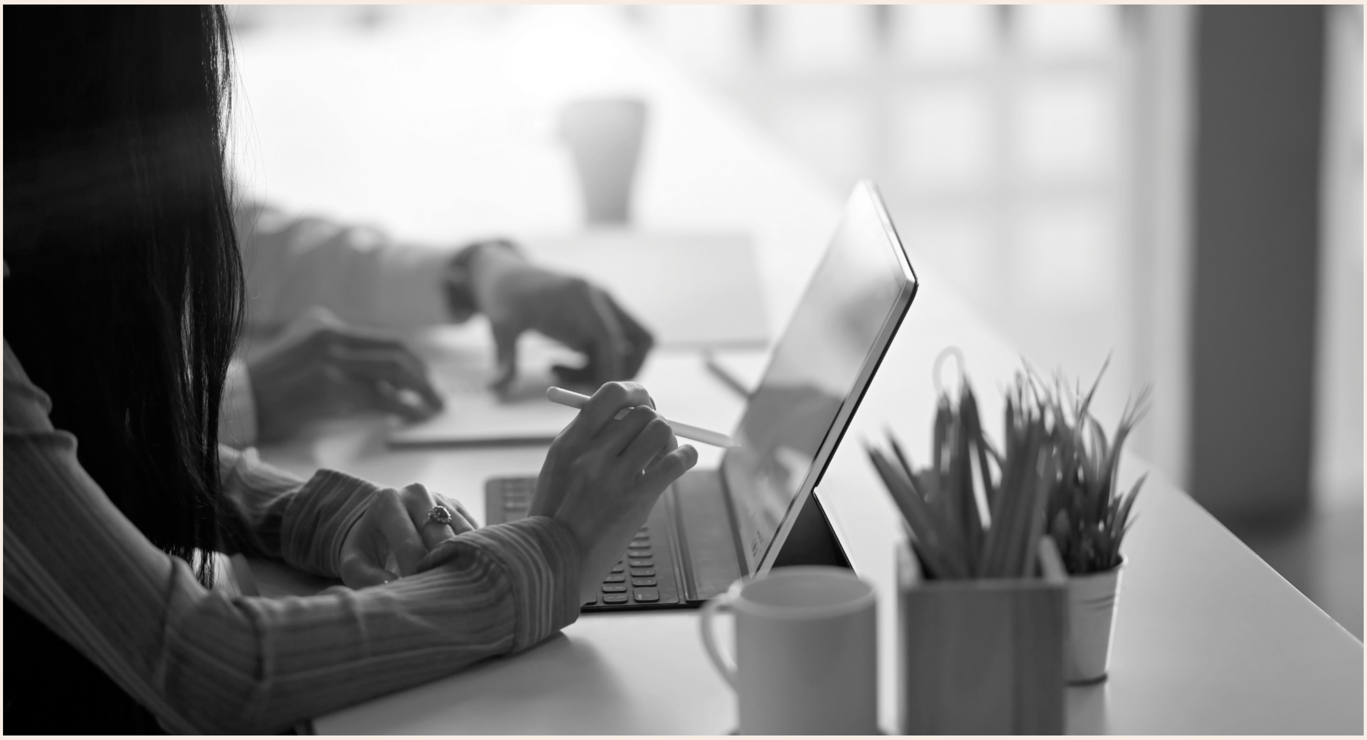

Corporate Divorce – Resolving disputes within a Company

Company directors and shareholders often must agree on important decisions. But what happens when two co-owners each hold 50% and cannot agree at all? In a **50/50 deadlock**, neither side can outvote the other. The result is an impasse that can paralyse the business. This situation is unfortunately common in small companies with two equal shareholders (often family members or business partners) and can lead to serious disputes.

