Shareholder contracts

Agreements can be 'invaluable'

LEGAL MATTERS

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P asks what a Company Shareholder Agreement is and what should be included.

This agreement is a contract between the shareholders of a company regarding their dealings with one another and the company.

It is not compulsory to have a shareholders' agreement, but it can be invaluable for enabling a company to continue trading after a death, illness or disruption, and may also set out a process for dealing with complicated situations, departures of one or more shareholders, or disputes.

Consider what the agreement should say about the following issues:

- Directors: Who? How many? Who hires and fires them? What are their responsibilities and obligations?
- Management: On a day-to-day basis? What about financial and other reporting?
- Remuneration: Will shareholders/directors be paid? What about other benefits?
- Information about shares and shareholders: Who can be a shareholder? How many shares? Are there different classes of shares with different voting rights?
- Purchase of shares: Do shares have to be paid for immediately? How can they be paid?
- Control of shareholders: Are there decisions that require unanimous shareholder support? For example, sale of the business, new shareholders, hiring staff, major purchases?
- Roles of shareholders: Do shareholders have different roles and responsibilities within the company? If so, what are they?
- Meetings: How often? Quorum? Notices?
- Exiting the company: Can a shareholder be compulsorily bought out? If so, when? Can a shareholder require others to buy him/her out? If so, when? What is the process if all shareholders want out?
- Pre-emptive rights of shareholders: If a shareholder wants to sell shares, must they be offered to the other shareholders first?
- Drag along/Tag along: Can a majority shareholder who wishes to sell his/her shares force the minority shareholder(s) to also sell their shares ("drag along")? If a majority shareholder is selling his/her shares, can a minority shareholder(s) require the majority shareholder to also negotiate the sale of the minority shareholder's shares ("tag along")?
- Valuation of shares: How will shares be valued? Will it be the same in all circumstances? For example, if a shareholder wishes to sell up or in the event of the death/disability of a shareholder?
- New shareholders: How are new shareholders introduced?
- Deadlocks: If shares are held evenly, what is the process for dealing with deadlocks?
- Employee shareholders: Will the company issue shares to employees?

  Will there be a different class of shares for employees? What happens if an employee-shareholder is no longer employed by the company?
- Family succession: Are family members entitled to acquire shares in the business after the death of their parent/sibling?
- Restraint of trade: Are departing shareholders subject to a restraint of trade? If so, on what terms?
- Non-competition: Are shareholders prevented from carrying on business in competition with the company?
- Disputes: What process will be followed if there is a dispute? At what point in a dispute should/can the agreement be terminated?
- Distributions: When/how will dividends be paid? Must a certain percentage of profit stay in the company?
- Funding: How will capital be raised? How else will the company be funded? What is the nature and amount of financial contributions by the shareholders?
- Insurance: Will the company (or individual shareholders) hold an insurance policy to buy the shares in the event of death or serious injury of another shareholder? If not, is there a provision for the company to pay the family of the shareholder to acquire the shares?
- Confidentiality: Will shareholders be subject to confidentiality restrictions?
- Intellectual property: Does the company own all its intellectual property?

▮ Column courtesy of Rainey Collins Lawyers phone 0800 733484. If you have a legal inquiry, email Alan on aknowsley@raineycollins.co.nz.