

股東協議

Shareholders' Agreement

Date: 8 November 2022



司徒維新律師行有限法律責任合夥
(Sun Lawyers LLP)

司徒博雅律師

Szeto Pok Nga, Artemis

目錄 Content



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

1. 協議範疇 Scope of Agreement
2. 股東協議條款 Terms of Shareholders' Agreement
3. 不利因素 Disadvantages
4. 股權架構設計 Design of Shareholding Structure

1. 協議範疇

Scope of Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

- 公司股東之間的協議 Agreement between the shareholders of a company
- 保護股東利益 Protect the shareholders' interest
- 小股東與大股東的利益 Beneficial both to minority and majority shareholders
- 股東關係 Relationship between the shareholders
- 與公司有關的具體、重要和實用的規則 Specific, important and practical rules relating to the company

1. 協議範疇

Scope of Agreement

- 補充公司章程 Complement the company's articles
- 對股東的額外保護 Additional protection to shareholders
- 預先同意的退出策略 Pre-agreed exit strategy
- 跟售權 Tag along right
- 拖售權 Drag along right
- 私隱因素 Element of privacy



1. 協議範疇

Scope of Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

Shareholder power 股東的權力

- 董事會的日常運作 Day-to-day running - board of directors
- 股東批准決策 Decisions require shareholders' approval
- 投資 Investment
- 公司營運的業務類別 The type of business the company will run
- 公司管理, 例: 董事會及任何委員會的組成

The management of the company, i.e., the composition of the board of directors and any committees



1. 協議範疇

Scope of Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

- 股息政策 Dividend policy
- 發行新股與新股東 Issue of new shares and admission of new shareholders
- 股權轉讓 Transfer of shares
- 反稀釋機制 Anti-dilution mechanism
- 僵局 Deadlock
- 保護小股東 Minority shareholder protection
- 公司進一步籌集資金 Further financing needs of the company

2. 股東協議條款

Terms of Shareholders' Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

1. 管理及擔任董事的權利 Management and right to be a director

- 管理公司的日常業務 Manage the company's day to day business
- 公司章程 Articles of association
- 股東協議 Shareholders' agreement
- 股東權利 Shareholders' rights
- 委任董事 Appointment of director
- 參與公司管理 Involved in the management of the company

2. 股東協議條款

Terms of Shareholders' Agreement



SUN
LAWYERS

LLP

司徒維新
律師行

有限法律責任合夥

股東協議通常會包含一項稱為“權威性條款”的條款，該條款規定，如果股東協議與公司章程發生衝突，則以股東協議的規定為準。但是，在所有其他情況下，通常以公司章程為準。

Shareholders' agreements will frequently have a “supremacy clause” which provides that in the event of a conflict between the agreement and the articles of association, the provisions of the shareholders' agreement would prevail. However, in all other cases, the articles of association normally prevail.

2. 股東協議條款 Terms of Shareholders' Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

2. 信息權 Information rights

- 董事 Director – 審查所有信息的權利 management of company right to review all information
- 股東 Shareholder – 有限度獲得信息 limited access to information

