

Submission from Mr John Brewer

Having looked at the bills committee paper, I think things risk going off the rails:

In Singapore, a shareholder has to seek leave; but in doing so he merely has to show the court that there is a "prima facie case" that the action is "in the interests of the company"; that is a demanding test in terms of having to show evidence to support his claim, but it's not an impossible test – the fact that a claim exists and hasn't been pursued will meet the "prima facie case" test; his real job comes later, of course, in pursuing the action on the company's behalf.

Our Bills committee proposes that a shareholder seeks leave and in doing so needs to show that the action is in the "best interests of the company"; that's a much higher test and in my view threatens to make life impossible: even if the shareholder could get hold of the evidence he needs, he will have to convince a court that the board of directors did not act bona fide in its decision - a harder task than succeeding with the action he wants the company to pursue.

If a shareholder is able to commence an action without leave, the company is still able to apply to have the action struck out if it (ie the board) can show that the action is not in the best interests of the company; all it needs to do in order to meet that test is show that it acted bona fide – the commercial sense of the board's decision will not be addressed by the court because the court don't (to paraphrase one judge) want to be left to manage every alehouse in the country.

Not an easy balancing exercise, but I think the drafting should be left well alone.