



## Legally Talking

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# Changes in the business environment and shareholders agreements

**Small to medium sized enterprises (SME's) feature predominantly in North Canterbury employing a large percentage of the work force and making a significant contribution to the regional gross domestic product.**

This year has been a year like no other, introducing a raft of new issues to which business leaders have had to adapt.

SME's in particular have had to be agile in responding to Covid-19, managing compliance and changes in legislation and being effective in a competitive marketplace.

In identifying these factors which affect the business lifecycle, shareholders need to have a Shareholders Agreement which is responsive to these scenarios and which is relevant to the evolving needs of the shareholders and the company.

Issues such as succession, different contributions from shareholders and unequal shareholdings often motivate the need for a Shareholders Agreement beyond the company operating solely on a Constitution.

An "early stage" or "greenfields" company may get by with just a Constitution, particularly when it is "pre-revenue".

However, as the company achieves new or major milestones within its lifespan, a Shareholders Agreement will be needed to tackle the "meatier" issues facing shareholders.

These issues include matters concerning governance, control, the management of disputes and the entry and exit of shareholders from time to time.



The need for a Shareholders Agreement to provide clear rules of engagement in dealing with major events was stressed in the matter of *Innes-Jones v Innes-Jones & Ors – Sailor's Corner* (2018).

The benefit of developing and executing a Shareholders Agreement is that it forces the parties to think about significant issues or key milestones in the possible shareholder relationship.

In this respect, Shareholders Agreements often represent a blend of commercial is-

suess, legal concepts and prescribing the manner in which litigious issues are to be dealt with.

Flux in the regional economy and business environment may force business owners to consider a different strategic pathway which may include a change in the focus of the business, a potential acquisition of complementary companies or enterprises or a sale of a part of the business.

A Shareholders Agreement can be an effective tool in this respect but conversely, if there is no Shareholders Agreement or if it fails to anticipate these developments, it may be difficult for the business owners to navigate the path forward in the absence of a structured methodology. In this context, Shareholders Agreements ought to provide for some or all of the following:

- the powers to raise capital or restructure the business;
- a departure from the original business focus;
- collateral contracts with key stakeholders in managing the evolution of the business;
- major transaction safeguards and dealing with related party protections where there is an interested director to the proceedings or potential commercial activity.

As is evidenced, a Shareholders Agreement should not be a document which once prepared, lies idle in a desk drawer but should be revisited from time to time to ensure that it correctly reflects the needs of the shareholders and the company as it grows.

Lastly, but often of key importance, is for the legal and accounting professionals to work in tandem with business owners so that business accounts and tax planning flow correctly with the legalities in the Shareholders Agreement and vice versa.

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