2. 股東協議條款 Terms of Shareholder Agreement



SUN
LAWYERS

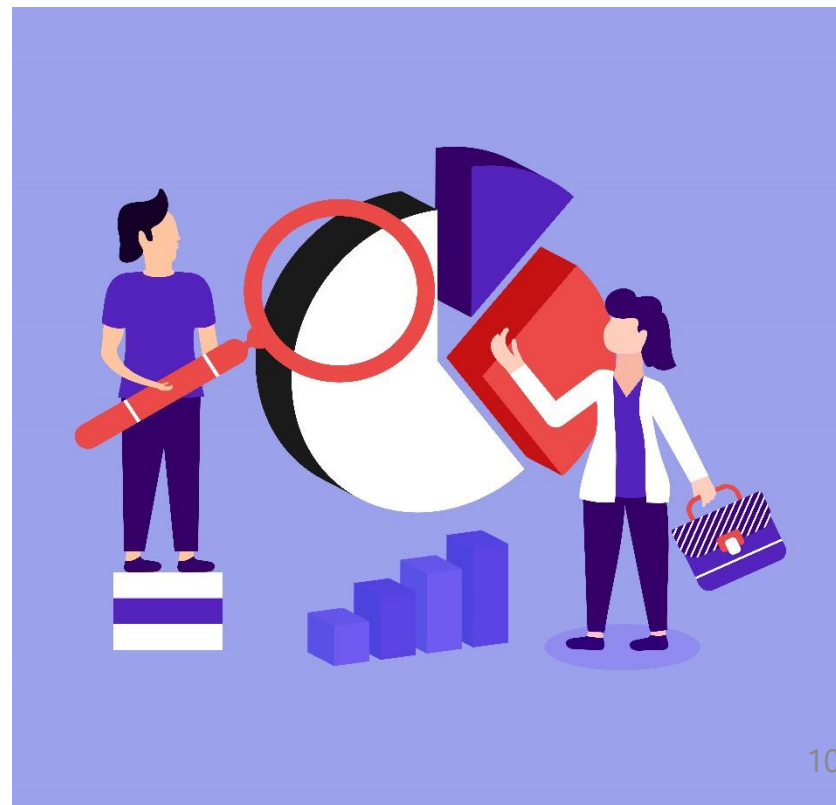
LLP

司徒維新
律師行

有限法律責任合夥

3. 保護小股東 Minority protection

- 重大決策 Major decision, i.e. financing and investment (例：籌集資金及投資)
- 跟售權 Tag along rights



2. 股東協議條款 Terms of Shareholders' Agreement



SUN
LAWYERS

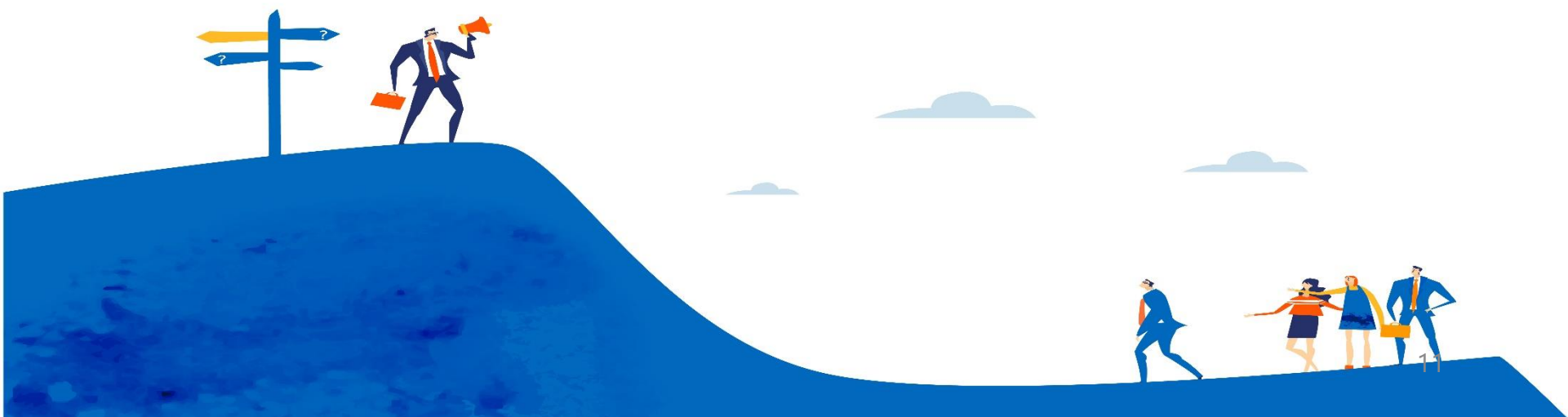
司徒維新
律師行

LLP

有限法律責任合夥

4. 保護大股東 Majority protection

- 公司創始人保留多數股權和/或投票權 Founder(s) of a company to retain a majority of the shareholding and/or voting right
- 拖售權 Drag along rights



2. 股東協議條款

Terms of Shareholders' Agreement



SUN
LAWYERS

LLP

司徒維新
律師行

有限法律責任合夥

- 普通決議 Ordinary resolution >50%
- 特別決議 Special resolution >75%
 - 更改公司章程 Alteration of the articles of association
 - 更改公司名稱 Change of the company's name
 - 減少公司股本 Reduction in the share capital of the company etc.
 - 大股東不能簡單地自行通過決議修改公司章程 The majority shareholder cannot simply pass a resolution by itself to alter the articles of association of the company
- 支出超過一定數額 Expenditure above a certain amount
- 處理重要資產 Disposal of material assets
- 公司主要業務發生變化 Change in the company's principal business
- 通過股權進一步籌集資金 Further financing through equity

