



## When Roles Collide: What Ignites Shareholder Disputes?

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Many shareholder disputes start long before the conflict becomes the subject of formal dispute resolution. A common driver in shareholder disputes is where people lose track, or are unclear, of the role they play in the company.

It is very common for people to wear more than one hat at the same time in their business and sometimes their different hats look almost identical. Same business, same people, same decisions. It becomes easy to forget which hat you're wearing. Are you acting in your capacity as a director? A shareholder? An employee? To many people in small to medium-sized companies, the roles feel similar enough that the boundaries become unclear. This is where the conflict can start.

In our experience, claims are often brought against others in the same company due to someone acting outside of their allocated role or their powers in that role. The overarching theme is that people may not understand the responsibilities and powers attached to their various roles, when they are acting with multiple hats on for the same company.

In some recent case law, a claim was brought relating to a person's rights as a shareholder, which as it turned out was a director's right as stated in their shareholder agreement (*Mulholland v Mulholland* 2023). As a general rule, Courts are reluctant to step in to internal company disputes. Judges are pushing companies to sort their own internal issues without requiring a courtroom to assist. This was discussed in *Sea Management Singapore Ltd v Professional Service Brokers Ltd* where the Court made it clear that businesses are expected to manage their own affairs wherever possible.

You may be wondering how an issue makes it all the way to court with this type of misunderstanding. The reason is often because without a well written shareholders agreement, or a good understanding of the different roles in a company, a way forward isn't always clear.

A shareholders' agreement is written specifically for your business and spells out exactly what each party agrees the roles, responsibilities, powers, and limits to be, and your lawyer can guide you in preparing this type of agreement with the knowledge of what the legal powers and limits are. So, if you and your business partner ever end up on different pages, you know where to look. You can see whether someone has overstepped, what obligations

might have been breached, and what options you have to deal with it. A good agreement reduces stress, keeps costs under control, and protects your company when things get tense.

Without a clear agreement, a dispute can leave you spending significant money as lawyers sift through company emails (usually extensive when there is an internal dispute), case law and legislation, negotiate endlessly, or head into costly mediation and other dispute resolution forums, to resolve issues inflamed by confusion that could have been avoided.

### *Roles, responsibilities and powers*

If you are in a company, a good starting point is understanding the fundamental differences between the roles people hold within the company:

- **Shareholder:** A shareholder owns shares in a company. Their rights relate primarily to ownership and oversight, such as voting on major decisions, receiving dividends, and sharing in the value of the business. They are generally not involved in day-to-day management unless they also hold another role.
- **Director:** A director is responsible for governing and directing the company's overall management. They make strategic decisions, consider management reports to ensure the business is on-track, ensure legal compliance, and act in the best interests of the company. Their duties are set by law and can carry personal liability if breached.
- **Employee:** An employee works for the company under an employment agreement. They carry out tasks and responsibilities assigned to them. Their rights and obligations arise from employment law and their contract. The role of CEO or general manager, in particular, is a managerial role, carrying the responsibility for day-to-day management of the business and reporting to the Board of Directors.

As outlined earlier, a good shareholders' agreement can outline how a group of owners intend to run a company and make decisions, and what part they each play in that. It can significantly reduce confusion at the outset and avoid substantial costs if there is a dispute later on.

If you want clarity around your current position or need guidance on your situation, our corporate and commercial team can help.

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