

The role of a company's auditors and accountants in shareholders disputes



A company's accountants and auditors often play a key role in the business of smaller companies, acting as general advisers to the directors. This can lead to problems in the event of a shareholder dispute or boardroom battle.

First, there will be an inclination to side with the majority shareholders in any dispute as they ultimately control the company. Any firm of accountants looking at the longer term will have to take into account that backing the wrong horse could lose them the business of acting for the company. For smaller firms of accountants this can be a significant factor.

Even where the accountants act even handedly and remain neutral in a dispute there will often be an intense distrust on the part of some shareholders (typically the minority shareholders). This can introduce an additional element into the dispute and the parties end up arguing about the veracity of any accounts or whether or not new accountants should be appointed. This can make a complex dispute even more convoluted and hence difficult to resolve.

In this context it is unfortunate that shareholders agreement often make the company's accountants or auditors either the arbiter of any dispute (via an expert determination clause) or the valuer who determines the value of shares on a transfer between shareholders (whether voluntary or forced). Where there is distrust about the neutrality of the accountant then the operation of such provisions can be fraught with problems. The parties can end up arguing about the dispute resolution or valuation process itself.

Such a situation arises from the best of intentions – to find a cost effective way to resolve disputes, especially



about value. The company's accountants / auditors are an obvious choice, they know all about the company and the shareholders and should be able to come to a swift and accurate decision.

However, in addition to the problems listed above, general accountants may not have the forensic skills or experience to properly value a company in a contentious situation and may be completely out of their depth when asked to step into the middle of a serious boardroom bloodbath and reach a binding decision on a particular aspect.

How best to mitigate disputes?

A better approach, especially in more valuable companies where there is potentially more to argue about, is to give the valuation or expert determination role to a third party.

In relation to valuation, a clause can be drafted which requires the parties to agree the identity of such a valuer, failing which the valuer is to be appointed by the President for the time being of the Institute of Chartered Accountants for England & Wales.

In summary, consideration should always be given as to whether expert determination is an appropriate way to resolve what can be very complex issues. If expert determination is to be used then think carefully about who should be the expert. Choosing the company's accountant / auditor may not be the best choice. If so, consider a mechanism under which the parties must agree the identity of the expert, failing which an appointment is made by a competent third party.

How we can help?

If you suspect there may be a potential claim related to the above that you would like advice on, please contact the [commercial disputes](#) team.

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