

## Legal Alert ? December 2010 ? **Minority Shareholders' Rights**

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Introduction

The global economic crises have again highlighted the dereliction in the responsibilities of the shareholders of companies, who as owners and not spectators of their companies, should properly oversee the governance and management of their companies. And to in proper instances, assert their legal rights to protect their shares/investments in these companies.

The position of the minority shareholders is usually more precarious as a result of the narrow understanding of the general legal rule that allows only a company, through its majority shareholders, to assert the legal rights of such a company. This rule, commonly known as the rule in *Foss v. Harbottle*, is intended to avoid multiplicity of law suits and also to protect our courts of law from interfering in the internal affairs of a company. However, and sometime, the injury to the company is caused by the majority shareholders or their appointed Directors to which situation the law has created exceptions to this general rule.

Minority Shareholders Rights

Section 81 of the Companies & Allied Matters Act ascribes to every member of an incorporated company, who has fully paid for his or her shares, a right to attend all the shareholders' meetings of such a company; and to speak and vote at such shareholders meetings. The mode of proving membership of a company is by the possession of a share certificate and the tendering of a certified true copy of the register of members should such a matter go to litigation. See the decision in *Oriji v. Dorji Textile Mills Limited* (2009) 12 SC (Part III) 101 @ 108, 112-113. All the members of a company also have the right to receive copies of the Memorandum and Articles of Association of the company as they do further have the right to receive and comment on the audited accounts of the company.

The minority shareholders of a company also have the right to bring derivative actions, in the name of the company, where the wrongdoers are the controlling directors of the company, who have being entrusted with the control and management of the company, and who have done any of the following:-

- a) Entered into any transaction which is illegal or ultra vires the Memorandum and Articles of

Association of the company;

- b) Committed a fraud on either the company or on the minority shareholders despite repeated notice to refrain or remedy such complained of actions;
- c) Derived or is/are deriving a profit or benefit or profited from their negligence and or breach of duty of care;
- d) Have by their actions or inactions or omissions infringed upon the individual rights of the minority shareholders;
- e) Are conducting the affairs of the company in an unfair, prejudicial and oppressive manner.

Judicial decisions on this matter, for your study, include the decisions in William v. William (1995-1996) ALL NLR 283 @ 294-302; Yalaju-Amaju v. A.R.E.C (1990) 6 SC 157 @ 175-176.

### Conclusion

The plethora of judicial authorities with the provisions of the Companies & Allied Matters Act are available to all shareholders, including the minority shareholders, to protect their investment rights. Shareholders should therefore avail themselves of these provisions to avoid more catastrophic losses in the future.

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