Shareholder Agreements 101: Unanimous vs Standard Agreements

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Starting up a new business is a very exciting time for many entrepreneurs. However, enthusiasm and optimism for the new venture can cause a business owner to overlook the potential for future disagreements on how best to run the company, the long-term obligations of shareholders and how the business or shares in the business can be sold. Putting in place a Shareholder Agreement can avoid considerable conflict, expense and distraction from the business operations down the road.

To operate a corporation effectively, there is no substitute for a good corporate decision-making process and governance. Even a small, closely held company with a few shareholders is better served by good governance practices.

Although it’s impossible to sit down and list out all of the potential events that could have an impact on the corporation in the future, a structure that provides a framework to assist and guide the board of directors can be very useful for the business. A framework for the decision making process offers greater certainty and fairness for all involved, and helps to protect the interests of both majority and minority shareholders alike. This framework is often most effectively provided through a Shareholder Agreement.

There are many common issues that are generally dealt with within a Shareholder Agreement. Examples of these include:

- Governance, Management & Control
- Financing / Participation
- Holding of Securities / Permitted Transfers
- Disposition and Acquisition of Shares
- Restrictive Covenants
- Dispute Resolution

Once you have decided that your corporation needs an agreement between shareholders to help govern its affairs, you must decide what form of Shareholder Agreement will be most effective. There are generally two options: a Unanimous Shareholders Agreement (“USA”) and a standard Shareholder Agreement.

A USA is the most common form of shareholder agreement. A USA covers all shareholders of the corporation both present and future. A USA is considered one of the framework documents of the corporation along with the articles and bylaws. Due to this, under the legislation, a USA may not be amended without the written consent of all those who are shareholders at the effective date of the amendment.

Why does this matter? If you were to have a minority shareholder, that you subsequently brought in for financing purposes, who does not agree with the proposed amendment, you will have no recourse. If you're likely to be in a situation such as this, a standard Shareholder Agreement may be a better option for you.

A standard Shareholder Agreement can offer greater flexibility than a USA. It is a contract between certain parties and it may include any shareholders of the corporation but does not need to include all shareholders. Future shareholders can choose to be bound by the agreement (the agreement would need to be amended for this to happen) but would not be automatically bound upon subscribing as a shareholder.

A standard Shareholder Agreement may be comprehensive or limited in scope and may also include non-shareholders. Major shareholders are able to operate the corporation without needing unanimous consent of all shareholders, which in some circumstances can stall corporate progress.

Of course this is a very top-line explanation of shareholders' agreements. If you are currently without a shareholder agreement and would like to implement one to help provide some structure to the governance of your business, our corporate lawyers at Duncan Craig LLP can help you assess what type of agreement would serve your corporation the best.

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