

《2003 年公司(修訂)條例草案》委員會  
二零零四年二月二十日、二十六日及二十八日會議  
所討論事項的跟進行動

## 引言

本文件載述就二零零四年二月二十日、二十六日及二十八日會議的討論事項所採取跟進行動的結果。

### 二零零四年二月二十日的會議

#### (i) 申請許可以提起法定衍生訴訟

2. 因應法案委員會的提議，我們同意修訂擬議第 168BB 條，訂明指明法團的成員必須獲得許可，才可代表該指明法團提起法律程序。有關的委員會審議階段修正案將另行送交法案委員會。

#### (ii) 法定衍生訴訟的涵蓋範圍

3. 根據普通法，公司任何成員可代表其公司提起衍生訴訟，但以下述兩種情況為限：第一，有關的失當行為因屬於“欺詐少數股東的行為”而不能由大多數成員予以有效確認，例如挪用公司資產；第二，有關的行為失當者擁有公司的控制權<sup>1</sup>。正如其他亦准許提起衍生訴訟的司法管轄區如澳洲一樣，在我們就法定衍生訴訟所提出的建議下，法院所考慮的因素將會包括有關成員是否本着真誠行事，以及該公司的最佳利益。此外，公司在大會上作出的確認不會禁止展開衍生訴訟程序。然而，法院在決定作出何種命令或裁決前，須考慮獨立股東曾否作出確認、成員知情與否，以及他們當時是否為恰當目的行事。

4. 基於普通法下的衍生訴訟與擬議法定衍生訴訟兩者的分別，以下類別的個案根據前者可能是法院不准許作出的申索，但根據後者卻可獲法院准許作出：

- (a) 純粹屬董事疏忽而無不真誠或欺詐成分(法院認為屬可獲確認的行為，即並非“欺詐少數股東的行為”)；
- (b) 屬“欺詐少數股東”的個案，例如挪用資產，但未能證明行為失當者擁有公司的控制權。

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<sup>1</sup> Gower's Principles of Modern Company Law, Sixth Edition 1997, Paul L. Davies 第 670 頁。

*(iii) 法定衍生訴訟的保障措​​施*

5. 因應法案委員會對法定衍生訴訟是否有足夠保障措​​施表示關注，我們同意修訂條例草案附表 4 第 IVAA 部，在訴訟中加入下列各項：

- (a) 成員須先獲得法院許可，才可代表其公司提起訴訟；
- (b) 法院批予許可讓成員代表其公司提起訴訟時，除現時有關“真誠行事”、“最佳利益”及“送達訴訟前通知書”等條件外，還須信納有關申請符合下述新條件(參照澳洲《2001 年法團法》第 237(2)條而訂定)：
  - (i) 有關的指明法團可能不會自行提起訴訟，或妥善地負起訴訟的責任；以及
  - (ii) 有重要問題須予以審訊。
- (c) 一項參照澳洲《2001 年法團法》第 237(3)條(副本載於附件 A)而作出的可駁回推定，即倘有關的法律程序涉及第三方，則批予許可並不符合指明法團的最佳利益。

有關的委員會審議階段修正案將另行送交法案委員會。

6. 鑑於已有上述額外保障措​​施，我們並不認為有必要加入另一項參照《2001 年澳洲證券及投資委員會法》第 50 條(把法律程序的涵蓋範圍局限於就欺詐、疏忽、過失及失職行為等追討損害賠償)而訂定的新條文。此外，《澳洲證券及投資委員會法》第 50 條就涉及公眾利益訴訟作出規定，而這些訴訟與股東衍生訴訟並不相同。不單其他司法管轄區如澳洲和新加坡等地沒有在法定衍生訴訟的法律程序的涵蓋範圍設立限制，普通法下的衍生訴訟亦無該種限制。

*(iv) 關於法定衍生訴訟的程序問題*

7. 我們正等待其他司法管轄區的對等機構作出回應，說明其在法定衍生訴訟中如何處理例如透露文件等程序問題，並會在獲得有關資料後就此事向法案委員會匯報。

*(v) 釐定衍生訴訟訟費的時間*

8. 澳洲《2001 年法團法》第 242 條規定，法院可於任何時間對法定衍生訴訟訟費及申請許可以提起訴訟事宜作出其認為適當的命令。Charlton 訴 Baber [2003] NSWSC 745 (二零零三年八月十五日)一案

