

Derivative claims—how commenced

19.9—(1) This rule applies to a derivative claim, whether under Chapter 1 of Part 11 of the Companies Act 2006 or otherwise. It does not apply to a claim made following an order under section 994 of that Act.

(2) A derivative claim must be commenced by claim form.

(3) The company, body corporate or trade union concerned 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) notifying the company, body corporate or trade union in accordance with rule 19.9A(4); or
- (b) making an urgent application for interim relief.

Derivative claims under Chapter 1 of Part 11 of the Companies Act 2006—applications for permission

19.9A—(1) In this rule, “derivative claim” means a derivative claim under Chapter 1 of Part 11 of the Companies Act 2006.

(2) The claim form for a derivative claim must be accompanied by an application notice under Part 23 for permission to continue the claim.

(3) The claimant must file with the application notice the written evidence on which the claimant relies in support of the permission application.

(4) Subject to sub-paragraph (6), the claimant must notify the company concerned of the claim and application for permission by sending to the company, at its principal office, as soon as reasonably practicable after issue—

- (a) a copy of the claim form and the application notice;
- (b) a copy of the evidence filed by the claimant in support of the application for permission; and
- (c) the form of notice set out in the practice direction supplementing this rule.

(5) The notification and documents required by sub-paragraph (4) may be sent to the company in any way that would constitute service of the documents on the company.

(6) If notifying the company of the application would be likely to frustrate some part of the relief 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.

(7) An application under sub-paragraph (6) may be made without notice.

(8) After the applicant has notified the company of the claim in accordance with paragraph (4), the applicant must file a witness statement with the court as confirmation that the applicant has notified the company as required.

(9) If the court dismisses the permission application without a hearing, the claimant may ask for the decision to be reconsidered at a hearing, but must make the request to the court within seven days of being served with notice of the decision.

(In the case of a derivative claim involving a company, the court must dismiss the permission application if no prima facie case for the grant of permission is made out on the evidence filed by the applicant—see section 261(2) of the Companies Act 2006. (This applies to other derivative claims by virtue of rule 19.9C(5).) Otherwise, the court will give directions for the hearing of the application.)

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 in the circumstances described in section 262(1) or 264(1) of the Companies Act 2006 (“the Act”).

(Section 262(1) relates to a claim that has already been made by a company and is now sought to be taken over and continued by a member as a derivative claim under Chapter 1 of Part 11 of the Act; section 264(1) relates to a derivative claim (under that Chapter) already brought by a member of a company that is now sought to be taken over by another member of the company.)

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

(3) Rule 19.9A (except for paragraphs (1) and (2) of that rule) applies to an application under this rule.

(4) For that application, references in that rule to the claimant 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 applies where—

- (a) either—
 - (i) a body corporate that is not a company, or
 - (ii) a trade union,is alleged to be entitled to a remedy; and
- (b) either—
 - (i) a claim is made by one or more of its members for it to be given that remedy; or
 - (ii) a member of the body corporate or trade union seeks to take over or continue a claim already brought, 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 brings, 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 application notice in accordance with Part 23.

(4) The court will apply to applications falling within this rule the procedure for applications in relation to companies in section 261, section 262 or sections 264(3), (4) and (5) (as the case requires) of the Companies Act 2006.

(5) Rule 19.9A (except for paragraphs (1) and (2) of that rule) applies to an application under this rule.

(6) In the application of a provision of the Act or rule 19.9A, references in the Act provision or the rule to a company are to be read as references to the body corporate or trade union.

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—incidental matters

19.9E.—(1) The court may order the company, body corporate or trade union concerned to indemnify the claimant against liability for costs incurred in the permission application or in the derivative claim or both.

(2) Once permission has been given to continue a derivative claim, the court may order that the claim may not be discontinued, settled or compromised without the permission of the court.