

Two parts to the process:

1. Discuss and agree on key issues
2. Completion of detail in shareholders agreement and company constitution

1. POINTS TO DISCUSS AND AGREE ON

- Individual investment objectives of the parties?
- The time scale for the venture
- Will parties be locked in for an initial term?
- What ownership structure will be used, company or partnership. Company is the preferred option
- What is the tax status of the company?
- Shareholding structure in the company
- Who will be the directors?
- Voting rights of directors and shareholders
- Maximum debt levels
- Dividend/distribution policy
- Terms of any shareholders accounts
- Exit procedure
- Pre-emptive rights of remaining shareholders when shares sold
- Disputes resolution process
- What contracts need to be entered into to develop business.

2. SHAREHOLDERS AGREEMENT CHECKLIST

This checklist is intending to provide assistance as a discussion document only. Each joint venture will have its own unique set of circumstances and this general checklist can not therefore cover all things that may be relevant to a particular joint venture. Some things in the checklist may not be appropriate for a particular joint venture agreement.

Joint Venture documentation common headings:

1. The Parties
- .2 The Background
 - Sets out the background to the agreement and why parties are joining together.
3. Definitions and Construction
 - Definitions
 - Shareholders agreement overrides the constitution to the extent of any inconsistency
4. Joint Venture Objectives
 - Purpose and priority - important to make sure all parties are heading in the same direction.

5. Preliminary Steps
 - Formation of the company - need to decide on a name, structure, IRD and GST registration (if required) and officers
 - Number and classes of shares - are there to be any rights and benefits to be granted to certain shares
 - Issue and shares and issue consideration
 - Funding of the company (Bank facilities)
 - Appointment of directors - is this to reflect the shareholding proportions of the company
6. Funds
 - Timing and method of payment of funds from shareholders
7. Board and General meetings
 - Frequency - e.g monthly, 6 monthly etc
 - Notice of meetings - e.g seven days notice or 48 hours
8. Authority to create obligations on behalf of the company
 - Matters requiring approval by a special resolution of the shareholders
 - Major transactions
 - Asset disposal/acquisition - e.g purchase of assets over \$20,000.00
 - Issue/transfer of shares
 - Borrowing or lending by the Company
 - Matters requiring approval by unanimous agreement of the shareholders
 - Amendment to shareholders agreement/constitution
 - Investment in other companies
9. Accounts and Information
 - The Board must keep the shareholders fully informed
 - Annual budgets
 - Annual accounts
 - Monthly financial information, cash flow projections
 - Accounting records
10. Finance and Working Capital
 - Shareholders under no obligation to provide further funds
 - Shareholders indemnity in proportion to shareholding
11. Business of the Company
 - Shareholders not to compete with the Business of the Company
12. Distributions
 - Dividend policy – a policy about distributing profit or perhaps allocation profit to repay rent of debt

13. Transfer of shares
 - No shareholder may transfer shares during the period of years
14. Shareholdings in the Company
 - Procedure for exiting shares in the company
 - Valuation of shares
15. Term and Termination of Agreement
 - Agreement continues until winding up of the company or until shareholders unanimously agree.
 - Shareholders being make bankrupt or insolvent
 - Shareholders failing to observe or perform shareholders obligations
16. Product Liability and Indemnity
 - No shareholder required to guarantee company products of performance
17. Confidentiality
 - No shareholder to disclose confidential company information to third parties.
18. Charges and Assignments
 - No shareholder may encumber their shares in the company without prior written consent of all other shareholders
 - No shareholder may assign any of their obligations or rights under this agreement – Important to enure that the agreement is binding on future shareholders
19. Dispute Resolution