

How much are my shares worth?



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Whether or not the other side is offering to buy you out, the court orders the purchase of your shares or you just “want out” of the company, the key question is how much are your shares really worth? The answer to this will depend upon the particular facts and for this reason it is not possible to make more than general observations of share values.

2 Expert help is usually required

Share valuation is an art, not a science. In the case of an unquoted private company – where there is no public market in the shares – it will rarely be possible to form any reliable view about its value without some form of expert input. Even then, one expert will often disagree with another about the appropriate method or result.

3 Is there already an agreement about how shares will be valued?

Where the company's articles of association or a shareholders' agreement make provision for the sale and valuation of shareholdings, then it is common for them to provide for the value to be determined by the company's auditors whose determination will usually be stated and accepted to be final as between the shareholders. This means that a shareholder will usually be stuck with the auditors' opinion of the company's value even if it is doubtful or unreasonable and, depending on the precise terms of the articles or agreement, they will be bound to sell at that price.

Auditors (and other valuers) will, however, usually owe a duty of care to the shareholders so that, if they value the shares negligently, they may be liable in damages to a shareholder who has suffered loss by, for example, having to sell shares at an unreasonably low price.

4 Method of valuation – going concern?

One of the decisions which the expert will have to make is what method of valuation to adopt. The two fundamental methods of valuing a company are as a “going concern” or on the basis of a break-up/liquidation value of its net assets. Unless, unusually, the business will not be continued after the sale of the shares in question (or there is some other special feature), it will be valued as a “going concern”.

The appropriate method of valuing a business as a going concern will depend on all the circumstances including, in particular, the nature of the business. If there is a usual or conventional method of valuing businesses in a particular industry then this will probably be the most appropriate method, unless there is a specific reason not to use it. Evidence of the method and/or price of other comparable sales of businesses in that industry may also assist.

Valuation as a “going concern” will usually be based on its profit or future income and it is common to take a figure for maintainable profits (whether gross or net) and multiply it by a factor based on expected “yield”. Yield will often be strongly influenced by the nature of the industry in which the company operates. Occasionally, even a “going concern” is more appropriately valued on the basis of its net assets.

5 No discount where quasi-partnership or unfair prejudice is found by court?

Where there is no such provision the question of whether there should be such a discount will often turn on the distinction between a quasi-partner or a mere investor. A quasi-partner is a shareholder who is entitled to participate in the management of the company (described in this respect as a “quasi-partnership”) and, in the usual case, his or her shareholding should be valued without a discount for the fact that it is a minority holding. More broadly, where the court finds that a minority shareholder has been subjected to “unfair prejudice”, any order which it makes that the majority should purchase the minority’s shares will usually be on the basis that there should be no discount and any purchase offer made by the majority in order to head off an unfair prejudice petition will need to be made on the same basis.

6 Valuation – allowing for unfair prejudice

In some cases the unfair prejudice may have adversely affected the value of the company (and therefore the shares in it) and so, it may be more appropriate for the valuation of the company to take these factors into account by, for example, adding back the value of misappropriated assets.

7 Valuation – as at what date?

The existence and nature of unfair prejudice may also have an impact on the date of the valuation. The starting point is that the shares should be valued on the date which they are ordered to be purchased but the court has a discretion to choose an earlier date before, for example, some unfair act was done, if that is more likely to result in a fair value being allocated to the shares. In this regard, the resolution will all depends on the facts of the particular case.

If the articles of association or shareholders’ agreement prescribe a machinery for the valuation of shares then, depending on its precise terms, the court may regard itself as bound to use this method of valuation.

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