

Title:

Buying Out Minority Shareholders under the Companies Act 1985

Word Count:

1198

Summary:

An article on minority shareholder rights and forcing a sale of minority shares using sections

Keywords:

minority rights, minority shareholder rights, minority shareholder protection

Article Body:

Rights of Minority Shareholders

In the decision of the Court of Appeal in *Profinance Trust SA v Gladstone* (Case No: A3/2000/04

However, Walker LJ observed:

'It is well known among company lawyers that although Sections 459-461 were intended to provide

Companies Act: Sections 459 & 461

Section 459(1) of the Companies Act 1985 (as slightly amended by the Companies Act 1989) provides

'A member of a company may apply to the court by petition for an order under this Part on the

Section 461(1) and (2) of the Act provide as follows:

'(1) If the court is satisfied that a petition under this Part is well founded, it may make such

(2) Without prejudice to the generality of subsection (1), the court's order may:

- (a) regulate the conduct of the company's affairs in the future;
- (b) require the company to refrain from doing or continuing an act complained of by the petitioner;
- (c) authorise civil proceedings to be brought in the name and on behalf of the company by such persons as the court may direct;
- (d) provide for the purchase of the shares of any members of the company by other members of the company.

It was observed in *Profinance* that there 'is a good deal of authority as to the circumstances

In a "quasi-partnership" case where the petitioner is not at fault the court tends to favour a

Date of Valuation and Interest under the Companies Act

The main question in *Profinance* was two-fold:

1. Does the court have the power to set an appropriate valuation date for the share purchase?
2. Does the court have the power to award interest from the date of valuation to the date of purchase?

As to the appropriate valuation date, it was held that the court has a wide discretion in the

As to the power of the court to award interest under a Section 461 order, it was held that an

Fair Valuation Date under the Companies Act

According to Walker LJ, the authorities show that there are two main considerations which the

1. One is that the shares should be valued at a date as close as possible to the actual sale date.

2. The rival consideration is that the date of the petition is the correct starting point. This is the position where a company has been deprived of its business, an early valuation date (and compensating a claimant) where a company has been reconstructed or its business has changed significantly, so that it has no value, where a minority shareholder has a petition on foot and there is a general fall in the market, but a claimant is not entitled to a "one-way bet" and the court will not direct an early valuation date. In all these points may be heavily influenced by the parties' conduct in making and accepting or rejecting the offer. Also, it should be noted that recent case law has clearly established the reluctance of the courts to direct an early valuation date.

<http://www.kaltons.co.uk>

This is a demo version of txt2pdf v.10.1
Developed by SANFACE Software <http://www.sanface.com/>
Available at <http://www.sanface.com/txt2pdf.html>