BUSINESS CO-OWNERSHIP AGREEMENTS, BUY/SELL AGREEMENTS & INSURANCE TRUSTS

CO-OWNERSHIP AGREEMENTS

WHAT ARE THEY?

If you are setting up a business with another person, whether they are a family member or 'unrelated', then it is strongly advised that you consider entering into a Shareholders Agreement, Partnership Agreement or Joint Venture Agreement (**'Co-ownership Agreements**'). These agreements set out the rules around the governance and conduct of the co-owners of your business venture.

BUT I HAVE A CONSTITUTION?

Many people consider that they do not need a Co-ownership Agreement because they have a company constitution. However, Co-ownership Agreements differ from a constitution in the following ways:

- A company constitution governs the administration of the company as a legal entity, not the governance and control of the company's business activities; and
- A company constitution is a public document and a Co-ownership Agreement is not, so they can deal with matters of a sensitive nature that you would prefer to keep confidential.

WHEN SHOULD I ENTER INTO A CO-OWNERSHIP AGREEMENT?

The best time to enter into a Co-ownership Agreement is at the beginning of your relationship with your fellow co-owners of the business. However, you can enter into a Co-ownership Agreement at any stage in the life-time of your business and, if you haven't already done so, it is strongly recommended that you discuss this with the co-owners of your business now.

The most important thing to remember is that a Co-ownership Agreement is flexible and can cover any issues that you consider appropriate and necessary.

WHAT ARE THE BENEFITS OF A CO-OWNERSHIP AGREEMENT?

- **Solid Foundation** from which to grow your business;
- **Reduced Risk of Disputes & Losses** arising from protracted disagreements between co-owners;
- **Safeguard against Rogue Contracts** by one party that may negatively impact on the hard work & investments of other stakeholders in the business;
- **Confidentiality** so you can deal with commercially sensitive or confidential terms;
- **Improved Bankability** ensuring the continued growth and saleability of your business; and
- **Improved Saleability** of your business.

WHAT SHOULD I INCLUDE?

The types of issues that you should consider covering in your Co-ownership Agreement are:

- Roles & responsibilities;
- Budgets & business planning;
- Decision making & control;
- Non competition & restraint of trade; and
- Dispute resolution.

BUY/SELL AGREEMENTS

WHAT ARE THEY?

Buy/Sell Agreements are specific agreements which deal with the sale & purchase of shares in a business where a co-owner dies, is otherwise forced or desires to leave the business. This is an area that is also commonly dealt with in a Co-ownership Agreement, but generally not in the same detail.

TYPE OF BUY/SELL AGREEMENTS

A Buy/Sell Agreement for the sale & purchase of shares of a business can be limited to just 'insurable events' occurring to one of your co-owners (ie. death, traumatic illness or total & permanent disability), or it can be a more comprehensive agreement which also deals with the sale & purchase of shares where a co-owner wishes to retire, resign, or needs to be forcibly removed.

Both types of Buy/Sell Agreements provide for an exiting co-owner, or the estate of a deceased co-owner, to be compensated fairly and promptly for their share in the business. Without these arrangements, negotiation around these issues can easily become protracted and costly, taking time and energy away from the core operation of the business.

WHAT ARE THE BENEFITS OF A BUY/SELL AGREEMENT?

- **Protects the Remaining Co-owners** from uncertainty following the exit of a co-owner;
- **Certainty of Payment to Exiting Co-owner** of a pre-agreed amount for their share in the business;
- **Continuity of Business** free from 'outside' interference, such as the executors of a deceased co-owner's estate or an ex-spouse; and
- **Protecting Profitability** by avoiding disruption to the operation of the business following the loss or removal of a co-owner.

INSURANCE TRUSTS

WHAT ARE THEY?

Insurance Trusts are a protection device routinely incorporated into Buy/Sell Agreements in respect of necessary insurance covers put in place to fund aspects of the agreement. They work by appointing an independent trustee as a guardian of the insurance cover for the co-owners. The independent trustee also holds the insurance funds, following an 'insurable event', for the purpose of paying the purchase price provided for in the Buy/Sell Agreement to the exiting co-owner or their estate.

WHAT ARE THE BENEFITS OF A BUY/SELL AGREEMENT?

- **Ensures Insurance is Always in Place** for the co-owners of the business.
- **Regular Reviews of Insurance** ensuring that it is appropriate for the changing nature of your business as it grows and diversifies.
- **Cost Effective & Efficient Administration of Claims** to allow for the remaining co-owners to get back to being in business as quickly as possible after the loss of a co-owner from an insurable event.
- **Ensures Payment of the Claim Proceeds** to the right people.

MORE INFORMATION

If you're thinking about entering into a Business Co-ownership Agreement, a Buy/Sell Agreement, you need some advice or have any questions — give us a call for more information.

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