A functional derivative action framework for Pakistan

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TITLE: A functional derivative action framework for Pakistan

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ABSTRACT: Company law in Pakistan does not recognise shareholders' right of derivative action. This situation raises the question as to what extent derivative action, if recognised under the company law in Pakistan, can promote good corporate governance and contribute to reinforce enforcement powers of shareholders as to safeguarding their rights? The purpose of this thesis is twofold. First, this thesis argues that an effective derivative action system could act as a means of disciplining corporate management in Pakistan. Second, it presents it argumentations that other legal and extra-legal managerial disciplinary mechanisms have limitations of their own that support the introduction of a statutory derivative action system in Pakistan. The methodologies used in this thesis are doctrinal, historical, case study, comparative and semi-structured interviews. Doctrinal analysis has been employed when analysing statutes and case law. Case study methodology has been used to exemplify problems of directorial misconduct and providing empirical evidence for carrying out further analysis. A comparative approach has been utilized for which the UK has been chosen for comparative purposes to identify lessons that Pakistan can learn from the UK derivative action system while finding ways for effective use of derivative action system in Pakistan. Semi-structured interviews are aimed at providing an evaluation of the reform proposals. This study contributes to the subject of derivative action in three key ways. First, it provides an in-depth examination of the regulatory framework pertaining to shareholder protection in Pakistan in order to highlight the inherent challenges presented by un-updated legal framework. Second, based on the findings from this thesis, reform proposals are made as to codifying derivative actions, clarifying the procedural route for derivative proceedings and providing a funding mechanism to attract shareholders to bring derivative actions to enforce corporate rights. Third, suggestions proposed in this thesis are supported by both the opinions of the interviewees and original research on judicial experience of other jurisdictions, particularly the UK. The findings made in this study and proposals have implications for law reforms and are expected to inform practitioners, academics, legislators and policy makers on the way forward in reforming shareholder protection in Pakistan. Thus, this thesis would inform reforms in the company law in order to strengthen the enforcement power of shareholders and ensure corporate accountability in Pakistan.

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Like the derivative of a function, the functional derivative satisfies the following properties, where $F[\rho]$ and $G[\rho]$ are functionals: Linearity:

$$\frac{\delta}{\delta \rho} (\lambda F[\rho] + \mu G[\rho]) = \lambda \frac{\delta}{\delta \rho} F[\rho] + \mu \frac{\delta}{\delta \rho} G[\rho].$$

The above equation for the functional derivative can be generalized to the case that includes higher dimensions and higher order derivatives. The functional would be

$$\frac{\delta}{\delta \phi(x)} \int \mathrm{d}y \phi(y) \left(\frac{\partial^2}{\partial y^2}\right)^n \phi(y),$$

where the vector $r \in \mathbb{R}^n$, and $\nabla(i)$ is a tensor whose $n_i$ components are partial derivative operators of order $i$. Functional and partial derivatives commute because they depend on different spacetime variables: the partial derivative is w.r.t. $y$ and the functional derivative is w.r.t $\phi(x)$ ($x$ vs $y$). So what you actually want to calculate is

$$\frac{\delta}{\delta \phi(x)} \int \mathrm{d}y \phi(y) \left(\frac{\partial}{\partial y}\right)^2 \phi(y),$$

note the spacetime dependencies.