Game Legal - Help Guide

FOUNDERS' AGREEMENTS

What is a 'founder's agreement', and why are they important to start-ups?

Managing expectations in a start-up or high growth business

Starting a new business or managing a high-growth venture can be extremely stressful and take enormous amounts of energy, effort, time, and money to just prove the concept, let alone go on to long-term success. It's often tough to run a start-up or expand a business venture as a founder on your own, so many team up and work with others to share the toll and increase the effort in an alignment of expectations. In doing so, the chance of ultimate success may be increased.

But what happens when co-founders' expectations are no longer aligned and founders lose focus on the business and start to disagree, or even get into dispute, with each other? Usually, without a guiding (and binding) document to govern key issues, co-founders may break up (acrimoniously) or they may even ultimately lawyer up and seek to resolve the dispute between them via lawyers in a court, leaving the future of their business in the hands of a judge, with no guarantees as to how much the litigation will cost (in financial terms) or what the result will be. Either way, any dispute will likely be terminal for the new business.

Founders Agreement

Basically, a founders agreement drafted with the specific needs of each founder and the business in mind will help guide discussions should the founders reach some sort of disagreement which the agreement deals with, and hopefully help to resolve any issues. In essence, the founders agreement can save the founders time and money, and even may save the business. They can be an investment.

What is in a Founders Agreement?

Unless regulated by law (as in the case of director's duties and other corporate governance requirements set out in the *Corporations Act 2001* (Cth)) or considered voidable for reasons of unfairness or unconscionability, a founders agreement can include and govern a wide range of issues and topics as viewed as important by the founders.

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Key issues that founders agreements should look to address and manage include:

- Roles and responsibilities
- Equity split
- IP ownership
- Decision making and operations
- Vesting of shares
- Capital and contributions
- Issuing new shares
- Remuneration
- Non-compete and restraints
- Confidentiality
- Exits
- Dispute resolution

Of these, lets focus on a few of the more critical areas here:

1. Roles and Responsibilities

You should strive to establish some clear lines of primary responsibility and enable a functional management system that enables each of the co-founders to have clear responsibilities and reporting obligations. Doing so will go a long way in helping you minimize growing pains.

2. Equity splits and vesting rules

You'll need to allocate the ownership of your new enterprise amongst the founding team. This almost always proves to be a delicate discussion. Yet this need not prove difficult if the founders focus on an objective analysis of what each brings to the table and the business. As a tip; leave around 10-15% off the table for sweat equity for later employees.

3. IP ownership and assignment

Make sure that whatever IP is being developed for your new enterprise belongs to the entity and not the individuals behind the development of the IP. This concept extends to not only your co-founders but all of your employees, consultants and contractors.

Why not use a Shareholders Agreement?

For the simple reason that shareholders agreements don't traditionally cover all key issues covered by founders agreements, and for the fact that some shareholders (including new investors) are not founders, there is scope for both agreements to be in place. This is especially so when a business is gearing up for new external investment via the issue of new shares.

The above is information only and does not constitute legal advice. To discuss your unique needs, contact a lawyer skilled in these areas, such as Game Legal.