Foundingbird

FOUNDER GUIDE

VESTING, SHAREHOLDERS' AGREEMENTS AND HOW TO AVOID A SPLIT

Starting a Sdn Bhd with Co-Founders

Equity, vesting, leavers and deadlock under Malaysian law

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WEB VERSION

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INSIDE THIS GUIDE

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The latest version of this guide, with the interactive tools, is at foundingbird.com/my/guides/co-founders-sdn-bhd-malaysia/.

Hi there,

I'm Dylan, Founder & CEO at foundingbird.com. I set up my own company in Malaysia as a foreign founder, and since then our team has helped incorporate more than 1,000 companies. Many have more than one founder, and as their company secretary we're there for what comes after: a founder moving on after a year, or a 50/50 company where nobody can sign anything.

You can settle most of that before you incorporate, in an afternoon, while everyone still gets along. The part people get wrong most often is vesting. US templates assume the company can buy back a leaver's shares, and a Malaysian Sdn Bhd generally can't. This guide covers how vesting works here, what it costs when shares move, and how to handle leavers, deadlock and IP.

Best,
Dylan Damsma

The short version

- **Agree it first:** equity, roles, money and what happens when someone leaves, written into a shareholders' agreement and a constitution that match.
- **Vesting is a contract:** Malaysian company law has no vesting concept. You get your shares on day one and agree to transfer the unvested part if you leave early.
- **No company buy-back:** only listed companies may buy back their own shares (section 127), so a leaver's shares go to the other founders or a nominee.
- **Moving shares costs a little:** stamp duty of 0.3% on the higher of the price and LHDN's value. Individuals pay no capital gains tax on Sdn Bhd shares.
- **Protect the business another way:** non-competes after someone leaves are mostly void in Malaysia. IP assignment, confidentiality and vesting do the work.

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01

SECTION 1

Why Co-Founder Companies Run Into Trouble

Co-founder disputes usually start with something nobody wrote down. The most common one is a co-founder who stops working on the company but keeps their shares. If someone leaves for a job in month nine, they still own a third of it unless you agreed otherwise.

Then there's the 50/50 split with no way to break a tie. If the two of you disagree on something big, neither of you can make the company act. IP is another one: the code, the domain or the trademark ends up registered to one founder personally rather than to the company. Money causes trouble too. When one founder puts in RM100,000 and nobody records whether it's a loan or payment for more shares, it's easy to end up disagreeing about which it was. And a foreign co-founder's pass can be affected when they leave. An Employment Pass is sponsored by the company, while an MTEP pass is one the founder applies for personally through MDEC, but they still have to show their shareholding in the company when they renew it.

A Sdn Bhd is a separate legal person, and the Companies Act 2016 gives it default rules. Those defaults work fine for one owner. They weren't written for three founders with different roles and commitments, so you change them by agreement.

ISSUE	THE DEFAULT IF YOU AGREE NOTHING	WHAT CO-FOUNDERS USUALLY AGREE
New shares	Offered first to existing shareholders in proportion to what they hold, subject to the constitution (section 85)	Keep this right, but carve out an ESOP pool and agreed investor rounds
Selling shares	A private company must restrict share transfers (section 42(2)). The board can refuse to register a transfer only where the Act or constitution allows it (section 106)	A right of first refusal, tag-along and drag-along rights, and leaver transfers
Removing a director	Ordinary resolution of shareholders, subject to the constitution (section 206)	Each larger founder can appoint a director, and leaving the business means leaving the board
A founder who leaves	Keeps every share, forever	Vesting, with unvested shares transferred back
Code and designs a founder created	Belongs to the founder unless it was made as an employee or commissioned (Copyright Act 1987, section 26)	A signed IP assignment to the company on day one

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SECTION 2

What to Agree Before You Incorporate

These conversations take a few hours, and it's much easier to have them before you file anything with SSM.

Who gets how much

An equal split can feel fair at the start and stop feeling fair a couple of years in, once it's clear who is doing what. It usually works better to base the split on what each person will bring over the next few years, such as their time, money, IP, contacts and role, rather than on who had the idea.

An example (hypothetical). Aisha (full-time CEO), Ben (full-time CTO) and Chandra (part-time adviser who puts in RM100,000) start a SaaS company. They agree 45% / 40% / 15%. Aisha and Ben vest over four years with a one-year cliff, because the company is paying for their future work. Chandra's RM100,000 buys extra shares at the same price per share as everyone else at incorporation, with her adviser shares vesting over two years.

Roles and time

Write down each founder's role, title and how much time they commit. "Full-time" should mean something specific, for example no other paid work without the others' consent.

