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# PROTECTING

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# your interests

DAVID NATHAN FROM GSC SOLICITORS EXPLAINS THE VALUE OF ENSURING A BUSINESS HAS A ROBUST SHAREHOLDERS' AGREEMENT IN PLACE TO AVOID DISPUTES DOWN THE LINE.

**M**ANY BUSINESSES operate as limited companies. However, shareholders, who are the owners of a company, do not often have in place the right documentation to protect their interests. One of the best ways for shareholders to protect their interests is to enter into a shareholders' agreement, which sets out in detail the rights afforded to each shareholder. A lack of certainty created by not having a shareholders' agreement in place can often lead to disputes amongst the shareholders which can be costly to deal with.

## WHAT'S IN A SHAREHOLDERS' AGREEMENT AND HOW TO NEGOTIATE

A shareholders' agreement, as the title suggests, is a separate contract made between the shareholders, relating to the operation of the company. Such an agreement will usually cover issues that are similar to those covered in a company's articles of association but, within the confines of the law, can cover whatever the parties to the agreement wish.

Although each document will be different, a shareholders' agreement will typically deal with some or all of the following:

- The right for a shareholder to hold a seat on the board of directors.
- Who the chairman of the board of directors is to be and whether that chairman will have a second or casting vote in the event of an equality of votes on an issue.
- Whether the consent of certain shareholders is required before a company can take certain actions such as disposing of the company's assets, issuing new shares, or winding up the company. This is particularly relevant for shareholders holding a minority of shares in the company as it allows them to "punch above their weight".
- Whether the company is to have a particular policy on dividends.
- Is intellectual property created by the shareholders to be vested in the company? This is particularly relevant in industries where intellectual property is an important asset of the company, for example in the IT industry.
- What procedure if any is to be followed if a shareholder wishes to sell his shares? This is a highly important issue, particularly in private companies. Remaining shareholders will often be working very closely together and do not want to be dealing with just any third party whom the selling shareholder decides to sell his shares to.
- The process to be followed in the event of the death, incapacity or insolvency of a shareholder.
- Any restrictions to stop shareholders competing with the company's business whilst they are shareholders and for an agreed time afterwards.

When negotiating shareholders' agreements, it is always important to bear in mind that each shareholder may have different priorities. This may depend on a number of factors, including the percentage of shares held by that individual and the respective duties of the shareholders. Someone who holds the majority of the shares in a company could be concerned about being chairman of the board and having a casting vote. Someone who holds a minority of shares in the company could be concerned about ensuring that he is a director whilst he is a shareholder so that his voice is heard.





**WHAT ARE THE BENEFITS OF HAVING A SHAREHOLDERS' AGREEMENT?**

Some of the major benefits of having a shareholders' agreement are:

- When parties go into business, at the outset in particular, there is usually a lot of trust and goodwill between the shareholders. All parties are looking for the business to succeed and often little attention is paid as to what would happen if a difference of opinion were to arise. Also, many discussions may

take place either orally or in writing between the parties regarding the operation of the company and the relationship between the shareholders. A well drafted shareholders' agreement will set out clearly in writing the results of those discussions, therefore reducing the potential for future dispute.

- By having specific discussions about what is to go into a shareholders' agreement, it focuses the minds of the parties who may not have previously thought of addressing particular scenarios.

- Unlike the articles of association, a shareholders' agreement is a private document, and that can be of benefit to the parties, especially if there are very sensitive commercial details that are to be included in the document.

It is never too late to put a shareholders' agreement in place. By agreement they can always be amended and updated as circumstances change. A properly thought out shareholders' agreement can be looked upon by the shareholders as a form of insurance policy, which protects their interests as the business.

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*GSC Solicitors assist clients on a spectrum of corporate and commercial issues. To find out more, contact [dnathan@gscsolicitors.com](mailto:dnathan@gscsolicitors.com)*