的判決似乎顯示法院最早可於展開訴訟而非獲得許可以展開訴訟時，對法定衍生訴訟訟費作出命令。因應法案委員會關注到法院在什麼時候對法定衍生訴訟訟費作出命令，我們建議對擬議第 168BG 條作出修訂，以訂明法院可於申請人獲批予許可提起訴訟之時（而非之後），對法定衍生訴訟訟費作出命令。有關的委員會審議階段修正案將另行送交法案委員會。

#### *(vi) 多重介入*

9. 我們的政策目的並非要禁止指明法團的不同成員多重介入同一宗衍生訴訟。舉例說，成員甲可根據擬議第 168BB(1)(b)條代表一間公司介入另一成員乙較早前根據擬議第 168BB(1)(a)條代表同一間公司提起的法律程序。其他司法管轄區似乎並無對多重介入法定衍生訴訟作出任何限制。實際上，法院未必批予許可讓成員甲介入成員乙代表同一間公司提起的法律程序，尤其當成員乙必須獲得許可才可展開法律程序；換言之，法院必定是信納提起有關訴訟符合該公司的最佳利益，以及成員乙是本着真誠行事。若然法院批予許可讓成員甲介入有關訴訟，我們相信法院在批予許可讓成員甲介入有關的法律程序時，會根據擬議第 168BF 條就各方應如何着手介入給予所需指示。

#### *(v) 披露資料*

10. 因應法案委員會的意見，我們同意刪除擬議第 152FC(1)(a)條中“或是為了一項按照法律而在香港進行的任何調查而必須作出的”字眼。

### 二零零四年二月二十六日的會議

#### *(i) 擬議第 168A(2A)至(2C)條的涵蓋範圍*

11. 我們並不認為擬議第 168A(2A)至(2C)條本身會違反普通法的原則，即有關成員不能就純粹反映公司損失的損失而提出起訴，因為該等條文不會改變申索的性質、構成新訴訟因由，或混淆個人申索與衍生申索的區別。不過，因應法案委員會的意見，我們同意加入一項新條文，訂明上述兩條不會使公司任何成員有權追索在普通法下應當屬於公司的損害賠償。這條文將可消除疑慮，說明關於任何成員不能就純粹反映公司損失的損失而提出起訴的普通法原則，不會受到影響。有關的委員會審議階段修正案將另行送交立法會。

*(ii) 刪除 “不論是否為了結所投訴的事項” 等字眼*

12. 因應法案委員會的意見，我們同意擬議第 168A(2A)及(2C)條中“不論是否為了結所投訴的事項”字眼應予刪除，而擬議第 168A(2A)條則應納入現有第 168A(2)條之內。有關的委員會審議階段修正案將另行送交法案委員會。我們不在擬議第 168A(2A)及(2C)條中以“為了結所投訴的事項”字眼對法院判給損害賠償的權力施加約制，是因為該等損害賠償與現有第 168A(2)條所述其他類別的寬免有所不同（第 168A(2)條下的寬免例如收購股份，其性質是為受到不公平損害的成員提供“退出”機會），該等損害賠償未必一定具有了結所投訴事項的效果，但可就所投訴的事項給予寬免。同時，在 Irish Press plc 訴 Ingersoll Irish Publications Ltd [1995] 2 ILRM 270 一案中，愛爾蘭最高法院把愛爾蘭高等法院所作的寬免命令推翻，命令有關的答辯人向呈請人支付 2,750,000 鎊，理由是作出該項命令旨在補償呈請人，而非終止有關欺壓，因此超出《1963 年愛爾蘭公司法》第 205(3)條<sup>2</sup>賦予法院的權限。

*(iii) 在《1993 年新西蘭公司法》下前股東就不公平損害情況的補救方法提出申請*

13. 我們未能找到任何有關在《1993 年新西蘭公司法》下由前股東就不公平損害情況的補救方法提出申請的法庭個案。我們現正與新西蘭的對等機構聯絡，查看它們能否提供這方面的資料。

