

## SHAREHOLDERS' AGREEMENTS - A SUMMARY

### What is a Shareholders Agreement?

A Shareholders Agreement is an essential document whenever there are two or more Shareholders in a private Company. Anyone who has experienced disputes, restructures, expansion or dissolution will know the importance of such an Agreement.

### Earlier the Better

A Shareholders Agreement can ensure smooth business transition and function if implemented in the creation phase of a Company's business enterprise, and it is never too late to put one in place. Further, a Company which is already operating can have a document drafted which reflects and re-enforces existing understandings and arrangements. This process can also serve to highlight areas which need attention.

### Can I Simply Rely On The Company Constitution?

While the Company Constitution governs, in part, the relationship between the Company and the Shareholders, a Shareholders Agreement will cover a much wider range of issues and in more detail. It will be read in priority to the Constitution.

### General Contents

While there is no such thing as a standard Shareholders Agreement, it will generally deal with, amongst other things, the following crucial information: -

- The internal structure of the Company;
- Rights, obligations of the shareholders, directors and the Board to the Company and other Shareholders and Directors;
- Financial controls;
- Non-competition provisions;
- Company policy and management issues including deadlock;
- Pre-emptive rights (the right for existing shareholders to have first option to buy shares being sold by another shareholder);
- An agreed procedure for the sale, transfer and allotment of shares;
- Management for the company's business; and
- Dispute resolution.

### Conclusion

Any Company that relies on the subjective recollection of its principals in relation to these issues runs a significant risk of expensive litigation. A Shareholders Agreement will give certainty and predictability to many situations which might otherwise result in time, money and effort wasting, disputes or "management paralysis".

In short, a Shareholders Agreement provides the framework for your Company's operations, development and growth. Although each Shareholders Agreement is rarely the same, it does have one common objective, to clarify a Shareholder's rights and obligations vis a vis his fellow Shareholders. It is strongly recommended business advisers including accountants and lawyers are involved in the process, to ensure rights and obligations are respectively protected and honoured.

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