Shareholder Agreements

Have you started a business venture with another person and are looking to incorporate or are part of an ongoing business with other parties as shareholders in a company?
What you should seriously consider is a shareholders agreement.

Clarity:

A shareholder agreement is always a good idea because it clarifies what and how you and your business partner are to deal with each other, the business and with third parties. Hence, it is best to have this done prior to commencing business / incorporation, as there is a chance that once up and running or further down the track, parties recollection of details will differ if not contradict raising the possibility of disharmony and disputes.

Where you don't have a shareholder agreement and are a part of an ongoing business, it is not too late to consider a shareholder agreement.

Having a shareholder agreement in place ensures that all shareholders understand the company's scope and purpose, how the relationship of the parties are governed with regards to each other, the company and third parties and how the business and the parties will deal with issues and events.

What ifs

A well written shareholders agreement specifies the shareholders' intentions in relation to multiple "what if" scenarios such as:

1. What happens if one shareholder wants to leave the venture?
2. How will the shares be valued at the time of sale?
3. Will all shareholders have access to books and records?
4. Will there be any restrictions on sale to third parties? Who can be a shareholder in the venture?
5. What happens when one shareholder dies, becomes disabled or files for personal bankruptcy?
6. Assuming the shareholders are also employees of the venture, what are the duties of each party in relation to the venture? Roles and expectations?
7. What happens if there are unequal contribution between the shareholders?
8. Do the shareholders have an obligation to keep each other informed of something that happens outside the ordinary course of business?

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Resolving disagreements

By agreeing to the terms and conditions, a shareholder agreement sets out rules and parameters about events and issues that may arise. Although you and your business partner may appear (or think) you are on good terms now, in business there are many unforeseen events and scope for disagreements especially for disagreements to snowball into significant disputes.

Where this happens, having a shareholder agreement should provide a framework/mechanism to resolve issues which could potentially save the relationship or allow orderly exit of one or more parties from the relationship. Conversely, where third parties seek to join the business, a well drafted shareholder agreement should provide mechanisms for incoming parties.

In extreme cases of shareholder disputes, the parties will likely incur significant legal fees or end up in court which are well drafted shareholder agreement can head off or curtail.

Better to be safe than sorry

It is important to note that shareholder agreements are, or at least should be, company-specific. There is no 'one-size fit all' approach as the position and nature of relationship between shareholders are different in every situation. Your shareholder agreement should depend entirely on the specific circumstances of your venture.

Further, as previously mentioned, it is also never too late to draw up a shareholders agreement – better to be safe than sorry.

For more information about shareholder agreements and or suggestions as to what provisions to include having regard to your individual circumstance, please visit our office or contact us on (03) 8555 3892.

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