*(iv) 其他司法管轄區就不公平損害訴訟所訂定的法定期限*

14. 我們正等待其他司法管轄區的對等機構就法定期限一事作出回應，並會在獲得有關資料後向法案委員會匯報。

## 二零零四年二月二十八日的會議

*(i) 查閱令*

15. 因應法案委員會的意見，我們已修訂與查閱令有關的委員會審議階段修正案(副本將另行送交法案委員會)。關於作為樣本的上市公司的股份面值資料，現載於附件 B。

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<sup>2</sup> 英國法律委員會一九九六年有關“股東補救方法”的諮詢文件第 102 頁註腳 72。

《1963 年愛爾蘭公司法》第 205(3)條規定，高等法院倘認為某公司處理事務的方式或其董事行使權力的方式欺壓公司任何成員或不顧及他們作為成員的權益，便可為了結所投訴的事項而作出其認為適當的命令，不論是指示公司作出或禁止公司作出任何作為，或取消或更改任何交易，或為公司日後處理事務的方式，或公司成員或公司本身購買其他成員的公司股份，或公司為減少公司資本或其他原因而購買股份的情況作出規管。

*(ii) 銀行業法例*

16. 《銀行業條例》並不包含任何條文管限銀行披露關於其客戶事務的資料。不過，香港的銀行在普通法責任下須保障客戶(企業客戶及個人客戶)的資料，並須遵守《個人資料(私隱)條例》關於保障個人客戶的個人資料的規定。

17. 英國、澳洲及新加坡均為普通法司法管轄區，故保障客戶私隱的普通法責任亦應適用於該等地區的銀行。據我們所知，英國及澳洲的銀行業法例並無任何條文限制或禁止銀行披露客戶資料，但新加坡的《銀行法》第 47(1)條則說明「新加坡的銀行或其任何職員除在本法令明文規定的情況外，不得以任何形式披露客戶資料」，而根據第 47(6)條，違反這項規定屬違法行為。

18. 鑑於法案委員會的意見，我們準備進一步修訂有關擬議第 152FD 條的委員會審議階段修正案，使法院不得發出命令，授權任何人查閱從事銀行事務的某指明法團客戶的紀錄。

*(iii) 強制令*

19. 根據澳洲《2001 年法團法》第 1324 條就查閱令申請所作出的兩項判決，載於附件 C。我們擬澄清，擬議第 350B 條及澳洲《2001 年法團法》下的強制令涵蓋範圍與新加坡《公司法》的強制令涵蓋範圍不同，因後者只涵蓋違反新加坡《公司法》的情況。澳洲《2001 年法團法》及新加坡《公司法》內相關條文的副本，現載於附件 D。

*(iv) 有關損害賠償的保證*

20. 我們正考慮關於就損害賠償作出保證的事宜，並會盡早向法案委員會匯報。

財經事務及庫務局  
財經事務科  
二零零四年三月

**AUSTRALIAN CORPORATIONS ACT 2001**  
**- SECTION 237**

Applying for and granting leave

- (1) A person referred to in paragraph 236(1)(a) may apply to the Court for leave to bring, or to intervene in, proceedings.
- (2) The Court must grant the application if it is satisfied that –
  - (a) it is probable that the company will not itself bring the proceedings, or properly take responsibility for them, or for the steps in them; and
  - (b) the applicant is acting in good faith; and
  - (c) it is in the best interests of the company that the applicant be granted leave; and
  - (d) if the applicant is applying for leave to bring proceedings – there is a serious question to be tried; and
  - (e) either –
    - (i) at least 14 days before making the application, the applicant gave written notice to the company of the intention to apply for leave and of the reasons for applying; or
    - (ii) it is appropriate to grant leave even though subparagraph (i) is not satisfied.
- (3) A rebuttable presumption that granting leave is not in the best interests of the company arises if it is established that –
  - (a) the proceedings are –
    - (i) by the company against a third party; or
    - (ii) by a third party against the company; and
  - (b) the company has decided –
    - (i) not to bring the proceedings; or
    - (ii) not to defend the proceedings; or
    - (iii) to discontinue, settle or compromise the proceedings; and
  - (c) all of the directors who participated in that decision –
    - (i) acted in good faith for a proper purpose; and
    - (ii) did not have a material personal interest in the decision; and
    - (iii) informed themselves about the subject matter of the decision to the extent they reasonably believed to be appropriate; and
    - (iv) rationally believed that the decision was in the best interests of the company.

The director's belief that the decision was in the best interests of the company is a rational one unless the belief is one that no reasonable person in their position would hold.

