

SCHEDULE 1

Rule 7

**“Derivative claims— how started**

**19.9.**—(1) This rule—

- (a) applies to a derivative claim (where a company, other body corporate or trade union is alleged to be entitled to claim a remedy, and a claim is made by a member of it for it to be given that remedy), whether under Chapter 1 of Part 11 of the Companies Act 2006<sup>(1)</sup> or otherwise; but
  - (b) does not apply to a claim made pursuant to an order under section 944 of that Act.
- (2) A derivative claim must be started by a claim form.
- (3) The company, body corporate or trade union for the benefit of which a remedy is sought must be made a defendant to the claim.
- (4) After the issue of the claim form, the claimant must not take any further step in the proceedings without the permission of the court, other than—
- (a) a step permitted or required by rule 19.9A or 19.9C; or
  - (b) making an urgent application for interim relief.

**Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006 – application for permission**

**19.9A.**—(1) In this rule—

“the Act” means the Companies Act 2006;

“derivative claim” means a derivative claim under Chapter 1 of Part 11 of the Act;

“permission application” means an application referred to in section 261(2), 262(2) or 264(2) of the Act;

“the company” means the company for the benefit of which the derivative claim is brought.

**19.9A.**—(2) When the claim form for a derivative claim is issued, the claimant must file—

- (a) an application notice under Part 23 for permission to continue the claim; and
  - (b) the written evidence on which the claimant relies in support of the permission application.
- (3) The claimant must not make the company a respondent to the permission application.
- (4) Subject to paragraph (7), the claimant must notify the company of the claim and permission application by sending to the company as soon as reasonably practicable after the claim form is issued—
- (a) a notice in the form set out in the practice direction supplementing this rule, and to which is attached a copy of the provisions of the Act required by that form;
  - (b) copies of the claim form and the particulars of claim;
  - (c) the application notice; and
  - (d) a copy of the evidence filed by the claimant in support of the permission application.
- (5) The claimant may send the notice and documents required by paragraph (4) to the company by any method permitted by Part 6 as if the notice and documents were being served on the company.

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(1) 2006 c. 46.

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(6) The claimant must file a witness statement confirming that the claimant has notified the company in accordance with paragraph (4).

(7) Where notifying the company of the permission application would be likely to frustrate some party of the remedy sought, the court may, on application by the claimant, order that the company need not be notified for such period after the issue of the claim form as the court directs.

(8) An application under paragraph (7) may be made without notice.

(9) Where the court dismisses the claimant's permission application without a hearing, the court will notify the claimant and (unless the court orders otherwise) the company of that decision.

(10) The claimant may ask for an oral hearing to reconsider the decision to dismiss the permission application, but the claimant—

- (a) must make the request to the court in writing within seven days of being notified of the decision; and
- (b) must notify the company in writing, as soon as reasonably practicable, of that request unless the court orders otherwise.

(11) Where the court dismisses the permission application at a hearing pursuant to paragraph (10), it will notify the claimant and the company of its decision.

(12) Where the court does not dismiss the application under section 261(2) of the Act, the court will—

- (a) order that the company and any other appropriate party must be made respondents to the permission application; and
- (b) give directions for the service on the company and any other appropriate party of the application notice and the claim form.

#### **Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006 – members of companies taking over claims by companies or other members**

**19.9B.**—(1) This rule applies to proceedings under section 262(1) or 264(1) of the Companies Act 2006.

(2) The application for permission must be made by an application notice in accordance with Part 23.

(3) Rule 19.9A (except for paragraphs (1), (2) and (4)(b) of that rule, and paragraph (12)(b) so far as it applies to the claim form) applies to an application under this rule and references to the claimant in rule 19.9A are to be read as references to the person who seeks to take over the claim.

#### **Derivative claims – other bodies corporate and trade unions**

**19.9C.**—(1) This rule sets out the procedure where—

- (a) either—
  - (i) a body corporate to which Chapter 1 of Part 11 of the Companies Act 2006 does not apply; or
  - (ii) a trade union,is alleged to be entitled to a remedy; and
- (b) either—
  - (i) a claim is made by a member for it to be given that remedy; or

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(ii) a member of the body corporate or trade union seeks to take over a claim already started, by the body corporate or trade union or one or more of its members, for it to be given that remedy.

(2) The member who starts, or seeks to take over, the claim must apply to the court for permission to continue the claim.

(3) The application for permission must be made by an application notice in accordance with Part 23.

(4) The procedure for applications in relation to companies under section 261, 262 or 264 (as the case requires) of the Companies Act 2006 applies to the permission application as if the body corporate or trade union were a company.

(5) Rule 19.9A (except for paragraphs (1), (2) and (4)(b) of that rule, and paragraph (12)(b) so far as it applies to the claim form) also applies to the permission application as if the body corporate or trade union were a company.

#### **Derivative claims arising in the course of other proceedings**

**19.9D.** If a derivative claim (except such a claim in pursuance of an order under section 994 of the Companies Act 2006) arises in the course of other proceedings—

- (a) in the case of a derivative claim under Chapter 1 of Part 11 of that Act, rule 19.9A or 19.9B applies, as the case requires; and
- (b) in any other case, rule 19.9C applies.

#### **Derivative claims – costs**

**19.9E.** The court may order the company, body corporate or trade union for the benefit of which a derivative claim is brought to indemnify the claimant against liability for costs incurred in the permission application or in the derivative claim or both.

#### **Derivative claims – discontinuance and settlement**

**19.9F.** Where the court has given permission to continue a derivative claim, the court may order that the claim may not be discontinued or settled without the permission of the court.”