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"CORPORATE MARRIAGES CAN WORK!"

But when they don't you need to have a well prepared Shareholders Agreement rather than a divorce lawyer!

If you are thinking of setting up a company with other people and then using that company to operate a business, it is essential that you have a Shareholders Agreement in place from day one. The Shareholders Agreement is really like a corporate rule book for:

> how the company will run;

> how the profits of the company will be divided;

> how decisions will be made;

> what happens in a deadlock and the directors or shareholders just can't agree.

You may not look at the rule book from play to play but when you don't agree with a call, it is the rule book that has the final word! And that is how a shareholders agreement works too.

You and your fellow shareholders/directors will make the day to day decisions about the company and its business, but at some point you may not necessarily agree with each others ideas. That is when you can refer to the shareholders agreement for a ruling.

One party to the marriage wants out

A shareholders agreement should always set out the rules for when a shareholder wants to sell their shares. The shareholder can either sell to the remaining shareholders or to a third party. It is usual for a shareholders agreement to set out pre-emptive rights. That is, if a shareholder wants to sell to a third party it must first offer its shares to the other shareholders. This right of pre-emption is a protection for the remaining shareholders so that they can keep the same "partners" rather than introducing a new person ie the third party who buys the shares.
However if the other shareholders don't want to buy the shares, the shareholder wanting to sell can then sell to a third party.

Irreconcilable Differences - You have a deadlock

When the relationship between shareholders breaks down and the company cannot be run effectively, you have a deadlock. This is when the shareholders agreement is invaluable. In a deadlock situation, the shareholders agreement will set out the rules under which a shareholder can request the other shareholders to buy his shares and allow him to leave the company. This may be a mandatory provision so that the other shareholders have to buy him out.

But if the shareholders no longer want to be involved in the company and they just want to get out of the relationship altogether, they can apply to the court for a winding up order and the company will be wound up and deregistered. A liquidator is appointed to make sure all the debts are paid and then any surplus is distributed to the shareholders in accordance with the shareholders agreement.

The decision is in your hands

Just remember, the shareholders of a company are the owners. They can make decisions every day if they agree to, without ever having to look at the shareholders agreement. They can even, if they all agree, make decisions that contradict the shareholders agreement.
Its only when there is a disagreement that you need to look at the rule book – and when things have reached that point you had better be sure the rules work.

If you would like help or advice in negotiating, drafting or checking a shareholders agreement please ring us on 02 8296 6222 or email peter@townsendslaw.com.au

TOWNSENDS BUSINESS & CORPORATE LAWYERS