

Shareholder Agreements Vital for Smooth Business Operations

In a recent situation one of the six shareholders in an exporting business died unexpectedly in middle age. This was of course a great shock to her family but also to her business partners.

The partners had to quickly pick up all of the tasks she had performed for the business and try to keep it on an even keel.

Unfortunately, the partners had never got in place a signed shareholders' agreement, despite talking about the need for one for quite a long time. They are now facing additional challenges with running the business as the deceased had willed her share in the business to her husband. The other partners did not have a good relationship with him before the death and things got worse afterwards as he assumed his share ownership would entitle him to a say in running the business and a seat at the boardroom table as a director. This caused serious concerns as he had no experience in business, or in exporting, or in the industry they operate in.

Once the shares have been transferred to the husband, as a shareholder, he could request to see all of the company's information and records. The company could only withhold such information if they had very a good reason for doing so (something more than not wanting the husband to be involved in the running of the business).

If the shareholders had had a signed agreement in place they could have dealt with matters such as what happens to the shares when someone dies, becomes infirm or wants to sell. Restrictions on leaving shares in a will could have been imposed, which would have avoided these problems. Instead a process could have been agreed to value the shares and have them purchased by the remaining shareholders.

The shareholders would then not be stuck with being in business with someone they did not get on with and who had no experience in their industry. When you go into business with someone you generally want to choose who that is. Here they were left with no choice.

Even where a company has a constitution in place, it is worthwhile entering into a shareholder's agreement as well to take care of situations outside the scope of the



constitution. Shareholders' agreements can cover a wide variety of other situations that might arise in the course of business, such as:

- How many directors?
- How are they appointed?
- How is the company managed?
- How will directors be paid?
- Who can be a shareholder?
- Are there different classes of shares with different voting rights?
- What decisions require unanimous shareholder support?
- Meetings. How often? Quorum? Notices?
- Exiting the company.
- Compulsory buy outs.
- Valuation of shares.
- Resolving deadlocks.
- Restraints of trade.
- Non-competition.
- Disputes resolution.
- Distributions.
- Funding. Who will contribute what?
- Insurance.
- Confidentiality. What does this apply to
- Intellectual property. Who owns what?

A failure to have a written and signed shareholders' agreement can leave a company open to all sorts of problems if there are disputes or an unexpected change in circumstances.

Louisa Gommans
Solicitor
RAINEY COLLINS
04 473 6850
www.raineycollins.co.nz

