

A low-angle, upward-looking photograph of a modern skyscraper with a glass and steel facade. The building's lines converge towards the top of the frame, creating a sense of height and scale. The sky is filled with soft, white clouds, and the building's windows reflect the sky and surrounding environment.

COLLYER BRISTOW

CORPORATE KNOW-HOW

SHAREHOLDERS' AGREEMENTS: THE BASICS

WHAT DO YOU NEED TO KNOW?

SHAREHOLDERS' AGREEMENTS: THE BASICS

WHAT IS IT?

A written agreement, between the shareholders of a company, as to the relationship between them and how the company should be managed. By including the company as a party, the shareholders can ensure that it is both bound by and able to enforce the terms of the agreement against contravening shareholders.

DOES EVERY COMPANY NEED ONE?

No. Shareholders' agreements are not a requirement of forming a company in the UK and would be of little use to sole shareholders with no plans to transfer their shares or seek new investment. However, although it may not be required, it can be a great source of security to shareholders, especially where they are not involved in day-to-day management, as it helps ensure that how the business will be run is formalised, with clear direction on how decisions can be made. Such an agreement can often be seen as superfluous between shareholders who are close friends or family members, however, if and when relationships break down, they can be a useful way of protecting the business by limiting what actions individuals may take and managing shareholder exits.

IS IT PUBLIC?

Unlike the articles of association of a company, shareholders' agreements are not publicly available, remaining a private agreement between the signatories that does not need to be disclosed to third parties.

WHAT CAN IT COVER?

A standard shareholders' agreement may include provisions such as:

- **Consent matters and veto rights** – limiting certain actions to a set threshold of shareholder approval or the unanimous consent of all current shareholders.
- **Sale of the business** – setting out shareholding thresholds for where a shareholder can force all other shareholders to sell to an incoming buyer or force an outgoing shareholder to take the remaining shareholders with them on a sale.
- **Dividends** – as a private agreement between the parties, it can offer the opportunity to detail a more comprehensive dividend policy that the shareholders would rather not state in the company's articles of association (provided it does not contradict the provisions in the articles).
- **Restrictive covenants** – restrictions on the interests and activities of shareholders while holding shares in the company (and for a period thereafter) can limit conflicts and deter shareholders from investing in competing businesses.

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Beyond the examples given above, shareholders' agreements have wide ranging flexibility on the provisions they incorporate, allowing for them to be tailored to the nature of the business and how decisions are made (or intended to be made) in practice.

WHAT ABOUT NEW SHAREHOLDERS?

Although entered into between the existing shareholders of a company at that time, future shareholders can enter into a short agreement, called a deed of adherence, agreeing to be bound by the latest version of the shareholders' agreement as a new party (without requiring the original agreement to be entered into by all parties again). A good shareholders' agreement will ensure that both an outgoing party (where transferring their shares) or the company (where issuing new shares) are bound to ensure that the new shareholder enters into a deed of adherence prior to obtaining their shares.

HOW CAN A SHAREHOLDERS' AGREEMENT BE ENFORCED?

As with other commercial contracts, a breach of the terms of a shareholders' agreement would usually be rectified by the wronged parties pursuing a breach of contract claim through the courts. Importantly, the fact that an action was taken in breach of the shareholders' agreement does not necessarily invalidate the action itself – even if the company is a party to the agreement. It is still important to consider who has day to day control of the business, whether by virtue of votes on the board or majority shareholding, as attempting to prevent or undo acts that breach the shareholders' agreement is likely to be a costly and time consuming exercise. When preparing a shareholders' agreement, drafting new articles of association in parallel can help ensure that failure to follow the required procedure when taking key actions such as transferring shares or removing directors can render the act ineffective.

WHEN DOES IT TERMINATE?

A shareholders' agreement should provide for its own termination, usually on winding up of the company, the appointment of an administrator or the company being reduced to one shareholder. The parties can amend or terminate the agreement by way of a deed of termination or amendment, or can specify other situations where the agreement would come to an end, such as admission of the company's shares to trading on a public market.

Shareholders' agreements can be short and simple, comprehensive and complex or anything in between – how the business is run, the relationship between shareholders and the plans for the future can all shape the final document. Whether you are considering putting place a shareholders' agreement for your business, would like to review an agreement already in place or have questions about where they can be useful, our specialist Corporate lawyers would be happy to provide you with the support you need.

SHAREHOLDERS' AGREEMENTS: **THE BASICS**

Whether you are considering acquiring a business, selling a business or you are advising on such matters, our specialists in the Corporate team at Collyer Bristow would be happy to provide you with the support you need.



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