

## Corporate Divorce: Options for Dealing with Shareholder Disputes

**Author :** Edward Feehan



It is often said that we spend more time with the people we work with than with our families. When business partners get in to bed together to run a corporation, many of the same dynamics and pressures of a marriage come in to play. Like a domestic marriage, sometimes relationships do not work out and a 'corporate divorce' becomes the only viable option. In these circumstances, a solution must be found for buying out one of the owners. If a buy-out is not an option, then a process for selling and divvying up assets of the business will have to be found.

There are four common approaches to resolving a shareholder dispute when one or more of the shareholders wants to buy out a partner and continue to own the business. Which solution is appropriate will depend on the level of acrimony that exists between the business partners.

### **Mutual Agreement**

If the parties can agree, the least expensive and most expeditious way to transfer shares is by agreeing to a share value and transferring the shares from one owner to another. Of course, for an agreement to be reached, all parties need to be willing to negotiate.

### **Shotgun Agreement**

Often, a prior mechanism for selling or buying shares has already been agreed to as part of a Unanimous Shareholders Agreement (USA), which sets out the steps by which one shareholder can force the sale of shares. Commonly referred to as a 'shotgun agreement' this process involves one shareholder offering to buy out the other shareholder at a price per share of their

choosing. The recipient of the offer must either accept the offer or buy out shares of the other shareholder at the same price. The same mechanism usually allows for a shareholder to force the other shareholder to buy his share.

### **Minority Rights**

If a minority shareholder believes the corporation has not acted in good faith, they can appeal to the court for the application of an Oppression Remedy. The Court can order a number of different remedies, including the purchase of the shares of the minority shareholder.

### **Litigation & ADR**

Commencing litigation can often force a party's hand and lead to settlement negotiations, which can include the transfer of shares. But, litigation in and of itself, cannot force the sale of shares unless it results in an oppression order from the Court. Alternatively, the parties can agree to go to mediation or arbitration frequently to determine the best option for the sale of shares. Mediation and arbitration offer a faster and less expensive route to resolution than going through the courts.

Other options for dealing with a serious dispute, that has little to no chance of resolution, typically involve ending the business in one way or another.

### **Butterfly Transaction**

Under this tax deferral process, the parties can agree to split the corporations into two separate corporations. The two new corporations must carry on the same business as the old entity. The division of assets in butterfly transactions can be difficult, but can result in significant tax savings to the shareholder.

### **Liquidation**

If there is a complete deadlock between equal shareholders that cannot be resolved through other means, the Courts can appoint a liquidator to sell the corporation assets. The shareholders of the corporation can also vote to place the corporation into liquidation.

### **Sell to a Third Party**

The corporation shareholders may elect to sell the corporate shares or its assets to a third party. Under the *Business Corporations Act* all shareholders are entitled to vote and/or dissent to the sale.

### **Informal Wind-down**

The shareholders may formally agree to wind-down the corporation, pay off its creditors and cease operations.

While other options and strategies do exist to navigate disputes amongst shareholder (including the appointment of auditors; inspectors; receiver-managers and liquidators), the options listed above are the most common tactics employed. It must also be noted that there are many potential tax implications that accompany the options listed above. Tax advisors should be consulted before any shares are transferred.

Having an up to date shareholders agreement that addresses dispute resolution processes can save all shareholders enormous and valuable time and energy. Spending time at the outset of the business relationship, or when relationships between shareholders is positive, is the best approach to getting agreement on how best to resolve any future dispute.

[Edward Feehan](#) and [Erin Burton](#)