

# ***STOCKHOLDER'S DERIVATIVE SUIT AND MANAGEMENT RESPONSIBILITIES IN UKRAINE***

## ***DERIVATIVE SUIT***

### **What is derivative suit?**

**A shareholder derivative suit is a lawsuit brought by a shareholder on behalf of a corporation against a third party. Often, the third party is an insider of the corporation, such as an executive officer or director.**

**Derivative suits permit a shareholder to bring an action in the name of the corporation against parties allegedly causing harm to the corporation.**

## ***BUSINESS JUDGMENT RULE***

### **What is Business Judgment Rule?**

**Business Judgment Rule is the presumption that in making business decisions not involving direct self-interest or self-dealing, corporate directors act on an informed basis, in good faith, and in the honest belief that their actions are in the corporation's best interest.**

**Given that the directors cannot ensure corporate success, the business judgment rule specifies that the court will not review the business decisions of directors who performed their duties**

- 1. in good faith;**
- 2. with the care that an ordinarily prudent person in a like position would exercise under similar circumstances;**
- 3. in a manner the directors reasonably believe to be in the best interests of the corporation.**

## ***SPECIFICS OF UKRAINIAN DERIVATIVE SUIT***

- ✓ Only shareholders (members), who individually hold more than 10% of the share capital of the joint-stock company (business associations) are allowed to sue.
- ✓ Only officials of the company can be sued.
- ✓ Only action on recovering damages is allowed.
- ✓ Special procedure of publication on process matters.
- ✓ The list of wrongdoings that may be a ground for derivative suit is not exhaustive and includes situations when an officer:
  1. acts beyond his powers or abuses of office;
  2. acts in violation of the procedure of prior approval or other decision-making procedures established by charter documents of the company;
  3. provides inadequate information, which was required for the prior approval;
  4. does not act in cases, when such officer was obliged to act in a particular way;
  5. does other guilty acts (actus reus) !!!

## ***PITFALLS OF DERIVATIVE LITIGATION***

**Not exhaustive list of wrongdoings.** This circumstance can provoke malicious prosecution on unreasonable grounds.

**Uncertain provisions on representatives in the process.** It may cause abuse of process.

**Appropriate provisional remedies should be explicitly prescribed.** Inadequate provisional remedies can be used by corporate blackmailers to achieve their goals by blocking proper commercial activity of the company.

**Special limitation period is not provided.** So shareholders are allowed to file derivative suit within 3 years after they have found out or should find out that violation took place.

***THANK YOU FOR YOUR ATTENTION!***

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