

DERIVATIVE ACTIONS – CHANGES BROUGHT BY COMPANIES ACT 2006 ON 1ST OCTOBER 2007

A new statutory framework for derivative actions came into force on 1st October 2007 under the Companies Act 2006. These provisions widen the scope of such actions and have the potential to increase claims against directors.

A derivative action is a claim against a director brought by a shareholder on behalf of the company. Such claims are brought when a wrong has been committed against the company which the company itself does not pursue.

Up until now, shareholders could only bring derivative actions in very limited circumstances. The new derivative action allows shareholders to bring claims for “any actual or proposed act or omission involving negligence, breach of duty or breach of trust” by a director, including breach of those duties codified for the first time in the Act. **Importantly, the director does not have to have benefited personally from the conduct of which the shareholder complains.**

As with the former regime, a shareholder will need the permission of the court to continue any derivative claim. If permission is granted, the shareholder will then be able to bring the proceedings against the director of the company.

Activist shareholders or special interest groups may use the procedure to object to a company being taken in a particular direction, to highlight a specific issue of concern to them or as a means of challenging what they regard as bad business decisions. Therefore, if the aim of the derivative action is publicity, the fact that any damages recovered will belong to the company, rather than the shareholder is unlikely to be much of a deterrent and the opportunity for the shareholder to participate in an oral hearing at the permission stage may even be an incentive to shareholders seeking to air a grievance.

Given the uncertainty in this area, it is important that detailed minutes are taken when exercising decisions and is one of the reasons that we recommend quarterly board meetings as a minimum to ensure this. If you would like us to attend and professionally minute your board meetings, please contact us.

We hope that this information proves to be useful. Should you require any further assistance, Company Law International can provide you with up to date legal advice and corporate compliance to ensure that your company is guided through the complex changes proposed under the Act.

Please note that this information is general guidance only and does not constitute legal advice. While every effort has been made to ensure the accuracy of its content, Company Law International Limited accepts no responsibility for the consequences of errors or omissions



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