

SHAREHOLDER CLASS ACTIONS – SOUNDING THE DEATH KNELL FOR ASIC SECTION 50 ACTIONS?

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Abstract

Section 50 of the *Australian Securities and Investments Commission Act 2001* (Cth) confers a wide power on the Australian Securities and Investment Commission (ASIC) to bring civil action in the name of the company or shareholders for the recovery of damages for corporate misconduct. Despite its broad scope, this power has been little used by ASIC. This trend seems set to continue due to the recent growth in ASIC's arsenal of enforcement powers, in particular the ability to bring proceedings seeking civil penalties, together with what promises to be a new age of private enforcement of shareholders rights through class actions funded by litigation funding corporations. In the context of this likely expansion of private enforcement action and the current legislative framework of ASIC's enforcement powers, this article will examine whether there is still a role for ASIC to bring civil action under this provision.