

SHAREHOLDERS AGREEMENTS

Hegarty LLP was formed in 1974 and is now a major regional player in the law marketplace, serving clients both locally and across the UK. Our rapid growth is a result of offering a top quality service, backed by an innovative approach to the law. We have been first with many services and marketing initiatives, and continually drive to exceed client expectations.

If you want help regarding shareholders agreements, and the legal implications of this please contact Andrew Heeler on 01733 295661 or email: andrew.heeler@hegarty.co.uk

The following information explains more about the issues you may want to think about.

Why have a shareholders agreement?

Shareholders agreements are an extremely diverse means of controlling the relationship between shareholders. They can be used for almost any purpose from controlling voting at shareholders meetings to giving individual shareholders the ability to purchase more and more shares.

Much of what is included in a shareholder's agreement can be included in the company's articles of association ("the Articles"). However, shareholder's agreements have the advantage of being private, unlike the Articles. The Articles have to be filed at Companies House and as a result are available for any member of the public to obtain. A shareholders agreement cannot differentiate between shareholders, so that different individuals can be treated differently. A shareholders agreement can also include rights granted to shareholders in a personal capacity that would be unenforceable if they were contained in the Articles.

However, one advantage of the Articles is that new shareholders will automatically become bound by them. If you have a shareholders agreement it will be necessary for new shareholders to enter into a deed of adherence to become bound by the shareholders agreement.

Ultimately, whether you wish to regulate the relationship with the Articles or by entering into a shareholders agreement is a matter of personal choice, and we would be happy to discuss all the issues with you.

Things you can include

1 Enterprise Management Incentives

This is a tax efficient way to give shares to your employees. Giving employees shares can improve efficiency and reduce absence, as the employees feel they are a part of the company.

- 2 Ability to purchase shares linked to profitability of the company, or over a set period of time. You may be considering giving someone shares in your company now, or you may decide that while you want them to have an option to purchase shares now to tie them into the company, you do not want them to be able to purchase shares for a period of time, or until the company reaches a set turnover level. This way the option holder will have an interest in how the company is doing as it will affect the value of the shares when he does get them, but will not be able to benefit from the shares until a future date. After all, a shareholder is a member of a company and will have a say in how it is run.
- 3 Ability for other members of the company to buy back shares from shareholders wishing to leave the company or when certain other events occur.

In doing this you can control all aspects of the sale, including:

- 3.1 a mechanism for valuing shares dependant on the conditions surrounding the sale – for example a lower valuation if an employee shareholder is leaving after gross misconduct;
 - 3.2 a time limit to force the shareholder to sell the shares within a set period from the event; and
 - 3.3 the percentages that other shareholders can buy in order to keep, or change, the balance of power.
- 4 The ability of particular shareholders to veto actions of the company.

You can use a shareholders agreement to cover all aspects of voting at shareholders meetings. While directors have day-to-day control of the company there are many matters that will need the shareholders consent.

- 5 Requirement for new shareholders to become parties to the shareholders agreement before they are registered as members of the company.

While all shareholders are automatically bound by the Articles, a new shareholder will only be bound by a existing shareholders agreement if they have signed a deed of adherence. It is common to prevent the directors registering a new shareholder unless they have signed a deed of adherence.

This information sheet is a guide to show you some of the options that are available. The contents of this information sheet is for information only. You should never act on the contents of the information sheet alone, and should always seek professional legal advice regarding to your particular situation before taking any action. For more information about this, or any other aspect of company law, please ring Andrew Heeler on 01733 295661 or email: andrew.heeler@hegarty.co.uk