

Application by a body corporate as either
Plaintiff / Defendant / Petitioner / Respondent Company
for leave to be represented by one of its directors

(1) Order 5, rule 6; Order 9 rule 6 and Order 12 rule 1 of the Rules of the High Court provide that unless leave is granted by the Registrar for a body corporate to be represented by one of its directors, a body corporate may not begin or carry on any step in the proceedings and defend the action otherwise than by a solicitor.

(2) An application by a body corporate for leave to be represented by one of its directors shall be made to the Registrar of high court. Applicants may find the following steps to be helpful as they would lead to a more efficient disposal of the application.

- (i) Phone up the clerk to the Practice Master at 2825 4673 during office hours (before noon) to make an appointment to see the Practice Master. The appointment is usually fixed at 3:30 p.m.
- (ii) Prepare a supporting affirmation/affidavit made by the director stating and verifying the reasons why leave should be given for the body corporate to be represented by the director. The relevant resolution of the board authorizing the director to represent the body corporate shall be exhibited to the affirmation/affidavit.
- (iii) If lack of funds is relied on as reasons for the application, the affirmation/affidavit shall exhibit all financial information of the body corporate to show that the body corporate is genuinely lack of funds or means to engage a lawyer. The financial information required would include but not limited to audited accounts, management accounts, bank statements of all bank accounts and information on credit facilities available to the body corporate.
- (iv) It should also be necessary for the shareholders and directors of the body corporate to demonstrate that they cannot either inject new capital or lend money to the body corporate to cover its legal costs. Each shareholder and director of the body corporate shall also make an affirmation/affidavit disclosing all his/her personal assets, properties, savings and income to demonstrate to the court that he/she cannot provide funding to the body corporate by way of capital injection or shareholder's loan. The affirmation/affidavit shall exhibit all relevant financial documents such as all bank account statements for the last 6 months. If he or she has savings and/or properties, details should be included in the affirmation/affidavit. (Please refer to *Re China Northern Newengeny Investment Limited*, HCCW 120/2014, Ruling of Mr. Justice Harris dated 8 September 2014 and *Re Designing Hong Kong Limited*, HCCAL 49/2014, Judgment of Mr. Justice Au dated 30 April 2015)
- (v) The directors and/or shareholders shall then take all the relevant supporting affirmations/affidavits before the Commissioner for Oaths at Room LG159, LG1, High Court Building, 38 Queensway, Hong Kong for affirming/swearing.
- (vi) Lodge the affirmations/affidavits together with all supporting documents**, if any, with the clerk to the Practice Master at Room LG115 on the same floor.
(* annual return, board resolutions, auditor's report, management accounts, memorandum and articles of association, bank statements of all bank accounts for the past 6 months and

other financial and supporting information.)

- (vii) The director has to be punctual for the appointment and attend before the Practice Master in the court mentioned by the clerk (usually in one of the courts on 2nd floor).
- (viii) At the hearing, the director has to show that the intended claim or defence of the body corporate has merit and substance. The director also needs to show that he has full knowledge of the subject matter and is capable of handling legal proceedings.

Points to note:

- (a) It is important that an advanced appointment booking by phone be made.
- (b) The supporting affirmation/affidavit and the relevant documents have to be lodged with the clerk to the Practice Master in the forenoon of the appointment date, so that the clerk could have sufficient time to locate the relevant case file.
- (c) If there is already a court hearing date fixed for the relevant proceedings, the “leave” application mentioned in paragraph (2) above must be made as soon as possible and in any event not later than the working day preceding the said hearing date. Unless leave is granted, the director will not be allowed to represent the company at the court hearing.