



Remedies for Minority Shareholders

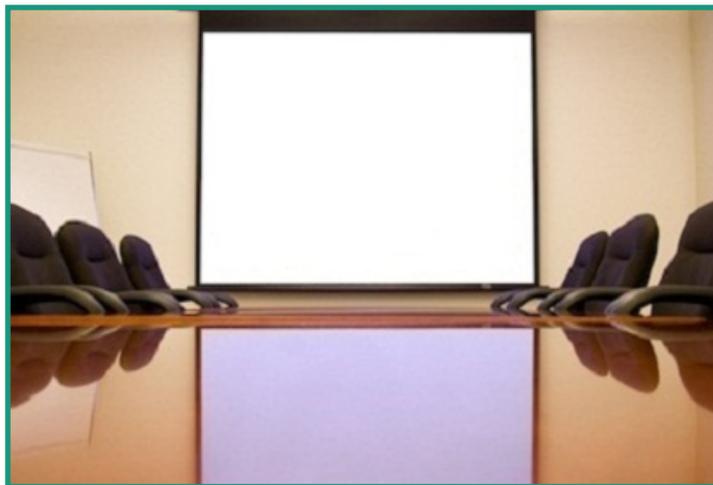
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Introduction

A company makes its decisions through natural persons that hold shares in the company. The majority shareholders have the final say in the decisions made by the company. However, the law provides minority shareholders with means of seeking recourse particularly where the action of majority shareholders are not made in the best interest of the company. The Companies Act 2015 provides for two ways by which a minority shareholder that feels aggrieved by the decisions of the majority may seek recourse. These are derivative action and action for unfair prejudice.

1. Derivative action

A derivative action is a claim began by a member of the company (the Applicant), seeking relief on behalf of the company. A derivative claim may be brought against a director, a former director or both or any other person in relation to a wrongful act, involving negligence, default, breach of duty or breach of trust by a director of the company.



Under Section 238 of the Act, in order to commence or continue a derivative claim an Applicant is required to apply to the Court for permission. The court may give permission to the Applicant and in so doing also give directions as to the evidence to be provided by the company and also issue other consequential orders. In determining whether to give permission for a derivative claim, the court considers the following:

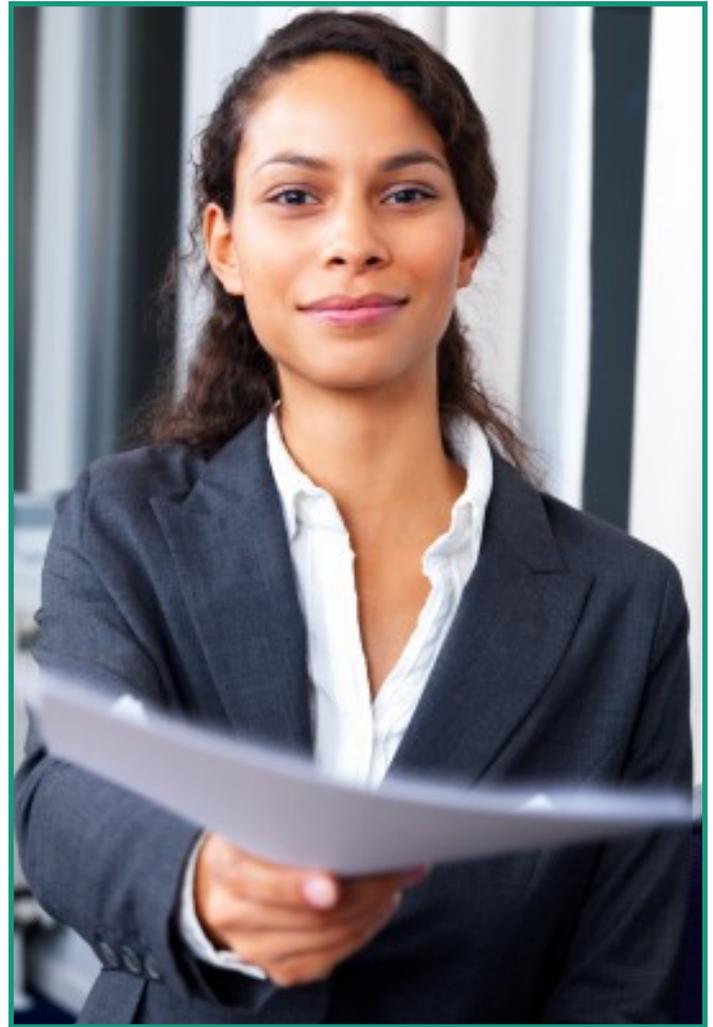
- I. Whether the Applicant is acting in good faith in seeking to continue the claim;
- II. The importance that a director exercising his duty to promote the success of the company would attach to continuing with the suit;
- III. Where the wrongful conduct is an act or omission that is yet to occur, whether it is likely to be authorized by the company before it occurs or ratified by the company after it occurs;
- IV. Whether the company has decided not to pursue the claim and
- V. Whether the claim is one that a member can pursue in his own right rather than on behalf of the company.

2. Action for unfair prejudice

A member of a company that feels that the company's affairs are being conducted in a manner that is oppressive or is unfairly prejudicial to the interests of part of its members can seek recourse before a court.

In making an order following the filing of such a suit, the Court may:

- I. Regulate the conduct of the affairs of the company in the future;
- II. Require the company to refrain from doing or continuing the act complained of
- III. Compel the company to do an act that the applicant has complained it has omitted to do;
- IV. Authorize civil proceedings to be brought in the name and on behalf of the company
- V. Require the company not to make any, or any specified, alterations in its articles without the leave of the Court; Provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.



Conclusion

The difference between the two types of action above is that while derivative actions involve a two-step procedure where the applicant has to first obtain leave of the court to continue with the claim, an action for unfair prejudice requires no such permission or leave. In addition for derivative actions the company bears the cost of the suit as the suit is taken to have been commenced by the company itself.