Money: share capital or a loan

Money paid for shares is share capital. The company doesn't have to repay it. Money lent to the company is a director's or shareholder's loan, and it's repayable on the terms you set. Decide which it is, record it in a board resolution, and keep the bank records. Our Sdn Bhd guide covers how much share capital to start with.

Salaries

Agree when founders start drawing a salary, how much, and who decides on increases. If a founder is on the payroll, they're also an employee. That matters for IP (see part 13) and for tax on any shares they get later (see part 7).

Decisions

Agree which decisions the board takes, and which need every founder or a supermajority: raising money, issuing shares, selling the company, taking on large debt, hiring family members, changing the business. These become your "reserved matters".

Leaving, death and everything else

What happens if a founder leaves, falls ill, dies, gets divorced, or loses the right to live in Malaysia? A founder's shares pass to their estate on death (section 109 deals with registering them to the estate). Your agreement decides whether the other founders can buy those shares, and at what price.

The director who lives in Malaysia

Every Sdn Bhd needs at least one director who ordinarily resides in Malaysia. If your team is mixed, decide who that is. Our Sdn Bhd guide explains the options for foreign founders.

FREE CHECKLIST

Co-founder checklist (Malaysia)

What to agree, sign and file when you start a Sdn Bhd with co-founders, and what to do when one of you leaves. Tick it off as you go.

Before you incorporate

- [ ] Agree the equity split and write down why (time, money, IP, role)
- [ ] Agree each founder's role, title and weekly time commitment
- [ ] Decide whether money put in is share capital or a loan to the company
- [ ] Agree vesting: total period, cliff, and what counts as a good and a bad leaver
- [ ] Agree what happens on death, illness, divorce or a founder's pass ending
- [ ] Pick who will be the director who ordinarily lives in Malaysia

At incorporation

- [ ] Issue enough shares to leave room for an ESOP pool and investors (for example 1,000,000, not 100)
- [ ] Adopt a constitution that matches your shareholders' agreement
- [ ] Record each founder holding 20% or more as a beneficial owner
- [ ] Pay for your founder shares and keep the bank records

In your first 30 days

- [ ] Sign the shareholders' agreement and stamp it within 30 days
- [ ] Sign an IP assignment from every founder to the company, covering work done before incorporation
- [ ] Sign service or employment agreements for founders who work in the business
- [ ] Pass board resolutions for share capital and any founder loans
- [ ] Register trademarks and domains in the company's name, not a founder's

Vesting and leaver mechanics

- [ ] The leaver clause names who buys unvested shares (the other founders or a nominee), not the company
- [ ] The price for unvested and vested shares is set for good and bad leavers
- [ ] The constitution lets the board refuse transfers that break the agreement
- [ ] Share certificates and signed transfer documents are held by the company secretary, if your agreement uses them
- [ ] Pre-emption on transfers doesn't block the leaver transfer

When a founder leaves

- [ ] Confirm leaver type and the number of vested and unvested shares
- [ ] Sign the share transfer form and pay the agreed price
- [ ] Stamp the transfer form within 30 days (0.3% of the higher of price and value)
- [ ] Lodge the stamped transfer with the company and register it within 30 days
- [ ] Notify SSM of the change in members within 14 days
- [ ] Update the register of beneficial owners and notify SSM within 14 days
- [ ] Resign or remove the leaver as director (special notice and a meeting if removed)
- [ ] Update bank mandates, system access and any Employment Pass the company sponsors

Every year

- [ ] Check the cap table against the register of members
- [ ] Review the shareholders' agreement when you raise money or add a founder
- [ ] Keep board and shareholder minutes for every major decision

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SECTION 3

Setting Up the Company for More Than One Founder

Issue enough shares

Shares have no par value under the Companies Act 2016, so the issue price is up to you. Founders commonly issue shares at a low price at incorporation. The number of shares matters more. If you issue 100 shares, a 1% ESOP grant is a single share and you can't go any smaller, whereas 1,000,000 shares leaves room for small grants later.

FOUNDER	SHARES	HOLDING
Aisha	450,000	45%
Ben	400,000	40%
Chandra	150,000	15%
Total	**1,000,000**	**100%**

Adopt a constitution

A constitution is optional for a Sdn Bhd, but if you have co-founders we recommend adopting one. Section 33 makes a constitution "bind the company and the members to the same extent as if the constitution had been signed and sealed by each member". A shareholders' agreement only binds the people who sign it. A new shareholder who never signed it, or a founder's estate, is bound by the constitution.

So the provisions that need to work against anyone holding shares (transfer restrictions, pre-emption, the board's power to refuse a transfer, leaver transfers, director appointment rights) belong in the constitution as well as the agreement. Keep the two consistent. Our post on when to adopt a constitution has more.

