



INFORMATION SHEET

SHAREHOLDERS' AGREEMENTS

INTRODUCTION

WHAT IS A SHAREHOLDERS' AGREEMENT?

Simply put, a Shareholders' Agreement is a written agreement which attempts to set out the rights and obligations of company shareholders in relation to one another. Such agreements typically cover a wide range of issues affecting the company and the shareholders' various obligations. Such matters might commonly include (amongst many others) the management and structure of the company and who is responsible for what, how initial and ongoing funding is to be arranged or provided, what activities the company will and won't be involved in, the daily running and administration of the company, what will happen when one or more shareholders wish to dispose of their shares, what happens when a shareholder dies and so on. Shareholder Agreements are most common when a new company is set up or when a company

Shareholder Agreements are essentially "private" documents which primarily affect the shareholders who are parties to it. The key "public" document, however, is the Company constitution – this is registered for all to see at the Companies Office.

acquires or enters into a new business venture.

Typically, such an agreement will dwell on the mechanics of running the business or company because it often provides something of a blueprint as to how the shareholders intend to run the business and organize it. It also provides for ways and means of dealing with certain contingencies which might occur in the future such as a shareholder dying or wishing to sell his or her shares.

It is important to realize that a Shareholders' Agreement is a "private" document in that it is not generally disclosed to any outside parties or filed in the Companies Office. It is more of an internal document which affects only the shareholders who are party to it. The Company's constitution on the other hand is "public" document which is registered with the companies Office and which is available for public inspection. The Shareholders' Agreement generally deals with a totally different set of circumstances compared to the Company constitution. The theory behind such agreements is that if there are no mechanisms in place to deal with core issues and the day to day management of the company, then there is huge potential for disputes between shareholders or other disputes which can have a huge impact on the healthy performance of the company.

WHEN IS A SHAREHOLDERS' AGREEMENT NEEDED?

A Shareholders' Agreement is most commonly used in two distinct situations:

In predominantly smaller companies with two or more shareholders and where it is perceived that there is the likelihood for change over time or the possibility of conflict in the future. Such an Agreement sets out the shareholders' rights and obligations in respect of the company and attempts to deal with the governance and management of the company as well as protecting the interests of all of the shareholders in the event of changed circumstances.

Where there is some form of "joint venture" between two or more parties whether in the form of a joint venture company or perhaps in a partnership. In this instance the agreement is more commonly known as a "Joint Venture Agreement" but it is essentially the same document.

Some of the most common areas where a Shareholders' Agreement is most useful are:

where a shareholder wishes to sell his or her shares, there will often be a procedure to be followed by that shareholder in order to do so, e.g. they may first have to offer their shares to existing shareholders or they may have to sell them to the company itself rather than to sell them on the open market

where all of the shareholders in a company are also directors, there may be a requirement that if a shareholder wishes to resign as a director then they may be obliged to offer their shareholding to the remaining shareholders in the first instance

where a small company does not have any majority shareholder or shareholders as such, the precise management structure may be carefully spelt out as well as a detailed dispute resolution and/or share valuation mechanisms to avoid the possibility of deadlock.

WHAT TYPES OF ISSUES MIGHT A SHAREHOLDERS' AGREEMENT COVER?

There are a huge range of issues and areas that might be covered by a Shareholders' Agreement and in many cases such an Agreement will be totally unique to a particular company. However, having said that, there are many issues which are common to such agreements and one might reasonably expect the following matters to be covered (if appropriate):

Management of the company – how senior management positions are filled (such as the managing director, directors, general manager, etc), how and when financial reports are to be prepared and presented to company management, who is responsible for certain areas of company administration.

Company structure – how the capital of the company is set up and any internal rules or policies which may affect it.

Appointment of directors – who has the power to appoint directors and any limitations they may have on what they can do or how they can do it, director's authority when making decisions, appointment of additional directors if and when there is a further issue of shares and so on.

Additional shareholders – if there are additional shareholders, how they become parties to the Shareholders' Agreement and the mechanics of that.

Shares – are there any restrictions on the sale and transfer of shares?, provisions relating to what happens when a shareholder dies or wishes to sell his or her shares in the company, any prohibitions on the sale of shares or any interest in them, the exact procedure for the transfer of shares, method of calculating the value of company shares.

Company Activities – any restrictions on what kinds of activities or endeavours the company may get involved in, any activities which might require a certain percentage of the shareholders' vote or perhaps unanimous approval.

Shareholders and directors – what are their rights and obligations?, in what situations (if any) can shareholders gain access to records, are there any additions to the statutory rights and duties of shareholders and directors?

Dividends and additional funding by shareholders – how profits are to be allocated as dividends each year, how and in what proportion shareholders will provide any further funding that may be needed to maintain the company or increase the size of it's operations, how will disputes over these matters be resolved.

Resolution of Disputes – how will the shareholders deal with a wide range of disputes which could potentially arise among themselves, is some form of alternative dispute resolution appropriate such as arbitration or mediation?

Confidentiality – deals with matters such as who has access to important company records and documents not only during the term of the Shareholders' Agreement but afterwards as well.

Non-Competition – providing for restrictions on shareholders setting up business in opposition to the company or within a particular geographic distance from the company's location.

Liquidation – what shareholders' duties are to the company in the event of a liquidation.

SUMMARY

A Shareholders' Agreement is therefore a vital tool which is used to provide structure for the internal management of a company or of a joint venture. It is especially important where there is no clear majority shareholding in a company as it helps ensure the efficient management of the company and assists in minimizing detrimental disputes within management which can otherwise break a company apart.

A Shareholders' Agreement is a private document which is not filed in the Companies Office and is not therefore open to public scrutiny. This enables otherwise sensitive details and information to be included without fear of exposure. Such an Agreement enables a company to start off on a firm footing and to ensure that the focus is on the financial success and viability of the company.



paul gallagher legal

P O Box 3

Albany Village

AUCKLAND

PHONE (09) 415 9321

FAX (09) 415 6407

info@lawfirm.co.nz

www.lawfirm.co.nz

paul gallagher legal – “Your business IS our business”

Ph. (09) 415 9321 Fax. (09) 415 6407 E: info@lawfirm.co.nz