Terms of Shareholders' Agreement



5. 離場策略/股份轉讓 Exit Strategy / Transfer of shares

必須先向其他剩餘股東出售股份 Must first offer to the other remaining shareholders

Share Price 股價

- 固定股價 Fixed Price
- 一致同意的公式 Pre-agreed formula
- 獨立專家 Independent expert

然後交給第三方 Then to third party

Terms of Shareholders' Agreement



SUN
LAWYERS

LLP

司徒維新
律師行

有限法律責任合夥

6. 違約 Default

- 損害公司聲譽和業務 Prejudicial to the company's reputation and business
- 向現有股東出售股份 Sale of Shares to existing shareholders
- 違反股東協議或公司章程的任何規定 Default of any provision of the shareholders' agreement or the articles of association
- 破產 Insolvent
- 犯法 Commission of crime

2. 股東協議條款 Terms of Shareholders' Agreement



SUN
LAWYERS

LLP

司徒維新
律師行

有限法律責任合夥

7. 僵局 Deadlock

- 最後決定權? Final decision ?
- 在指定時間內解決僵局 Resolve the deadlock within a specified time
- 收購 Buying out
- 公司清盤 Liquidate the company



2. 股東協議條款 Terms of Shareholders' Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

8. 保密 Confidentiality

- 商業機密 Trade secrets
- 客戶清單 List of customers
- 供應商清單 List of suppliers
- 分包商清單 List of Subcontractors
- 項目清單 List of projects
- 不得為其他目的使用或審查 Not use or review for other purpose

2. 股東協議條款 Terms of Shareholders' Agreement



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

9. 股息政策 Dividends policy

- 利潤分享 VS 進一步投資 Sharing of profit VS further investment
- 股份類別 Class of shares

Terms of Shareholders' Agreement



SUN
LAWYERS

LLP

司徒維新
律師行

有限法律責任合夥

10. 非競爭條款 Non-Competition clause

- 小股東要求大股東不從事任何商業活動或投資於其他類似業務

A minority requests majority not to engage in any business operations or investment in other similar businesses

- 持有公司股份的期間及不再持有公司股份後的一段時間

While holding shares in the company and for a period after ceasing to hold such shares

- 客戶 Clients

- 僱員 Employees

2. 股東協議條款 Terms of Shareholders' Agreement



SUN
LAWYERS

LLP

司徒維新
律師行

有限法律責任合夥

11. 解決爭議 Dispute resolution

- 法律的選擇 Choice of law
- 管轄權 Jurisdiction
- 調解 Mediation
- 仲裁 Arbitration



3.不利因素 Disadvantages



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

修改股東協議困難 Harder to amend shareholders' agreement

全體股東同意 All shareholders to agree

修改公司章程 Amending the articles > 75%



4. 股權架構設計

Design of Shareholding Structure



假設情況 Scenario

David and Emily hold Company A running a retailing business and own an office premise in Hong Kong. Company A is considering to launch a new product line in co-operation with Company B and to explore Japan market with Company C.

How to arrange corporate structure?

