

Shareholders Agreements – what you need to know

James Chadburn

[Dean Wilson LLP Solicitors](#)

The Basics

- Constitution of a Company
 - Memorandum of association
 - Articles of association
- Directors
 - Management
- Shareholders
 - Ownership

Articles of Association

- The articles govern the day-to-day management of the Company.
- Default articles on incorporation:
 - Table A (Companies Act 1985)
 - Model Articles (Companies Act 2006)
 - You may have standard articles provided by the formation agents
- Bespoke articles – common provisions include:
 - Separate classes of shares and their respective rights
 - Procedures for the issue and transfer of shares (including quorum and voting)

Articles of Association (cont)

- Notice and proceedings at shareholder and director meetings (including quorum and voting)
- Appointment, powers and duties of directors
- Provisions for the authorisation and management of directors' conflict of interest
- Borrowing powers

Shareholders' agreement

- The Shareholders agreement may contain a number of the provisions found in the articles. Other provisions might include:
 - Object and scope of the business undertaken by the company
 - Funding (initial and ongoing) or other contributions of the parties
 - The composition of the board and management arrangements
 - Business plan
 - Distribution policy

Shareholders agreement (cont)

- Transferability of shares in different circumstances
- Deadlock and termination
- Provisions for unwinding deadlock in a 50:50 situation
- Minority protection, if any (for example, veto rights on certain matters, also known as ‘reserved matters’)
- Restrictive covenants on the company and the participants
- Confidentiality

How do the articles and the shareholders agreement dovetail?

- Company is a creature of statute
 - The articles must comply with company law
 - A shareholders agreement can contain almost any arrangement
 - it is an agreement between the shareholders
- Articles are a public document, a shareholders agreement is not
- The shareholders agreement is simply an agreement between all or some of the shareholders and can deal with all aspects of the relationship between the parties if required, including the personal rights and obligations of the shareholders (for example, how they will exercise

their voting rights

- Articles can be amended by special resolution (75% or more of the votes cast)
- Shareholders Agreement by agreement of all the parties

Do we need a shareholders agreement?

- Yes!!!
- Can govern the relationship between individuals
 - Transfer of shares
 - Pre-emption rights
 - Drag Along
 - Compulsory transfer
 - Good leaver/bad leaver
 - Death/incapacity
- Can govern joint ventures
- Investor – will likely insist on shareholders agreement

Contact details:

 jc@deanwilson.co.uk

 01273 249267