

SETTING UP SMALL TO MEDIUM ENTERPRISES



Part 4 - 'Shareholder Agreements' How significant are they to SME's?

A shareholders' agreement is generally the most effective way of ensuring the rights and duties of the shareholders in a company are regulated. The agreement generally governs the relationship between the parties and the affairs of the company and should be read in conjunction with a company's articles of association. Whilst there is no legal requirement to have an agreement in place, a well drafted one will reduce any potential for conflict between shareholders and provides a concrete framework for the operation of a company.

Shareholder Agreement and Articles of Association

Articles of association deal with matters related to shareholders in their capacity as members. A shareholders' agreement however can provide additional protection in terms of ownership and the way in which decisions are taken. It can also deal with the more personal matters of a shareholder as it is a confidential document not available to the public, because unlike articles of association it does not need to be registered at Companies House.

Minority Shareholders

Minority shareholders in particular, may find themselves in a weak position as in the absence of additional protective provisions, the majority shareholders can unilaterally alter the terms of the articles of association – which has the effect of a contract to which the minority shareholders are a party. A shareholders' agreement in comparison, can only be amended with approval of all the shareholders.

Regulating Key Managerial Decisions

A shareholders' agreement can also provide additional protection in respect of key decisions such as, acquisitions, borrowing facilities, decisions regarding dividend and distribution payments, and decisions about selling or otherwise disposing of a material part of the business or its assets making clear that none of these can take place unless they are agreed by a certain percentage such as 90% of shareholders.

What Next?

Having a shareholders' agreement in place will not only give certainty and stability for the current shareholders but also prove attractive for potential investors who wish to know more about the rights they would gain before acquiring any shares and who can become parties to the shareholders' agreement by a simple deed of adherence.

Carter Lemon Camerons LLP is committed to delivering commercially relevant advice regarding bespoke shareholder agreements to support the growing needs of SMEs. If you would like any further information about putting an agreement in place or if you are thinking of amending your current agreement please get in touch.

Naimi Shah (Trainee Solicitor)
Corporate and Commercial Team

For further information on the above or on any other part of your business please contact:

Stuart Brennan (Partner) Company Commercial
StuartBrennan@cartercamerons.com

Justin Cumberlege (Partner) Healthcare
JustinCumberlege@cartercamerons.com

Andrew Firman (Partner) Employment
AndrewFirman@cartercamerons.com