Shareholders Agreement

A shareholders agreement should be seriously considered where there is more than one shareholder in a company. Resolving a dispute or exiting the company could become a very expensive and lengthy exercise without one.

What is a Shareholders Agreement?

A shareholders agreement is an agreement between the shareholders of a company which regulates the relationships between shareholders and sets out what is going to happen in certain major events.

Why do you need a Shareholders Agreement?

Every relationship goes through its ups and downs. The relationship between shareholders is no different. A well drafted shareholders agreement should cover off what happens when there is a dispute between shareholders and when one shareholder wants to exit the company.

Many think that a shareholders agreement is not required because of the Companies Act 1993. This Act contains limited provisions which cover the relationship between a company and its shareholders, it does not regulate the relationship between the shareholders themselves.

Without a shareholders agreement resolving a dispute between shareholders could be a very costly and lengthy process. The shareholders may even have to resort to litigation to resolve the matter.

The process of negotiating a shareholders agreement forces the shareholders to discuss and try to resolve what will happen if a certain event occurs. During this process the shareholders will get to know each other very well and it can be an important part of shareholders establishing that they can work with each other.

What is in a Shareholders Agreement?

Examples of provisions that a shareholders agreement may contain are:

- *Selling shares* – a shareholders agreement will set out when a shareholder can sell its shares and what the process is.
- *Lock up clauses* – this is where there is a restriction on selling shares for a certain period (e.g. to get the business established).
- *Pre-emptive* – this provides that where a shareholder wishes to sell its shares that it must first offer its shares to the other shareholders.
- *Call options* – where one shareholder can force another to sell shareholders shares to it.
- *Put options* – where one shareholder can force another to sell shareholders shares to it.
- *Drag along clauses* – this is where one shareholder (usually the majority shareholder) wants to sell its shares to a third party and can force the other shareholders to sell its shares to that third party.
- *Tag along* – this is where one shareholder (usually the majority shareholder) wants to sell its shares to a third party and the other shareholders can force that shareholder to make sure that the third party purchases their shares as part of the deal.
- *Decision making* – when, where and how are shareholder and director meetings to be held? How many shareholders and directors must be at a meeting in order for decisions to be made? What percentage of votes are required to make certain decisions?
- *Directors* – how many (if any) directors can a shareholder appoint? Who can remove a director? Are there any limitations as to who can be appointed as a director?

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- *Insurance* – a shareholders agreement can contain provisions regarding what insurance the company must take out for instance, life insurance over the life of a shareholder to fund the purchase of that shareholder's shares by the other shareholders.
- *Restraints* – provisions which prevent a shareholder from competing with the company both during and after the period during which they are shareholders.
- *Shareholder advances* – the agreement can set out what funding is required from shareholders, how this will be repaid by the company and what security the company will give in return.
- *Distributions* – for example – how will distributions be calculated and when will they be payable, are any loans to be paid before distributions are made?
- *Senior employees* – is shareholder approval required before senior employees can be appointed?
- *Shareholders as employees* - where a shareholder is an employee the agreement can set out the terms on which the shareholder is employed.
- *Deadlock* – what happens when the shareholders can't agree? How is a dispute to be resolved – arbitration, mediation…? What if there is deadlock?

There is no such thing as a one size fits all shareholders agreements. We can help you tailor a shareholders agreement to fit the circumstances of your company.

We can help!

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