

TURNING DREAMS INTO REALITY

We all have our dreams and what is better than having a few friends, with the same vision, jump in to start a business together?

More often than not, due to the many many operative considerations that confront a business in the start up phase, founders of the businesses lose sight of the importance of having an agreement between themselves to avoid future disputes and to protect the business from interruptions from internal disputes.



WHAT'S IN THIS AGREEMENT?

If you have established a company, this will be a shareholders agreement. If you use a unit trust as the trading vehicle, this will be a unitholders agreement.

This agreement will set out salient points such as:

- the agreed responsibilities of each participant in the operation of the business;
- what contribution is each participant bringing into the business - skills, know-how, access to funding, connections;
- consequences of failure to deliver one's responsibilities;
- future funding options;

- exit mechanisms;
- decision making process including day to day business operations and internal matters such as the remuneration of directors, reinvestment of dividends into the business;
- procedures when one participant becomes incapacitated or dies.

CAN WE DO WITHOUT IT?

Yes and there are many many businesses out there which are operating without this agreement.

Below are some examples of problems that we have seen business owners encounter:

- a major participant whose asset to the business is his/her skills in the trade/professional decides to set up shop in competition with the business while refusing to relinquish his/her shares in the business;
- a shareholder refuses to inject much needed funds into the business and expansion of the business is put on hold;
- a director refuses to attend board meetings making it impossible for the remaining director/directors to make time sensitive decisions;
- directors refusing to disclose company books to shareholders;
- minority shareholders holding out on a potentially profitable sale of the business;
- disputes regarding the valuation of shares/interests in the business when a party seeks to sell out;
- director misusing information for his/her own benefit to the detriment of the company.

WHAT HAPPENS THEN?

Without a shareholders or unitholders agreement, the parties cannot refer to an agreed way to resolve the dispute and the only resort is to the Courts to obtain a Court Order for the outcome that you are after.

Needless to say initiating proceedings in Courts involves legal costs in obtaining advice, initiating proceedings and most important of all, your business is left in limbo while you are sorting out your issues with your business partner who now has more important concerns/interests than the the business that you created together.

It is invariably the remaining shareholders/partners/unitholders who want to continue with the business in such instances who will suffer the most. While we cannot anticipate all dispute scenarios that can crop up, it is always best to have the ground rules set right with your business partners before taking the leap together.

Contact us for a consultation today.