



Don't Delay – Create Your Shareholders Agreement Today!

When setting up a corporation, the focus is normally on establishing and growing the business, but it is also important where a corporation has more than one shareholder to have a shareholders agreement to establish a road map that both sets out expectations for management of the business and the relationship between the shareholders, and provides for how changes in circumstances will be dealt with.

It is important to have a shareholders agreement in place even when a corporation is relatively small in size and the shareholders are related, or are good friends.

Regardless of who the other shareholders may be, we have seen numerous situations where friends and family go into business together, the first few years are amicable, but something happens, for example a death of a shareholder, or a disagreement between shareholders over the management and governance of the corporation. Suddenly, the corporation and its shareholders find themselves in litigation, or if not litigation, a complete disturbance of the day to day affairs of the corporation. A well drafted shareholders agreement provides valuable protection and peace of mind for the corporation and its shareholders.

A Shareholders Agreement May Deal With Some Or All Of The Following Matters:

- management and governance of the corporation, including composition of the board of directors, and setting out certain matters that require the approval of a specified number of directors or shareholders
- financing and capital requirements – restrictions on the issuance of shares and debt, and setting the level of shareholder approval required
- pre-emptive rights to permit shareholders to purchase shares on a pro-rata basis in the event of a proposed issuance of shares, to provide anti-dilution protection
- restrictions on transfer of shares
- resolution of deadlocks and disputes
- providing a mechanism for valuation and liquidity of shares where a shareholder wishes to transfer its shares and for succession planning and upon the death, disability or insolvency of a shareholder, or a shareholder ceasing to be interested in the business; these provisions may include:
 - right of first refusal
 - tag-along, or piggy-back rights, which permit a minority shareholder to participate in a proposed sale of shares by a majority shareholder to a third party
 - drag-along rights, which permit a majority shareholder to require a minority shareholder to participate in a proposed sale of shares to a third party
 - buy-sell, or shot-gun provision, which permits a shareholder to offer to buy the shares of the other shareholders, who may instead require the shareholder to sell its shares to them at the same price
 - puts, permitting a shareholder to require the corporation or another shareholder to buy its shares, and calls, permitting the corporation or another shareholder to buy a shareholder's shares
- payments to directors, officers and employees
- protection of confidential information
- non-competition provisions

A shareholders agreement will normally provide that any issuance or transfer of shares to a new shareholder will be conditional on the new shareholder being bound by the shareholders agreement.

Putting a shareholders agreement in place allows the shareholders to consider and provide for how issues will be dealt with before they arise.

Where Can I Learn More?

Once a shareholders agreement is in place, it is important to regularly review it and update it as the corporation, its shareholders and circumstances change over time.

There is no standard form of shareholders agreement applicable to all circumstances, and it is important that a shareholders agreement be customized for a corporation and its particular shareholders and circumstances. AUM Law has extensive experience in drafting and updating shareholders agreements for small and large corporations. For assistance with preparing an effective shareholders agreement or updating an existing one, please contact one of the following individuals: [David Coultice](#), [Kevin Cohen](#), [Erez Blumberger](#) or [Kim Poster](#).

This nutshell is an overview only and it does not constitute legal advice. It is not intended to be a complete statement of the law or an opinion on any matter. No one should act upon the information in this nutshell without a thorough examination of the law as applied to the facts of a specific situation.

