Shareholder Oppression – Fact Sheet

Overview

Shareholder oppression is conduct by the majority shareholder(s) of a company that is unfairly prejudicial to the interests of the minority shareholder(s).

There is no exhaustive list of the types of conduct that may be considered oppressive. The term ‘oppression’ has been found to connote a lack of probity and fair dealing. For conduct to be oppressive, it must be unjust or otherwise exhibit commercial unfairness.

Common examples of shareholder oppression to watch out for

* + - * An improper diversion of business/business opportunities by the majority shareholder(s) to an entity related to the majority, or conducting the affairs of the company to advance the interests of the majority, or to the detriment of the majority. For example:
        + the directors of a company taking a lucrative contract in their own name;
        + the directors of a company appointing additional directors to increase board control and then transferring assets out of the company.
      * Denying access to information, particularly where there is a company document (e.g. company constitution or shareholder agreement) that provides the shareholder a right to access or request information.
      * Selling the shares held in subsidiary companies at a significant undervalue in the absence of minority shareholder consent.
      * The sale of land or business assets on commercially unjustifiable terms.
      * Payment of excessive remuneration to a majority shareholder(s) or an associate of a majority shareholder(s).
      * A failure to prosecute the misconduct of a majority shareholder director where there are grounds to do so under the Constitution of the company.
      * Issuing shares to a majority shareholder to further dilute the minority shareholders in an effort to reduce their voting power.
      * An improper exclusion from participation in the management of the company. For example, not allowing a minority shareholder director to attend a meeting of the board that is otherwise controlled by the majority.

1. Remedies for the oppressed – Corporations Act
   * 1. Where unfair or oppressive conduct has been established, the Court may grant a remedy appropriate to the circumstances under the *Corporations Act*. Examples of the relief that may be ordered by the court are as follows:
        + that the company be wound up;
        + that the existing company constitution be modified or repealed;
        + that the majority purchase the minority shares with an appropriate reduction of the company’s share capital;
        + regulating the future conduct of the company’s affairs or particular officers of the company; and
        + appointing a receiver.