One class of shares, usually

Most founding teams start with ordinary shares only. A company can issue preference shares unless its constitution says otherwise, and redeemable preference shares need express authority in the constitution (section 72). Changing the rights of a class later needs the consent of that class (section 91). Keep it simple until an investor asks for something else.

Beneficial owners

Every company keeps a register of beneficial owners (section 60B). Under SSM's beneficial ownership guideline, an individual who holds directly or indirectly at least 20% of the shares or voting shares is a beneficial owner, and so is someone who controls the company in other ways. In a three-founder company, that's usually all three. Don't use a nominee to hide a founder: the guideline counts shares held through nominees and agreements.

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SECTION 4

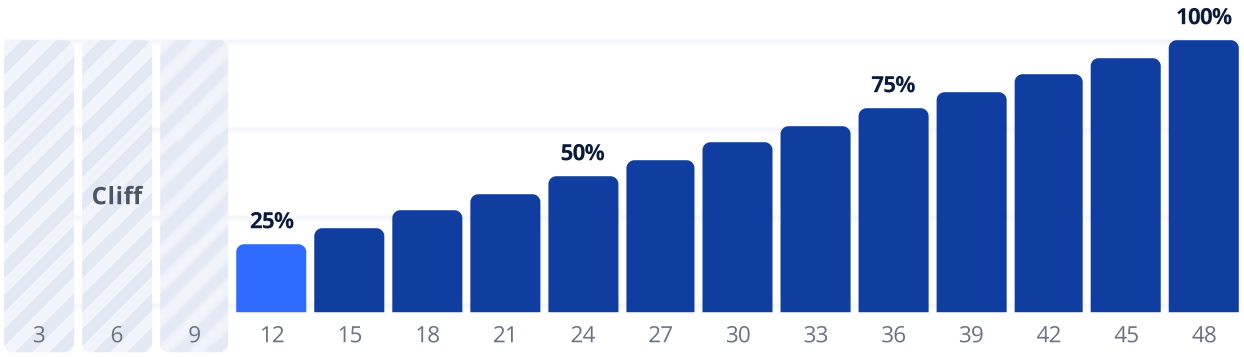
Vesting in Malaysia: How It Works

What vesting means

Vesting means a founder earns their shares over time. The usual terms are four years with a one-year cliff: nothing vests in the first 12 months, a quarter vests at month 12, and the rest vests monthly or quarterly until month 48.

4-year vesting with a 1-year cliff

Share of a founder's shares vested, by month



Months since the vesting start date. Before month 12, a leaver keeps nothing that is subject to vesting.

An example (hypothetical). Ben holds 400,000 shares on four-year monthly vesting with a one-year cliff.

BEN LEAVES AFTER	VESTED	UNVESTED (HE MUST TRANSFER THESE)
9 months	0	400,000
12 months	100,000	300,000
30 months	250,000	150,000
48 months	400,000	0

The cliff means someone who leaves in the first year walks away with none of their vesting shares, and the monthly vesting after it means a founder who stays three years ends up with more than one who stays one.

Common variations: a shorter schedule for founders who joined after the others, credit for work done before incorporation (for example vesting starting six months back), and vesting for advisers over one or two years.

Malaysian company law has no "vesting"

You won't find vesting in the Companies Act 2016. In a Malaysian Sdn Bhd, vesting is a contract between the founders, and it usually works like this:

1. **Every founder gets all their shares at incorporation** and pays for them.
2. **The shareholders' agreement says that if a founder leaves early, they must transfer their unvested shares**, to the other founders in proportion to their holdings or to a person the board names, at a price set in advance.
3. **The constitution backs it up**, so the transfer obligation and the board's power to refuse other transfers bind every shareholder (section 33).

This is often called "reverse vesting". You own the shares from day one, so you vote and receive dividends on all of them, and the unvested part is subject to a transfer obligation.

The other way is to issue shares in tranches as they vest. It sounds simpler, but each later issue happens when the company is worth more. Every issue has to go through the pre-emption process in section 85 unless the constitution says otherwise, and a founder who is also an employee may be taxed on getting shares cheaply (see part 7). Few founding teams in Malaysia do it this way.

Options for founders

Share options suit employees better than founders. Under LHDN's Public Ruling No. 11/2012, a benefit from an employee share scheme is employment income, taxed when the option is exercised. Founders who hold shares from the start don't need options, so keep options for your ESOP.

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SECTION 5

Why Your Sdn Bhd Can't Buy Back the Shares

Most vesting templates come from the US, where the company usually holds a right to "repurchase" a leaver's unvested shares at cost. Copying that clause into a Malaysian shareholders' agreement causes a problem.

