Should my company have a shareholder’s agreement? (hint: the answer is usually yes)

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Even though we may have given away the punch line in the heading, this blog is the one for companies with multiple business owners who are considering whether they should be going to the effort of having a shareholder’s agreement in place (spoiler alert, the answer is often yes!). Here are five features of a shareholders’ agreement and reasons a shareholder’s agreement can be helpful in your company!

A shareholder’s agreement can set out decision-making structures

At the end of the day (and frankly, the start and middle too – it never really ends), running a business is all about making decisions. Big decisions, small decisions, easy decisions, scary decisions, financial decisions – they’re all there waiting to be made. A shareholder’s agreement can assist by setting out a structured process of how those decisions should and can be made.

For example, the shareholder’s agreement can look at the different types of decisions the company and shareholders will need to make and, for each type of decision, set out information including:

- how many people are required to make different types of decisions;
- how people can vote about decisions; and
- which people should make the decision?

This means that when it comes to crunch time of deciding on certain aspects of the business, the shareholders aren't stuck trying to figure out how and who should make the decision. They can just get straight on to making the decision and growing the company!

A shareholder's agreement can set up a process for resolving disputes

It is not lost on us that discussing how to deal with things going wrong isn't the most uplifting thing to talk about when you're getting started in a company or even once the company is set up. But we're here to have the hard chats.

The beauty of having multiple people involved in a business is that there are multiple views and opinions that can be shared to consider a common goal. The reality is that with different opinions, there will eventually be disagreements. Unfortunately, this sometimes leads to the breakdown of business relationships.

A shareholder's agreement can set up a structured process for resolving disputes that can aim to maintain the relationship between the parties in the interests of what is best for the company. Having this structure in place from the start can be one less factor to consider when disagreements occur and reduce the stress and tension of that situation.

Even if the unfortunate does happen and the relationship breaks down, the pre-agreed arrangements can be followed to resolve any matters required for the parties to go their separate ways.

A few of the options that the shareholder's agreement can consider to assist with dispute resolution include:

- what processes will be followed (e.g. meetings, mediations etc.);
- how long the process should take;
- who should be involved in the process;
- will third-party independent views and opinions be considered in the process?

A shareholder's agreement can set out how shareholders enter and exit the company

A company is really made up of the people within it – and the reality of business is that people come and go for various different reasons. When all of that is happening, a shareholder's agreement that properly sets out how shareholders may enter and exit the company (or, in other words, acquire and dispose of their shares) is incredibly important.

Without this, third parties who others may not want in the company could become involved, and decisions (and business growth) could be halted until appropriate arrangements can be put into place. Without clear direction when someone is entering the business, there may be disagreements as to how new shareholders can acquire their shares, which may mean their involvement needs to be delayed until that can be decided.

Having that process in place from the start can save lots of time and stress for the future ebbs and flows and growth of the company.

Shareholder’s agreements can set out provisions for future amendments

If there’s one thing that’s certain, it’s that the future is impossible to predict! Companies are constantly changing and need flexibility to allow for growth.

That’s why specific provisions for any future amendments to the shareholder’s agreement can be built into that very document. This can set out a structured process about how and by whom future amendments can be made to the document as and when the company’s requirements change.

An opportunity to ensure you’re on the same page as your co-shareholders

At the end of the day, we’re sure it’s not controversial that business is HARD, but it is much easier if the people running the business are all on the same page about a lot of the “big things”.

If nothing else, the process of creating a shareholder’s agreement is an opportunity for shareholders of a company to consider their positions on various aspects of how the company should be run. It's much better to know earlier on where everyone else stands (even if that doesn’t mean everyone is necessarily on the same page) rather than having to figure this out later when there may be other factors that complicate the situation further.

The process of creating the shareholder’s agreement may provide an opportunity for shareholders to communicate their positions with each other early on to assist with smooth sailing for the company in the years to come!

Get help from a commercial lawyer

Does your company (whether just starting out or a little older) need a shareholder’s agreement? If you haven’t got one, it may be worthwhile having a discussion with a qualified commercial lawyer about your options.

IM Lawyers’ commercial team can assist you with any questions you may have and any decisions you need to make, and we can draft your shareholder’s agreement.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact us.