DOWNLOAD PDF SHAREHOLDERS RIGHTS AND REMEDIES

Chapter 1 : Shareholdersâ€™ rights and remedies in the BVI

Rediscovering Shareholders Rights in Texas. The demise of the Shareholder Oppression Doctrine in the Texas Supreme Court's Ritchie v. Rupe decision lead many to fear that minority shareholders were no longer protected by the law.

I anticipate further avenues for shareholders, in particular minority shareholders, to ensure that their rights are protected. In particular, some of these changes will likely lead to more shareholder litigation. This will test the exact limits of the new laws. Written resolution procedure for private companies For private companies, there are no more AGMs. With no mandatory requirement to hold such shareholder meetings, a lot of the shareholder decisions can now be carried out through the new written resolution procedure. Such a written resolution of the shareholders can be initiated either by the board of directors or any shareholder. So for instance, certain minority shareholders may want to appoint an additional director to the board by way of a written resolution. This new procedure will have a lot of new procedural requirements that may need to be interpreted by the courts. In particular, the directors may refuse to circulate this written resolution based on four specific grounds, such as it would not be in the best interest of the company. These are new provisions and the courts would have to decide on the scope of these new provisions and restrictions. Easier amendment to the constitution? There is a new provision that allows a director or shareholder to apply to the court for such an amendment. The court has to be satisfied that it would not be practicable to amend the constitution using the procedures under the new Act or under the constitution itself. Such a power to amend the constitution has to be carefully considered. An amendment to the constitution could amount to a fundamental change and against the original bargain between the shareholders. The constitution can also allow for a lower threshold to be set. So there will be disclosure of the quantum of the fees and benefits of the directors. The traditional rule was that directors had the exclusive powers to manage the business of the company. Shareholders could not control the management of that business. These new powers may now blur that distinction. This is subject to it being in the best interest of the company. The demise of the common law derivative action At common law, the derivative action allowed a minority shareholder to bring an action on behalf of the company. This would have been where the wrongdoers were in control of the company. The old law preserved the right of a shareholder to either bring a common law derivative action or a statutory derivative action. It allowed wider options. The new law has now removed the common law derivative action. Presumably, this is to allow a more streamlined approach. But the removal of the common law derivative action can be detrimental to shareholders in two aspects. First, the statutory derivative action requires time to obtain a court order and may not allow for urgent interim relief. Secondly, there are now question marks whether it is possible to bring a multiple derivative action. This exists only under common law since our statutory derivative action does not have wide enough wording. A multiple derivative action is where the shareholder of the holding company brings an action on behalf of a subsidiary further down the corporate structure. Statutory injunction The provision for the statutory injunction existed under the Companies Act but was never widely utilised. I foresee that this right to obtain a statutory injunction will be further relied on in the future. If there are any sort of acts that contravene the new Act or is an attempt to contravene the Act, a shareholder who is affected can apply to the court for an injunction under this provision. With the wide provisions of the new Act and with new duties and obligations, a shareholder may want to rely on the wide grounds of the statutory injunction. There is a similar provision in Singapore and in Australia, so cases from those jurisdictions would be persuasive here.

Chapter 2 : Shareholder remedies: overview | Practical Law

Corporate shareholders have a variety of rights that may be exercised in order to seek recompense for injuries caused by the corporation, by the board of directors, controlling shareholders, or others.

He was outraged and upset. I assured him that the majority shareholders of a closely held corporation do indeed have a fiduciary duty to protect the interests of minority shareholders, as held in Weisbecker v. Hosiery Patents, Pa. But, he wondered, what does that mean exactly? And what can you do about it anyway? There are countless ways such oppression can occur, but here are a few of the more common: Failure to pay dividends. Payment of excessive compensation to majority shareholders. Refusing to provide access to information, or a voice in decision-making. Denying compensation to the minority, or terminating employment. Appropriating corporate assets or opportunities to benefit the majority alone. Contrary to most corporate decision-making, majority shareholders will arguably not be entitled to the deferential protection of the business-judgment rule to the extent their decisions focus on the internal rights of shareholders relative to each other, as in Viener. Typical remedies include providing information to the minority, such as by accountings or access to corporate records, or compensating the minority for the loss of reasonably anticipated benefits, most commonly in the form of damages for lost dividends or salary, or via a forced buyout of minority shares. Punitive damages may also be awarded against majority shareholders for egregious breaches of their fiduciary duties. And a minority shareholder who was forced to leave the company may be relieved of any noncompete obligations. As a result, engaging a credible expert witness to testify regarding valuation is often critically important. But the lawyers should not sit on the sidelines during the valuation process. They can, instead, play a key role at the valuation stageâ€”because valuation involves policy questions. There is generally little dispute about the first step in the valuation process: The business should be valued as a whole, as a going concern. But disputes often arise over two other questions that any appraiser must confrontâ€”whether a minority discount should be applied, and the proper valuation date. The courts do not appear to have definitively resolved the question of minority discounts. Under Delaware law, which often guides Pennsylvania courts, such discounts are not favored, as in Cavalier Oil v. Blake Agency, N. Court of Appeals for the Eighth Circuit, by contrast, has expressly rejected both types of discounts as being contrary to the statutory purpose of protecting minority shareholders, as in Swope v. But the rationale may not apply so neatly in an oppression scenario, where the majority may have selected the squeeze-out date precisely to minimize the value of the minority interest. Under those circumstances, courts have recognized the need to consider different dates and other factors that may affect valuation, as in Viener, which set valuation at an earlier date on account of post-squeeze-out diminution in value; Mitchell Partners v. Shareholder disputes will arise for as long as people form businesses together. After exploring those with my client, we were able to achieve a successful resolution in early mediation by presenting a clear narrative, key documents and a detailed valuation report from a qualified appraiser that was supported by solid legal arguments.

