

SHAREHOLDER AGREEMENTS

Shareholder agreements provide a framework for addressing potential issues which can arise in a business, such as agreeing on the way in which a business is to be managed and resolving potential disputes between the shareholders. They are a crucial part of business planning and will almost certainly be called upon at key moments.

What is a Shareholders Agreement?

A Shareholder Agreement is a written document which provides clear documentation of the principles agreed upon by the owners of a business across a range of key issues.

What are the benefits of having a Shareholders Agreement in place?

There are various benefits to having a Shareholders Agreement including:

- Clear documenting of the exit strategy for shareholders;
- A framework for addressing business-critical issues when they occur;
- A clear outline to aid shareholders when disputes arise;
- Setting of control measures to assist the business to avoid unplanned expenditure or debt.

How is a Shareholders Agreement different to a Buy-Sell Agreement?

A Buy-Sell Agreement addresses “insurable” risks such as death, disability and trauma to an owner. A Shareholders Agreement, by contrast, seeks to minimise “non-insurable” risks by putting in place an agreed framework.

What if my trading structure is not a company?

While the term “Shareholders Agreement” is used mainly in regards to company structures, similar instruments exist for other structures, such as a Unit Holders Agreement in the case of a Unit Trust and a Partnership Agreement in the case of a partnership.

What are the main elements of a Shareholders Agreement?

- A description of each person's involvement in the business;
- Management principles, including dispute resolution clauses;
- Rules regarding the equity of the company, such as allotments and transfers of shares;
- Rules relating to the debt of the company, including who must contribute funds and how they are to be repaid;
- Pre-emption clauses which cover what should happen if a Shareholder wishes to sell their shares. This will cover a range of issues such as who can purchase the share, how the share is to be valued and the notice period that needs to be given;
- "Drag Along" and "Tag Along" clauses to protect majority and minority shareholders in the event of a sale to a third party;
- Decision making rules (i.e. which decisions can be made unilaterally versus by majority versus unanimously);
- Forced disposal clauses setting out the circumstances in which a Shareholder can be compelled to sell their shares;
- Clauses dealing with deadlocks;
- Restraint of Trade clauses imposing limitations on shareholders (current and former) from competing with the business, or soliciting clients and staff;
- Agreed rules as to when the Agreement can be legitimately terminated by the parties involved.

What is the role of PT Partners?

Through a deep understanding of the business structure, its tax issues, and the personal profiles of the business owners, PT Partners is perfectly positioned to shape a Shareholders Agreement that is effective and tailored to the specific requirements at hand.

We co-ordinate and facilitate the entire process, drawing on the expertise of trusted legal and insurance contacts at the relevant stages. Please read our separate Fact Sheet titled "Business Succession Planning Process" for a clear outline of the steps.