

Prenuptials are not just for newlyweds

From buyout clauses to dispute-settlement rules, written agreements between business partners set the ground rules for challenges they might face as their company grows

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Colleagues at Bombardier Aerospace, Ken Ingram and Abdul Hajibrahim remained friends after they left the company to pursue other ventures.

Ingram became a business coach and trainer, while Hajibrahim worked as a consultant and site manager for an aerospace design office.

Two months ago, they joined forces to run their own training company. Given their friendship, it was an arrangement they could have sealed with a handshake. But they decided on a written agreement instead.

"You always hear these horror stories about things going along well and then the disagreements start," Ingram said of the rationale for his formal agreement with Hajibrahim. "It's much like a marriage contract."



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Abdul Hajibrahim and business partner Ken Ingram (right) work with Deirdre Ware, who runs a fabric and interior design business, on things like time management.

From buyout clauses to dispute-settlement rules, agreements between partners set the ground rules for the challenges business associates face as they grow their company. Some opt for a do-it-yourself approach to these contracts, but timely legal advice can help avoid the pitfalls of doing business with someone you know.

Ingram and Hajibrahim started their Montreal company - The Achievement Centre Plus - in April to offer coaching and training to senior managers and business owners in the areas of leadership, sales, and business development and strategic planning.

They also plan to offer training in project management, process improvement and ISO certification.

Ingram and Hajibrahim are affiliated with The Achievement Centre, a Kitchener, Ont.-based company providing training, coaching and consulting services to small and medium-size businesses.

The two men are working from home while scouting out possible office locations. Despite not having a physical space, they took the time to draw up a written framework - a shareholders agreement - for running their business.

To draft their contract, they briefly consulted a lawyer and an accountant, but came up with most of the content themselves using business books and the Internet.

They wanted to keep the language simple and the agreement concise.

"Some might say that's a bit naive, but we think we've made the right decision," Ingram said

of the do-it-yourself approach.

"I've seen 50-page agreements and they're useless," Hajibrahim chimed in. "Once you get into that, the lawyers will make a lot of money and we won't."

Their three-page agreement splits shares in their company equally. But it also provides a mechanism for attracting employees or partners by offering new recruits shares in the business.

The dispute resolution clause is innovative: any impasse will be settled in odd-numbered months by one partner, in other months by the other partner.

Neither partner can give away their share of the business, nor can any cheques be processed without both partners' signatures.

A "non-compete" clause prevents either partner from going into the same line of business should he leave the company.

A "divorce" clause provides for what happens if the relationship breaks down.

"We know associates who've ended up in court over that," Hajibrahim said.

Despite the messy situations in which partners can end up, it can be tough to persuade them to spend the time and money on a written agreement, said Karen Michetti, a Montreal lawyer and business-management consultant.

"It's a very, very common thing for new entrepreneurs to incorporate a company and say, 'well, a shareholders agreement is something I can look at later,' " said Michetti, whose company, Spettro Consultants Inc., caters to clients starting a business.

Michetti prepares shareholders agreements, which are more common and used in the case of incorporated companies, and partnership agreements, which govern situations in which a group pools resources and talent for a business venture.

Going into business with a friend or family member is common, Michetti said, and that makes partners hesitate to put things in writing.

"They don't want to insult their partner by saying 'we should put this in a contract,' " she said. "Because they go into business with someone they know ... they think they can rest their laurels on that relationship."

New partners also skip having a written agreement because money is often tight.

"Resources are limited at the beginning (of a new business), and it's a contract that's a

bit more expensive," Michetti said.

Michetti estimated the cost to her clients of a shareholders agreement at between \$400 and \$900, depending on its complexity and whether it's done at the time of incorporation. (It can be cheaper to have it done when the company is formed.)

When her clients are cash-strapped, Michetti prepares a temporary letter agreement.

Standard clauses in a shareholders agreement include provisions for what happens if a shareholder dies or is incapacitated, Michetti said.

Other common clauses include life insurance on the shareholders, which provides money for shares to be bought back in the event of death, and provisions regarding how shares will be valued.

While non-compete restrictions are also standard, they can be tricky, Michetti said. Reasonable limits on duration and geographic scope should form part of the clause.

"The courts hate to see anything that limits the right to earn a living," she said.

Finally, shareholders agreements often provide for arbitration to settle major disputes, Michetti said.

Ingram and Hajibrahim are confident they've foreseen all the issues that might surface as they grow their company.

Over coffee and tea at Ingram's home, they talked about the type of clients they're going after.

Ingram will focus on smaller clients like Deirdre Ware, who runs a fabric and interior design business with three employees in Ste. Anne de Bellevue. Ingram is working with Ware on time-management skills and other

issues.

Hajibrahim, who studied engineering in Kuwait and the U.S. and has lived around the world, will target the aerospace sector and the Middle East.

While the firm is still small, the partners already have visions of growing much larger and hope their contract provides a framework for that to happen smoothly.

"There has to be 100-per-cent agreement about hiring or a new partner," Ingram said.

"In the future, if we decide we want to grow or attract talent, we've already spelled out how that will happen."

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