THE IMPORTANCE OF A SHAREHOLDERS' AGREEMENT

Shareholders' Agreements are often used as a safeguard and to give protection to shareholders, because (amongst other things) they can provide for what happens if things go wrong.

A shareholders' agreement will:

Regulate sale of shares in the company

If stakeholders wish to restrict who is admitted as a shareholder in the company, a shareholders' agreement can include the right of pre-emption whereby any shareholder wishing to sell their shares must first give the remaining shareholders, or the company, the right of first refusal on those shares.

Control the transfer of shares in the event of a shareholder's death

A shareholders' agreement can set out how shares are transferred in the event of the death of a shareholder. For example, an insurance policy can be put in place which will provide the company with sufficient funds to purchase the deceased's shareholding from their beneficiary.

Determine the value of shares on sale

There are various events that could trigger buyout of a shareholder's shares. These typically include a buyout on death, permanent disability, bankruptcy, a serious disagreement among shareholders and possibly retirement. For a buyout to take place, a value needs to be placed on the shares. Normally, the valuation clause will use a special term to determine what the buyout price is to be, for example: 'fair market value' or 'nominal value'.

Outline how disputes should be resolved

There can be specific requirements included in the shareholders' agreement which dictate how a dispute between shareholders should be resolved. These may include at what stage in the dispute to call in a mediator and who this should be.

Set out a dividend policy

A shareholders' agreement can set out a varied dividend policy which may allow different dividends to be payable to each shareholder, where they have different classes of shares.

Detail how decisions should be made

A shareholders' agreement typically contains a requirement that day to day decisions are taken by the directors and specified key decisions are approved by unanimous agreement or a special majority of all the shareholders. It is important to be clear as to what these decisions are e.g. capital commitment over a certain level, changing the rights attaching to company shares or changing the nature of the business.

These are just a few of the reasons why it is important to have a shareholders agreement.

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