



## Business Law Briefing No: 4

### Shareholder Agreements – they should not be complicated!

Shareholder Agreements are an essential in any Company even more so when some or all of members are in the same family.

Unfortunately, I come across many Shareholder Agreements that are too long, are not understood by the shareholders and, as a result, do not give the “value” that they should.

The initial question that is often overlooked but must be addressed is “what is the actual relationship between the parties?”. The agreement must reflect this, rather than the parties adapting their relationship to fit in with the agreement! It seems, therefore, more appropriate to refer to the shareholders agreement as the **“Relationship Agreement”** and, as such, the name gives a true description the contents and effect of the agreement.

The overall philosophy that I prefer to suggest is:

***“so long as all the parties agree, they can do whatever they want (providing that it’s legal!) and ONLY if there is an unresolved disagreement will the provisions of the agreement apply”***

This means that the shareholders better understand and the agreement can be consigned to a safe place and act like an insurance policy, hopefully never to see the light of day again. It is, after all, a safety net. Experience has shown that shareholders with a well drafted, meaningful Relationship Agreement feel more comfortable and have the confidence to get on with earning profit and generating wealth and not worry about things that could go wrong between them.

Relationships in a company are primarily governed by the Articles of Association which is a public document, so private matters need to be set out in the Relationship Agreement away from the public gaze. Although not exhaustive, the following need to be considered and, if thought appropriate, be included in the relationship provisions:

- how is the business to be run and decisions made? What requires a majority decision and what must be unanimous?
- are the shareholders required to invest further money by way of loan or capital?
- what provisions are necessary to protect any minority shareholders?
- what restrictions should be placed on a shareholder's ability to transfers shares owned by him/her?
- if a majority wish to sell the entire company, how can the minority be required to sell and, conversely, if a majority find a buyer for just their shares how can the minority force the purchaser to buy their shares as well?
- should a shareholder be allowed to transfer all or some of their shares to a family member/trust?

### **What happens next?**

Business relationships can always deteriorate and resolving disputes without an agreement is costly both in terms of money and lost profits while everyone's efforts are taken up trying to move forward.

If you are in a business relationship without a governing agreement then all of the parties should consider their position and take the appropriate advice.

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Martin specialises in Company and Commercial Law, with strong emphasis in share sales, business sales, joint ventures, management buy-outs & shareholder agreements, company reconstructions, partnerships, franchising, IT agreements and all aspects of Business Law.

Qualifying as both a Solicitor and Chartered Accountant gives Martin the broad range of skills necessary to assist in the successful, timely and cost effective completion of his client's transactions.

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