

Shareholders' Agreements in Tanzania: A Legal Perspective

Shareholders' agreement is a crucial tool for governing the relationships between shareholders in a company, particularly in Tanzania's dynamic business environment. They provide a framework for managing the company's affairs, protecting minority shareholder interests, and ensuring smooth operations. This article explores the significance of shareholders' agreements in Tanzania and clarifies their legal standing.

What is a Shareholders' Agreement?

A shareholders' agreement is a legally binding contract between shareholders in a company. It supplements the company's Memorandum and Articles of Association (MemArts) by addressing matters not typically covered in the MemArts, such as restrictive covenants, dividend policy, board representation, and dispute resolution. It essentially acts as a "private treaty" among shareholders, offering greater flexibility and specificity.

Distinction between Shareholders' Agreement and MemArts

MemArts are a statutory requirement in which the company must comply with and are public registered document which may be subject to public inspection. While shareholders' agreement is a private treaty and is rarely public registered. It is also very important to note that, MemArts and shareholders' agreement should read harmoniously to avoid conflicting positions between the two (2) documents. However, in circumstances where there are conflicting positions between shareholders' agreement and MemArts, the MemArts position prevails.

Importance of Shareholders' Agreements in Tanzania.

- 1. Protection of Minority Shareholders:** Minority shareholders often lack the voting power to influence company decisions, and a shareholders' agreement can include provisions protecting their interests, such as:
 - a. Pre-emptive rights:** Giving minority shareholders the first right of refusal on new share issuances, preventing their ownership from being diluted.
 - b. Board representation:** Guaranteeing minority shareholders a seat on the board of directors.
 - c. Ensuring that minority shareholders can participate in a sale of the company or that they are not forced to sell their shares on unfavourable terms.**
- 2. Clarity and Certainty:** A shareholders' agreement clarifies the rights and obligations of each shareholder, reducing the potential for misunderstandings and disputes.
- 3. Succession Planning:** The agreement can address succession planning, outlining how shares will be transferred in the event of a shareholder's disability, or retirement or how shares can be transmitted in the event of death.
- 4. Dispute Resolution:** A well-drafted agreement will include a clear mechanism for resolving disputes among shareholders, such as mediation or arbitration, avoiding time-consuming litigation.

5. **Investment Attraction:** Investors often prefer to invest in companies with a clear and comprehensive shareholders' agreement in place, as it demonstrates good governance and reduces risk.
6. **Exit Strategies:** The agreement can outline exit strategies for shareholders, specifying how and when shareholders can sell their shares.

Shareholders' Agreement Enforcement in Tanzania

A shareholders' agreement is not a statutory requirement in Tanzania, since the Companies Act, Cap. 212, does not mandate the existence of such an agreement. However, it is highly recommended for all companies, particularly those with multiple shareholders. The absence of a shareholders' agreement can lead to significant problems, especially in the event of disagreements or unexpected events.

Shareholders' agreement is a binding agreement among the shareholders thus general principles of contract law apply to shareholders' agreements. Therefore, courts will generally uphold the provisions of a shareholders' agreement if they are not illegal, unconscionable, or contrary to public policy. Courts are likely to consider the intentions of the parties as expressed in the agreement, the principle of freedom of contract, and the need to uphold legally binding commitments.

Conclusion

Shareholders' agreement is an important tool in corporate governance, since it provides a framework for managing shareholder relationships, protecting minority interests, and ensuring the smooth operation of the company. By addressing key issues proactively and in writing, shareholders can build a stronger foundation for their business.

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