

Raising the Bar

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Planning Ahead – The importance of Shareholder and Partnership Agreements

We've all heard the disaster stories about when businesses become unstuck because the owners have had a falling out or are going in different directions. The best way to monitor against this type of risk is for people in business relationships to ensure that they have an appropriate agreement in place setting out dispute resolution procedures and exit strategies before things turn sour!

Take for example, this typical scenario – Mary and Kate set up in business 5 years ago and formed Mary and Kate Limited. Mary and Kate both owned a 50% shareholding in the company and were both Directors. They decided not to enter into a Shareholders Agreement as they had been friends for years and did not see this as necessary...

Mary now wants to expand the business and Kate wants to continue as a two woman operation. As Kate won't agree to expand, Mary has offered to sell her shares in the business back to Mary but she is not interested in buying. Kate has been unable to sell her shares to a third

party and is now in the awkward situation of either remaining in the business unhappy because the business is not going in the direction she wants it to or walking away from her investment. Had Mary and Kate entered into a Shareholders Agreement the course of action on how to deal with this type of situation would be dealt with in the Agreement and Mary would not be in this difficult position.

Neither the Companies Act nor Partnership Act contain provisions dealing with this type of scenario so business owners do not have fall back provisions to rely on.

A Shareholders/Partnership Agreement will vary from business to business but common clauses to include are:

Dispute resolution procedures

- Exit strategies
- Deadlock provisions
- Dividends Policies
- Pre-emptive rights for existing business owners
- Methods to determine fair value and purchase price
- Circumstances when a business should be liquidated

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