

Partnership and Shareholder Agreements - the Foundations of your business

2010 Update



A recession has a habit of exposing the weaknesses of any management structure, particularly when it attempts to develop and adapt to meet the changing requirements of its marketplace or situation. As with a pre-marital agreement, both Partnership and Shareholder Agreements should be seen as the legal foundation of a jointly run business that allows its key players to enshrine the principals and rules of the business as agreed by all at the outset. Most business develop and grow without ever stopping to lay down how they would formally deal with the seismic events that could entirely destroy their potential to trade – from the addition of new blood to the lawful suspension or exclusion of existing members; from restraint of trade to ownership of assets and profit-sharing.

Shareholder Agreements

The basic legal documentation provided with an 'off the shelf' company, or even that transferred from an existing business as it changes and develops, will never fully suit the actual business model and realities of the Limited Company it seeks to describe. All Company Directors will be more than aware of the limitations and pitfalls of an inaccurate Memorandum & Articles of Incorporation, but less aware of the need to put in place a Shareholders Agreement to regulate activities between Shareholders, determine the agreed rules on joining and leaving the company, share transfers, appointment of directors, issue of new shares, etc. Without a Shareholder's Agreement a company is left with only the basic detail of the Memorandum and Articles

to rely on in the event of either a difference of purpose or opinion within the ownership structure.

Partnership Agreements

Just as a shareholder agreement can assist in the formalisation of arrangements within a limited company, so a Partnership Agreement can avoid reliance on the Partnership Act 1890 when deciding issues within almost any business carried on in common by between 2 and 20 people, that has not been limited by shares. The ambit of a 'partnership' in business terms is wide and defined by this Act as "the relation which subsists between persons carrying on a business in common with a view of profit", meaning that many may be operating a business that the law regards as a partnership without even realising or intending that this is so.

If no formal Partnership Agreement is in place, then the basic rules established by the Partnership Act will apply, including (amongst others) the division of all profits equally between the partners, and the need for unanimous agreement between the existing partners for a new partner to be brought into the business. No provision is, of course, made for the individual situation of the business in question to be reflected in the rules and regulations of the partnership, and even a standard and established practice may find itself challenged in the event of a dispute between partners if the established practice goes against the legal framework laid out in the Partnership Act.

Whether you are considering the creation of a pre-marital agreement to set the ground rules in the event of a marriage break-up or, more complex still, the fundamental principles on

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which you will run and manage your business, is it not sensible to put in place an agreement between all parties? Surely this is better created when all involved have a mutual sense of purpose and are working towards the same goals?

As new partners come into the business, or any of those already working decide to move away, as the business expands and requires further capital investment, or the balance between the different current and capital accounts of the partners shifts according to the drawings and workload of all concerned, so the Partnership Agreement allows all concerned to act within agreed parameters. It is, evidently, a far more time and cost-efficient approach to such complex business arrangements to decide a framework in advance of issues arising, rather than 'fire-fight' each issue as it arises.

For detailed and tailored advice on Shareholder or Partnership Agreements for your business, or to discuss any other Company Law issues, please contact us at law@pwjsolicitors.co.uk or by telephone at our Cockfosters Office on 020 8441 1556 or at our Barnet Office on 020 8364 9955.

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