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Chapter 3 : Company Shareholders' Rights And Remedies According To Companies Act

Shareholders' Rights and Remedies in Hong Kong is the first practitioner text published in Hong Kong on the law of minority shareholders' remedies and derivative actions.

By Patricia Virc Private companies often operate without a lot of concern for corporate governance and shareholder rights. Formalities such as annual meetings, financial statements and proper corporate approvals can be neglected because, firstly, managers may see these legal requirements as things that divert their time away from operating the business; secondly, shareholders and managers may have very little knowledge of their respective rights and obligations; and thirdly, these formalities have a cost. Shareholders may be content with a very casual corporate governance situation while the business is operating well. Shareholders have three basic rights: Corporate statutes in Canada require the directors to call an annual meeting not later than 18 months after the company comes into existence and subsequently not later than 15 months after holding the last preceding annual meeting. Shareholders are entitled to receive notice of the time and place of a meeting and, in the case of a private company, the notice period is 10 days. Shareholders are entitled to receive financial statements at least 10 days before each annual meeting of shareholders. The financial statements must be audited, unless the audit requirement is waived, in writing, by all shareholders. Global Chinese Press that it is no answer to say that audit would be too expensive. Although that case involved a company incorporated under the Canada Business Corporations Act, this principle would be applicable to companies incorporated under the Ontario Business Corporations Act which has the same language. The financial statements must be approved by the board of directors and the approval must be evidenced by a signature of a director at the foot of the balance sheet. The financial statements must be placed before the annual meeting. These records must be available for examination by both directors and shareholders. The company must keep adequate accounting records and minutes of meetings and resolutions of the directors. These records must be available for examination by directors. If these formalities are not being observed, a shareholder can apply to the court for an order directing the company or any person to comply. The court may order a meeting to be called and conducted in such manner as the court directs, including the delivery of financial statements. In addition, a shareholder who is aggrieved by the manner in which management has conducted the business and affairs of the company can apply to the court for a broad range of other remedies. People tend to involve equity investors in their businesses without adequate consideration of the rights that shareholders have. When an entrepreneur funds a business with family money, asks another person to invest in her venture or when she compensates someone who works in the business with shares, she must consider that she has acquired an investor whose rights must be respected, even if the relationship goes sour or the employment relationship is terminated.

Chapter 4 : Shareholders' Rights and Remedies (LAWS) â€" The University of Melbourne Handbook

Shareholders have three basic rights: voting rights, rights respecting meetings and rights to access information. Corporate statutes in Canada require the directors to call an annual meeting not later than 18 months after the company comes into existence and subsequently not later than 15 months after holding the last preceding annual meeting.

Chapter 5 : Shareholder rights and remedies in a private corporation

The general rights of minority shareholders will be explored both in terms of their common law and statutory rights. The main focus of the course will be unfair prejudice petitions and the right to bring a derivative action on behalf of the company, including recent cases covering these areas.

Chapter 6 : Remedies for Minority Shareholders After Ritchie v. Rupe

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Shareholders' rights and remediesâ€”and how they interact with the rights and obligations of directors, officers and the company itselfâ€”are a critical part of the law and corporate governance of Australian companies.

Chapter 7 : Rights to Information | Jerry Burleson

7 Changes to Shareholders' Rights and Remedies under the Companies Act March 13, May 14, Lee Shih One of the aims of the Companies Act is to strengthen shareholders' rights.

Chapter 8 : Minority Shareholder Oppression: Rights and Remedies â€“ Clayton Commercial Litigation LLC

Courts have the power and discretion in a shareholder dispute to award equitable remedies where warranted to redress oppressive conduct. North Dakota courts therefore, may order monetary damages, dissolution, shareholder buyout, order an accounting, award attorney's fees, grant injunctive relief, or fashion any other custom remedy warranted.

Chapter 9 : Shareholdersâ€™ Rights and Remedies in Litigating Corporate Disputes

However, the rights and remedies enjoyed by members and shareholders are different, because the latter are not considered members of a company. Likewise, shareholders are also not subject to the liabilities that members have.