19 August 2022

THIRD-PARTY VALUATION OF SHARES IN A PRIVATE COMPANY

Shareholder agreements often make provision for the situation where one of the shareholders exits the company. This is usually done by providing the remaining shareholders with a pre-emptive right to purchase the shares that have become available. However, it often happens that the relations between the shareholders are no longer amiable, which leads to disputes regarding the value of the shares in the company. One way to deal with this is to appoint a third party to evaluate the shares, which is usually the company's auditor. However, once the auditor provides a valuation of the shares, is there a possibility that this valuation can be amended?

In Tahilram v Trustees of the Lukamber Trust (2021), the parties agreed that the company's auditor would value the shares stipulated in the shareholders' agreement. The auditor determined the fair value of the business to be R4.8 million. Mr Tahilram accepted this valuation. The Trust failed to pay Mr Tahilram, and the auditor subsequently reduced the company's valuation by R1.26 million.

The court held that once the valuer's valuation had been communicated to the parties, the valuation cannot subsequently be withdrawn, amended or cancelled. Once the valuation report has been issued, the valuer is functus officio, and in the absence of contractual provisions to the contrary, the initial valuation is final and binding.