

SHAREHOLDERS AGREEMENTS

A limited company is governed by its Memorandum and Articles of Association, which are statutory documents created when the company is formed. They can be subsequently amended. The Memorandum of Association gives various legally required details about the company, eg its objects and its share capital. The Articles of Association are the “rules” for running the company, and normally take the form of adopting a statutory model, normally table A, and then revoking some clauses and substituting new ones.

On top of the Memorandum and Articles, many companies have a more flexible agreement known as a “Shareholders agreement” – this is a contract between the shareholders and/or directors as to how the company will be run. Unlike the Memorandum and Articles it does not have to adhere to any statutes, so can be as flexible or detailed as is needed for the circumstances.

The agreement should set out the rules governing how the company operates, and should cover the main ‘What happens if ...’ situations. If there is no agreement, there will be a large element of uncertainty, and applying the underlying law, such as the standard Table A Articles of Association, may well lead to unwanted results.

It is usually best to have a shareholders agreement drawn up by an accountant, but before you reach that stage you should think about exactly what you want the agreement to cover. In particular, you should consider:

Running the business

- directors / shareholders duties
- working hours and holidays
- decision-making procedures
- board procedures
- right of appointing a director
- business premises
- cars

Financial matters

- dividend and remuneration policies
- share capital and shareholders/directors loans (and interest arrangements)
- banking and financial arrangements
- accounting arrangements
- making provision for tax payments

Special circumstances

- shareholder/director retirement procedures
- death of a shareholder/director
- disability of a shareholder/director
- establishing the right to expel a shareholder/director
- arbitration for unresolved disputes

Updated: March 2006

© Garbetts Limited