

Early share valuation in shareholders' disputes



It can be very important to get a share valuation done at an early stage of any shareholders dispute and this article explains why.

In most shareholders disputes one of the first questions that will occur to a lawyer is how much are you arguing about. However, it is surprising how often this has not been addressed by parties to a dispute.

Why get a share valuation?

Shareholder litigation is notoriously expensive. As part of any risk analysis an assessment of the proportionality of taking legal action is essential. Only parties with very deep pockets to start with should consider embarking on such litigation as a point of principle. It should generally only be contemplated where a commercial case for doing so can be made out.

Given the cost of such litigation it is increasingly funded by third party capital from commercial litigation funders. This is an expensive solution and in order to be viable the value of the business at the heart of the dispute must be of sufficient value to make the numbers work. Funders are going to want to see a valuation that demonstrates this.

Finally, armed with a valuation you are in a much better position to negotiate, for example, a buyout of a minority shareholder and engage in settlement discussions generally.



Who should do the valuation of the company?

I am sometimes asked for my personal view on the value of the company but this is very definitely something for an accountant to give an opinion on rather than a lawyer.

Often the assumption is that the company's accountants should do the valuation, and sometimes this is specified in, for example, share transfer provisions in Articles of Association or Shareholders Agreements. However, often they are not really qualified to do such a valuation exercise and it is therefore better to instruct an independent accountant who specialises in company valuations.

Experts in company share valuation will also be better able to give a considered view on such matters as the appropriate discount for valuing a minority shareholding, which is often a contentious issue.

What sort of company valuation is required?

The valuation of companies has an undeserved reputation as being something of a dark art. However, at the most basic level a company is simply worth what somebody will pay for it (either actually or theoretically) and there are various tried and tested ways of approaching such a valuation which can be employed.

A full blown expert valuation for a court case will cost many thousands of pounds but that is not necessarily what is required at the initial stage of a dispute. Also, you may not have access to the information that an expert accountant would need to produce a full valuation. What is generally needed at the early stages of a dispute is a ball park figure that can be used as the basis of an initial risk analysis and also potentially form the basis of settlement discussions. Third party funders may also have their preferred valuers and their own requirements about what is required.

Joint company valuations

Some shareholder disputes are really just about "how much". Deep down the parties realise that one or other has to leave and it is simply a question of how much the other will take / pay for the shares. In these cases it can sometimes be agreed that an accountant will act jointly. The parties will each pay half of the cost of getting a valuation and either formally agree to be bound by the valuation or just use the valuation obtained as the starting point for discussions.

Conclusions

There are a number of reasons to get a share valuation done at the early stage of a dispute and indeed it may be essential if third party funding is required. Such a valuation can be an important part of the overall strategy for resolving a shareholder dispute.

If you are involved in a shareholder dispute and need legal advice then please contact [Ed Weeks](#), a recognised expert in this area.



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