David 和 Emily 持有 A 公司經營零售業務，並在香港設立辦事處。A 公司正在考慮與B公司合作推出新的產品線，並與C公司一起開拓日本市場。

如何安排公司架構？

4. 股權架構設計

Design of Shareholding Structure

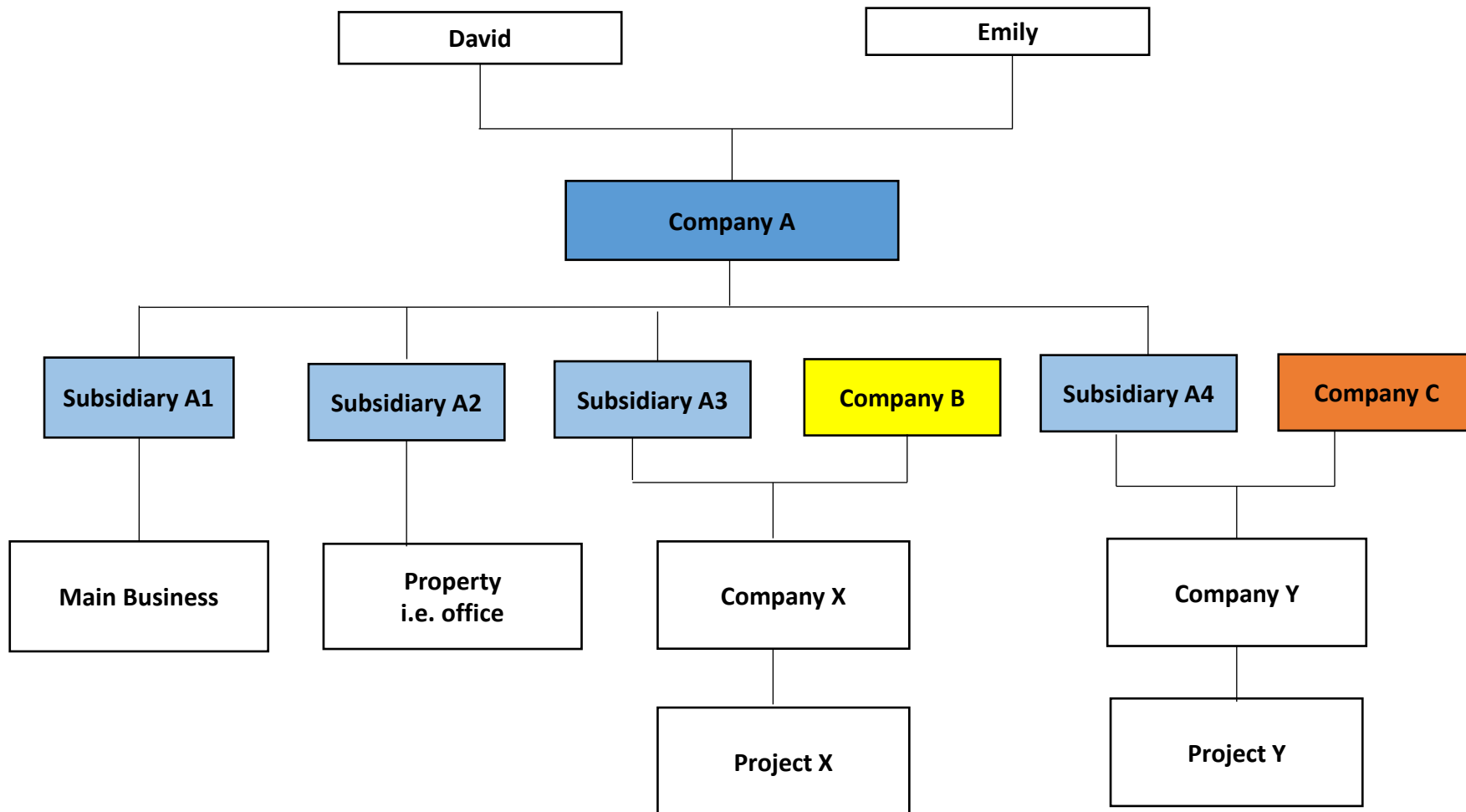


SUN
LAWYERS

司徒維新
律師行

LLP

有限法律責任合夥



免責聲明

Disclaimer



SUN
LAWYERS

司徒維新
律師行

LLP

有限法律責任合夥

本演示文稿的所有內容僅提供一般信息，不反映目前的法律發展、判決或和解。本演示文稿所含的任何信息不應視作法律意見，也不可取代就任何事項提出的法律意見。任何本演示文稿內容的接收人（無論是本行客戶或其他人士），在未就特定事實及情形向其所在地區、國家或其他適用認可司法管轄區認可的律師尋求法律或其他專業意見前，不應在此演示文稿的任何內容的基礎上作出或避免作出任何行為。

The all contents herein are provided for general informational purposes only, and may not reflect current legal developments, verdicts or settlements. Any information contained herein should not be construed as legal advice and is not intended to be a substitute for legal opinion on any subject matter. No recipient of contents herein (whether clients or otherwise) should act or refrain from acting on the basis of any contents herein without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from a lawyer licensed in the recipient's region, country or other appropriate licensing jurisdiction.



SUN
LAWYERS
LLP

司徒維新
律師行
有限法律責任合夥

結束 *The End*
再見 *Thank you* !