Does your company have a shareholders agreement?

For limited companies, when it comes to making decisions, company law states that shareholders who own more than 50% can pass a motion at a company meeting regardless of the views of other shareholders. If a shareholder(s) owns more than 75% of the shares, they control the company outright and can veto the decisions of all other shareholders.

This may not suit all business situations, especially where you have two or more founders holding equal share capital or a group of owners with varying amounts of capital, some of whom are directors and some who are not, but who are all working together for the company's success.

A shareholders' agreement is entered into between all or some of the shareholders in a company. It regulates the relationship between the shareholders and the management of the company, ownership of the shares and the protection of the shareholders. They also govern the way in which the company is run.

The agreement can help define how a business makes decisions for the benefit of all owners, and is recommended where:

- A small number of owners want to reach collective and fair decisions for the benefit of all
- Some owners may want to be able to influence decisions that are particularly relevant to them
- Some shareholders may not be directors and cannot influence operations on a day-to-day basis

Typically, it is seeking to deal with the three "D's" of death, disability and disagreement. It may also cover a variety of other significant areas, for example, retirement and buyback of shares.

Key areas for any shareholder agreement

This is not a comprehensive list as each situation is different, but it may help you collect the thoughts of all shareholders before you draw up an agreement.

1. Company details including structure, directors and officers
2. Purpose and aims of the company

3. Equity split of shareholders
4. Parties to the agreement
5. Shareholders' rights, obligations and commitments
6. Decision-making processes on major issues, required voting majorities and day-to-day operating decisions
7. Restrictions on the sale of shares
8. Rights of first refusal and pre-emptive rights to acquire shares on leaving, retirement, death or disability
9. Death, disability and other retirement compensation payments
10. Management contracts, director approval and remuneration amounts
11. Insurance and other protective requirements
12. Professional advisers and change of professional advisers
13. Dispute resolution
14. Changes to and termination of the agreement
15. Buy out provisions for leaving shareholders
16. Valuation of shares on changes and valuations of the business

Our view is that a shareholders agreement is an essential document for any limited company and an equitably drafted agreement should provide comfort to all parties.

Please talk to us if you need help in planning for an agreement, especially where there are several shareholders, a new company is being formed, a shareholder wants to sell their shares or pass them to their children, someone is nearing retirement, or the company has borrowed money from a shareholder. We can help with share and company valuations and put the shareholders' wishes into an agreement with a local solicitor.