Only listed companies may buy back their own shares

Section 127(1) of the Companies Act 2016 says "a company whose shares are quoted on a stock exchange may purchase its own shares if so authorized by its constitution". There is no equivalent for a private company.

Section 123(1) goes further. Unless the Act provides otherwise, a company "shall not give any financial assistance ... for the purpose of or in connection with a purchase or subscription made or to be made by any person of or for any shares in the company", or "in any way purchase, deal in or lend money on its own shares". An officer who breaks this commits an offence, with a fine of up to RM3 million, up to five years' imprisonment, or both (section 123(3)).

So the company can't perform a clause that says "the Company may repurchase the Leaver's Unvested Shares at cost", and directors who try to carry it out expose themselves to that offence.

Section 126 lets a private company give limited financial assistance: a special resolution, a directors' resolution and solvency statement, fair value to the company, and a cap of 10% of what it received for its shares plus its reserves, as shown in its latest audited accounts. It's for helping someone else acquire shares, not for the company buying its own. It doesn't solve the vesting problem, and the company funding a nominee to buy a leaver's shares has to fit within it.

The routes that do work

ROUTE	HOW IT WORKS	GOOD FOR	WATCH OUT FOR
Transfer to the other founders	The leaver must sell unvested shares to the remaining founders in proportion to their holdings, at the agreed price	Most founding teams. Simple and common	The buyers pay the price from their own pocket, plus stamp duty on LHDN's value (see part 7)

ROUTE	HOW IT WORKS	GOOD FOR	WATCH OUT FOR
Transfer to a nominee for the ESOP	The shares go to a person or company named by the board, to be granted to future hires	Keeping the shares available for new team members	Who the nominee is, and the beneficial owner register. If the company funds the purchase, section 126's limits apply
Transfer to a new founder or investor	The leaver sells directly to the person replacing them	When a replacement is ready	Timing rarely lines up
Redeemable preference shares	Part of a founder's stake is issued as preference shares the company can redeem	When the company itself must take shares back	Needs authority in the constitution. Shares must be fully paid. Redemption comes from profits, a fresh issue, or capital with a solvency statement by all directors lodged with SSM. SSM is notified within 14 days (section 72)
Capital reduction	Shareholders cancel the leaver's shares by special resolution	Tidying up when a transfer isn't possible	Section 117 steps: a solvency statement by all directors made within 14 days before the resolution, notice to LHDN and SSM within 7 days, the statement open to creditors for six weeks, and newspaper notices in Malay and English within 7 days

Most founders use the first two routes. Redemption and capital reduction work, but they take more steps and more paperwork.

There's one more exception, though you can't plan for it. In an oppression case, the court can order the company itself to buy a shareholder's shares and reduce its capital accordingly (section 346(2)(c) and (d)).

Making the transfer happen

A transfer obligation is only useful if you can carry it out when a founder walks away and stops replying. Agreements usually combine some of these:

- The leaver clause in the constitution as well as the agreement, so it binds any holder of the shares.
- A power of attorney in the agreement letting a director sign the transfer form for a leaver who won't.
- Share certificates held by the company secretary until shares vest.
- A carve-out from the right of first refusal, so the general transfer process doesn't clash with the leaver transfer.
- A set-off clause, so money the leaver owes the company can be deducted from the price.

If the board refuses or delays registering a transfer, it has to pass a resolution with full reasons within 30 days of receiving the transfer and tell both sides within 7 days (section 106). Either the transferor or the transferee can ask the court to order registration (section 107).

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SECTION 6

Leavers: Good, Bad, and the Price

Good and bad leavers

Most agreements treat a leaver differently depending on why they leave. A good leaver is usually someone who leaves because of death, serious illness or disability, is let go without cause, or leaves on terms the others agree to. A bad leaver is usually someone who resigns before the cliff or within a set period, is dismissed for cause such as fraud or a serious breach, breaches the shareholders' agreement, or starts a competing business.

The price

LEAVER	UNVESTED SHARES	VESTED SHARES
Good leaver	Transferred at the lower of cost and fair value, or at cost	Kept, or bought at fair value if the agreement gives the others that option
Bad leaver	Transferred at the lower of cost and fair value, or at a nominal price	Often kept. Some agreements also require these to be sold at the lower of cost and fair value

Agree how fair value is set, whether by an independent valuer, the price in the last funding round or a formula. If you leave it open, an argument about a leaver tends to become an argument about what the company is worth.

When a low price can be challenged

Section 75 of the Contracts Act 1950 limits what a party can recover when a contract names a sum, or "any other stipulation by way of penalty", for a breach: "reasonable compensation not exceeding the amount so named". In *Cubic Electronics Sdn Bhd (in liquidation) v Mars Telecommunication Sdn Bhd* [2019] 2 CLJ 723, the Federal Court said reasonable compensation is assessed by looking at the innocent party's legitimate interest and whether the clause is proportionate to it. The party enforcing the clause doesn't have to prove actual loss. The other side has to show the clause is unreasonable.

