

Whether you are an angel investor or are looking to invest in established businesses, you need to be aware of your rights as stakeholder in the entity even when you are not intending to be involved in the operations of the business.

PRELIMINARY STEPS - OBTAIN INFORMATION ON THE COMPANY'S:

- Financials (debtors, creditors, cash flow, revenue forecast, salaries and wages, accrued employee entitlements, pre-payments, guarantees, bonds, business maintainable earnings)
- Business plan and detailed financial projections for the next 2 years
- Competitors in the market, market trends and issues
- Products and services, their diversity
- Marketing campaigns, customer feedback
- % margin earned on main product and service over the recent years
- suppliers and their terms of trade.

The above are also relevant to business purchase due diligence investigations and more details can be found in [our previous article](#).

Angel Investors evaluating looking at start ups will also need to consider:

- The capital that the company is looking to raise
- Whether the company is valued appropriately
- What the monthly burn rate will be
- Key cost components for the service or product
- The likely gross margins
- The typical sales cycle
- The founders and management team structure
- Whether key additions will be required in the short term
- Whether further additional rounds of financing will be required

SHAREHOLDERS



PRIVATE COMPANY STRUCTURE

If you are buying into a private company structure, you will be a shareholder of the company.

Your rights and obligations can be found in:

- the Corporations Act 2001 (Cth)
- the Constitution of the Company
- the Shareholders Agreement (if any)

General Rights – Corporations Act 2001 (Cth)

- Voting rights (as attached to your class of shares) at shareholders meetings
- Right to receive annual company reports
- Pre-emptive right on issue of new shares (to maintain percentage shareholding)
- Rights to remove directors with majority of shareholders in favour
- Right to receive dividends

Additional Rights that can only be included in a Shareholders Agreement or a tailored Constitution, to name a few, are:

- Right to inspect the books of the Company (not just the annual company reports)
- Confidentiality and Non competition covenants from all Shareholders

- Pre-emptive rights on disposal of shares by other shareholders
- Requirement that all shareholders vote in the interest of the Company at all times
- Right to partake in any offer made for shares owned by other shareholders or require other shareholders to sell their shares to achieve a sale of the business (Drag along and tag along rights)
- Restrict the power of the Board by subjecting certain Board decisions to shareholders' consent
- Dispute resolution provisions both at Board and shareholders levels
- Clear and reasonable exit mechanisms to enhance liquidity of the shares (as it is very difficult to sell shares in a private company to a third party when fellow shareholders do not take them up)
- Set a time frame for the preparation of an annual plan and an annual budgets in order to keep track of where your investment is heading
- A clear dividend and distribution policy setting out the frequency of distributions and whether there is any dividend reinvestment plan
- Future funding obligations and proposed source or funding
- To be entitled to an entrenched seat on the Board of Directors and be represented at Board level. *Note: There is usually a shareholding threshold for board representation and you need to be clear on what this is.*

Whilst a certain level of risk is acceptable in any investment, all investors should take care in their due diligence investigations and ensure that their investment is best protected in every possible way. This starts with a carefully drafted shareholders agreement which works hand in hand with the company's constitution.

NEXT STEPS

1. Request a copy of the company's constitution and shareholders agreement to understand your rights and obligations.
2. Negotiate terms to be included in the shareholders agreement to protect your investment.

Note: The information contained in this article and on www.laulegal.consulting website is general information only and does not constitute legal or compliance advice.

NOT SURE ABOUT HOW TO PROTECT YOUR RIGHTS?

CONTACT US FOR A CONSULTATION TODAY.