

Talking Companies

Actions by Shareholders in terms of the Companies Act 2008 (“the Act”)

A shareholder may restrain the company from doing anything inconsistent with the Act.

The company’s Memorandum of Incorporation (“Mol”) may also limit, restrict or qualify the purposes, powers or activities of the company. A shareholder can bring an action to ensure that the directors act within the terms of the Mol. If the directors have already acted in a manner which is inconsistent with the Mol, the shareholders may by special resolution, ratify such inconsistent action, except if that action is also a contravention of the Act.

Each shareholder of a company has a claim for damages against any person who fraudulently or due to gross negligence causes the company to do anything inconsistent with the Act or its Mol, except where the action giving rise to the claim has been ratified by a special resolution.

A shareholder may serve a demand on the company to commence or continue legal proceedings, or take related steps, to protect the legal interests of the company. The company which receives the demand must:

- Apply to court to have the demand set aside on the grounds that it is frivolous, vexatious or without merit; or
- Appoint an independent and impartial person or committee to investigate the demand and report to the board on matters such as:
 - The facts and circumstances that may give rise to the action contemplated in the demand;
 - The probable costs of pursuing the matter;
 - Whether it is in the interest of the company to pursue the matter.
- Within 60 days after being served with the demand, or such further period as the court on application by the company may allow, either:
 - Initiate or continue the legal proceedings or take related steps to protect the legal interests of the company as contemplated in the demand; or
 - Serve a notice on the shareholder who made the demand, refusing to comply with it.



The shareholder who made the demand may apply to court for leave to bring or continue proceedings in the name of the company, and the court may grant such leave but only if:

- The company:
 - Did not appoint a committee to investigate the matter or has failed to initiate or continue the proceedings;
 - Appointed an investigator or committee that was not independent or impartial;
 - Accepted an inadequate report;
 - Acted in a manner inconsistent with the report;
 - Has served a notice refusing to comply with the demand.
- The court is satisfied that:
 - The shareholder is acting in good faith;
 - The proposed or continuing proceedings involve the trial of a serious question of material consequence to the company;
 - It is in the interest of the company to commence or continue the proceedings.

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