(4) For the purposes of subsection (3) –

(a) a person is a third party if –

(i) the company is a public company and the person is not a related party of the company; or

(ii) the company is not a public company and the person would not be a related party of the company if the company were a public company; and

(b) proceedings by or against the company include any appeal from a decision made in proceedings by or against the company.

Note: Related party is defined in section 228.

**AUSTRALIAN CORPORATIONS ACT 2001**  
**- SECTION 228**

Related parties

Controlling entities

- (1) An entity that controls a public company is a related party of the public company.

Directors and their spouses

- (2) The following persons are related parties of a public company –
- (a) directors of the public company;
  - (b) directors (if any) of an entity that controls the public company;
  - (c) if the public company is controlled by an entity that is not a body corporate—each of the persons making up the controlling entity;
  - (d) spouses and de facto spouses of the persons referred to in paragraphs (a), (b) and (c).

Relatives of directors and spouses

- (3) The following relatives of persons referred to in subsection (2) are related parties of the public company –
- (a) parents;
  - (b) children.

Entities controlled by other related parties

- (4) An entity controlled by a related party referred to in subsection (1), (2) or (3) is a related party of the public company unless the entity is also controlled by the public company.

Related party in previous 6 months

- (5) An entity is a related party of a public company at a particular time if the entity was a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time within the previous 6 months.

Entity has reasonable grounds to believe it will become related party in future

- (6) An entity is a related party of a public company at a particular time if the entity believes or has reasonable grounds to believe that it is likely to become a related party of the public company of a kind referred to in subsection (1), (2), (3) or (4) at any time in the future.

Acting in concert with related party

- (7) An entity is a related party of a public company if the entity acts in concert with a related party of the public company on the understanding that the



related party will receive a financial benefit if the public company gives the entity a financial benefit.

附件B

作為樣本的上市公司的股份面值			
公司編號	公司名稱	股份類別	每股面值
255	東亞銀行有限公司	普通股	2.50港元
3653	恆生銀行有限公司	普通股	5.00港元
770009	中銀香港(控股)有限公司	普通股	5.00港元
627771	中電控股有限公司	普通股	5.00港元
117620	香港中華煤氣有限公司	普通股	0.25港元
24096	長江實業(集團)有限公司	普通股	0.50港元
1679	Swire Pacific Limited	普通A股	0.60港元
		普通B股	0.12港元
54532	Hutchison Whampoa Limited	普通股	0.25港元
69030	電訊盈科有限公司	普通股	0.20港元
2672	Cathay Pacific Airways Limited	普通股	0.20港元
123905	新鴻基有限公司	普通股	1.00 港元
714016	地鐵有限公司	普通股	1.00 港元
F 4746	HSBC Holdings Limited	普通股	0.50 美元

(1) ASIC (澳洲證券及投資委員會) 訴 Mauer-Swisse Securities Ltd and Goldman

[2002] NSWSC 684 (二零零二年八月二日)

[2002] NSWSC 741 (二零零二年八月九日)

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第一及第二被告經營的投資計劃表面看來有欺詐成分，澳洲證券及投資委員會就有關計劃展開調查。第一被告公司是在新西蘭成立，而第二被告(即第一被告的董事)是一名新西蘭人。澳洲證券及投資委員會根據《法團法》第 1323 及 1324 條向法院申請頒令，禁止第二被告在未經法院同意的情況下離開澳洲，以及要求第二被告將其護照交付法院。法院按有關申請頒令，並在二零零二年八月九日的判詞中，撮述施行第 1324 條的原則：－

“36 冒着重複之虞，現撮述本席在參考現有適用於本案的典據後所採取的原則：

- － 法院根據第 1324 CA 條行使的裁判權是法定裁判權，而非法院的傳統衡平法司法管轄權；
- － 國會藉着不斷制定成文法則，更清楚訂明法院在根據第 1324 條行使法定裁判權時，不受限於其在行使傳統衡平法司法管轄權時所適用的考慮因素；
- － 法院就根據第 1324 CA 條申請禁制令的個案所須考慮的因素，包括 Austin 法官在 *Sweeney* 和 *Parkes* 案件及 Davies 法官在 *Pegasus* 案件中所提述一些涉及更廣泛層面的事宜；該等事宜可概括為有關禁制令能否或會否達到《法團法》所預期的某些效用或目的；
- － 不論是根據第 1324(1)條提出的永久禁制令申請，抑或是根據第 1324(4)條提出的臨時禁制令申請，這些因素都會納入考慮之列；
- － 如有關申請是澳洲證券及投資委員會根據第 1324(4)條提出，而非由私人訴訟人提出，則法院較有可能把禁制令會否達到《法團法》所預期目的，列作較重要的考慮因素；

