

Shareholder Disputes and Available Resolutions

At Crowe Advisory, we have been engaged in an increasing number of cases helping to resolve shareholder disputes. In this article, we explore some of the causes and remedies of shareholder disputes.

Shareholder disputes are common, many and varied. The parties can often become entrenched and the dispute can become hard fought and come before the Courts. Because of this, and the need for the shareholder to safeguard their financial interest in the company, the claims brought can often focus on the perceived wronged party seeking to recover their loss or the value of their shareholding.

Potential solutions will usually involve either the other shareholders buying out the interest of the aggrieved shareholder or an agreement that the company be wound up by way of members' voluntary liquidation and the assets or proceeds from a sale of assets being distributed to the shareholders in accordance with their entitlements.

Often, due to the acrimonious nature of the fallout between shareholders, the matter can be the subject of litigation, which in due course through mediation is resolved through a settlement agreement.

In our experience, the most common disputes involve a minority shareholder claiming they are being oppressed by a majority shareholder.

What is Shareholder Oppression?

A minority shareholder is a shareholder who owns less than a 51% interest in a company and does not have a majority control over the business. Shareholder oppression occurs when minority shareholders are denied their rights as shareholders or when majority shareholders act in a way that favours the majority or unfairly prejudices the minority. Shareholder oppression often occurs as part of a plan by majority shareholders to force minority shareholders to sell their interest in a company at an unfairly low valuation.

Instances of shareholder oppression may occur where majority shareholders typically control the day-to-day business.

Common Examples of Shareholder Oppression

- Refusing to allow a minority shareholder to inspect the company's books and records.
- Breakdown in relationship between co-owners.
- Draining company profits through inflated salaries and bonuses to the majority, leaving little or nothing to distribute in dividends.
- Locking a minority shareholder out of company property.
- Cutting a minority shareholder out of management decisions.
- Refusing to notify a minority shareholder of official shareholder meetings.
- Altering agreements to remove or diminish a minority shareholder's rights.
- Using company funds to pay for the majority's personal expenses.
- Attempting to force a repurchase of the minority's shares at an unfairly low price.
- Accepting a share restructure that eliminates a minority shareholder's interest in the company.

Why do disputes happen?

It is not uncommon for individuals be they the original founders, small investors or employees to find themselves being offered minority shareholdings in start-up companies.

We often encounter informal business arrangements where individuals at the outset of a new venture or profit share arrangement agree to roles and general strategy but later have disagreements as to ongoing business plans as circumstances change. We also see situations where changes happen in family companies as the children of the founder assume greater control of day-to-day activities and disputes between family members start. There are many situations where a deadlock situation can emerge between shareholders in business due to the inability to agree on a business strategy.

While we would advise that a shareholders agreement is put in place at the earliest juncture, this does not always happen. Likewise, appropriate provisions in the company's constitution should be in place to provide for changes in shareholdings and share capital that reflect the agreements that the business owners wish to have in place. However, we find there is often little discussion with the shareholders at the outset as to what is in place in the foundation documents.

Crowe can assist in processes to resolve shareholder disputes by:

- Provide a Strategic Review Report as to options available to the shareholders to resolve their dispute and in reviewing the document with the shareholders to assist in negotiating a workable solution that can be implemented.

- Providing an independent business valuation taking on the role of expert.
- Assist in implementing a step plan that allows for share buyback by the company using existing reserves and assets.
- Act as liquidator in members' voluntary liquidation and distribute the company funds/assets on a pre-agreed basis.
- Provide a tax advice report on different exit scenarios so that the focus is on optimising proceeds rather than the dispute.

How to Prevent Shareholder Oppression

The best way for minority shareholders to protect themselves from shareholder oppression is to insist on a shareholder agreement being a prerequisite to buying a minority interest in a company. Shareholder agreements typically define the respective management and voting powers of the shareholders, payment of dividends, and redemption and sale rights and limitations. These contracts between shareholders are the most direct and easy method for protecting minority shareholder's rights and avoiding many of the oppressive actions outlined above.

Please contact Declan Hanly or Aiden Murphy if you wish to confidentially discuss the above or any other aspects of projects involving shareholder disputes and receive a no-obligation consultation.

About us

Established in 1941, Crowe is a leading accountancy and business advisory firm in Ireland. Throughout our 80-year history, we have developed an unrivalled understanding of the Irish business environment and built a national reputation in auditing, tax and business consultancy.

We work with a variety of clients across commercial and public sectors. Our services include Audit & Assurance, Tax, Corporate Insolvency & Recovery, Corporate Finance, Consultancy, and Outsourcing.

We are also independent members of Crowe Global, one of the top 10 accountancy networks in the world, with colleagues in over 750 offices across 145 countries. Through this global reach we are able to offer clients a seamless service when trading internationally.

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Contact

Crowe
40 Mespil Road
Dublin 4
D04 C2N4

Tel: +353 1 448 2200

www.crowe.ie



Aiden Murphy

Partner

Direct: +353 1 448 2214

aiden.murphy@crowe.ie



Declan Hanly

Director

Direct: +353 1 448 2231

declan.hanly@crowe.ie