the company's memorandum of association.

# ANSWER TO QUESTION 1 (b) (i)

Allison feels that as she is the founder, she needs to hold more than 50% equity interest in the company and have control over the management of the company. With the introduction of new investors, she is concerned that there will be interference with management by shareholders and possibly new investors. As a start-up, her company may not be able to achieve profitability and declare dividends in the short-term. Launches of new products may be delayed due to uncertainties caused by the unforeseen pandemic and (the expected but nevertheless) real competition with the digital banks which have recently been granted licences. However, the company may still have to pay recurring costs, which includes the payment of “fat” salaries to Allison and her management team as executive directors of the company.

## RIGHTS OF MINORITY SHAREHOLDERS AGAINST ALLISON (MAJORITY SHARE HOLDER)

Minority shareholders own a relatively small shareholding in the company and generally have to accept the majority rule. [3] The following are the rights that protect their interests:

1. Right to observe of the constitution
2. Right to information
3. Right to attend meetings and vote
4. Right to fair treatment

## Right to observance of the constitution

As per Section 39(1) of the Companies Act [4], every shareholder has a statutory right to require the company and every other shareholder to observe the constitution and to amend the company's constitution by a special resolution. A special resolution is a decision taken by the shareholders collectively as a group during a properly convened general meeting whereby at least 75% majority of those present vote in favour thereof. This right to amend is thus a right available not to an individual shareholder but to the shareholders exercising their right collectively.

## Right to information

Every shareholder can inspect and obtain minutes of general meetings. Shareholders are accredited to be supplied with the latest audited financial statements of the company at least 14 days before AGM. Shareholders are entitled to inspect specific registers that are required to be maintained by the company. These include records of directors' shareholdings, CEO's shareholding, substantial shareholders, debenture holders and charges. However, shareholders are not entitled to inspect or obtain copies of directors' meetings.

## Right to attend meetings and vote

According to Section, 180, shareholders have the right to speak and vote at meetings. [5] Shareholders have the right to attend annual general meetings (AGM) and extraordinary general meetings (EGM). At AGMs, shareholders have the right to review the company's performance, query the directors on corporate policies, and elect new or re-appoint the existing directors. EGMs are held either when the directors require shareholders' approval on matters not discussed at AGMs or when the shareholders decide to convene a meeting to raise issues for voting. According to Section 176(1) of Companies Act, one or more shareholders holding at least 10% of the total number of paid-up shares of the company are entitled to call for an EGM.

## Right to fair treatment

Shareholders are entitled to pass resolutions in their interests at general meetings. Once resolutions are passed, it follows that the will of the majority must prevail. An aggrieved shareholder must show that there has been oppression or that his interests have been disregarded according to section 216(1). [6] The applicant must prove commercial unfairness. For example, dominant shareholders advance their interests to the detriment of the company or other minority shareholders, or majority shareholders abuse their voting powers by voting in bad faith.

In the case of *Re Kong Thai Sawmill (Miri) Sdn Bhd (1978)* it was held that to establish "oppression," there must be a visible departure from the standards of fair dealing and a violation of the conditions of fair play, which a shareholder is entitled to expect.

In the case of *Re Kong Thai Sawmill (Miri) Sdn Bhd (1978),* the court opined that to establish "disregard of shareholders' interests," it must involve something more than a failure to take account of the minority's interest. There must be aware of that interest and an evident decision to override it or brush it aside

In the case of *Ho Yew Kong v Sakae Holdings Ltd (2018), the* majority shareholder had taken advantage of the minority shareholder's trust in him by wrongfully getting puppet directors to sign contracts whichwere not in the interests of the company and which enabled him to misappropriate funds.

In the case of *Anita Hatta v Lee Siow Kiang Georgia (2019)*, the majority shareholder failed to supply fair and accurate information to the minority shareholder and engaged in related party transactions that ultimately benefitted her at the minority's expense.

