

## Shareholders Agreements, Gillian Harding

When a new company is formed, it's a busy time and practicalities can often take priority over legal matters but it is always worth considering whether you would benefit from a Shareholders Agreement. We focus on one of the primary reasons here.

If a shareholder dies, their shares pass to their beneficiaries who will be entitled to keep them unless you change the Articles of Association your company comes with or enter into a Shareholders Agreement. If shares pass to beneficiaries, it creates the potential for disruption in the company, in some cases more than others, for example a divorced shareholder may decide to leave shares to their children but, if they are under 18, then their ex-spouse may hold the shares on trust for the children and therefore become involved in the company. A Shareholders Agreement can include an automatic requirement for the shares to be sold following the death of a shareholder.

Although Articles of Association can also include provisions requiring shares to be sold on the death of a shareholder but they aren't private (because they are filed at Companies House) and they don't create a contractual relationship between the shareholders so a Shareholders Agreement is often preferred.

Another risk is that the surviving shareholder(s) may not have sufficient funds available to buy shares from the deceased's estate. Sometimes a Shareholders Agreement will state that the shares can be paid for in instalments but a more popular way of dealing with this risk is insurance. The policy benefits the surviving shareholders so there are funds available to purchase the shares from the estate. The insurer requires shareholders to have a 'Cross Option Agreement'. This gives each shareholder a contractual right to require the personal representatives of the deceased shareholder to sell the shares to them. In return, the personal representatives have the right to require the surviving shareholders to purchase the shares of the deceased shareholder.

If you would like to discuss the benefits of preparing a Shareholders Agreement, please contact Gillian Harding ([gillian.harding@hrjlaw.co.uk](mailto:gillian.harding@hrjlaw.co.uk)) or David Howard ([david.howard@hrjlaw.co.uk](mailto:david.howard@hrjlaw.co.uk)) at our Hitchin office (01462 628888).



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