Baldock Stacy & Niven
Solicitors and Notaries

Partnership Agreements and Shareholders' Agreements

Introduction

Starting and running any business can be complicated and challenging. When you have a business with two or more partners or shareholders, it is very important to set up ground rules. This is normally done through a shareholders or partnership agreement.

This brochure answers some questions regarding partnership or shareholders agreements and outlines the benefits. If you are thinking of setting up a business, or you are currently involved in a business that does not have an agreement in place, speak to **Baldock Stacy & Niven** today about how you can protect your future.

What is a shareholders/partners agreement?

A shareholders agreement or partnership agreement is a written agreement between the shareholders or partners of a business, it is best prepared at the start of a business, when all parties are enthusiastic and there have been no disputes or disagreements over the running of the business.

The agreement cover the funding, structure, management and direction of the business, as well as outlining the responsibilities and obligations of owners, it is critical that the individual circumstances of a business and the parties involved are taken into consideration,

The agreement is also designed to deal with the issues that based in experience, have a distinct possibility of arising in the life of a business. It can also help the parties react "after the event" and potentially allowing self-interest to affect what each party sees as the appropriate response.

Why do you need a shareholders/partners agreement?

A shareholders/partners agreement can avoid or minimise disputes over the running of a business and its funding. In the same way as a prenuptial agreement can minimise the costs of a marriage breakup a shareholders agreement can also reduce the cost and uncertainty of a business break up. Every business is different and every shareholder or partner is different. A good shareholders/partnership agreement can help to minimise the potential for conflict, the unpredictability and cost of dealing with conflict and maximise opportunity for growth.

Once a business relationship has broken down it becomes very difficult to objectively look at key issues. It is much easier to decide on the fundamental issues early and to minimise the problems that can occur later.

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What does a shareholders agreement cover?

A legally binding shareholders/partnership agreement will specify a number of requirements for the successful running of business. It will outline a range of issues, such as:

- The structure of the senior executive team – who will be the directors, whether there will be a managing director, how often the directors will meet etc
- Voting rights of shareholders and directors
- Majority/percentage voted required for major decisions to be implemented
- The decisions that require a vote of all shareholders
- What happens if a "deadlock" in votes for and against a decision and how it should be resolved
- Banking, accounting and auditing arrangements
- Dividend policies for the distribution or retention of profits
- Capital contributions and what assets are to be provided by each participant
- Shareholder obligations to provide "loans" to the business
- The type business that will be undertaken and the planned future directions of the business
- Parties salaries and reviews including fringe benefits
- What happens when a party wants to "exit" the agreement, or passes away
- What events will "trigger" the termination of the agreement
- How share will be valued I the event of a buy-out or sale to another party
- Restrictions covenants if a shareholder leaves

What happens if a shareholder or partner leaves the business?

The shareholders/partnership agreement should consider this scenario and incorporate provisions for the buy-out or sale of a party's shares. It will also identify the individual circumstances I which a shareholder can terminate an agreement, or what will happen in the event that one of the shareholders passes away.

In many businesses, for example, there is no provision for the death of one of the shareholders or partners and the remaining spouse takes on the interest in the company. This is may not be the best outcome for a business and can be avoided with a well-developed shareholders/partnership agreement and adequate succession planning.

It is important to remember that even though a shareholders agreement is in place, if constructed and reviewed properly, it does not restrict the business or partnership's progress.

What if my business doesn't have a shareholders/partnership agreement?

If you are currently operating a business or partnership without an agreement in place, we recommend that you discuss your situation with **Baldock Stacy & Niven**.

In most cases, an agreement can de drafted based on the existing structure and operational style of the business. It also helps to identify possible issues and problems before they arise, and before business relationships become strained in the event of a conflict. Think about the future of your business. Do not leave it to chance- you never know what is around the corner.

Who should prepare the shareholders agreement?

The outline of issues in this guide is brief and designed to provide an overview only of the type of information that should be included in a shareholders agreement. At the start of the business, it is strongly recommended that the parties meet with their accountant and **Baldock Stacy & Niven** to discuss these (and other) issues and to determine the business arrangements in advance.

Baldock Stacy & Niven is experienced in the preparation of shareholders and partnership agreements will be able to advise on a range of provisions, as well as look into the individual business and suggest inclusions that are unique to that particular situation.

It is important to remember that even if the business partners or shareholders agree on everything and can't imagine things ever being any different, it pays to get an expert to prepare a shareholders agreement. In addition to avoiding future problems or disputes over the running of the business, a shareholders agreement can also assist with tax-effective business structuring and funding, insurance issues and succession planning. Do not attempt to develop a written agreement without seeking professional legal advice.