- 如被告日後相當可能(而非憑空想像)違反《法團法》的條文，則法院除發出永久禁制令外，在適當情況下發出臨時禁制令以限制該種行為，是符合《法團法》所預期目的的做法。第 1324 條的意圖是在刑事檢控方面加入可能極為嚴重的後果及相對地迅速就藐視法庭提起法律程序，以阻嚇違反《法團法》的行為；
- 儘管權衡即將審訊的問題是否嚴重以及對哪一方會造成更大不便等問題，不會對法院考慮根據第 1324(4)條所提出的臨時禁制令申請造成約束，但基於公義原則，即使該等問題聲稱涉及保障公眾，法院在考慮有關施加限制的申請時，仍須予以審慎研究，以便妥為審理有關個案：參閱 Young 法官在 *Corporate Affairs Commission(NSW) 訴 Lombard Nash International Pty Ltd* (1986)11 ACLR 566 一案的判詞(第 570 至 571 頁)；
- 對哪一方造成更大不便的問題，會因根據第 1324(4)條提出申請者是澳洲證券及投資委員會抑或私人訴訟人而從不同角度予以考慮。倘澳洲證券及投資委員會是為保障公眾利益而行事，則未有就損害賠償作出保證(可根據第 1324(8)條獲准豁免)通常無關重要。不過，如有關的法律程序是為增進原告人的私人利益而提起，而原告人未有就損害賠償提供保證，即使他可同樣根據上述第 8 款獲得豁免，法院在判斷公義原則及裁定發出禁制令是否“合宜”時，可就實際情況、常識及公正持平而論，將有關情況納入考慮之列：參閱 Young 法官在 *Lombard Nash* 一案的判詞(第 571 頁)。”

## (2) Mancini 訴 Mancini [1999] NSWSC 800

(一九九九年八月六日)

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一家律師行曾代表多家公司行事，該等公司的單一董事為甲先生及乙女士，而甲乙二人是夫婦關係。不過，二人在離婚後對該等公司的管理出現意見分歧。乙女士聲稱要罷免甲先生董事之職，並就與該等公司事務有關的補救方法向甲先生展開法律程序。上述律師行在乙女士提起的法律程序中擔任甲先生的代表，乙女士遂根據《法團法》第 1324 條申請禁制令，要求禁止甲先生聘用該律師行。由於沒有證據顯示上述律師行掌握任何與該法律程序相關的機密資料，或在代表該等公司行事時曾獲得任何該等資料，法院裁定第 1324 條所述的權力屬酌情性質，及因沒有就該條而言屬作出禁制令

的充分理據而認為不宜作出禁制令。法院在決定是否行使酌情決定權時，已顧及《法團法》的一般目的，其他應當考慮的因素包括受違規行為影響的公司的利益，以及乙女士的利益是否或會否因該律師行獲得聘用而受影響。儘管乙女士根據該條文具備申請禁制令的理由，但這並不構成法院發出禁制令的理據。

**AUSTRALIAN CORPORATIONS ACT 2001  
- SECTION 1324**

Injunctions

- (1) Where a person has engaged, is engaging or is proposing to engage in conduct that constituted, constitutes or would constitute –
- (a) a contravention of this Act; or
  - (b) attempting to contravene this Act; or
  - (c) aiding, abetting, counselling or procuring a person to contravene this Act; or
  - (d) inducing or attempting to induce, whether by threats, promises or otherwise, a person to contravene this Act; or
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of this Act; or
  - (f) conspiring with others to contravene this Act;

the Court may, on the application of ASIC, or of a person whose interests have been, are or would be affected by the conduct, grant an injunction, on such terms as the Court thinks appropriate, restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

- (1A) For the purposes of subsection (1) –

- (a) a contravention of this Act affects the interests of a creditor or member of a company if the insolvency of the company is an element of the contravention; and
- (b) a company's contravention of –
  - (i) paragraph 257A(1)(a) (share buy-back not to prejudice ability to pay creditors); or
  - (ia) paragraph 256B(1)(b) (share capital reduction not to prejudice ability to pay creditors); or
  - (ii) paragraph 260A(1)(a) (financial assistance for share acquisition not to prejudice company or shareholders or ability to pay creditors); affects the interests of a creditor or member of the company; and
- (c) a company's contravention of paragraph 256B(1)(a) (fair and reasonable test for share capital reduction) affects the interests of a member of the company.