For a leaver clause, that means linking the price to a founder leaving rather than to a breach. A clause saying "unvested shares are transferred at cost when a founder stops working in the business" describes what the founder agreed to earn, while "if a founder breaches this agreement, they forfeit their shares" looks like a penalty for breach. Take extra care with vested shares, because forcing a bad leaver to sell shares they've

already earned at a nominal price is the part most open to challenge. It also helps to write the reason into the agreement: the equity is meant for the people who build the company over the next few years, and that is the legitimate interest the clause protects.

We know of no reported Malaysian decision on a founder leaver clause specifically, so this is where your lawyer's drafting matters most.

Acceleration on a sale

Your agreement should also say what happens to unvested shares if the company is sold before everyone has fully vested. With single-trigger acceleration, everything vests when the company is sold. With double trigger, shares vest on a sale only if the founder is also let go, or their role is substantially cut, within a set period afterwards. Investors usually prefer double trigger because a buyer wants the team to stay.

An example (hypothetical). A buyer acquires Aisha and Ben's company in month 30. Their agreement has double-trigger acceleration with a 12-month window. Ben is let go two months after completion, so his remaining 150,000 unvested shares vest in full. Aisha stays on and keeps vesting on her original schedule.

Re-vesting when you raise money

Investors sometimes ask founders to put their shares back on a new vesting schedule at a funding round. You can negotiate this, so ask for credit for the time you've already served, a shorter schedule, and acceleration on a sale.

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SECTION 7

Tax and Stamp Duty When Shares Move

Stamp duty on the transfer

Under section 105, shares are transferred "by a duly executed and stamped instrument of transfer". The form is the securities transfer form under section 105 of the Companies Act 2016. You'll still hear it called "Form 32A", which was its name under the old Companies Act 1965.

The duty is in item 32(b) of the First Schedule to the Stamp Act 1949: RM3 for every RM1,000 or part of RM1,000 (0.3%), on the price or the value of the shares on the date of transfer, whichever is greater.

LHDN values unlisted shares by the type of company, under its share transfer guideline of 6 November 2019, restated in its stamp duty guideline of 30 June 2026:

- **Profitable, loss-making and dormant companies:** the higher of net tangible assets (NTA) and the price.
- **Newly incorporated companies:** the price.
- **Sales that need Securities Commission approval:** the price the SC approved.

NTA is total assets, minus intangible assets, minus total liabilities. NTA per share is that figure divided by the number of shares issued. The person receiving the shares pays the duty, and the form has to be stamped within 30 days of signing, through LHDN's online stamping system. Self-assessment for share transfers is due from 1 January 2028. Until then, LHDN assesses the duty.

An example (hypothetical). Ben leaves in month 30, and his 150,000 unvested shares go to Aisha and Chandra at RM0.01 per share, RM1,500 in total. The company is profitable and past the newly incorporated stage. Its NTA is RM300,000 over 1,000,000 shares, so RM0.30 per share. LHDN values the 150,000 shares at RM45,000, not RM1,500. Stamp duty is 45 × RM3 = RM135, paid by Aisha and Chandra.

For an early-stage company the duty is usually small, but it's worked out on LHDN's value, which can be well above the price the founders agreed.

The shareholders' agreement itself

The agreement needs stamping as well. A shareholders' agreement that doesn't itself transfer shares is usually stamped at a fixed RM10 under item 4 of the First Schedule. Section 52 of the Stamp Act says an instrument that isn't duly stamped can't be admitted in evidence. You can stamp it late, with a penalty, but it's better to do it within 30 days of signing.

Capital gains tax

Malaysia taxes gains on the disposal of shares in unlisted Malaysian companies. It applies to disposals from 1 March 2024 by **companies, limited liability partnerships, trust bodies and co-operatives**. Individuals are excluded. The rate is 10% of the net gain, or 2% of the gross price for shares acquired before 1 January 2024, and the return (e-CKM) and tax are due within 60 days of the disposal.

If you hold your shares personally, a leaver transfer is not subject to capital gains tax. If you hold them through your own company, that company is within the tax when it disposes of them, and since 1 January 2026 a redemption of shares or a capital reduction also counts as a disposal, so the redemption and capital reduction routes in part 5 can trigger it too.

Income tax on shares you get through work

LHDN's Public Ruling No. 11/2012 treats a benefit from an employee share scheme as part of employment income (a perquisite under section 13(1)(a) of the Income Tax Act 1967). The benefit is broadly the market value of the shares minus what the employee paid, and it's taxed in the year the employee exercises the right. Public Ruling No. 12/2012 covers employees who work across borders.

