



PORCH NEWSLETTER ARTICLE

FROM: Charlie Macfarlane, Balsam Advisory
RE: How to mitigate the risk of shareholder disputes
DATE: April 20th, 2024

PREVIEW

Conflicts amongst shareholders are almost inevitable during the lifecycle of a corporation. Such disputes can lead to operational inefficiencies, increased costs, or even the downfall of your company. To mitigate these risks, a well-drafted shareholder agreement is crucial. In this month's newsletter, corporate commercial lawyer and PORCH Partner [Charlie Macfarlane](#) offers insights on drafting and maintaining an effective shareholder agreement, covering topics from ongoing maintenance to dispute resolution mechanisms. Learn how to avoid potential deadlocks, adapt to business changes, and ensure your agreement evolves with your company's growth. **READ MORE**

INTRODUCTION

Whether your corporation has two shareholders or twenty, conflict between or amongst them is almost inevitable. Matters such as the control and direction of a company, material transactions and business expenses, the inclusion/appointment of key persons and their respective duties, and decisions relating to fundraising are common pain points within emerging businesses. Such disputes can lead to operational inefficiencies, increased cost, or – in extreme cases – the beginning of your company's demise.

Drafting in anticipation of shareholder squabbles is among the top priorities when creating your company's shareholder agreement. The following sets forth suggestions for how your company can mitigate the risk of disputes via sound drafting and attention-to detail in your shareholder agreement.

ONGOING MAINTENANCE OF YOUR SHAREHOLDER AGREEMENT

It's common for early-stage businesses to rely on standardized, automated, or non-tailored shareholder agreement templates; while these cost-effective solutions may suffice in the beginning, they typically require revisiting and refining over time. As operations grow, funds are raised, or your shareholder base expands, your company might begin to evolve beyond the bounds of your pre-existing or non-tailored shareholder agreement and beyond your understanding of legal and business implications of the language within said agreement. Matters that often require revision of a shareholder agreement include, but are not limited to:

- **Business expansion:** growth into new markets may require the inclusion of language regarding additional funding requirements or changes in ownership structure;
- **Legal and regulatory changes:** ensuring compliance with new legal developments;
- **Divergence in shareholder priorities:** shareholders may have misalignment regarding their interests, investment horizons, or levels of involvement – this divergence might necessitate clauses for buyout options, exit strategies, or changes in voting rights;
- **Operational changes:** restructuring or diversification of business activities can result in necessary clarification of decision-making processes, profit-sharing arrangements, buyout options, or exit strategies in your shareholder agreement.

AVOIDING THE COURTS

Litigation can be incredibly detrimental to your business: it's costly, time-consuming, and can drive a stake in your company's growth and scale-up aspirations. Language relating to dispute resolution allows for a reasonable alternative to bringing a matter to the courts. Mechanisms such as mandatory mediation or arbitration are cost-effective and efficient processes that, in general, limit the adversarial nature of conflict between or amongst shareholders and are much more favourable than proceeding through the courts and litigation.

MINIMIZING THE CHANCE OF DEADLOCK

There is a tendency for early-stage businesses to prioritize unanimous shareholder voting regarding material business decisions, believing it reflects fairness, cohesion, and aligns with their company's mission. However, as a company expands, differing opinions amongst voting shareholders emerge; this can easily result in decision-making challenges that requiring voting. To avoid such deadlocks, alternatives such as "super-majority" resolution voting (75%/+) or buy/sell provisions relating to one's shares should be considered while constructing your shareholder agreement. Creating proactive and agreed-upon avenues to escape potential impasses can go a long way in avoiding tension and disputes and a potential stalling of operations in your business.

TAKEAWAYS

Whether you are forming your business or in the midst of a growth phase, it's highly advised to review your shareholder agreement in the interest of reducing risk relating to potential conflict amongst shareholders. Should you need assistance ensuring your shareholder agreement is suitably crafted to address specific business challenges or needs, please contact [Charlie Macfarlane](#) at charlie@balsam-advisory.com for strategic drafting advice.

Note: this article is a general discussion of certain legal and business matters and should not be relied upon as legal advice. If you require legal advice, it is encouraged that you reach out to Charlie Macfarlane at charlie@balsam-advisory.com for personalized legal assistance.