



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SHAREHOLDERS' AGREEMENT**

Shareholders in a company (particularly if there are only a few and/or a company is formed for a special purpose) often enter into a Shareholders' Agreement to regulate the ownership and control of the company.

A Shareholders Agreement is best prepared at the start of a business, when all parties are enthusiastic and there have been no disputes or disagreements over the running of the business. Such Agreement can avoid or minimise disputes over the running of a business and its funding; it can also reduce the cost and uncertainty of a business break up. Every business is different and every shareholder is different – a good Shareholders Agreement can help to minimise the potential for conflict, the unpredictability and cost of dealing with conflict, and maximise opportunity for growth.

Once a business relationship has broken down it becomes very difficult to objectively look at key issues. It is much easier to decide on the fundamental issues early and to minimise the problems that can occur later.

Provisions of Shareholders' Agreement

The provisions of a Shareholders' Agreement will usually be in addition to anything contained in the company's constitution and can override the constitution where in conflict.

Matters dealt with in a Shareholders' Agreement can include:

- a. Number of directors (minimum and/or maximum), who they are and/or who they represent (eg, 3 directors representing the 3 largest shareholders) and quorum for a board meeting;
- b. Who will be chairman, and when/how the chair changes and whether or not he has a casting vote;
- c. Alternate directors (ability to appoint, terms, etc);
- d. Removal of director (eg, a shareholder representative can be removed/replaced by that shareholder – whether or not the other directors vote in favour of the new director);



- e. Frequency, notice and agenda for board meetings;
- f. Handling decisions/disputes at board level (eg, they may be decided/settled by a 'Majority Board Approval' [ie, a majority of directors attending a meeting who are eligible to vote on a matter] which cannot be challenged);
- g. Some 'critical' matters (eg, allotting new shares; entering into transactions unconnected with the stated business of the company) needing a 'Special Resolution of the Board' [ie, at least 75% of directors attending a meeting who are eligible to vote];
- h. Share issues and transfers; and
- i. Shareholders' meeting provisions, quorum, voting;

as well as basic operational aspects of the business, such as funding, structure, management and future direction.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.