



COLLYER BRISTOW

COMMERCIAL DISPUTES **KNOW-HOW GUIDES**

SHAREHOLDERS' DISPUTES

Shareholders disputes can arise for any reason, but common circumstances include a divergence of opinion for the future direction of the company, the unfair distribution of responsibilities between the parties leading to one party feeling disgruntled and/or a minority shareholder being excluded from management of the company.

COMMERCIAL DISPUTES KNOW-HOW GUIDES

ARTICLES OF ASSOCIATION AND SHAREHOLDERS' AGREEMENT COURT ACTION

The Articles of Association (“Articles”) govern the internal affairs of the company, addressing matters such as the rights attaching to shares, the procedure for issuing and transferring shares, and the appointment and removal of directors. Shareholders can enforce their rights under the Articles.

A company may also have in place a shareholders’ agreement which supplements the Articles to establish further commitments between the shareholders. Where the agreement is breached, a shareholder can take steps to enforce these rights as they would any other contract.

The agreement may set out a clear dispute resolution process to be followed where there is a dispute, offering remedies to a shareholder which are enforceable. It should be consulted in the event of an emerging dispute but cannot be expected to cover every possible dispute between the shareholders. If a dispute arises shareholders have two options: litigate or negotiate.

A shareholder may need to consider recourse through the court. There are several statutory remedies available to shareholders, in particular minority shareholders.

UNFAIR PREJUDICE PETITIONS

S.994 of the Companies Act 2006 (“CA 2006”) offers a powerful remedy to minority shareholders where the affairs of the company are being conducted in a manner that is unfairly prejudicial to all or part of its shareholder members. This is commonly referred to as an unfair prejudice petition.

The test for what constitutes unfair prejudice is an objective one, the prejudice will be regarded as unfair if a hypothetical reasonable bystander observing the consequences of the conduct, would believe it to be unfair. There is no definition of what constitutes unfairly prejudicial conduct; however, this can include:

- Exclusion from management where the shareholder concerned had an expectation of participation.
- Failure to pay a certain dividend (without justification if the company’s financial position permits) where it was part of the basis on which the petitioner became a member of the company.
- Certain alterations to the articles of association, such as the adoption of a compulsory transfer mechanism.

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If the court consider the petition is “well founded” under *s.996 of the CA 2006* it “may make such order as it thinks fit for giving relief in respect of the matters complained of”. Such remedies can include the purchase of the shares of any member of the company by other members or by the company itself. This will ordinarily require the consideration of expert evidence to value the shares.

PETITIONS FOR THE ‘JUST AND EQUITABLE’ WINDING UP OF A COMPANY

Often seen as a last resort a shareholder may petition for the winding up of the company on the grounds it would be just and equitable to do so (*section 122(1)(g) Insolvency Act 1986*). The bases for the petition can include:

- Loss of substratum, where it is shown that the original purpose(s) of the company have been achieved or may no longer be pursued.
- Deadlock, where a breakdown in relations between parties means decisions concerning the company’s business cannot be made.
- Mismanagement of the company’s affairs.

Such order if granted essentially amounts to the end of the company.

DERIVATIVE ACTIONS

Where a shareholder’s dissatisfaction arises from a breach of a director’s duties which has caused loss to the company, a shareholder may be able to pursue a claim on behalf of the company to recover the company’s loss. This is known as a derivative claim **[[add hyperlink to director’s duties guide](#)]**. A key point to note is that any proceeds from the claim belong to the company (not the shareholder).

NEGOTIATION

Litigation between the shareholders can be detrimental to the company, and it may be advisable for the parties to reach a commercial settlement which avoids the involvement of the court. The settlement can be navigated by way of a formal mediation with each party appointing solicitors and a jointly selected mediator or negotiations between the parties with their legal teams. It is open to the parties to reach any resolution which is commercially acceptable to all involved. This could include putting in place new governance documents which assuage the concerns of the disgruntled party or the buying out of a shareholder. A settlement which involves the purchase of shares will most likely require an expert valuation of those shares.

This is part of a series of practical know-how guides for those involved in commercial disputes whether the dispute has led to litigation or not. They provide basic information on a wide-range of disputes topics but are not a substitute for specific legal advice. For further guidance on the topic please contact Nichola Leach at nichola.leach@collyerbristow.com or on +44 (0) 7793 168795 or contact any member of the commercial disputes team.



NICHOLA LEACH

Senior Associate

+44 20 7468 7209
+44 7793 168795
nichola.leach@collyerbristow.com



ROBIN HENRY

Partner - Head of Dispute Resolution Services

+44 20 7470 4429
+44 7943 503198
robin.henry@collyerbristow.com



JEFF ROBERTS

Partner

+44 20 7470 4441
+44 7831 27743
jeff.roberts@collyerbristow.com



STEPHEN ROSEN

Partner

+44 20 7468 7208
+44 7770 986494
stephen.rosen@collyerbristow.com



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COLLYERBRISTOW.COM



@COLLYER_BRISTOW



@COLLYER-BRISTOW-LLP



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