



SELF-HELP IS UNHELPFUL IN DIRECTOR/SHAREHOLDER EXITS

Despite their best intentions at the outset, business owners (often shareholders in private companies) sometimes wish to go out on their own.

That may be for any number of reasons, including retirement, deadlock, disagreement, or a desire to compete.

I have been asked to assist with many matters after self-help measures have been attempted.

Note: This article discusses amicable shareholder/director exits. For acrimonious shareholder/director exits, click [HERE](#) : Business Exit Disputes (aka "Shareholder Disputes") - A Litigation and Insolvency Lawyer's Overview

Self-help exits

As a Litigation and Insolvency lawyer, I have seen many "quasi-exits" from private businesses, where the owners have tried to effect the exit themselves.

In those circumstances, the parties remain (at least at the beginning of the exit) amicable and agree a price for the share sale, and the exiting owner then resigns as a director.

But that is not the end of it.

Even if there is no dispute, some common issues that need to be dealt with, but often aren't, include:

1. Agreements with third parties, such as guarantees given to trade creditors, need to be revoked where appropriate and/or credit arrangements renegotiated entirely.

2. Indemnities need to be obtained from the remaining directors/shareholders in respect of liabilities to other creditors, such as the ATO (if personal liability for company debts has attached, such as under a Director Penalty Notice regime liability).
3. Managing finance or trade creditor facilities where the resignation of a director, or change in shareholding, itself triggers breaches or notifiable events in those facilities.
4. Post-resignation restraints, protection of Intellectual Property (including client lists) and the like.
5. Director or shareholder loan accounts must be dealt with.
6. Termination of employment agreements (where necessary).
7. Updating the ASIC register.

Director/shareholder exits, even if there is no dispute, often involve elements of commercial law, corporations law, finance law, PPSR, property law, guarantee law, employment law, equity, intellectual property law, and insolvency law.

At Murfett Legal, our team of specialists work together to cover the field in shareholder exits.

This includes advice, negotiation, document preparation, representation, and dispute resolution.

Self-help shareholders agreements

Prevention is almost always better than the cure.

A well drafted and comprehensive Shareholders Agreement put in place at the outset, whilst relations are still amicable, can save a lot of delay, stress, and legal costs, especially when compared to a disputed exit.

It becomes the rule book by which an exit, or a dispute, is to be effected.

It sets the groundwork from a commercial perspective, negotiated by rational minds at the outset, rather than at the back end during a dispute/exit when the parties' decisions can often be motivated by emotion.

I have seen businesses use what I call "Frankenstein" shareholders (partnership) agreements, being agreements cobbled together by the parties themselves, from various sources (not using a lawyer). Often, the parties have made a mess of it so royally that it takes more time and effort to un-do and then re-do properly.

This practice doesn't seem to be confined to shareholder exits, but extends to all manner of contracts.

Leaving aside plagiarism and copyright issues, the dysfunctional nature of such agreements almost always means they simply don't work in practice, and it can be expensive to try and make sense of, and implement, the terms of such an agreement.

At Murfett Legal, our Commercial Law team regularly assists with preparation of shareholders agreements, and provide advice as regards its operation during the course of the business' life.

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