THINK BEFORE YOU ACT: A CLOSER LOOK AT THE DISPUTE RESOLUTION PROCEDURE

written by Yannick Lauwers | December 23, 2025

It often begins promisingly. Two or more entrepreneurs join forces, incorporate a company together, and dream of growth and success. However, practice teaches us that not every collaboration withstands the test of time. Visions diverge, interests clash, and what was once a shared ambition culminates in a deadlock. The question then arises: how to proceed when collaboration has become impossible, yet the company itself remains viable?

Belgian company law provides a statutory framework for such situations: the shareholder dispute resolution procedure (*geschillenregeling*). This mechanism, set forth in Book II, Title 7 of the Belgian Code of Companies and Associations (*Wetboek van Vennootschappen en Verenigingen*, hereinafter "CCA"), underwent comprehensive reform upon the entry into force of the CCA in 2019. The legislature clarified the scope of application, refined the procedural rules, and granted the court broader discretionary powers. The result is a more balanced framework that enables shareholders to definitively part ways without jeopardising the continuity of the enterprise.

To Whom Does the Dispute Resolution Procedure Apply?

The procedure applies exclusively to non-listed private limited companies (*besloten vennootschappen*, "BV") and public limited companies (*naamloze vennootschappen*, "NV") with their registered office in Belgium. Claims may relate to various securities, including not only ordinary shares but also subscription rights and convertible bonds. A significant limitation is that any claim for exclusion or withdrawal must encompass all securities held by the shareholder concerned. A partial exit is not permitted, which is logical given the purpose of the procedure: the definitive termination of an untenable situation.

Two Paths to Exit

The dispute resolution procedure comprises two complementary remedies, each invoked from a different position. In the case of an exclusion claim (*vordering tot uitsluiting*), one or more shareholders take the initiative to compel a fellow shareholder to leave the company. However, this instrument is not available to everyone. The legislature has established quantitative thresholds: whoever seeks exclusion must, individually or together with other claimants, hold at least thirty per cent of the voting rights. This threshold prevents minority shareholders from frivolously initiating exclusion proceedings.

The withdrawal claim (*vordering tot uittreding*) operates in the reverse direction. Here, a shareholder requests permission to leave the company, with the remaining shareholders being obligated to acquire his securities. No participation threshold applies to this claim—any shareholder, regardless of the size of his holding, may seek withdrawal when he considers his shareholding to have become untenable.

Just Cause as Gatekeeper

Neither exclusion nor withdrawal is granted as a matter of course. Central to both procedures is the requirement of just cause (*gegronde reden*). This concept constitutes an open-textured norm that affords the court broad discretion. In essence, it concerns a factual situation that justifies why the continuation of the shareholding can no longer reasonably be expected.

The interpretation of this concept warrants nuance. First, just cause need not be attributable solely to the respondent shareholder. Circumstances for which neither party can be held responsible may also suffice. Second, fault is not a prerequisite—the question is not who bears blame, but whether the shareholding remains tenable. Third, just cause must be current, both at the time the claim is brought and at the moment of the court's decision. A conflict that has since been resolved can no longer serve as a basis. Finally, both the corporate interest and the personal interest of the shareholder may be relevant to the assessment.

The Procedure: Swift but Not Superficial

The legislature has opted for a streamlined procedure. Claims for exclusion or withdrawal are brought before the President of the Enterprise Court (*ondernemingsrechtbank*) of the place where the company has its registered office. The President sits "as in summary proceedings" (*zoals in kort geding*), meaning that the procedure utilises the speed and flexibility of summary proceedings while nonetheless yielding a judgment on the merits.

The exclusive jurisdiction of the President carries a downside. Not every dispute between shareholders can be resolved through this procedure. The dispute resolution mechanism is expressly not a one-stop shop. The President may indeed hear related disputes, but only if strict conditions are met. These must concern actually existing disputes relating to financial relationships between the parties and the company—such as loans, current accounts, and security interests—or to non-competition obligations, and which are connected to the termination of the shareholding.

Claims for annulment of resolutions of corporate bodies, return of assets, or appointment of a provisional administrator fall outside this jurisdiction and must be pursued through ordinary court proceedings. The President interprets his jurisdiction restrictively, as befits an exceptional procedure.

