

## SHAREHOLDERS' AGREEMENTS - WHAT'S IN IT FOR ME?

The absence of shareholders agreements among Singapore's Small & Medium Enterprises is a huge stumbling block that often results in costly and time sapping disputes between the business owners; and if unresolved may lead to the eventual breakup of a thriving and successful business. Lack of a shareholders' agreement also hinders the growth of companies as investors shun from uncertainty.

### **What is a Shareholders' Agreement?**

A Shareholders Agreement is simply an agreement between the shareholders of a company. The purpose of a Shareholders Agreement is to set out the ground rules of the relationship between the shareholders. Such ground rules include the rights and obligations of the shareholders, how can shares in the company be dealt with, how the company is going to be run, how important decisions are to be made.

### **Benefits of a Shareholders' Agreement**

For the benefits they provide, the shareholders agreement is an extraordinarily cheap and yet effective way to minimize disputes between owners. The common uses of a shareholders agreement include:

- Provision of Clear Structure – A Shareholders Agreement would set out the outline of the structure of a company, how it is financed, who are the members of the Board, how the company is to managed.
- Minimizing Uncertainty – A properly drafted Shareholders Agreement would provide an proper mechanism for the transfer of shares in the business and helps keep the company running smoothly in the face of uncertain events such as death, disability or retirement of a shareholder.

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- Confidentiality - Shareholders may have different business interests, some being more active than others in the company. Confidentiality clauses in a Shareholders Agreement help protect the company from the release of commercial information to competitors or other outsiders.
- Investor Relationship – Shareholders Agreement often contain provisions relating to management rights and investors rights. The purpose of such provisions is to ensure that the rights of the venture capitalist (if any) are protected.

### Common Misconceptions

A common misconception among business owners is that the Articles of Association is in effect the same as a Shareholders Agreement.

While the Articles of Association of a company does set out the rules governing the management and administration of a company, these are the basic rules as set out in the Companies Act (Cap. 50). A shareholders agreement allows the business owners to establish their own “rules” or terms of engagement in the business undertaking.

### Key Differences between Articles of Association & Shareholders Agreement

Articles of Association	Shareholders Agreement
Governed by Companies Act	Governed by normal contract law
Sets out the basic rules governing the management and administration of a company	Sets out basic plus comprehensive rules governing the management and administration of a company

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Articles of Association	Shareholders Agreement
Available for public inspection	Not available for public inspection, i.e. confidential
Binds each and every shareholder	Only binds shareholders who sign the Shareholders Agreement. New shareholders must sign the Shareholders Agreement to be bound.

### What should a Shareholders' Agreement contain?

A Shareholders Agreement, properly drafted with sound legal principles, sets out these provisions:

- Overview – guidelines relating to dividend policies; funding of shares transfers; structure of company operations; management rights employment of staff members; percentage of votes required to approve major decisions and bringing in new shareholders.
- Valuation Method - Without a public market, a private company must have an agreed method for valuing shares. There are several valuation methods and different external valuers can come up with different valuations of the same company. Hence it is important for the shareholders agreement to specify an agreed methodology.
- An 'Exit Route' for Business Partners - One of the major source of contention in every business is when a business partners wants to "exit" the business. As such, it is vital for every shareholders agreement to set out the formal processes that govern how shareholders can exit the business and at what price. In addition, it is imperative that a shareholders agreement include provisions that the sale process should give existing shareholders pre-emptive rights to purchase the stake before it can be sold to an outsider.

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- **Life Insurance** - The death of a partner can cause severe problems, especially when relatives who wish to realize the inherited shareholdings. In such a situation, the surviving shareholders would be faced with a situation of having to raise finance to purchase the shareholdings or face the prospect of the stake being sold to an outsider. The shareholders agreement can include provisions which stipulate for the funding of insurance so as to ensure that the surviving shareholders are able to afford to purchase the stakes of co-owners in the event of death or disability.
- **Confidentiality** - In companies where shareholders have different business interests, some being more active than others in the company, it is essential to include confidentiality clauses so as to protect the company from the release of commercial information to competitors or other outsiders.

## **What We Do**

**Business Law** – We advise businesses in all stages of its life cycle - from start-up and growing it through acquisitions and restructures; to retiring from the business by selling or handing it over to the next generation. Your business too will face different funding, organizational and legal challenges as it goes through different stages of its life cycle.

**Estate Planning** – You have worked your whole life to establish your estate, why not take the time to protect it. A proper estate plan will protect your loved ones from having to deal with the troubles and costs involved with probate court. We make Estate Planning easy to understand. We help create a legally binding directive that helps your loved ones when it counts the most. We offer guidance to help simplify the process for your loved one. No matter the size of your estate, we provide an entire plan designed for your individual needs.

## **Our Approach**

Our Approach is Simple

Personal. Honest. Decisive.

We provide frank, insightful analysis and practical solutions.

We don't believe in doing anything less.

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*If you need a trusted legal advisor at hand to help you navigate the complexities of the law and to keep you safe from unsuspecting pitfalls, contact us.*

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