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October 2019

Dear Client / Geagte Kliënt

Newsletter

Shareholders' Agreements - Aandeelhouersooreenkomste

Menige keer word die vraag gevra: "Wat is die nut en doel van 'n aandeelhouersooreenkoms?" "Reguleer die memorandum van inkorporasie (MOI) dan nie juis kragtens die Maatskappye Wet (71 of 2008 -"the Act") alle aspekte van die maatskappy en die verhoudings tussen aandeelhouers nie?"

The answer lies to a large extent therein that whilst the Memorandum of Incorporation is essentially a public document and as such subject to scrutiny by all and sundry, the Shareholder's Agreement conversely, is essentially intended only for the eyes of the parties thereto and normally remains in the private domain.



Die nut van die aandeelhouersooreenkoms lê daarin dat dit grootliks maatskappy-spesifiek is en noukeurig bepaal hoe die betrokke privaatmaatskappy bedryf behoort te word tot die voordeel van alle aandeelhouers. Verder reguleer dit die regte en verpligtinge van die aandeelhouers onderling, asook hul verhouding met die maatskappy. Die ooreenkoms is verder van groot hulp om geskille tussen aandeelhouers te voorkom.

It is therefore no coincidence that acknowledgement of the value of shareholders' agreements are given in section 15(7) of Act wherein it is stated that shareholders of a company may enter into any agreement with one another in respect to any

matter relating to the company.

Daar is dus geen voorskrif in die wet rakende die inhoud van 'n aandeelhouersooreenkoms nie en dit wat uiteindelik in die ooreenkoms verwoord word, word eintlik slegs beperk deur die vindingrykheid van die partye en dié van die opsteller. Daar is egter die enkele voorskrif dat geen bepaling vervat in die aandeelhouersooreenkoms strydig mag wees met die bepalings van die Maatskappywet of die MOI nie.

Note, however, that contrary to the earlier position the contents of the Memorandum of Incorporation now always trump terms of a shareholders' agreement which may not be consistent with either the Act or the MOI. It means that the shareholders' agreements have evolved in the last decade into a document that rather complements the company's MOI in a way that covers those situations or issues that the Act or the MOI does not address.

'n Aandeelhouersooreenkoms moet gesien word as daardie ekstra pyl in die boog van die aandeelhouers wat hul toelaat om sekere sake van die maatskappy privaat te reguleer. Sulke aangeleenthede sluit gewoonlik in spesiale reëlings rakende die regulering van besluite deur aandeelhouers, aankoop en verkoop van aandele, onderling of andersins, waardasie van die aandele, borgskappe, interne en eksterne befondsing van die maatskappy, asook die uittrede of afsterwe van aandeelhouers, hetsy hul maatskappy werknemers is al dan nie. Laastens kan alternatiewe geskilbeslegtings-prosedures neergelê word.

It should be noted that shareholders' agreements bind only those shareholders that were parties to the contract and that new shareholders should always be obliged to also commit themselves to the terms of a shareholders' agreement.

Groete / Greetings!

Hennie, Eberhard & Cheryl-Anne | *Directors*



Orders Pertaining to General and Other Issues In Community Schemes

Danny van Zyl, associate attorney at Van Zyl Kruger Inc, was recently awarded his Master of Laws Degree from the University of Stellenbosch and wrote his thesis on the Community Schemes Ombud Service Act 9 of 2011. He shares certain aspects of his thesis with us in a series of articles to be featured in the next few newsletters.

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Verhuurder en huurder: Wanneer kan jy die slotte verander of die elektrisiteit laat afsny?

Ons verstaan die frustrasie wat 'n verhuurder met 'n huurder kan beleef. 'n Verhuurder dink dalk dit is net vinniger en makliker om reg in eie hande te neem. As 'n huurder nie betaal nie, wil jy dalk die huurder van hulp wees sodat hy vinniger uittrek. Dan spaar jy mos die koste en frustrasie van 'n hofproses. Dit is egter nie 'n goeie idee nie. Al is jou saak hoe goed, as jy besluit om self op te tree is jy al klaar aan die verkeerde kant van die gereg.

Kom ons kyk hoe werk die storie in teorie en ook hoe die Hooggeregshof dit onlangs prakties hanteer het.



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**"Life is pleasant
Death is peaceful
It's the transition that's troublesome"**
(Isaac Asimov)

Why a living will is essential

Life is all about choices and the hardest choice your loved ones will ever have to make, is when you are on life support and they need to make the decision to remain



hopeful or to let go.

While most people are familiar with a last will and testament, there is an important document that isn't always top of mind: a living will. A living will could come in especially handy and give your loved ones peace of mind should you be mentally incapacitated or in a coma, and unable to make medical decisions for yourself.

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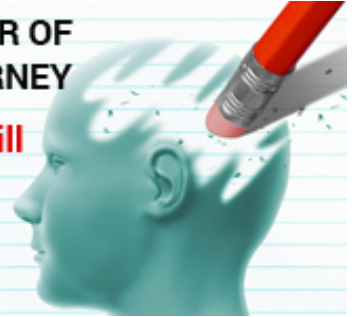
Dementia en onbevoegdheid: Wat is 'n volmag en kry mens 'n ewigdurende volmag?

Die gevalle van dementia as persentasie van die bevolking neem blykbaar af, maar as gevolg van die immergroeiende bevolkingsgetalle, raak die getal werklike demensialyers natuurlik elke dag meer. Hierdie is belangrik vir ouer mense, hul families en hul versorgers. Ons raak almal ouer, so dit is ook iets wat ons almal as gemeenskap raak.

'n Persoon wat na aan jou is (gewoonlik 'n ouer of 'n tante of 'n oom) benodig bystand met hul finansiële sake. Jou eerste gedagte is dat hulle 'n volmag moet teken om vir 'n verantwoordelike persoon of familielid as hul agent te benoem om namens hulle op te tree.

POWER OF ATTORNEY

Is it still valid?



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