Founders who subscribe for shares at incorporation, at the same price as everyone else, aren't getting shares because of a job. The issue comes up when someone joins later as an employee and gets cheap shares or options once the company is worth something. Price those grants properly and get tax advice before you make them.

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SECTION 8

The Paperwork When a Founder Leaves

STEP	WHO	DEADLINE	LAW
Confirm leaver type, vested and unvested shares, and price	Founders, board	As set in your agreement	Shareholders' agreement
Sign the share transfer form, pay the price	Leaver and buyers	As agreed	Section 105
Stamp the transfer form	Buyer pays	30 days from signing	Stamp Act 1949, item 32(b)
Lodge the stamped transfer with the company	Buyer	After stamping	Section 105(1)
Board approves and registers the transfer in the register of members	Board, company secretary	30 days from receiving the transfer	Section 106
Notify SSM of the change in members	Company secretary	14 days	Section 51
Update the register of beneficial owners and notify SSM	Company secretary	14 days from recording the change	Section 60B
Resignation or removal as director, notify SSM	Leaver, shareholders, company secretary	14 days from the change	Sections 206 and 58
Bank mandates, system access, cancelling any Employment Pass the company sponsors	Company	Straight away	Bank and immigration rules

Our post on what a company secretary does explains who keeps which register.

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SECTION 9

Your Shareholders' Agreement, Clause by Clause

The shareholders' agreement (some people call it a founders' agreement) is where everything in this guide gets written down. These are the clauses co-founders need, and the Malaysian point to watch in each.

CLAUSE	WHAT IT DOES	MALAYSIAN POINT TO WATCH
Vesting and leavers	Who has earned what, and what happens to unvested shares	No company buy-back (sections 123 and 127). Leaver pricing and section 75
Pre-emption on new shares	Protects founders from dilution	Section 85 applies "subject to the constitution", so set the carve-outs there
Right of first refusal	A founder who wants to sell offers to the others first	Section 42(2) requires a private company to restrict transfers anyway
Tag-along and drag-along	Minority can join a sale, and the majority can make everyone sell	Put them in the constitution too
Reserved matters	Decisions that need all founders or a supermajority	Some decisions need a special resolution (75%) by law, for example a capital reduction (sections 115 and 292)
Board seats	Each founder above a threshold appoints a director	Shareholders can remove a director by ordinary resolution unless the constitution says otherwise (section 206)
Deadlock	What happens when you can't agree	No default in the Act. See part 11 of this guide
IP and confidentiality	The company owns what the founders create	Copyright Act section 26, Patents Act section 20
Non-compete and non-solicit	Limits on competing and poaching	Non-competes after someone leaves are generally void (Contracts Act section 28). Narrow non-solicit clauses covering customers and staff have been upheld
Funding and loans	Who funds shortfalls, and whether it's equity or a loan	The company can't fund share purchases except within section 126

CLAUSE	WHAT IT DOES	MALAYSIAN POINT TO WATCH
Disputes	Mediation, then arbitration or court	Name the venue and the rules
Stamping	Makes the agreement usable in court	Stamp within 30 days (Stamp Act section 52)

Put it in writing

In *ISM Sendirian Berhad v Queensway Nominees (Asing) Sdn Bhd & Ors* [2026] 4 MLRA 381, decided by the Federal Court on 21 April 2026, shareholders had an oral understanding about how the company would be funded. One of them brought an oppression claim, and the Federal Court held that the oral shareholders' arrangement on funding was a private matter between the shareholders, not the affairs of the company, and that the company wasn't a quasi-partnership. Following its earlier decision in *Jet-Tech Materials Sdn Bhd v Yushiro Chemical Industry Co Ltd* [2013] 2 MLJ 297, the court said a breach of a shareholders' agreement can support an oppression claim only where the conduct relates to the company's affairs.

For co-founders, that means your agreement is enforced as a contract between you. If it's oral or vague, there may be very little to enforce.

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SECTION 10

Control: Directors, Votes and Removing a Co-Founder

Most co-founders are both directors and shareholders, so it's easy to forget these are different roles. The directors run the company, while the shareholders own it and decide who the directors are. Our post on the roles of directors and shareholders covers the basics.

