DONNY & ONG | ADVOCATES & SOLICITORS
Legal Insight · Issue 10 · July 2026

A Business Partnership Is a Marriage: Draft for the Fallout

Why fifty-fifty is not fairness, and why an AI-drafted three-pager will not save you.

Two people start a company the way two people start a marriage — full of trust, light on paperwork, certain it will last. The incorporation forms take an afternoon; the fallout, when it comes, can take years. A shareholders' agreement is not the document you sign because you expect to fall out. It is the document you sign because you cannot know that you won't.

We were recently handed a three-page "agreement", generated by AI, meant to govern a shareholders' arrangement. It read the commercial intent well enough — who puts in what, who draws out what. It said nothing about what happens on a default, or on the day one partner says, simply, "I can no longer work with you." A document that captures the deal but not the break is not protection. It is a record of good intentions.

The value a lawyer adds is not in typing the clauses. It is in seeing the fallout before it arrives, and building the exit while everyone is still friends.

KEY HIGHLIGHTS

- A shareholders' agreement governs the fallout, not just the deal — how deadlock, default and exit are handled once goodwill runs out.
- Fifty-fifty is not fairness. Equal shares with no tie-breaker means neither side can carry a vote, and neither can break a deadlock.
- A director owes his duties to the company, not to the shareholder who appointed him (s 213, CA 2016) — the nominee you appoint can be the vote against you.
- There is no easy statutory exit: a voluntary winding-up needs a 75% special resolution (ss 439, 292) that a deadlocked company cannot pass.

FIFTY-FIFTY IS NOT FAIRNESS

The instinct is generous: we are equals, so we hold equal shares. But equality of shares is not equality of outcome. A 50:50 split means every decision needs the other's agreement — and every disagreement stops the company. There is no majority to carry a resolution and no mechanism to break the tie. Fairness on day one becomes paralysis on the worst day.

The answer is not to make the split unequal. It is to decide, in advance, how a deadlock is broken: a casting vote, a buy-out formula, a reference to an independent third party, a shoot-out clause. None of that is in the incorporation forms. All of it belongs in the shareholders' agreement.

WHICH SIDE YOU ACT FOR CHANGES THE DRAFT

The majority and the minority do not fear the same things. The majority fears being held hostage by a shareholder who will neither sell nor cooperate. The minority fears being frozen out — denied dividends, denied information, out-voted on every resolution while the value of the shares quietly withers.

So the same blank page produces two different documents. Acting for the majority, a lawyer builds control and mobility: pre-emption, drag-along, a tightly drawn list of reserved matters. Acting for the minority, a lawyer builds protection: tag-along, veto rights over the decisions that can dilute or trap them, information rights, and an exit they can actually use. Knowing which protections matter to which side — and which the other side will accept — is judgment, not text generation.

WHAT THE STATUTE WILL NOT DO FOR YOU

The Companies Act 2016 gives a company a spine, not a marriage contract. Two of its rules bite when a fallout comes.

Directors' duties run to the company. Under section 213, a director must act in good faith in the best interest of the company and for a proper purpose. The director you nominated does not owe you a duty to vote your way; he owes the company a duty to act in its interest. In a fallout, the nominee you appointed can be the vote against you.

The exit is not freely available. When partners can no longer work together, the instinct is to wind the company up and walk away. But a members' voluntary winding-up requires a special resolution — a majority of not less than 75% (sections 439 and 292). A 50:50 or obstructed company cannot reach it. The company you can neither run nor leave keeps trading, or grinds to a halt, while the dispute plays out. The statute will not hand you a divorce; the shareholders' agreement is where you write one.

> **NOTABLE LEGISLATION**
> - Companies Act 2016 ("CA 2016") — s 213 (duties of directors); s 292 (special resolution); s 439 (voluntary winding up)

PRACTICAL TAKEAWAY

Forging a partnership is a marriage in business. Done wrong, the relationship breaks — and sometimes it breaks ugly. The casualties are rarely just the two owners. The business stalls, and the employees who built it are left carrying a fight that was never theirs.

Before you sign the incorporation documents at the company secretary's office, ask the questions the excitement makes easy to skip. Can this person be my other half in business for the long run? What happens if one of us wants out? What happens if we simply stop agreeing — who decides, and how?

An AI template can write the answer down once you have it. It cannot ask you the question, weigh what you cannot yet see, or hold the line on the clause you will be grateful for on your worst day. That is what a lawyer is for.

If your only shareholders' agreement is a handshake and a set of incorporation forms, you do not have an agreement. You have a hope. Before you say "I do", ask what happens if one day you cannot.

All information in this Newsletter is correct as at 1 July 2026 unless otherwise stated.

Get in Touch

WhatsApp: +6014-7695 227
Email: admin@donnyong.com