Shareholder Agreements

YOUR CA AND BUSINESS ADVISORY SERVICES

The Business Advisory Services Committee
The Canadian Institute of Chartered Accountants

Every business can benefit significantly by consulting your chartered accountant about business advisory services. CAs are skilled in accounting, auditing and tax services – and a lot more!

CAs can help you with:

- profitability improvement
- financing and loan applications
- obtaining government grants and other financial assistance
- developing management information systems
- cost accounting
- planning and budgeting
- forecasting and evaluation
- risk assessment and insurance planning
- planning compensation programs
- business valuation
- feasibility studies for business expansion
- starting a new business
- acquiring a franchise
- planning for retirement and/or business succession
- integrating business tax planning with estate tax planning.

These business advisory services are cost-effective because CAs have the knowledge of clients' organizations, operations, finances, personnel and tax situations.

Shareholder Agreements

Sometimes called a buy-sell agreement, the shareholder agreement could be the most important contract you enter into when newly incorporating a company with two or more owners or increasing an existing company's number of shareholders.

While the agreement must comply with Federal and Provincial corporate legislation, these provisions define only the basic requirements for the functioning of the corporation. Making sure the agreement meets your specific needs and objectives as a shareholder is your responsibility. For this reason, the shareholder agreement must be approached carefully and knowledgeably by each party involved.

The Purpose of the Shareholder Agreement

The agreement can ensure sound management of your investment in the company and protect the continuity of the business, particularly when the corporation is faced with major changes such as:

- bankruptcy
- death
- disability
- entrance/exit of shareholders
- retirement

The agreement details the shareholders' rights and obligations. It is also a means to prevent conflicts and to resolve those that may occur. Defining the relationship between the parties is especially important for small companies where the limited number of owners makes them comparable to partners.

The Objectives of the Shareholder Agreement

The objectives of shareholder agreements are:

- to ensure a market for the shares;
- to protect both major and minor shareholders;
- to determine the shareholder involvement in the company;
- to prevent conflicts regarding management, operating, and financing issues; and,
- to provide for arbitration.

When to Prepare a Shareholder Agreement

A shareholder agreement should be written as soon as a company is incorporated or acquired by two or more persons. At this stage, the parties are enthusiastic and have mutual objectives so that it's easier to conclude an agreement on the many clauses that will define their rights and obligations.

And, of course, this agreement should be reviewed periodically and, if necessary, amended, particularly when a major change occurs in the corporation.

Content of a Shareholder Agreement

Some of the important issues addressed with the provisions include:

- the purchase and sale of shares
- timing of any buy-sell
- share pricing
- share payment
- valuation
- terms of payment
- insurance
- tax considerations
- the corporation's business activities
- compliance with statutory regulations

Talk to Your Chartered Accountant

As a business advisor, your CA offers professional knowledge of finances, information systems, business planning and operations, and a thorough knowledge of the Income Tax Act. Before you conclude a shareholder agreement or amend an existing one, talk to your CA and explore your options and concerns. While your legal advisor will conclude your shareholder agreement, during the process your CA will be an important source of advice and assistance.