Mandatory Law with a Subsidiary Character

The dispute resolution procedure occupies a peculiar tension. On the one hand, it constitutes mandatory law (*dwingend recht*): shareholders cannot contractually or statutorily exclude or limit their right to invoke it. Provisions that attempt to do so are void. This mandatory character protects shareholders against arrangements that would leave them trapped in the event of conflict.

On the other hand, the legislature regards the dispute resolution procedure as an *ultimum remedium*—a last resort that comes into play only when other solutions have failed. The legislative history is unequivocal on this point: the procedure is "only to be offered as a technique when conflicts between shareholders cannot be resolved amicably." This subsidiary character finds its basis in the good faith that parties owe to one another and in the drastic nature of a forced exit. A shareholder who resorts too hastily to the dispute resolution procedure without first exploring alternative solutions risks having his claim dismissed as unfounded.

The Possibility of Arbitration

An important nuance concerns the relationship with arbitration. Although the dispute resolution procedure constitutes mandatory law, parties may agree to submit disputes concerning exclusion or withdrawal to arbitration proceedings. The legislature expressly recognises this possibility. Two conditions must be fulfilled: all parties involved in the dispute resolution must be parties to the arbitration clause, and the intention must be to resolve the dispute resolution matter exclusively through arbitration. If these conditions are met, the President of the Enterprise Court lacks jurisdiction and the arbitral tribunal is competent. Case law interprets arbitration clauses restrictively in this context, such that doubt is resolved in favour of the ordinary courts.

Statutory and Contractual Exit Mechanisms

In addition to the statutory dispute resolution procedure, practice often features statutory or contractual mechanisms that provide for an exit upon certain events. Consider good leaver and bad leaver provisions in shareholders’ agreements, or statutory withdrawal arrangements in the BV. The question arises how these relate to the statutory procedure.

The answer is nuanced. Such mechanisms may exist alongside the statutory procedure but cannot exclude it. A shareholder who is statutorily invited to first exhaust the contractual procedure retains the right to apply directly to the court. Mandatory legal protection cannot be circumvented through contractual conditions or delaying tactics. That said, the existence of workable contractual mechanisms may be relevant when assessing whether the statutory procedure, as an *ultimum remedium*, is actually warranted.

Valuation at the Appropriate Moment

When the court decides that exclusion or withdrawal is justified, the question of price inevitably arises. The CCA adopts as its starting point that the value of the securities is to be assessed at the time the court orders the transfer. This principle aligns with the reality that the right to payment of the price arises at the moment of transfer of ownership.

However, the legislature has recognised that strict application of this principle may in certain cases lead to inequitable results. Where the circumstances giving rise to the claim, or the conduct of the parties in connection with the proceedings, have influenced the value of the securities, a correction may be necessary. The CCA therefore expressly grants the court the power to apply an equitable price increase or reduction when the standard valuation would lead to a manifestly unreasonable result.

The Court’s Toolkit

The court has at its disposal various instruments to arrive at a fair price. A first option is to shift the valuation date (*peildatum*) to an earlier point in time, for example to the moment before the escalation of the conflict or before certain harmful conduct by a party. The Court of Cassation *(Hof van Cassatie)* has confirmed that such a shift is possible where the court specifically establishes that the circumstances or conduct have had an impact on value. The court must, however, provide reasons for its choice.

Additionally, the court may award a provisional price pending definitive determination, for example where uncertainty exists regarding the impact of certain elements on value. It may also incorporate adjustment mechanisms for risks that are known at the valuation date but whose extent has yet to materialise. To protect the parties’ interests, the court may impose security for the amount still to be paid, such as a pledge over the transferred securities, a bank guarantee, or a deposit into an escrow account.

Non-Competition Obligations as a Pricing Element

A particular aspect of price determination concerns non-competition obligations. The court may link the price to the departing shareholder’s consent to a non-competition covenant or to the strengthening of an existing covenant. Conversely, it may lift or limit an existing non-competition prohibition, with a corresponding price reduction. This power recognises that the value of a shareholding is partly determined by whether the departing shareholder may subsequently act as a competitor.

