CORPORATE GOVERNANCE AND LEGAL PROTECTIONS FOR MINORITY SHAREHOLDERS

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Outline of presentation;

- Legal concept of corporate governance
- Notion of minority shareholders
- Why minority shareholders need to be protected?
- Conducts which the majority shareholders abuses the rights of minority shareholders and the company.

- **Who is minority shareholder?**
- A minority shareholder is an equity holder who does not have voting control in his or her company. Under such circumstances, minority shareholders would not be able to control the affairs of the company.

- **Majority shareholders may exercise their power in ways that disadvantage the minority shareholders' interests**

- *O'Neill v Phillips:*

  "…some breach of the terms on which are members agreed that the affairs of the company should be conducted; or some use of the rules in a manner which equity would regard as contrary to good faith i.e cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal power ".

Unfair Prejudice Provision

UK Companies Act 2006; section 994;

"A member of a company may apply to the court by petition for an order under this Part on the ground—

(a)that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

(b)that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial…"

- **Majority shareholders may exercise their power to disadvantage the interests of the company as a whole.**
- The unlimited power of the majority shareholders allows them to commit all kind of wrongdoings to the detriment of the company and consequently vote to prevent the company or the minority shareholder from taking any legal action to gain a remedy. This kind of vote usually takes place at board meetings or in the general assembly, wherein the majority shareholders are able directly or indirectly to control voting.116 The majority shareholders in most cases are free to manage the company in a way that they prefer, and by their controlling authority they can prevent minority shareholder from starting this litigation.

Derivative Claims

UK Companies Act; section 260;

"(1) This Chapter applies to proceedings in England and Wales or Northern Ireland by a member of a company—

(a)in respect of a cause of action vested in the company, and

(b)seeking relief on behalf of the company.

This is referred to in this Chapter as a "derivative claim".

(2)A derivative claim may only be brought—

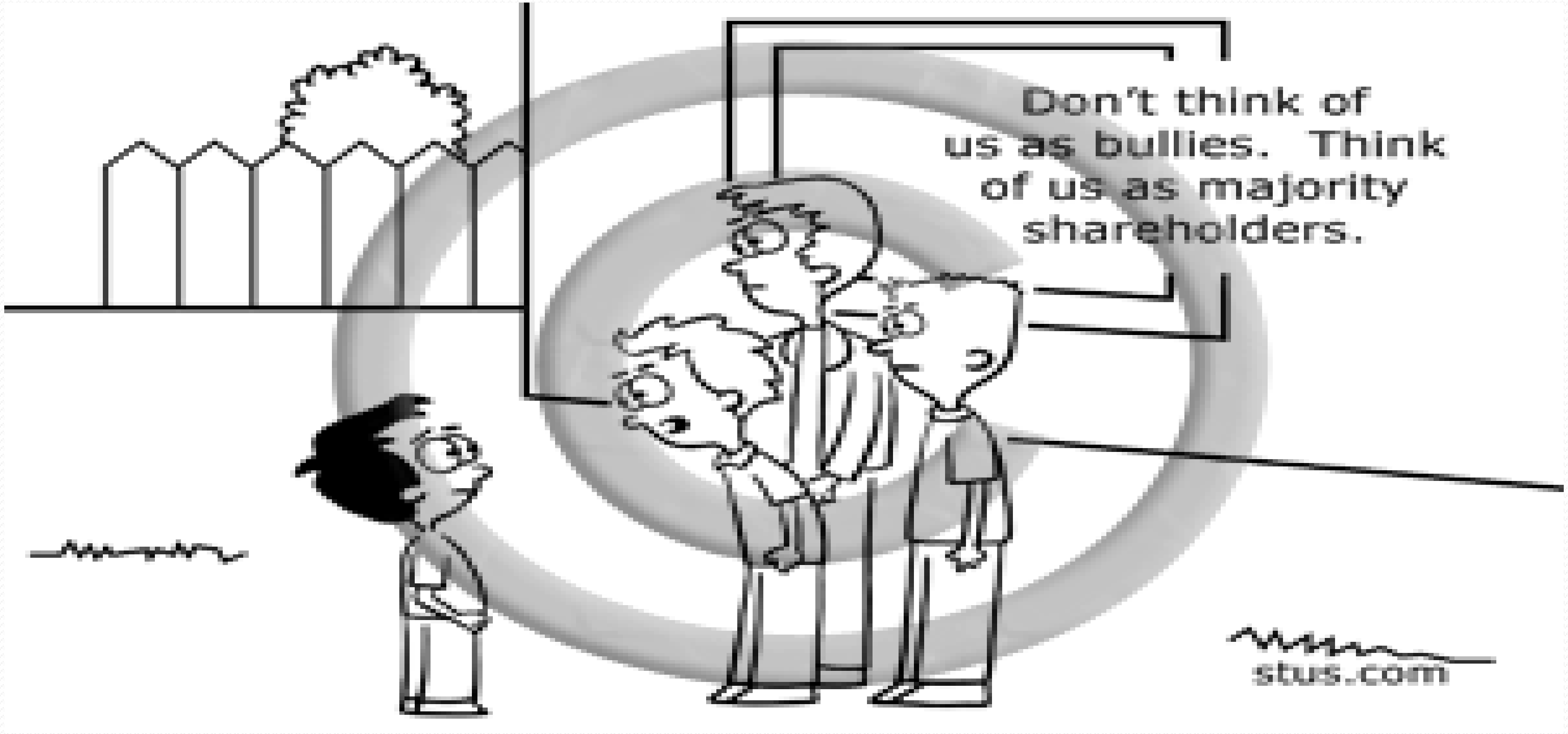
(a)under this Chapter, or

(b)in pursuance of an order of the court in proceedings under section 994 (proceedings for protection of members against unfair prejudice).

(3)A derivative claim under this Chapter may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company…"

Conclusion

- The major subject of presentation was in the knowledge of law and regulation in the legal protections of minority shareholders.
- The systems ought to be in place to strengthen the rights of minority shareholders against those of the majority; otherwise minority shareholders will continue to be helpless victims of the actions of the majority. Hence, a functional system of minority shareholder protection must provide rights and interests of minority shareholders and ensure that minority shareholders are treated fairly. Additionally, shareholders should be sure that in the case of wrongdoing or oppression they can apply to the court and obtain an appropriate remedy such as the purchase of their shares at a fair value.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