What each vote needs

DECISION	VOTE NEEDED	LAW
Most shareholder decisions	Ordinary resolution: more than half the votes	Section 291
Change the constitution, reduce capital, wind up voluntarily	Special resolution: at least 75% of the votes, with at least 21 days' notice for a meeting	Section 292
Remove a director	Ordinary resolution at a meeting, with special notice	Sections 206, 297 and 322

Removing a co-founder as director

In a private company, a director "may be removed ... by ordinary resolution", subject to the constitution (section 206(1)(a)). Section 206(3) requires special notice of the resolution. Under section 322, that means notice of the intention to move it given to the company at least 28 days before the meeting. SSM's Practice Note 9/2024 adds that "the resolution to remove the director shall not take effect until the director's successor has been appointed" (referring to section 196(3)), and that the company must keep its minimum number of directors.

A removal can't be done by written resolution (section 297(2)(a)), so you need to hold a meeting. A director of a private company has the right to be heard against removal only if the constitution gives it (section 207(7)).

Removing someone as a director doesn't affect their shares, so a co-founder you take off the board keeps their stake along with its votes and dividends. That's why a leaver clause should link the two, so that leaving the business also means leaving the board and triggers the vesting provisions.

What majority control looks like

The founders of Supermax Corp Bhd, Stanley Thai and Cheryl Tan, held their stake through a private holding company, Supermax Holdings Sdn Bhd, split 57.5% and 42.5%. Ms Tan brought an oppression claim under section 346. A director had been appointed by the majority's written resolution, and she alleged, among other things, that the bank mandates were changed without her. On 6 March 2026, the High Court dismissed the claim, as reported by The Edge. In September 2026, The Edge reported a consent order under which the holding company's Supermax shares would be transferred to the two of them directly.

With more than 50% of the votes, a shareholder can appoint directors and run the company within the law. A minority founder's protection comes from what was agreed: board seats, reserved matters, information rights and an exit route.

11

SECTION 11

Deadlock

A 50/50 company has no majority on the board or among the shareholders, so when you disagree, nothing gets decided. A chairman's casting vote helps only if the constitution gives one, and giving it to one founder hands them control.

TOOL	HOW IT WORKS
Escalation	The issue goes to a meeting of the founders, then to an agreed adviser
Mediation	A mediator helps you reach agreement, for example through the AIAC
Independent director	A third director with a vote breaks ties
Buy-sell ("Russian roulette")	One founder names a price, and the other must either buy at that price or sell at it
Put and call options	One side can make the other buy, or sell, at a set formula
Sale of the company	If deadlock lasts a set time, the company is put up for sale

An example (hypothetical). Dev and Mei each own 50%. They've been deadlocked for three months on whether to accept a distributor's offer. Their agreement's buy-sell clause lets Dev name a price: RM2 per share for all of Mei's shares. Mei then chooses whether to sell her shares to Dev at RM2 or buy Dev's shares at RM2. Since Dev doesn't know which way she'll go, he has every reason to name a fair price.

Without a clause like that, deadlock ends up in court. In *Perak Integrated Networks Services Sdn Bhd v Urban Domain Sdn Bhd & Ors* [2018] 4 MLJ 1, the Federal Court allowed a shareholder of a 50/50 deadlocked company to bring a derivative action on its behalf, because the company couldn't sue the wrongdoers itself. Today that's done under section 347, with the court's permission. The court can also wind a company up where "it is just and equitable" (section 465(1)(h)), but that ends the business, so courts treat it as a last resort.

12

SECTION 12

When It Goes to Court

Oppression

Section 346 lets any member apply to court where the company's affairs are conducted, or the directors' powers used, "in a manner oppressive" to them or "in disregard of" their interests, or where an act or resolution "unfairly discriminates against or is otherwise prejudicial" to them. The court can make any order it thinks fit, including ordering other shareholders (or the company) to buy the applicant's shares, or winding the company up (section 346(2)).

Malaysian courts look for "a visible departure from the standards of fair dealing", a test the Federal Court applied in *Owen Sim Liang Khui v Piasau Jaya Sdn Bhd & Anor* [1996] 1 MLJ 113. Simply disagreeing with the majority isn't enough. Typical complaints between founders are being shut out of management, being diluted by a share issue that skipped the pre-emption process, or salaries and dividends set to squeeze one founder.

When the loss belongs to the company

In *Low Cheng Teik & Ors v Low Ean Nee* [2024] 6 MLRA 220, a 50% shareholder complained that the company's trademarks had been assigned to a related company. She succeeded in the Court of Appeal. On 28 August 2024, the Federal Court allowed the appeal and restored the High Court's dismissal of her claim: the harm was to the company and affected every shareholder alike, so the right claim was a derivative action on the company's behalf under section 347, not oppression.

Keep the company's IP in the company's name, and have any transfer approved properly. Before you choose a claim, work out whose loss it is.

Prevention is cheaper

Most of these cases ran for years. Many of them turned on things a signed agreement, proper board minutes, shared accounts or a deadlock clause would have settled early. Our accounting team can give every founder the same view of the numbers.

