

SHAREHOLDER AGREEMENTS – DO I NEED ONE?

BACKGROUND

We are often approached by clients wanting to establish a new business querying whether such business should be held in their personal names or by some other structure such as a company, trust or partnership. The addition of other parties not controlled by the client (ie a business partner) adds complexity to the advice required and set-up for the client.

CONSIDERATION

Whilst from a legal perspective, it is important to consider asset protection measures, stamp duty implications on re-structuring and the future of the business we would also recommend that advice is obtained from a qualified accountant so that the structure provides the most tax effective results for our client, whilst keeping our client's commercial interests (including set-up costs) in mind.

TYPICAL COMPANY/TRUST STRUCTURE

Where two or more business partners choose to embark on an enterprise, the structure often involves a company where those business holders hold shares in the company proportionate to their interests in the proposed enterprise with the company to conduct no other activity than the proposed enterprise. It is also not unusual for the company to act as trustee for a Unit Trust with the business partners holding a fixed number of units proportionate to their interest in the business.

In either of the above situations, it is prudent for the parties to consider a Shareholders or Shareholders/Unit Holders form of written agreement, to cover arrangements between themselves as to the operation of the business and the holding of their interests in the company/trust.

FORM OF AGREEMENTS

In respect of a Shareholders Agreement, careful consideration should be given to:

- Whether the Company will act solely to hold the proposed business, or whether the company will hold other businesses from time to time.
- How the parties may transfer their shares in the company and whether pre-emptive rights will apply.

- How the parties will deal with an offer from an independent third party to either sell the business and/or their interests in the company as shareholders.
- How decisions will be made. Often in the case of silent investors, they prefer a Management Committee to make decisions on day to day issues, with a register of reserved issues to be decided at a meeting of all shareholders.
- Any limitation on the ability of an appointed Board/Management Committee, that will require further approval from the shareholders.
- Arrangements to be implemented by the company to stick to an annual programme and provide sufficient accounting and reporting information to the shareholders.
- Whether the shareholders will be liable to attribute to losses of the company or whether the company will sustain its own losses. It is often misunderstood that shareholders have obligations to contribute to the ongoing operation of the company by way of funding, however, without an express agreement this is not the case.
- How the company will source funding (ie from a bank or from shareholders loans) and the terms of that funding including whether personal guarantees are required to be given; The dividend policy of the company.
- Default provisions and ability for one party to buy out the other.
- Dispute resolution provisions in the event that the parties cannot agree on certain matters regarding the company.
- Insurance policy arrangements to be put in place in the event of death and/or sickness of a party.
- Exit arrangements, allowing a party to elect for their share to be bought out at certain intervals.

The above is not an exhaustive list but covers many of the issues seen in a Shareholders Agreement.

In addition to the above, we are often asked to advise new entities on holding of business names, holding of intellectual property (and whether a separate entity is required), documenting internal loan arrangements recommended by their accountant and preparing security in respect of related party loans.

WHAT WE DO

Short Punch & Greatorix are regularly involved in the above activity and are able to assist you with:

1. Establishing an effective legal structure from which to run your business.

2. Stamp Duty implications in relation to selling an interest in an existing structure.
3. Assisting with drafting of Shareholder Agreements, Shareholder and Unit Holder Agreements and other agreements to set out the object of business partners and the way they will conduct their business through the vehicle selected.
4. Acquisition and holding of assets.
5. Resolution of disputes which arise from time to time.

Please contact **Matthew Brook, Senior Associate** if we can be of any assistance to you.