

Business Dispute Fundamentals and Avoidance Strategies

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SUMMARY FOR TODAY

- **Shareholders Agreements**
- **Real Property Transactions**
- **Employment and Contractor Agreements**
- **Financial Controls and Record Keeping**
- **Dispute Resolution Provisions**
- **Early Advice**

SHAREHOLDERS AGREEMENTS

- Details rights and obligations of specific shareholders
- Often alters default relationship between shareholders established by corporate law (BCBCA)
- Provides for specific remedies shareholders agree to pursue upon happening of certain events
 - Eg. buy-sell provision in the event of deadlock between shareholders

SHAREHOLDERS AGREEMENTS (cont'd)

- Ensure there is a signed shareholders agreement
- Customize shareholder agreement to fit specific company/shareholders (have a lawyer prepare or review)
- Anticipate specific problems/disputes that may arise between shareholders
- Provide for effective and practical “exit” strategies in the event of dispute/retirement/incapacity, etc.
- Follow agreement and update as necessary

SHAREHOLDERS AGREEMENTS (cont'd)

Important points to address in agreement:

- Conduct of directors' and shareholders' meetings
- Initial and later financing of company
(shareholder/third party loans, repayment of loans)
- Restrictions on issuance and transfer of shares
(consider RFR with closely held corporations)
 - Eg. *Canada Snow Mountain Investments Co. Ltd. v. Miller Springs Ltd.*, 2015 BCSC 1117 (whether company can issue new shares)

SHAREHOLDERS AGREEMENTS (cont'd)

Other important points to consider:

- Use of confidential information
- Non-compete and non-solicitation obligations
- Events of default and their consequences:
 - notice in writing of default
 - compulsory buy-out/shotgun procedures
 - If no agreement, parties have to resort to court

SHAREHOLDERS AGREEMENTS (cont'd)

Compulsory buy-out (“shot-gun”) clauses:

- Usually require a shareholder to offer to sell his/her shares to other shareholders or buy theirs at same price
- Provide an “exit” strategy for shareholders without having to resort to court remedies (often discretionary)
- Possible triggering events: shareholder impasse/retirement /default/ incapacity or death/claim under FRA

SHAREHOLDERS AGREEMENTS (cont'd)

Compulsory buy-out (“shot-gun”) clauses:

- Provide clear mechanism to determine price:
 - “Fair market value” vs. “fair value” (multiple factors)
 - Formula vs. independent valuation by a third party

REAL PROPERTY TRANSACTIONS

- Avoid use of standard form contracts of purchase and sale for commercial properties drafted by realtors
- Ensure compliance with provincial land use regulations – Agricultural Land Reserve
- Ensure compliance with municipal zoning bylaws
- Vet real property leases
- Diarize renewal dates

REAL PROPERTY TRANSACTIONS (cont'd)

- Ascertain environmental condition of lands
- *Environmental Management Act* liability
 - *Gehring v. Chevron Canada Ltd.*, 2006 BCSC 1639
- Obtain enforceable indemnities for environmental contamination

EMPLOYMENT AGREEMENTS

- Have a written employment/contractor agreement for each employee/contractor
- Avoid use of standard form agreements – have a lawyer prepare a custom one for specific company/employee
- Ensure agreements deal with:
 - Use of confidential information
 - Non-competition/non-solicitation of clients/employees
- Above restrictive covenants must meet certain criteria to be enforceable (eg. *Praxair Canada Inc. v. Hirakida*, 2019 BCSC 1261 – non-competition clause)

EMPLOYMENT AGREEMENTS (cont'd)

If you hear of a potential issue/dispute:

- Act promptly – obtain legal advice to help “shape narrative” and position client strategically
- Keep records of communications
- Issue a “cease and desist” letter to confirm position
- If threat of substantial harm to the company, consider asking for (urgent) court intervention, including a potential injunction

FINANCIAL CONTROLS AND CORPORATE RECORD KEEPING

- Key corporate actions approved by directors/shareholders
- *BC Business Corporations Act*, articles of incorporation, shareholders agreements
- Timely disclosure of information (including financial statements) to minority shareholders/directors
- Oppressive corporate behavior – reasonable expectations test: *BCE Inc. v. 1976 Debentureholders*, 2008 SCC 69

FINANCIAL CONTROLS AND CORPORATE RECORD KEEPING (cont'd)

- Strict signing authority procedures and access to bank accounts
- Delineate administrator and ownership rights to websites
- Understand scope of personal guarantees and rights against co-sureties
- Investigation of financial controls by external investors

DISPUTE RESOLUTION AGREEMENTS

- Useful component in variety of agreements
 - shareholders agreements/employment agreements/supply agreements/service agreements/leases
- Avoid time, expense and public nature of regular court processes
- Establish clear path to resolution – good faith negotiation/mediation/arbitration
- Choice of jurisdiction – BC/ other Canadian Provinces/ US states/other foreign countries
- Choice of applicable law

PRELIMINARY ADVICE

- Have a lawyer prepare/ review agreements to provide certainty and eliminate unnecessary disputes
- Follow the agreement!
- Document communications, “shape the narrative”
- Compromise to avoid litigation and minimize risk
- Be aware of a **2 year limitation period** (from the time of breach) to enforce legal rights

QUESTIONS?



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