This subsection does not limit subsection (1) in any way.

(1B) If the ground relied on in an application for an injunction is conduct or proposed conduct of a company or other person that it is alleged constitutes, or would constitute:

- (a) a contravention of paragraph 256B(1)(a) or (b), section 257A or paragraph 260A(1)(a); or
- (b) a contravention of a provision of this Act involving the insolvency of the company because of –
  - (i) the company making a reduction of its share capital to which Division 1 of Part 2J.1 applies; or
  - (ii) the company buying back its shares; or
  - (iii) the company giving financial assistance to which Part 2J.3 applies;

the Court must assume that the conduct constitutes, or would constitute, a contravention of that paragraph, section or provision unless the company or person proves otherwise.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that the person is required by this Act to do, the Court may, on the application of –

- (a) ASIC; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing;

grant an injunction, on such terms as the Court thinks appropriate, requiring the first-mentioned person to do that act or thing.

(3) Where an application for an injunction under subsection (1) or (2) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that that subsection applies.

(4) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).

(5) The Court may discharge or vary an injunction granted under subsection (1), (2) or (4).

(6) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised –

- (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (7) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised –
- (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; and
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (8) Where ASIC applies to the Court for the grant of an injunction under this section, the Court must not require the applicant or any other person, as a condition of granting an interim injunction, to give an undertaking as to damages.
- (9) In proceedings under this section against a person the Court may make an order under section 1323 in respect of the person.
- (10) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.



## SINGAPORE COMPANIES ACT

### Injunctions

409A. – (1) Where a person has engaged, is engaging or is proposing to engage in any conduct that constituted, constitutes or would constitute a contravention of this Act, the Court may, on the application of –

- (a) the Registrar; or
- (b) any person whose interests have been, are or would be affected by the conduct,

grant an injunction restraining the first-mentioned person from engaging in the conduct and, if in the opinion of the Court it is desirable to do so, requiring that person to do any act or thing.

(2) Where a person has refused or failed, is refusing or failing, or is proposing to refuse or fail, to do an act or thing that he is required by this Act to do, the Court may, on the application of –

- (a) the Registrar; or
- (b) any person whose interests have been, are or would be affected by the refusal or failure to do that act or thing,

grant an injunction requiring the first-mentioned person to do that act or thing.

(3) Where an application is made to the Court for an injunction under subsection (1), the Court may, if in the opinion of the Court it is desirable to do so, before considering the application, grant an interim injunction restraining a person from engaging in conduct of the kind referred to in subsection (1) pending the determination of the application.

(4) The Court may rescind or vary an injunction granted under subsection (1), (2) or (3).

(5) Where an application is made to the Court for the grant of an injunction restraining a person from engaging in conduct of a particular kind, the power of the Court to grant the injunction may be exercised –

(a) if the Court is satisfied that the person has engaged in conduct of that kind — whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will engage in conduct of that kind — whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.

(6) Where an application is made to the Court for a grant of an injunction requiring a person to do a particular act or thing, the power of the Court to grant the injunction may be exercised –

(a) if the Court is satisfied that the person has refused or failed to do that act or thing — whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or

(b) if it appears to the Court that, in the event that an injunction is not granted, it is likely the person will refuse or fail to do that act or thing — whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the first mentioned person refused or fails to do that act or thing.

(7) Where the Registrar makes an application to the Court for the grant of an injunction under this section, the Court shall not require the Registrar or any other person, as a condition of granting an interim injunction, to give any undertakings as to damages.

(8) Where the Court has power under this section to grant an injunction restraining a person from engaging in particular conduct, or requiring a person to do a particular act or thing, the Court may, either in addition to or in substitution for the grant of the injunction, order that person to pay damages to any other person.