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Shareholders Agreements

Legally there is no requirement to have a formal shareholders agreement. However every company with more than one shareholder should have one for the following reasons:

1. A shareholders agreement gives clarity and certainty to the running of the company, including what can or cannot be done, decisions which require unanimous or majority decisions and outlines a process for an exiting director/shareholder. This will reduce the potential for conflict between shareholders and resulting legal costs and ensure the efficient running of the company.

2. Without a shareholders agreement, the shareholders and directors must rely on statute and the company's constitution which are generic and broad. A shareholders agreement should be tailored to the shareholders' expectations. A shareholders agreement can only be amended with the agreement of all of the shareholders.

3. Important decisions relating to the company requiring unanimous or majority decisions are outlined and whether they should take place at director or shareholder level. This restricts the directors' powers, providing greater protection for the shareholders (whether majority, minority or equal) of the company. The key terms may address:

Limits on commercial activities	Share transfer conditions
Roles and responsibilities of directors	Valuation of shares method
Management structure	Restrictions on appointments
Deadlock procedure	Dispute resolution
Confidentiality	Restraint of trade
Death or incapacity of a shareholder	"Key man" insurance
Appointment of directors	Reporting requirements
Dividend distribution	Policies and procedures

4. If a shareholder's personal circumstances change, it safeguards the shareholders' financial interest in the company, and the interests of the shareholders' families in the event of the death or incapacity of a shareholder.

5. It is best to create a shareholders agreement early on in the business when the shareholders are enthusiastic and there have been no disputes. It is inevitable that views of the shareholders will diverge, circumstances change and resentment can build between shareholders leading to fractious disagreement in relation to the company.

6. A shareholders agreement is a cheap way to minimise the potential for disagreements between shareholders by making it clear how certain decisions are made and also by providing a framework and procedures for dispute resolution. The agreement should be clear and operate to resolve issues quickly and with certainty and finality.

7. The shareholders agreement is confidential and is not available to the public, employees or creditors.

This information is intended as a guide only. For further information, feel free to contact Leanne Scott of Scott Legal on 03 9111 0078.