HOW TO BRING A NEW SHAREHOLDER INTO YOUR BUSINESS

How to establish the shareholding for the incoming investor

ISSUES TO CONSIDER:

1. Do you, as existing shareholders and directors, want to take on the new shareholding all at the outset, in tranches or instalments, and/or over a period based on performance?

2. Will the new shareholder (e.g. a one-third equity holder) automatically become a director of the company, or would you rather this happen in 12 months after a 'qualifying period' or otherwise?

3. Will existing shareholders be issuing fresh ordinary equity for the new shareholder to purchase? Or (using the example from Point 2) will you each be selling an equal portion of your ordinary equity to allow the shareholder to take up their one-third holding? (You may need an accountant's advice as there will be a tax impact.)

4. Are you only issuing ordinary equity with the shareholding or is there an opportunity to provide other classes of shares (non-voting) for income distribution purposes and also to spouses?

5. Prior to any transaction, have you (as existing directors and shareholders) considered paying a special dividend relating to surplus retained earnings from prior years? (You may need an accountant's advice as there will be a tax impact.)

6. Have you considered a proportionment of any or all business liabilities or working capital at the commencement of any transaction (between old and new shareholders)?

How to manage the shareholder relationships

ISSUES TO CONSIDER:

1. Share transfer and sale rules, and exit provisions for shareholders. Make sure you address issues such as valuation in the event of a buy-out opportunity.

2. Conduct and governance processes for running the company, including appointment of key senior people, approval of business plan, approval of material decisions and financing, capital spending, acquisitions and divestments.

3. Mediation processes for a relationship breakdown amongst shareholders.

4. Process for capital raising – this usually involves a series of steps e.g. shareholders fund in equal contributions, shareholders fund disproportionately, debt, outside equity, etc.

5. Director obligations and responsibilities, plus what happens in the case of misconduct of directors and shareholders (over and above regulatory requirements).

6. Provisions in the case of a buy-out by a third party. This may involve 'drag along' and 'tag along' clauses and other processes to ensure a balanced consideration.

7. Proportion of shareholding that allows for a directorship.

8. Any formula relating to dividend declarations, working capital and other financial and business benchmarks (these can also be covered in the Annual Business Plan).

9. Provisions for conflict of interest for related party transactions.

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