

CONTENTS

SHAREHOLDERS' AGREEMENTS.....	1
INTRODUCTION	1
BACKGROUND.....	1
STRESS-TESTING IN THE AGE OF COVID-19	2
<i>Down round financing</i>	4
<i>Constitutions</i>	4
<i>Does an SME need a Shareholders' Agreements?</i>	6
BIG PICTURE ISSUES	8
KEY ISSUES IN THE LIFECYCLE OF THE BUSINESS	10
<i>Making the big decisions – Board and shareholder decision-making</i>	10
<i>Down rounds</i>	15
<i>Dealing with deadlocks and disputes</i>	20
<i>Facilitating a safe exit</i>	21
THE SHAREHOLDERS' AGREEMENT NEEDS TO REFLECT CHANGES OVER TIME –	
<i>INNES-JONES V INNES-JONES & ORS – SAILOR'S CORNER CASE (2018)</i>	22
<i>Complaints</i>	23
<i>Takeaway – make sure the governing documents cater for/adapt to the lifecycle of the business</i>	24
ATTEMPTS TO WEAPONISE THE SHAREHOLDERS' AGREEMENT – <i>STURGESS V DUNPHY</i> –	
GREYMOUTH PETROLEUM HOLDINGS LIMITED (<i>GREYMOUTH</i>)	24
<i>The Courts are likely to be unable to plug explicit gaps in a Shareholders' Agreement –</i>	
<i>Dold v Murphy</i>	29
<i>Breach of shareholders' agreement?</i>	29
<i>Breach of fiduciary duty and duress?</i>	29
<i>Takeaways</i>	34
PRESCRIBED FORMULA FOR SHARE SALE.....	34
<i>Application of s 149 of the Companies Act</i>	35
DISCUSSION: SME RESPONSE TO A CHALLENGING ENVIRONMENT.....	37
POWERPOINTS.....	39