Start with the Shareholders’ Agreement (If One Exists)

The first place to look in any shareholder dispute is the **Shareholders’ Agreement**, if the company has one. A shareholders’ agreement is a private contract between the owners that can specify how decisions are made and how disputes are resolved. Well-drafted agreements often include **deadlock resolution clauses** to deal with a 50/50 stalemate. These clauses aim to break the impasse before it harms the company. For example, a shareholders’ agreement might provide for:

- **Casting Vote Provisions:** e.g. giving an independent chair or a nominated director a casting vote to break boardroom ties.
- **Negotiation or Mediation Requirements:** clauses requiring the parties to use their best endeavours to negotiate or attend mediation if a deadlock arises.
- **"Russian Roulette" or Buy-Sell Clauses:** a mechanism whereby one shareholder can offer to buy out the other at a set price, and the other must either accept the offer or buy the first shareholder's shares at that same price. This effectively forces a resolution by sale of shares to one party.
- **Third-Party Sale Provision:** an agreement that, if the owners can't resolve the deadlock, they will jointly seek to sell the entire company to a third party.
- **Alternate Dispute Resolution:** referral to an independent expert, arbitrator, or mediator to decide the issue.
- **Last-Resort Liquidation:** a clause allowing one or both shareholders to force a wind-up of the company if a deadlock persists (used sparingly, as it ends the business).

Having such agreed procedures in place can save a lot of time, money, and stress. It provides a roadmap to follow at the first sign of impasse. If you are a 50% shareholder, **check if any shareholders' agreement covers deadlock situations**. This is the fastest way to address the problem privately. If your agreement has a buy-out clause or dispute resolution clause, you may be able to invoke it to break the stalemate without going to court. On the other hand, **if no shareholders' agreement exists (or it doesn't cover deadlocks), read on** – you'll need to rely on the company's constitutional documents and common law (previous decisions of the Courts).

The Company Constitution and Replaceable Rules

If there's no shareholders' agreement to guide you, the next reference point is the **company's constitution** (if it has one) or else the **replaceable rules** under the *Corporations Act 2001 (Cth)*. A company's constitution sets out the rules governing the company, including how directors are appointed or removed and how decisions are made. Many companies, especially small ones, may not have a tailored constitution; in that case, the *Corporations Act's* default *replaceable rules* apply by law.

Under these default rules, major decisions generally require a vote of the shareholders or directors. For example, the *Act* provides that **shareholders can remove a director by resolution** passed at a general meeting. Importantly, this is an **ordinary resolution**, meaning it requires a simple majority (> 50%) of votes in favour to pass.

In a 50/50 ownership scenario, however, **neither shareholder can achieve "more than 50%" of the votes** on their own. If one shareholder votes to remove the other from the board, the other will vote against – resulting in a 50/50 split, which is not a majority. The resolution **fails due to deadlock**. In practical terms, this means **you cannot remove or replace a director (or make any significant change opposed by the other owner) when the shares are evenly split**. The same problem occurs for passing **special resolutions** (which under the law require **75%** approval – essentially impossible with only 50% support).

The replaceable rules and most constitutions also require **board decisions** to be by majority vote of directors. If each 50% shareholder is also a director, the board is usually two people with equal voting power. A disagreement at board level likewise results in a tie, so the motion cannot be passed. Unless the constitution gives the chairperson a casting vote (which some constitutions allow, but the replaceable rules *do not* automatically grant), a 1-1 vote means no decision. Thus, on both the **shareholder level** and the **director level**, a true 50/50 split can paralyse the company's decision-making.

In summary, **check the company's constitution or default rules** for any mechanisms that might resolve a deadlock. Sometimes constitutions drafted by lawyers for two-owner companies will include a casting vote or other bespoke provisions. In the absence of any such provisions, however, the equal split in ownership and control means the company is effectively at an impasse. No side can unilaterally take significant action like firing the other director, issuing new shares, changing the constitution, or voluntarily winding up the company. At this stage, if informal negotiation fails, the **only way to break the deadlock may be through**

legal action or mutually agreed separation (e.g. one party selling shares to the other).

Oppression Remedy under the Corporations Act 2001 (Cth)

One legal pathway for a frustrated shareholder in a deadlocked company is the **oppression remedy** in the *Corporations Act*. Section 232 of the *Corporations Act 2001 (Cth)* allows a shareholder (or director in some cases) to apply to the court for relief if the company's affairs are being conducted in a way that is **"oppressive or unfairly prejudicial to, or unfairly discriminatory against"** them (or in a way that is contrary to the interests of members as a whole). In simpler terms, if the other shareholder or those in control of the company are behaving unfairly and harming your interests, you can ask the court to step in.

