

Shareholders Agreements – Critical or Not?

A shareholders agreement is perhaps one of the most critical documents that a privately owned company can have.

All business partnerships start out with good intentions. Each of them will vary in form, but they will all have one thing in common – the ability to go horribly wrong. In newly formed companies, optimism is high and everyone is getting on. As a result, shareholders often do not see the need for such an agreement, especially when money may be tight. They consider it to be an unnecessary expense.

However, disputes between shareholders do arise, for many different reasons and cannot always be ended simply and amicably. Such disputes can be extremely disruptive to a business and in circumstances where there is a deadlock, can result in bringing the business to a complete standstill through the inability to make decisions.

Shareholders agreements are critical because they provide a method for:

- resolving shareholder disputes. By providing a structure for parties to work within, not only can disputes be resolved quickly and effectively, but conflict can often be prevented before it begins;
- preventing the personal circumstances of a shareholder affecting the company or the other shareholders. If a shareholder were to die then other family members, who may not know much about the business, may take their place. If a shareholder gets divorced then their former spouse may turn up at board meetings and cause problems out of spite.



A shareholders agreement can prevent this. Furthermore, without some form of agreement in place, shareholders are free to sell their shares to any third party, which may not be in the best interests of the company;

- defining the powers of the shareholders and creating procedures and limits within which the company can operate. Without some form of agreement in place shareholders are able to enter into contracts and other commitments on behalf of the company without any proper consideration of the effects that they may have, which could spell disaster for the company and the other shareholders.

If you would like any further information on drafting a shareholders' agreement or on reviewing an existing shareholders agreement, then please contact Jennifer Bell on 01254 828300 / 07912 390020 Jennifer@backhouses.co.uk



FREE Company Health Check

In times of uncertainty and financial pressures it is important to ensure that your internal business structures and systems are working for you, rather than against you. That your business is compliant and not at risk of criticism. The following are examples of some of the issues you should be considering:

- are you complying with and taking advantage of the Companies Act 2006?
- is your operators licence held in the correct entity?
- are you at risk of personal liability?

Here at Backhouse Jones we are offering you a FREE company check-up to identify improvements for your business. For further information please contact Jennifer Bell on 01254 828300 Jennifer@backhouses.co.uk



Directors: What should you be considering if your company is facing financial difficulty?

In addition to the practical steps that you will normally take to protect your business, you also need to consider your personal position. Generally speaking directors are not liable for the debts of a company, however personal liability may be incurred in the following situations, in particular, during periods of financial difficulty.

- **Directors duties**—in times of financial difficulty a directors compliance with the duties contained within the Companies Act 2006 will come under particular scrutiny.
- **Wrongful & Fraudulent Trading**—directors may be required to contribute to the assets of an insolvent company on the application of a liquidator, if it appears that a director has:
 - ◇ misapplied, retained or become accountable for any money or other property of the company;
 - ◇ been guilty of misfeasance or breach of any fiduciary duty;
 - ◇ knowingly been a party to the carrying on of business with the intention to defraud; or
 - ◇ prior to the winding up, knew or ought to have known that there was no reasonable prospect that the company would avoid liquidation, and did not after that point take every step with a view to minimising the loss to creditors.

However, as a general rule the more that directors base their decision making upon the advice of

specialist advisors the less chance there is of a liquidator successfully imposing personal liability on them.

- **Contractual liability**— the principle of limited liability does not apply to liabilities agreed to in a directors personal capacity and it is not uncommon for directors to guarantee the liabilities of a company. However in difficult times you do need to be fully aware of your obligations under the relevant guarantee.

Operating Centres — the essentials.....

When acquiring land for an operating centre the following issues must be addressed. Failure to do so could result in the acquisition of a piece of land, which is unsuitable for use as an operating centre. This can be expensive and even fatal for your business, if it results in your operators licence being refused or revoked. The considerations include:

- **Road Safety**—does the land have a genuinely safe entrance and exit from the road? This will include considerations of public footpaths, bridleways etc which could be rendered unsafe by the movement of heavy goods vehicles;
- **Environmental Suitability** — Traffic Commissioners are required to consider whether a proposed site is suitable on environmental grounds. This will include the consideration of issues such as noise dust vibration light (flood lights) which might impact on the use of the surrounding area. If an operator requires a 24 hour operation, particular regard must be had to the surrounding environment. It is important that someone skilled in assessing environmental suitability of operators centres examines the site before you enter into any formal contract;
- **Change of Use**— If the land has been used as an operating centre in the past , this may

give you a head start on your application. However, consideration will need to be given to any changes of use to the surrounding areas. For example, if there is now a residential estate in the surrounding area then this could result in conditions being imposed on the use of your licence. Such conditions can be expensive.

There are of course many other issues that need to be considered when acquiring land for commercial use, e.g. Planning, whether under lease or purchase. Leases often contain particular clauses about re-instatement of buildings and fixtures and fittings on termination of the lease and many other clauses, which, as a tenant you will need to be advised on and will also need to negotiate before entering into the lease. Similarly and conversely, if you are intending on leasing a piece of land which you own, or allow use of it on licence, to another person or operator, it is equally important to address these considerations.

An operating centre is a pivotal part of any business. Advice sought at an early stage can prevent extremely expensive mistakes. For more information please contact Wendy Newbury on 01254 828300 wendyn@backhouses.co.uk

MEET THE TEAM



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