

Minority Shareholders' Rights in Cyprus



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It is common practice for Cypriot courts to refrain from interfering with the internal management of private companies, which is usually handled by the Board of Directors and/or the Shareholders in General Meetings unless required by applicable law and/or public policy reasons. However, there are instances where court interference is required to restore the good order of the company's affairs and eliminate the oppression of shareholders from the majority of the shareholders, who are essentially in control.

The Companies Law however does not include any express provisions that allow shareholders to go against other shareholders, when a wrong is allegedly done by the company in questions. It is a general principle of Company Law that in any action of this nature, the proper claimant is the company itself. This principle is commonly known as the rule in *Foss v Harbottle*.

Protection at common law

Rule in Foss v Harbottle

In *Foss v Harbottle* (1842), the Court rejected the two shareholders' claim and held that a breach of duty by the directors of the company was a wrong, done to the company for which it alone could sue. In other words, the proper claimant in that case was the company itself and not the two individual shareholders.

The reasoning of the Court's decision lies in two general legal principles of Company Law, namely, that a company is a legal entity separate from its shareholders and as already mentioned the Courts will not interfere with the internal management of companies acting within their powers. Where an ordinary majority of members can ratify an act, the Court will normally not interfere. Therefore, if the majority can ratify an act, the minority cannot sue.

Nevertheless, in case of violation of the minority shareholders' rights, the following exceptions to the aforementioned rule may be applied:

- **Ultra vires and illegal acts:** This doctrine states that if a corporation enters into a contract that is beyond the scope of its corporate powers, then the contract is illegal.



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- **Acts requiring a special majority (i.e. 75%):** for instance, when a corporate action has been approved by an ordinary resolution (i.e. simple shareholder's majority), when a higher majority needs to approve the said corporate action according to the Memorandum & Articles of Association of the Company.
- **Acts violating the individual rights of a shareholder:** In this case, the denial of a personal right is a wrong, done to the shareholder in his capacity as such and not to the company.
- **Acts of fraud committed against the minority shareholders:** a minority shareholder, in the absence of any other remedy, can sue when the board uses its powers willingly or not, in a fraudulent manner which benefits the board to the detriment of the company

Options available to the minority shareholders:

- A personal action against the company can be filed due to a breach of duty by the company.
- A derivative action can be filed, provided that there has been a fraud perpetrated against the company, which is controlled by the wrongdoers. In this case the minority shareholders file a claim on behalf of the company. The damages recovered will be given to the company.

Protection under statute

Section 202 of the Companies Law, Cap. 113, provides protection to a shareholder against whom the company's affairs are conducted in an oppressive manner. The said statutory section is nearly identical to s. 210 of the long repealed English Companies Act 1948. As such, Cypriot courts rely heavily on English case law in cases of minority oppression.

The conditions that must be satisfied to successfully invoke s. 202 of Cap. 113 are summarised as follows:

- the company's affairs are carried out to the oppression of the minority shareholders
- a court would be justified to issue an order to wind-up the company on the basis that it would be just and equitable to do so; and
- the winding-up of the company would be unfair to the minority shareholders.

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