

# Briefing Note

## Shareholders Agreement

A Shareholders Agreement is a contract between shareholders to regulate the relationship between themselves, and the company. It can be between individuals or companies, and is used for a wide variety of different shareholder types such as family owned companies, joint ventures, or unrelated shareholders. We normally recommend that the company is also included as a party to a Shareholders Agreement.

Briefing Note  
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Shareholders Agreement by  
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If you would like more  
information on this subject or  
any other corporate legal  
matters please contact me.

### 1. Shareholders Agreement versus Articles of Association

There are two main ways in which shareholders can regulate a company, through a Shareholders Agreement or through the Articles of Association (Articles). One fundamental difference between these two methods is that a Shareholders Agreement is a private contract between the parties while the Articles is a public document registered at Companies House. As a Shareholders Agreement is a private contract it can deal with all aspects of the relationship between shareholders including personal rights and obligations, and it may regulate a company above and beyond statutory requirements. However, the Articles must comply with company law such that it is generally better not to include any provisions in the Articles that fetter a company's statutory rights. The benefit of the Articles being a public document is that third parties will be deemed to have notice of them.

Want to know more  
about Shareholders  
Agreements? Just  
ask us for our handy  
Guide.

### 2. Usual Contents of a Shareholders Agreement

We would expect to see the provisions in a Shareholders Agreement relating to the following matters::

- Shareholder Consent: this is normally the percentage of voting rights required to pass a particular resolution in relation to certain matters set out in the agreement.
- Board meetings: quorum, frequency, appointment of directors, casting vote, and voting rights.
- Shareholder meetings: notice and quorum.
- Issue, sale or transfer of shares: this may include compulsory transfer events, pre-emption rights, and share valuation provisions.
- Restrictive covenants: these normally include non-compete, and no poaching of staff or customers.
- Information and Confidentiality of Information: providing information to shareholders, and maintaining information confidential both during and after the Shareholder Agreement.
- Finance and funding: this may include investment into the company, borrowing and spending limits, and spending authority and is often linked in with Shareholder Consent.

If there are two or  
more shareholders  
then you should  
have a  
Shareholders  
Agreements in  
place.

- Dividends policy: provides for the method of calculating distributable profits and the amount of profits to be distributed.
- Tag along and drag along: these provisions provide that on a proposed sale of shares by one shareholder that the buyer will be able to buy all the shares in the company.
- Deadlock: in the event of a voting stalemate the deadlock provisions provide a mechanism to resolve the issue.
- Termination: termination of the Shareholders Agreement and the regulation of leaving shareholders.

As a Shareholders Agreement is a private contract a wide range of other provisions may be included.

### 3. Amendment of a Shareholders Agreement

A Shareholders Agreement can generally only be amended with the consent of all the parties. This means that when an amendment is proposed all shareholders will have the same power (a minority shareholder will have the same power as a majority shareholder).

### 4. New Shareholders

New shareholders are normally bound into a Shareholders Agreement through a Deed of Adherence. This Deed need only be executed by the new shareholder. If there are common provisions that you want to automatically bind all shareholders then it may be better to include these in the Articles.

### 5. Breach of a Shareholders Agreement

As a Shareholders Agreement is a private contract then if there is a breach a party may have contractual remedies and in particular can claim damages or seek an injunction. As one of the requirements for a claim for damages is to show 'loss' then this can sometimes be difficult. However, a breach of the company's Articles may make the action void and therefore not binding on the company.

### 6. Conclusion

Each situation is different and the right approach has to be assessed and measured as to the priorities and requirements of the parties. If the parties are not concerned about the publicity issue then perhaps the Articles are the most appropriate place to put the provisions. If there is commercially sensitive information then a Shareholders Agreement may be more appropriate. An alternative approach is for some provisions to be put into the Articles and some into a Shareholders Agreement.

## Contacts

If you would like to discuss any matters set out in this Briefing Note or any other matter then please contact:

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