

When minority shareholders are protected

THE Companies Act provides minority shareholders with a right to apply to court for relief against conduct that is “oppressive, or unfairly prejudicial to, or unfairly disregards the interests” of the shareholder concerned.

In a recent decision of the Supreme Court of Appeal (SCA), the court provided guidance on the application of this remedy. It concluded that it was not the motive for the conduct complained about that the court must consider, but the conduct itself and its effects on the shareholders.

This article considers the protection provided to minority shareholders against oppressive or prejudicial conduct.

The scope of protection available to aggrieved shareholders under

section 163 of the new act is significantly broader than that provided in its predecessor, section 252 of the old Companies Act of 1973.

This is evident from the following:

- The introduction of a new ground upon which relief may be sought, namely conduct “that unfairly disregards the interests of the applicant”.

- The extension of the kinds of “conduct” that the applicant may rely on in relation to its grievance.

- The latitude given to courts to grant appropriate relief. The court is empowered to make any interim or final order it considers fit, including:

- a) An order directing the company to amend its Memorandum of Incorporation or to create or amend

Sponsored column

Jenna Padoa



LAW MATTERS

a unanimous shareholder agreement.

- b) An order directing an issue or exchange of shares.

- c) An order appointing directors in place of or in addition to any of the directors then in office.

In the case of Grancy Property

COX | YEATS
attorneys

Limited v Manala and others, the Supreme Court of Appeal came to the assistance of a minority shareholder who successfully relied on the minority protection provision.

The appellant in this case sought and was granted an order for the appointment of two independent directors to the board of the company, of which it was a shareholder, for them to investigate allegations of misconduct on the part of the other directors of the company.

The SCA held that “in determining whether the conduct complained of is oppressive, unfairly prejudicial or unfairly disregards the interests of (a shareholder) it is not the motive for the conduct complained of that the court must look at, but the conduct itself and the effect which it has on the other

members of the company”.

The SCA noted (with reference to *Contemporary Company Law*, 2nd edition (2012), pages 770-771) that: “Not all acts which prejudicially affect shareholders, or which disregard their interests, will entitle them to relief; it must be shown that the ‘conduct’ is not only prejudicial or disregarding but also that it is unfairly so.”

Given the extensive power of the courts under section 163, shareholders and directors would do well to keep abreast of any new and innovative remedies imposed by the courts.

- Padoa is an associate at Cox Yeats Attorneys, specialising in Business Law. She can be phoned at 031 536 8500 or e-mailed at jpadoa@coxyeats.co.za.