



STATUTORY INSTRUMENTS.

S.I. No. 503 of 2010

RULES OF THE SUPERIOR COURTS (DERIVATIVE ACTIONS) 2010

(Prn. A10/1534)

RULES OF THE SUPERIOR COURTS (DERIVATIVE ACTIONS) 2010

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, and the Courts of Justice Act 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act, 1961 section 48), and the Courts (Supplemental Provisions) Act 1961, section 14, and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 17th day of June 2010.

John L. Murray

Nicholas Kearns

Donal O'Donnell

Elizabeth Dunne

Paul McGarry

Patrick O'Connor

Mary Cummins

Geraldine Manners

Noel Rubotham

I concur in the making of the following Rules of Court.

Dated this 19th day of October, 2010.

DERMOT AHERN,
Minister for Justice and Law Reform.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 29th October, 2010.*

S.I. No. 503 of 2010

RULES OF THE SUPERIOR COURTS (DERIVATIVE ACTIONS) 2010

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Derivative Actions) 2010, shall come into operation on the 16th day of November 2010.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2010.

2. The Rules of the Superior Courts are amended by the insertion immediately following rule 38 of Order 15 of the following title and rule:

“IV. Derivative Actions

39. (1) In this rule—

“company” has the same meaning as in section 2 of the Companies Act 1963;

“derivative action” includes any action in which a claim is made on behalf of a company by a member of that company.

(2) Subject to the provisions of this rule, a derivative action may not be commenced without the leave of the Court, given in accordance with this rule.

(3) An application for leave to commence a derivative action shall be made by Originating Notice of Motion in which is sought:

(a) the leave of the Court to commence the derivative action;

(b) where relevant, an order requiring the company to indemnify the applicant in respect of the whole or part of the costs and expenses reasonably incurred by the applicant in conducting the derivative action (including any costs for which the applicant may be made liable in such action), and

(c) any interim relief of an urgent nature.

(4) The Originating Notice of Motion shall be entitled “In the matter of an intended derivative action” on the application of the applicant. The company shall be named as a respondent.

(5) The Originating Notice of Motion shall be supported by an affidavit:

- (i) setting out the nature and extent of the evidence available to support the applicant's claim to be a person entitled to bring the intended derivative action;
- (ii) setting out the nature and extent of the evidence available to support the applicant's assertion that the company is entitled to make the claim to which the intended derivative action relates, and where such evidence is of an expert or technical nature, the substance of that evidence shall be provided to the Court in a report of a qualified person verified by its author and exhibited to the grounding affidavit, or in other suitable form;
- (iii) setting out the basis of the deponent's belief as to the existence of the facts or circumstances referred to in paragraphs (i) and (ii);
- (iv) specifying the efforts, if any, made by the applicant to cause the company to prosecute the claim concerned;
- (v) setting out the basis on which it is alleged that it is reasonable and prudent in the interests of the company that the applicant be given leave to commence the intended derivative action;
- (vi) including evidence, where available, of the views of members other than the applicant;
- (vii) to which is exhibited an opinion of counsel as to whether the applicant has a realistic prospect of success in the intended derivative action; and
- (viii) to which is exhibited a draft of the summons or other originating document, and a draft of any statement of claim, in the intended derivative action.

(6) Unless the Court otherwise directs, a respondent shall be served with copies of the Originating Notice of Motion, of the grounding affidavit and any exhibits thereto at least 21 days before the date first fixed for the hearing of the Originating Notice of Motion.

(7) Where the Court is satisfied on the ex parte application of the applicant that service of the Originating Notice of Motion would be likely to frustrate some party of a relief sought, the Court may hear and determine ex parte an application for some relief sought in the Originating Notice of Motion.

(8) A respondent who has been served with the Originating Notice of Motion and who intends to oppose the application may file in the Central Office a replying affidavit setting out his grounds of opposition and verifying any facts or circumstances relied on, and shall serve a copy of any such

affidavit and any exhibits thereto on the applicant and on any other respondent not later than seven days before the return date of the Originating Notice of Motion.

(9) The applicant shall be at liberty to file a further affidavit replying to any matter verified in an affidavit of a respondent, in which event a copy of that affidavit shall be served upon the respondent before the return date of the Originating Notice of Motion.

(10) An affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the Originating Notice of Motion, grounding affidavit and exhibits (if any) shall be filed by the applicant before the motion is heard.

