

"Everybody is a genius, but if you judge a fish by its ability to climb a tree, it will live its whole life believing that it is stupid." –

December 2016

Albert Einstein

WHEN YOU CALL YOUR BIG BROTHER TO FINISH THE FIGHT

Minority shareholders had limited protection under the Companies Act, 61 of 1973 ("the 1973 Act"). Only a member, being a minority shareholder, could approach a court in cases of oppressive or unfair prejudicial conduct. When approaching a court for relief under the 1973 Act, the minority shareholder had to show that the decisions taken by the board or majority shareholders were unfairly prejudicial, unjust or inequitable towards the minority shareholder.

The 2008 Companies Act provides that a shareholder "or a director" of a company may apply to a court for relief in the event of oppressive or unfairly prejudicial conduct that disregards the interest of minority shareholder.

By allowing a director to apply to court for relief, it strengthened the position of minority shareholders, provided the director have been appointed by the minority shareholder/s. Minority shareholders will then have representation on the board and no longer have to punch above their weight.

The 2008 Companies Act further prescribes that a court can grant either an interim or final order, whichever it deems fit. This allows the minority shareholder some leeway and minority shareholders have improved protection, provided it is allowed the right to appoint or nominate at least one director to the board. The director can then approach the courts for relief on behalf of the minority shareholder/s. This right should, without exception, be negotiated by and for the benefit of the minority shareholder before concluding a new Memorandum of Incorporation.

Law & Laughter

Joke: "Honey, our lawyer wishes us, but in no way guarantees, a Merry Christmas"

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