



The 10 Top Issues to Discuss and Document, Before Entering into a Business Relationship

66% of businesses fail. Because of our expertise, we see a lot of these businesses. There are many reasons why a business can fail, and a dispute between the shareholders is one of the reasons which is common.

As such, it is important to properly document arrangements between the shareholders before hands are shaken. Having a robust and a tailored to your personal needs shareholder agreement can help to avoid disputes. Also, if the shareholders do end up in dispute, the shareholder agreement can make the resolution of the dispute simpler and faster.

Based on our experience, a poorly drafted or a 'templated' shareholder agreement often causes more problems than not having one at all!

This guide is intended to give the top issues to be discussed, agreed and documented upfront between the prospective shareholders to reduce the chances of dispute. It is important that prospective shareholders turn their minds to these issues and document them properly.

1. Right to appoint and remove directors

Who has this right?

How is it triggered?

2. Minority Shareholders

How are they protected so that unanimous shareholder approval is required for some company decisions? Or do they not require this?

3. Exit strategies

If someone wants to leave, do shareholders have freedom to dispose of shares freely? Are there pre-emption rights? Can they sell to third parties? What happens if a shareholder dies? Will the other shareholders be in business with their spouse or children or are there rights to purchase from existing shareholders? What valuations apply to the transaction? Are minority shares worth less (because they hold less control) or are all shares equal in value?

4. Nature of business

Are there any restrictions over the nature of the business and any change of this business?

5. Raising Capital

How will this occur? What is the maximum commitment each shareholder is obliged to make? What happens if a shareholder does not make a contribution? Are they 'kicked out' or is their share simply diluted? How will share dilution be avoided? Will it be avoided?

6. Dividends and other monetary contribution

Is there a policy for dividends? Will certain shareholders agree to waive dividends for an agreed period or permanently? Are shareholder's drawings to be allowed and if yes, in which circumstances?

7. Directors

Do the directors have freedom of action, for example to invest in a new capital project or charge the company's assets? How are day to day decisions made? How are the directors to be remunerated? Do major transactions require 75% shareholder agreement or will it require a unanimous decision?

8. Business plan

Is there a business plan?

9. Non-compete covenants

Can shareholders compete with the company while still being shareholders? Can shareholders compete with the company for a period after they sell their shares (say for 12 months)?

10. Shareholder disputes

How are shareholder disputes to be resolved? Arbitration? Mediation? Court? Can there be an automatic forfeit of shares in certain defined circumstances? If so, what?

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