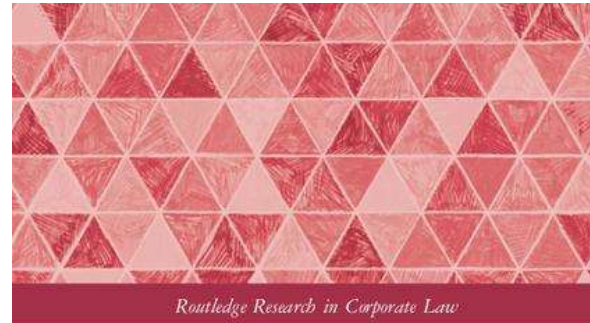


The (new) Greek law on PLCs: (still) in
need for a derivative action?

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Routledge Research in Corporate Law

SHAREHOLDER PROTECTION RECONSIDERED

**DERIVATIVE ACTION IN THE UK, GERMANY AND
GREECE**

Georgios Zouridakis





Derivative actions- nature and purpose

- Definition: *in cases where a wrong is suffered by the company, a (group of minority) shareholder(s) may exceptionally be allowed to seek remedy on behalf of the company*
- Nature: substantive and procedural law
- Character: subsidiary mechanism to avoid impasse
- Purpose: compensatory relief (for the company and its members); deterrence

the “company’s action”



- The provision conceptually and functionally closest to a derivative action under L. 4548/2018
- 5% minority may demand that the board brings the action and, in case the board does not comply with this request, the majority of that minority may petition the court to appoint special representatives to bring the claim. L. 4548/2018, arts. 103-106, replacing L.2190/1920 art. 22b (1) & (3).
- The company’s action was introduced to Greek law in 1962, by means of legal transplant from German law



Derivative actions v the Greek “company’s action”

- **Legal standing in the application stage**
- **Legal standing in main proceedings**
- Scope of misfeasance covered
- **Judicial oversight**
- Costs
- Access to information



Qualified minority threshold

- ❖ -Arbitrary/exclusionary
- ❖ -“default” thresholds have little practical significance
- ❖ -collective action problem: “shareholders’ forum” inadequate

Legal standing in the application stage

Legal standing in the application stage

- **Continuous ownership:** the requirement that the ownership thresholds are maintained
- problematic when coupled with qualified minority thresholds
- Further problematic when coupled with prior ownership





Legal standing in the application stage

- no multiple derivative actions: shareholder in the parent company unable to instigate litigation on behalf of the subsidiary

- **Issues:**

separate corporate
personality of the
subsidiary

how to remedy
reflective loss on (a)
different level(s)

Judicial oversight

The company's interests criterion

- Article 105: a request may be dismissed if “overriding interests of the company so demand”.
- Legal transplant: AktG, section 148 (1)(4)
- Low threshold



Legal standing in main proceedings

Special
representatives

risk of moral
hazard

Unappealing
option for
petitioners



Does Greece need a statutory derivative action?

- The dysfunctional “company’s action”
- Asymmetry of focus between directors’ duties and enforcement
- No alternatives/ substitutes
- The German experience; sections 147, 148 and 149 AktG

is the derivative action per the EMCA, section 11.39, a suitable blueprint?



Restricted
availability



Time consuming



Small possibility
for indemnity



No judicial
oversight

Derivative actions- striking the right balance

- ❖ Desirable effects of statutory legislation; incentives and restrictions:
 - 1) availability of the remedy and economic rationality
 - 2) control of frivolous and vexatious litigation in order to avoid undue interference with corporate affairs (marauding/predatory shareholders; räuberische Aktionäre)



Devising a blueprint for Greek law: part 1

- Individual right v qualified minority
- Contemporaneous ownership of shares
- Multiple derivative actions
- Scope of misfeasance

Devising a blueprint for Greek law: part 2

- Principle of subsidiarity
- Judicial oversight
- Costs
- Access to information

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Thank you for your
attention