Usually oppression cases involve a minority shareholder being mistreated by a majority. Classic examples include majority owners excluding a minority from management, withholding dividends, or running the company to benefit themselves at the expense of the minority. But **oppression can also occur in a 50/50 company**, even though neither side is a majority owner. Australian courts have confirmed that a 50% shareholder can be "oppressed" by the other 50% in certain circumstances. The key is whether the conduct is **unfair**. For instance, if one of the co-owners uses their veto power to block actions solely to harm the other or to benefit themselves, or if one owner tries to exclude the other from the business's operations, that could be deemed oppressive. In fact, the courts often focus on **what the aggrieved shareholder cannot do** in a deadlock scenario (due to the other's blocking conduct), rather than only what the supposed oppressor is actively doing. Intentionally creating or **exploiting a voting deadlock** to freeze the other shareholder out might constitute oppression if it unfairly prevents the other from exercising their rights.

Under section 233 of the Act, the court has broad power to make orders once oppression is proven. The goal is to **"remedy the oppression"** and bring about a fair result. In a 50/50 dispute, a common order is a **buy-out**: the court might order one shareholder to purchase the shares of the other at a fair value (or vice versa). This effectively ends the partnership in a way that the oppressed party can exit on fair terms. For example, in *Patterson v Humfrey [2014] WASC 446*, the two co-founders each owned 50%. The relationship broke down, and one accused the other of oppressive conduct. The Supreme Court of WA agreed that even equal shareholders can fall within the oppression remedy, and in that case ordered that the oppressor buy out the oppressed shareholder's stake at a fair market value. The result was that one owner took full control of the company, while the other received financial compensation and exited – a resolution that the company's internal stalemate could not achieve on its own.

Other remedies the court might consider include: ordering the company or another person to **purchase the shares** of the aggrieved member (forced buy-out), appointing a **receiver or manager** to run the company, or even amending the constitution or **winding up the company** (though winding up via an oppression case is typically a last resort if no other remedy is adequate). The oppression provisions (s.232-233) are designed to be flexible, so the court will tailor the remedy to the situation. If you are a 50% shareholder suffering because of the other owner's actions (or inaction), an oppression claim can be a powerful tool. It lets you ask the court for a remedy without having to prove any breach of duty or illegality – you only need to show that what's happening is **unfair to you as a shareholder in the context of the company**. However, these cases can be complex and costly, so they're often a last resort when negotiations have failed. Courts also encourage parties to explore settlement – for example, one party voluntarily buying out the other – before litigating to judgment.

Winding Up on "Just and Equitable" Grounds – The Last Resort

When a company is hopelessly deadlocked and all other solutions have failed or are impractical, a shareholder can apply to **wind up the company** on the **"just and equitable"** ground. This is effectively asking the court to **liquidate the company** – ending the business by selling off its assets, paying debts, and distributing any remaining value to shareholders. It's a drastic remedy (the corporate equivalent of a divorce), and as such, it is considered **a remedy of last resort**. No one starts a business with a friend or partner expecting to ask a court to shut it down; however, in some deadlock situations it may be the only viable outcome left.

Section **461(1)(k)** of the *Corporations Act 2001 (Cth)* gives the court power to wind up a company if **“the court is of the opinion that it is just and equitable to do so.”** In plain language, this means a court can order the company be dissolved if fairness requires it, even if the company is solvent. The law does not rigidly define all the situations that are “just and equitable” – it is a broad, flexible ground. Over years of case law, certain scenarios have been recognized where a *just and equitable winding up* is appropriate. One of the most common is where there is a **complete breakdown of relationship and trust between those in control of the company**, such that the company’s affairs cannot be carried on properly. This often overlaps with the deadlock scenario in small, founder-run companies.

