the **IMPACT** INITIATIVE

ākina

How to protect and manage the impact of your business through an investment

How to use this guide

This guide has been prepared to enable company owners to understand some of the ways your business's impact can be managed and protected through an investment, so that it is enabled to grow into the future. This information is provided at a high level, and intended as a guide only. If you are considering seeking investment, we recommend seeking professional advice.

Introduction

As more and more businesses aim to deliver positive social or environmental impact alongside profit, the need to manage this impact through an investment is becoming increasingly important.

Seeking investment often involves writing new legal documents for your company, such as a Constitution, Shareholders' Agreement and Subscription Agreement. Each of these influence how the company is managed in the years to come. It is therefore important to ensure that the impact of the company is considered within these, so it too can grow in the years to come.

The first step in managing impact: mission statement

The first step, before you can protect your impact, is to include some form of impact or mission statement in the constitution and/or shareholders' agreement that clearly states the company's impact.

You can see a guide **here** for more information on this statement and how to lock it into the documents so that it is protected into the future.

How to protect your impact within a shareholders' agreement

Set out below are some examples of how provisions in your company's shareholders' agreement can be linked to your mission so that it is protected. You could choose to use one or many of these, and they are no particular order. Any new shareholder, when investing into the company, should agree to be bound by the terms of the shareholders' agreement.

1. Operational commitment to mission statement

The shareholders' agreement can require that your mission statement is followed in all of your operations, governance and/or ownership arrangements, by including a clause that prevents the company from engaging in operations or activities that fall outside the scope of your stated mission. The Better Packaging Co. is an example of a company that does this (see Example One).

2. Restriction on transfers of shares

The shareholders' agreement can set out what existing shareholders should consider before approving a transfer of shares to a new shareholder. This could include the ability for existing shareholders to veto a transfer of shares if they consider that the new shareholder does not support the company's mission.

3. Forced sale

The shareholders' agreement can also include a forced sale provision, where if a certain percentage of the other shareholders agree that a particular shareholder is compromising the mission (e.g. through their other business activities), they can compel that shareholder to sell their shares.

<u>**Example One**</u>

The Better Packaging Co. is a social enterprise committed to making an environmental impact by providing sustainable packaging solutions to support the e-Commerce and retail sectors.

Their shareholders' agreement includes a mission statement and then restricts the company's operations to those activities that relate to the mission. The Better Packaging Co. can only engage in operations that do not relate to the mission if they are approved by 75% of the shareholders. Set out below is how The Better Packaging Co. have done this:

1. BUSINESS OF COMPANY

1.1 The objective of the Company is to create a more sustainable future by reducing the environmental impact of packaging.

1.2 Unless approved by Special Resolution, the Company shall not engage in any business or activity which does not directly relate, or is reasonably incidental, to the objective set out in clause 1.1.

4. Asset lock
The shareholders' agreement can require that a set proportion of your company's assets (e.g. its profits) are retained in the business for use in achieving the mission (rather than being distributed to shareholders). This kind of provision can be drafted in general terms or can set out specific uses of the company's assets required by the shareholders (e.g. that profits are reinvested in a particular business activity).

5. Impact reporting
The shareholders' agreement can require regular impact reporting to be provided to the shareholders so that they can monitor the company's progress in achieving its mission. The shareholders' agreement can specify the frequency of this reporting, as well as the types of information that must be provided to the shareholders. The shareholders' agreement can also require that impact reporting measures form an integral part of the key performance indicators for the company's directors and/or executive management, which links the company's mission to the performance of its team.

6. Strategic/business plan alignment
The shareholders' agreement can include a requirement that your company's strategic and/or business plans must align with its mission. In order to ensure this alignment, the shareholders can require that they approve (e.g. with the support of at least 50% of shareholders) the strategic and/or business plans before they are adopted.

7. Protecting impact management provisions
You can put requirements in place on how the above provisions that protect a company's impact or mission are amended to ensure they are not changed or removed without full consideration. The usual way to do this is to require any changes to be approved by more shareholders than would usually be required for a general decision (e.g. with the support of at least 75%, 90% or even 100% of shareholders).

The Better Packaging Co. did this by requiring 75% shareholder approval to any change of the mission set out in its shareholders agreement.

Finding aligned investors:
And remember, the golden rule of impact investing: find investors who are aligned with your mission, so that the above protections are never actually challenged! You can also put a requirement in the shareholders' agreement that the existing shareholders must approve any new investors (and can even set out the relevant matters or criteria their approval must be based on), which enables the new investors to be carefully selected based on their support of the mission. This is something that The Better Packaging Co. also did!

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