13

SECTION 13

Intellectual Property

Copyright: code, designs, content

Under section 26 of the Copyright Act 1987, copyright "shall vest initially in the author". It's deemed transferred to someone else only where the work was commissioned by a person who isn't the author's employer, or made "in the course of the author's employment", and even then "subject to any agreement between the parties excluding or limiting such transfer".

So code a founder wrote before the company existed, or while unpaid and not employed by it, generally belongs to that founder, who can take it with them when they leave.

Patents

Under section 20 of the Patents Act 1983, unless a contract says otherwise, the right to a patent for an invention made in performing an employment contract, or in carrying out commissioned work, belongs to the employer or the person who commissioned it. If the invention turns out to be worth much more than anyone could have foreseen, the inventor is entitled to equitable remuneration, and that right "shall not be restricted by contract".

What to do

- Every founder signs an IP assignment to the company, covering everything relevant to the business they've created, including before incorporation.
- Register trademarks and domains in the company's name, not a founder's.
- Founders who work in the business sign a service or employment agreement with IP and confidentiality terms.
- Contractors and agencies assign IP in their contracts.

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SECTION 14

Non-Competes in Malaysia

Section 28 of the Contracts Act 1950 says: "Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void." The only exceptions are for someone who sells the goodwill of a business, and for partners in a partnership.

Malaysian courts don't ask whether a restraint is reasonable in time or area. The question is whether it fits an exception. A clause stopping a co-founder from starting a competing business after they leave generally doesn't. Restrictions during the relationship, while the founder is still working in the business, are treated differently.

In June 2026, a committee reviewing Malaysia's contract law published a final report recommending that section 28 be replaced with a reasonableness test. It isn't law yet. If it's enacted, reasonable restraints in commercial agreements may become enforceable.

Until then, the protection comes from the rest of your agreement. Vesting means a founder who leaves early gives up their unvested shares, and bad-leaver pricing can apply to someone who leaves to compete (see part 6). Confidentiality obligations can last after the founder leaves, and an IP assignment keeps the code and brand with the company. You can also add a narrow non-solicit clause covering the company's customers and staff for a set period. Courts here have upheld clauses like that, while treating a ban on working in the same field as a void restraint.

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SECTION 15

Foreign Co-Founders and Holding Companies

Mixed teams

A Sdn Bhd can generally be 100% foreign-owned, outside sectors with their own rules. It still needs at least one director who ordinarily lives in Malaysia. A foreign co-founder who wants to live and work here needs a pass. An MTEP pass is one the founder applies for personally through MDEC, not one the company sponsors, but every applicant shows their shareholding in the company and has to prove it again at renewal. An Employment Pass is sponsored by the company. Either way, a founder who leaves the company or transfers their shares may affect their own right to stay, so cover it in the leaver provisions. Banks will ask about every beneficial owner when you open the account.

Moving to a foreign holding company

Some investors ask Malaysian startups to set up a holding company in Singapore or elsewhere, with the founders swapping their Sdn Bhd shares for holding company shares. This is often called a "flip". If you expect one, it's easier to do early, while the company's value and the stamp duty on transferring the shares are still low.

Check the tax before you sign. Individuals selling Sdn Bhd shares are outside capital gains tax, but a corporate shareholder isn't. The capital gains tax exemption for group restructuring, in force for disposals up to 31 December 2028, needs a buyer resident in Malaysia, so a swap into a foreign holding company generally won't qualify. Stamp duty relief has its own conditions too. Your vesting also moves to the holding company and follows that country's company law. Singapore, for example, has its own share buy-back rules for private companies. Take tax and legal advice in both countries before you start.

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SECTION 16

Get Started

You'll find the co-founder checklist in part 2. If you'd like us to look after your company:

- Incorporate your Sdn Bhd with your co-founders, with the constitution and share structure set up for more than one founder
- Appoint us as your company secretary for share transfers, resolutions, registers and SSM filings, including when a founder leaves
- Keep the books with our accounting team, so every founder sees the same numbers and you have NTA figures when shares move
- Run founder salaries through payroll

You look forward. We handle the rest. Have a question? Message us on WhatsApp and we'll get back to you.

Sources: the Companies Act 2016, SSM's Practice Note 9/2024 and beneficial ownership guideline, the Contracts Act 1950, the Stamp Act 1949, LHDN's share valuation and stamp duty guidelines, Public Rulings No. 11/2012 and 12/2012, LHDN's capital gains tax guidelines, the Copyright Act 1987, the Patents Act 1983 and the court decisions named above, as at 14 October 2026. The cases come from published judgments and press reports. The founders in the examples are made up. This guide is general information, not legal or tax advice. Have a lawyer draft or review your shareholders' agreement and constitution before you sign.

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