(11) On the return date of the Originating Notice of Motion (or on any adjournment from such date), the Court may, in addition to any other order it may make:

- (a) direct service of notice of the application on any other member or other person, including mode of service and the time allowed for such service (and the Court may for that purpose adjourn the hearing or further hearing of the application to a date specified);
- (b) give directions as to the filing and delivery of any further affidavits;
- (c) make such orders and give such directions (including a direction that a meeting of members take place) as it considers appropriate for the purpose of ascertaining the views of members whose interest in the subject matter of the proposed derivative action is independent of that of the applicant and the respondent;
- (d) where the court has directed in accordance with the preceding paragraph that a meeting of members shall take place, give directions as to the convening and conduct of the meeting and for the reporting to the Court of the proceedings at the meeting;
- (e) give a direction that the application be determined by way of plenary hearing, where it appears to the Court that the subject matter of the application is likely to involve a substantial dispute of fact or it is otherwise necessary or desirable in the interests of justice (and the Court may for that purpose make orders and give directions in relation to the exchange of pleadings or points of claim or defence between the parties);
- (f) give directions as to the furnishing by the parties to the Court and delivery of written submissions;
- (g) give directions as to the publication of notice of the hearing of the application and the giving of notice in advance of such hearing to

any person other than a party to the proceedings who desires to be heard on the hearing of the application;

(h) hear and determine any application for relief of an interlocutory nature, whether in the nature of an injunction or otherwise.

(12) Save where the Court otherwise directs, any evidence in proceedings to which this rule relates shall be given on affidavit.

(13) An order made on an application under sub-rule (3) may:

(a) give leave to commence a derivative action on such terms or conditions as the Court sees fit to impose;

(b) give leave to continue a derivative action only until the close of pleadings, the completion of discovery, or some other specified step in the proceedings or until a specified date, and require a further application for leave to continue the derivative action beyond that step or date;

(c) require the company for the benefit of which a derivative action is allowed to be brought to indemnify the applicant in respect of the whole or part of costs and expenses reasonably incurred by the applicant in conducting the derivative action (including any costs for which the applicant may be made liable in such action);

(d) order that the derivative action may not be discontinued or compromised without the leave of the Court;

(e) give such directions and include such orders for the conduct of the proceedings on the derivative action as appear convenient for the determination of those proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings.

(14) Where a claim which might be the subject of a derivative action arises in proceedings pending before the Court, the provisions of this rule shall, with the necessary modifications, apply to such a claim, provided that the application referred to in sub-rule (2) may, in lieu of being brought by Originating Notice of Motion, be made by motion on notice in the pending proceedings, and the Court may make any order it considers just:

(a) dispensing with any requirement of this rule, where it considers it appropriate to do so having regard to the proceedings had in the pending proceedings; or

(b) as to the hearing of the application.

(15) An application for an order that the applicant be given conduct of proceedings and continue those proceedings as a derivative action shall be made by motion on notice in the proceedings concerned. The motion shall

be grounded on an affidavit sworn by or on behalf of the moving party which shall:

- (a) set out the grounds on which the applicant claims that the proceedings should continue as a derivative action, and verify any facts and circumstances relied on in that regard; and
- (b) set out the nature and extent of the evidence available to support the applicant's claim to be a proper person to continue the proceedings as a derivative action.

(16) An application for an order substituting another person to have conduct of a derivative action shall be made by motion on notice in the proceedings on the derivative action. The motion shall be grounded on an affidavit sworn by or on behalf of the moving party which shall:

- (a) set out the grounds on which the moving party claims such substitution is necessary or desirable, and verify any facts and circumstances relied on in that regard; and
- (b) set out the nature and extent of the evidence available to support the claim that the person proposed to be substituted is a proper person to continue the proceedings as a derivative action.

(17) A member referred to in sub-rule (1) may apply for leave to defend on behalf of a company a claim or a counter-claim against such company, and the provisions of this rule other than this sub-rule shall, with the necessary modifications, apply to such an application.

(18) Where, in accordance with law, an action may be authorised by leave of the Court:

- (a) in which a claim is made on behalf of a body corporate (which is not a company) by a member of that body; or
- (b) in which a claim is made on behalf of an unincorporated association or body by a member of that association or body,

the provisions of this rule shall, unless the Court otherwise directs or permits, apply *mutatis mutandis* to any application for leave to commence or to have conduct of such an action, to the proceedings on any such application and to the conduct of any such action for which leave is given as if the references in this rule to a "company" (and to its members) included references to the body corporate or unincorporated association or body concerned (and to its members)."

EXPLANATORY NOTE

(This does not form part of the Instrument and does not purport to be a legal interpretation.)

These rules insert a new rule 39 in Order 15 of the Rules of the Superior Courts prescribing the procedure in respect of derivative actions in the High Court.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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