

Dealing with a Shareholder or Director Dispute: What You Need to Know



Although often not considered when starting or buying a business, disputes between shareholders and directors commonly occur and can have severe consequences.

These disputes can arise over the running of the business or due to the personal circumstances of the directors or shareholders. Tension can build and in the end it can impact the business' performance as directors are forced to focus on the dispute at hand, rather than the business itself. Shareholder and director disputes are best resolved quickly for all parties involved. Failing to do so may mean losing your business.

There are various options available for directors and shareholders to resolve a dispute. These options have varying levels of cost and consequences. The most appropriate option for your situation will depend on the circumstances of your business and the parties involved.

How Does a Shareholder/Director Dispute Arise?

Disagreements between shareholders or directors can arise due to:

- Disagreements on how the company is being run and its strategy – particularly when it's performing poorly,
- Inappropriate actions taken such as failing to provide financial or other information, or worse a [breach of director's duties or fraud](#),
- The personal circumstances of the people involved including moving on to new ventures, separate business interests, divorce or illness, and
- Breach of a shareholder's agreement.

What are Your Options When Resolving a Dispute?

1. Negotiate a Resolution

Ideally, a shareholder agreement is in place to help navigate disputes. If not, then before battle lines are drawn, bringing all parties to the table to negotiate a way forward can be the fastest and most effective way to resolve a dispute.

Like any dispute, finding common ground and compromising to ensure a beneficial outcome for all parties is likely to be the cheapest and least disruptive approach. Up to date financial information will likely be required, and the company's accountant may also be able to assist. Whether lawyers are involved will depend on the stage of the dispute.

2. Resign, Buy or Sell

If you're a director but not a shareholder, then you may resign from the role at any time. It's important to be conscious of your exposure to [various liabilities](#), particularly from personal guarantees or for unpaid GST, PAYG and [superannuation debts](#). Once you resign, you have no control over the company's affairs.

If you're a shareholder, it's not as easy to walk away. Failing to resolve disputes early may lead to the parties' relationships being fractured to a point where the parties may have to go their separate ways. If the business is doing well and hasn't suffered irreparably because of the dispute, one or more of the parties will likely want to retain it. If the parties can't agree on the share value or who should buy out the other, then an independent valuation will be required. Sometimes each party obtains their own valuation and unfortunately, these can be very different.

You may be invested in the company and not be willing to let the other party have it. However, sometimes letting go of your shares in a potentially valuable company is the best option, especially if the business and/or your personal life will greatly suffer if you continue the dispute. If the dispute can't be resolved at this stage, then court action will be required. Or if the dispute continues to the detriment of the business, an insolvency appointment may be required.

3. Seek Court Intervention

Sections 232 and 233 of the Corporations Act allow shareholders to apply to the Court for relief where the company's affairs are being run in a way that is not in the interests of shareholders as a whole, or in a way that is oppressive to particular shareholders. Such conduct may arise where:

- The directors fail to act in the best interests of the company,
- Company assets are sold at an undervalue,
- Improper exclusion of a person from the company's management,
- Diversion of business opportunities away from the company,
- Oppressive conduct of board meetings, or
- Unfairly restricting dividends.

Court intervention should be seen as a last resort. When the Court gets involved in a shareholder/director dispute, it has a wide range of powers to make orders as it deems necessary, such as:

- Winding up your company,
- Ordering the sale/purchase of the shares of any member by other members,
- Appointing a receiver,
- Ordering the company to institute, prosecute, defend or discontinue legal proceedings,
- Restraining or directing a person's conduct; and
- Modifying or repealing the constitution of your company.

Section 461 of the Corporations Act also allows the Court to wind up a company on just and equitable grounds.

4. Appoint a Voluntary Administrator

Where the company is, or is likely to become, **insolvent**, the directors can resolve to appoint a Voluntary Administrator with a view to stabilising the business and allowing proposals for the company's future to be considered.

Voluntary Administration allows directors, shareholders, or any other party submitting a proposal for a **Deed of Company Arrangement (DOCA)** to be proposed. A DOCA will provide for control of the company to return to the directors after approximately 5 weeks.

As certain directors, shareholders or other parties may wish to take over the control and ownership of the company, the Administrator can adjust directorships and shareholdings as appropriate. If a company is insolvent, then its shareholding is likely to be worthless. Therefore, subject to the administration process being for a **proper purpose**, the Administrator can transfer shareholdings by consent, or as ordered by the Court. This can allow a party to invest funds in the business through a DOCA, in return for obtaining control and ownership of that business.

If there no proposals submitted for a DOCA, or as an alternative, the Administrator can seek to sell the company's business.

How Can You Avoid a Shareholder/Director Dispute?

To reduce the damage a shareholder dispute can have on your company, it's vital to have a shareholder's agreement in place. A shareholder's agreement can include various elements as noted in **this guide by CPA Australia**. The agreement can cover aspects regarding the funding, structure, management and direction of the business. A shareholder's agreement should also include a clear dispute resolution process. Without this, a shareholder dispute may cause significant detriment to your business.

Need Further Assistance?

If you're experiencing a director or shareholder dispute which is impacting the viability of your business, Revive Financial can assist. As business debt specialists, we can help implement a business turnaround strategy, Voluntary Administration or Company Liquidation. Get in touch with our team on 1800 560 557 for a free business health check.