

A Primer on Shareholder Agreements

Shareholder agreements are necessary vehicles designed to protect the interests of a company and its shareholders. They may be implemented at any stage in a company's lifecycle and provide immeasurable value, particularly when significant events and changes arise.

This brochure will address:

- **THE IMPORTANCE OF SHAREHOLDER AGREEMENTS**
- **HOW SHAREHOLDER AGREEMENTS BENEFIT A COMPANY**
- **BASIC PROVISIONS OF SHAREHOLDER AGREEMENTS**
- **ADDITIONAL OPTIONS AND PROVISIONS**
- **WHEN IS THE RIGHT TIME TO DEVELOP SHAREHOLDER AGREEMENTS**
- **IMPLEMENTATION OF SHAREHOLDER AGREEMENTS**



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In addition, Brody Wilkinson provides sophisticated and highly personalized service to individuals in the areas of estate and tax planning, estate and trust administration, charitable giving, business succession planning, family foundations, and residential real estate. The firm has 20 attorneys who work closely with clients to identify and evaluate their legal needs and create tailored solutions to address their specific circumstances.

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Shareholder Agreements

The Importance of Shareholder Agreements

Shareholder agreements are customized documents that govern the relationship of shareholders in matters that are not addressed in certificates of incorporation or bylaws. Shareholder agreements principally serve to both anticipate issues that can potentially cause disputes between shareholders and also determine in advance acceptable methods of avoiding or resolving disputes.

How Shareholder Agreements Benefit A Company

Shareholder agreements can benefit a company by:

(1) allowing shareholders to enact procedures that meet their specific needs; (2) supplementing or varying state statutes that would otherwise govern the shareholder relationship; (3) controlling who can own shares; (4) allowing for continuity in the event of death or other major events; and (5) helping to prevent a deadlock.

Basic Provisions

While shareholder agreements are uniquely developed to suit the specific needs of a company, there are certain basic provisions that are normally included pertaining to areas such as:

PROCEDURAL RESTRICTIONS ON TRANSFERS

- Can shareholders sell their shares to third parties and must shares be offered to the company and/or other shareholders first?
- What are the consequences of unauthorized share transfers?

WHAT HAPPENS IN THE EVENT OF A SHAREHOLDER'S DEATH, DISABILITY OR EMPLOYMENT TERMINATION

- Is there a buyout of shares upon death or inheritance by heirs?
- Is there a buyout upon long-term disability and how are any disability policy proceeds applied?
- What is the effect of an employment termination and are there penalties if the termination is for cause?

TERMS OF A BUYOUT OF STOCK

- How is the value of shares determined and should any discounts be applied?
- What is the manner of payment for shares?

FUNDING OF THE COMPANY

- Must shareholders contribute additional capital and what are the consequences of refusing to contribute?
- What are the terms of any shareholder loans?

DISPUTE RESOLUTION

- What is the protocol for resolving disputes?
- Does it include mediation, arbitration and/or dissolution?

Additional Options and Provisions

A company may decide to resolve other issues by incorporating additional provisions into the shareholder agreement including:

- Are shares available to be sold to or purchased by the company at any time?
- Can shareholders be allowed or forced to participate in certain stock transfers?
- Is there a need for non-competition and non-solicitation clauses?
- How can confidential information and trade secrets of the company be protected?
- How can the rights of creditors and ex-spouses be limited?
- Should the powers of a company's Board of Directors be limited?
- Must shareholders present outside business opportunities to the company?

When Is The Right Time To Develop Shareholder Agreements

A shareholder agreement may be created at any stage of a company's development and its adoption should be prioritized before any important events and/or changes occur.

Implementation of Shareholder Agreements

To initiate implementation, shareholders should first identify and discuss the issues that need to be addressed in the agreement. Brody Wilkinson PC can facilitate this process by providing materials to guide and shape the discussion, and, subsequently, drafting a tailored agreement containing the appropriate provisions. Once the shareholders accept the terms of the agreement, it should be executed by all of the shareholders as well as by the company itself following the approval of the Board of Directors.

To learn more about the benefits of shareholder agreements or how similar documents may be created for use in limited liability companies and partnerships, please contact Thomas J. Walsh, Jr. at (203) 319-7100 or twalsh@brodywilk.com.