However, an important limitation applies: the court cannot impose a new non-competition covenant where none exists. Party autonomy is respected in this regard. Whoever wishes to enforce a non-competition prohibition must have stipulated it contractually.

When a Shareholder Departs

The dynamics of dispute proceedings may change significantly when a shareholder dies, is declared bankrupt, or is dissolved during the proceedings. These events have both procedural and substantive consequences.

At the procedural level, heirs or trustees in bankruptcy may continue the proceedings. Whether heirs may become shareholders at all depends on any statutory restrictions. In a BV, the articles of association may provide that heirs are not automatically admitted, resulting in a withdrawal by operation of law. Substantively, just cause is assessed following resumption of proceedings with reference to the legal successor. This may materially alter the situation, particularly where the original just cause was closely connected to the person of the deceased or bankrupt shareholder.

When the Company Itself Disappears

The situation becomes more complex when not a shareholder but the company itself is dissolved or declared bankrupt. Case law is divided here. One school of thought holds that the dispute resolution procedure is no longer possible in such cases, or that pending proceedings become moot. The reasoning is that the purpose of the procedure—ensuring continuity—lapses when the company ceases to exist.

Another school of thought nuances this and accepts that the dispute resolution procedure may nonetheless be continued under certain conditions, particularly where the bankruptcy or dissolution was artificially brought about to circumvent the procedure. An absolute exclusion would indeed open the door to artificial or malicious dissolutions, intended solely to frustrate threatened or pending dispute resolution proceedings. The court assesses this on a case-by-case basis.

No Way Back

Whoever contemplates initiating dispute proceedings must be aware of a fundamental reality: there is no right of retraction. Once the court has ruled in an (interlocutory) judgment on the merits of the exclusion or withdrawal, that decision is final. The claimant can no longer withdraw, even if the price turns out to be lower or higher than expected.

Case law is particularly clear on this point. In a case where the claimant had litigated for years and, upon receipt of the expert report, suddenly wished to abandon his claim, the court held that the law does not provide for a right of retraction for the party who instigates a buyout and subsequently finds that the outcome is less favourable than anticipated. This falls within the litigation risk. An attempt to bring a new, modified claim following an unfavourable expert report was likewise rejected as contrary to procedural rules.

The Cost of Being Right

The financial implications of dispute proceedings extend beyond the share price. Legal costs can be substantial, particularly when an expert investigation into the value of the securities is ordered. The unsuccessful party bears the costs in principle, with case law often looking to the shareholder who is at the root of the just cause. Where multiple parties and claims are involved, multiple procedural indemnities (*rechtsplegingsvergoedingen*) may be owed, causing the bill to escalate rapidly.

Parties may make derogating arrangements in the articles of association or shareholders' agreements regarding the allocation of procedural and expert costs. Such arrangements may be confirmed by the court and provide parties with greater upfront certainty regarding cost allocation. It is advisable to address this aspect when drafting shareholders' agreements.

Conclusion

The dispute resolution procedure in the BV and NV embodies a delicate balancing act. It offers shareholders trapped in an unworkable situation a statutorily guaranteed way out, without the company itself becoming the victim. At the same time, it sets high thresholds: just cause is required, the procedure serves as an *ultimum remedium*, and whoever initiates proceedings must be prepared to bear the consequences.

The reform under the CCA has refined the procedure and given the court more instruments to achieve an equitable outcome. The broader possibilities for price correction, the hearing of related disputes, and the imposition of security contribute to a more balanced framework. But the core remains unchanged: the dispute resolution procedure is a weighty instrument that must be handled with due circumspection.

For shareholders finding themselves in a conflict situation, it is essential to carefully weigh the options. Negotiation, mediation, and statutory or contractual mechanisms deserve priority. Only when these avenues reach a dead end does the statutory dispute resolution procedure come into view. And whoever takes that step would do well to thoroughly prepare the proceedings, map the financial risks, and engage specialised counsel. For in dispute resolution proceedings more than elsewhere: look before you leap.

Are you confronted with a shareholder dispute and wondering what options you have? Our corporate law specialists stand ready to guide you towards a sustainable solution.

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