# ANSWER TO QUESTION 1 (b) (ii)

## WAYS IN WHICH ALLISON CAN PROTECT HERSELF FROM INTERFERENCE FROM NEW INVESTORS

A founder who wants to control the company can create a class of shares that ensures their ongoing management of the business. [7] Shares represent ownership in a company. When a company is created, the founders of the company must determine who owns the company. [8] In the given scenario, Alison can protect herself against any interference from the new investors whom she invites by taking the following actions: -

## Board composition

Investors often seek equal representation on the board (holding half of the board seats) so that no decisions can be made at the board level without their consent. Allison should be cautious, because providing investors with equal representation will mean that they are effectively giving up control of their company. [9]

Allison should only grant board representation to investors investing the most significant money in the funding round. As a settlement, minor investors can be granted "observer rights" instead of board representation, which will allow them to nominate a nominee to participate in board meetings but in a non-voting capacity. She should confirm that board appointments and board observer rights remain subject to the investors retaining a shareholding in the company, at or above an agreed threshold.

## Governance rights (veto/control)

Investors will typically seek veto rights over certain significant company actions, such as future share issuances, the incurrence of substantial debt, amendments to the company's constitution, declaration of dividends, or the sale or acquisition of any new business or subsidiary. The presence of such veto rights can notably bringdown a founder's or management's control over the company, even if they appoint a majority of directors on the board. Allison should therefore limit the matters subject to veto rights.

## Lock-in provisions

Investment documents for early-stage financings often contain "lock-in" provisions that prevent founders and other key management team members from selling their shares for a prescribed period of time. Investors insist on these provisions to ensure that the founder and/or management interests are lined up with the company's success.

To balance, on the one hand, the investor's desire to incentivise the company's key employees, against the founders' and/or management's need for liquidity, Allison should agree with the investor that a percentage of their shares shall fall outside of the transfer restrictions, in order to enable them to sell a small portion of their overall.

## Information rights

It is common for investors to request access to certain information about the company (financial reports, management accounts, *etc.*). [10] In general, investors will want the right to:

1. access the company's key management personnel;
2. access the company's books, records and other financial information;
3. obtain information that the company furnish to its board of directors (if the investor does not have an appointee on the board or observer rights); and
4. request such other information that it requires to be kept well informed about the company.

Allison should also ensure that investors are contractually obliged to keep information provided to them confidential with a Non-Disclosure Agreement.

## Determine risk tolerance level

When it comes to investing, everyone can accept risk. When buying shares, one must assess the level of risk they are willing to face based on their age, earnings, dependents, and other factors. Investors frequently take on more risk than is necessary. And it's brought to light whenever there's a financial slump. [11]

## Government protection

Allison can also seek government protection, which entails laws and enforcement by government authorities to maintain a fair market and eliminate fraudulent practices. The U.S. Securities and Exchange Commission (SEC), which seeks to safeguard reasonable investors in America, is an example of a government agency that protects investors.

# REFERENCES

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| --- | --- |
| [1] | Section 17(2), Companies Act, |
| [2] | Accounting and Corporate Regualtory Authorithy, available at https://www.acra.gov.sg/ |
| [3] | Legal Structure of a Singapore Company, available at: https://www.startupdecisions.com.sg/singapore/company-law/company-legal-structure/.. |
| [4] | Section 39(1), Companies Act. |
| [5] | Section 180, Companies Act. |
| [6] | Section 216, Companies Act. |
| [7] | *Supra* note 3. |
| [8] | Introduction to Singapore Shares & Share Classes for first time entrepreneurs available at: https://www.guidemesingapore.com/business-guides/incorporation/for-first-time-entrepreneurs/introduction-to-shares-and-share-classes.. |
| [9] | Robert Grant, Muhammad Ali Pasha, The Top 5 issues- Founder's Perspective, avaialble at: https://www.sal.org.sg/Resources-Tools/VIMA-Premium-Access/A-Founders-Perspective\_. |
| [10] | Richard Harroch, Whar Angel Investors want to know before investing in your startup, available at: https://www.forbes.com/sites/allbusiness/2020/12/13/what-angel-investors-want-to-know-before-investing-in-your-startup/?sh=31f52f1a1a11. |
| [11] | Kotler, P., Kartajaya, H., & Young, S. D. (2004). Attracting investors: a marketing approach to finding funds for your business. John. |
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