Courts have a concept of **“quasi-partnership”** companies. These are businesses which, although structured as companies, are run more like a partnership between a small number of individuals. Typical signs of a quasi-partnership are: the company started with a personal relationship of mutual trust and confidence (e.g. friends or family who went into business together), each person brought personal skill or effort (not just passive investment), and there was an understanding they would all be involved in management and share in profits. In such companies, the **personal relationship is crucial to the venture’s success**. When that relationship **irretrievably breaks down – for example, two equal partners fall out – the very basis of the company has failed**, even if the business itself is still making money. The situation may become *just and equitable* for the company to be wound up, akin to dissolving a partnership that no longer works. As the Supreme Court of New South Wales put it, **“winding up is the characteristic remedy in circumstances where a working relationship predicated on mutual co-operation, trust and confidence has broken down.”** In other words, if co-owners who must work together can no longer do so in good faith, forcing them to remain tied may be unjust – ending the business and letting both move on might be the fairest solution.

Similarly, in the English case *Re Yenidje Tobacco Co [1916]* (often cited in Australia), a profitable company with two 50/50 owners was still ordered to wind up because the owners were deadlocked and not on speaking terms – the court likened it to a partnership gone sour. And in the leading UK case *Ebrahimi v Westbourne Galleries Ltd [1973] AC 360*, the House of Lords explained that the **“just and equitable”** provision allows courts to apply equitable considerations and not just strict legal rights in such situations. Even if a shareholder has no *legal* right to exit or to remove the other (because of the corporate structure), the court can grant relief considering the personal relationship and understandings between the parties. In short, the courts will look at the **realities of the relationship** – if the **foundation of mutual trust has collapsed**, it can be unjust to hold the parties to their company bargain, so a winding up may be granted for fairness.

Before winding up a solvent company, however, **courts will consider whether there is an alternative remedy** that would be more reasonable and less drastic. In fact, section 467(4) of the *Corporations Act* directs the court to consider whether the applicant (the person asking for winding up) is acting unreasonably by not pursuing another available remedy. For instance, if one shareholder could buy out the other, the court might see that as a preferable solution to killing the company. In *Tomanovic v Global Mortgage Equity Corp Pty Ltd [2011] NSWSC 104*, the court declined to wind up the company because a **compulsory buy-out of the disaffected shareholder's shares** was deemed a more appropriate remedy in the circumstances. The idea is that if the business can continue under one owner after buying out the other, that might be better for all (the outgoing person gets paid for their shares, and the company survives). However, there are cases where a buy-out isn't feasible – for example, if the co-owners **cannot afford** to buy one another out, or simply refuse to do so at a fair price. In *Nassar* (above), the court noted that if financial realities or mutual hostility make a buy-out impractical, **winding up may be the only viable option to break the deadlock**. It's also important to note that a company being **profitable or successful does not automatically protect it from being wound up** on just and equitable grounds. The court's focus is on the **breakdown of the relationship and the inability to function**, not just on the balance sheet. So long as the legal requirements are met, even a thriving business can be ordered to liquidate if that is the just and equitable outcome in a shareholder dispute.

Because a winding up will dissolve the company, courts truly treat it as a last resort. In practice, just the threat of a winding-up application can bring a recalcitrant party to the negotiating table. Often, facing the risk of losing the company entirely, one shareholder might finally agree to buy or sell shares, or to some settlement, rather than see the company end. If a negotiated solution still cannot be reached, the court's winding up order ensures an end to the impasse – effectively "freeing" the shareholders from their failed venture so they can each move on, even though it's a drastic measure.

Conclusion: Preventing and Resolving Deadlock Disputes

A 50/50 shareholder deadlock can be devastating to a business – the company can't move forward, critical decisions can't be made, and the relationship between owners only worsens over time. The **best time to address this issue is before it happens**, by having a comprehensive shareholders' agreement or constitution provisions that provide for deadlock resolution (much like a business "pre-nup").

However, if you are already in a 50/50 deadlock with no contractual way out, **all is not lost**. You do have legal remedies, though pursuing them will require careful navigation.

In a 50/50 deadlock situation, **you are not alone and you do have options**. From leveraging agreements, to court-based solutions, there are ways to break the impasse. The key is to act promptly and get the right advice. If you find yourself stuck in a corporate deadlock or foresee one arising, please contact Andersons to discuss how we can help resolve the issue and protect your interests. With the right approach, even the most intractable stalemate can be solved – allowing you to get back to business.