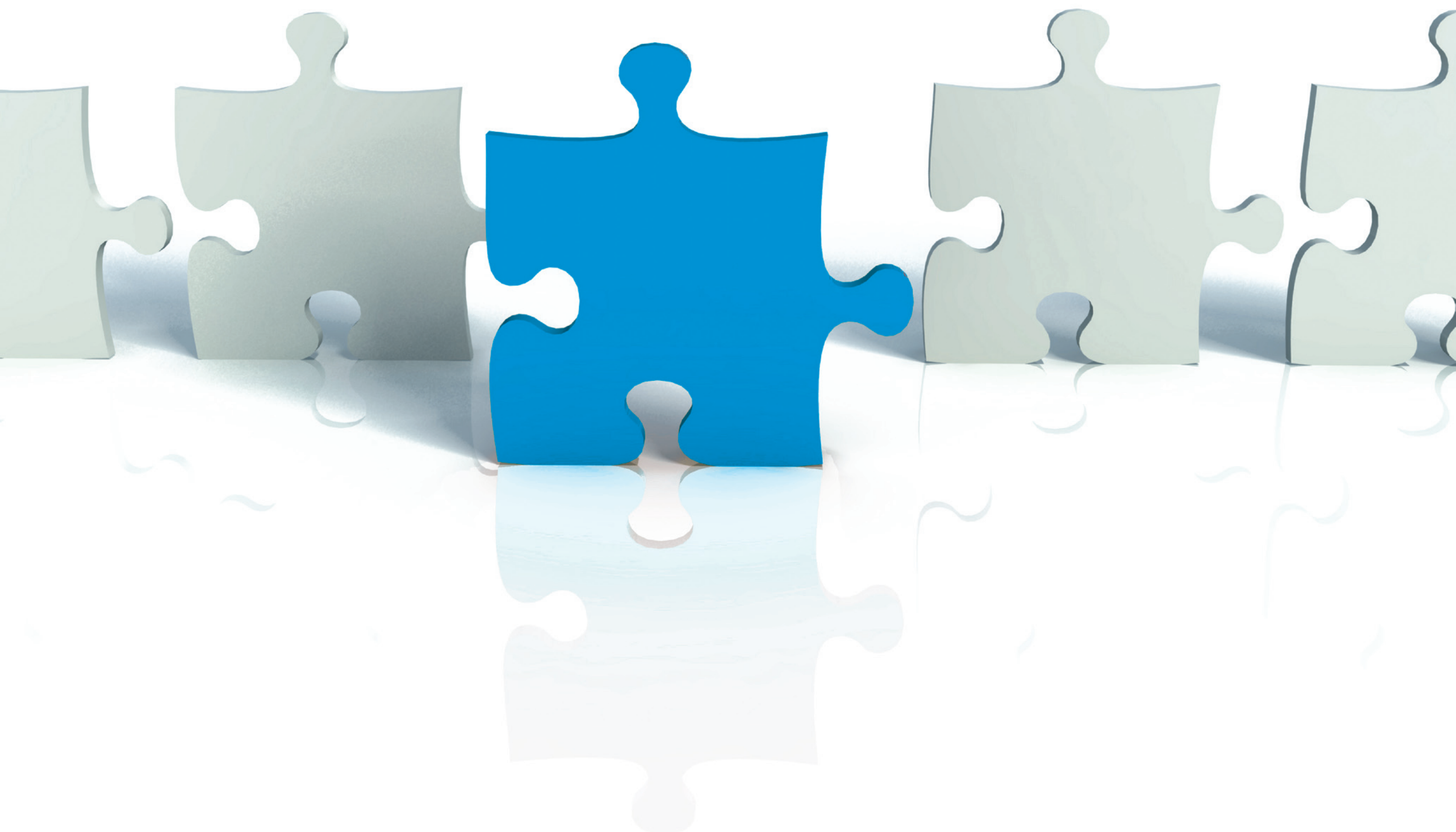
burton & dyson
SOLICITORS



Guide to Shareholders Agreements

A guide by Burton & Dyson

Introduction

Very few people go into business expecting things to go wrong. But sometimes life gets in the way and business partners fall out. Sometimes personal circumstances change. What happens then in the context of a company?

The absence of an agreement between shareholders often results in costly disputes over what rights each person has and how the company is run, valued or funded. Failure to document arrangements properly can hamper growth, and problems can arise if one party wants to exit the company or on the death of a shareholder.

A shareholders' agreement provides clarity and peace of mind to all shareholders about what can and cannot be done and what happens when things go wrong.

What is a Shareholders' Agreement?

A shareholders' agreement is exactly that; an agreement between the shareholders of a company. It sets out the relationship between the shareholders, their share of the company, how the business will be run and what happens if difficulties arise.

Shareholders' agreements supplement the Articles of Association. Unlike the Articles of Association which are governed by corporate law, they are governed by contract law and may be amended and ended by simple agreement.

Also, unlike the Articles of Association, the shareholders' agreement is a private document, and so does not need to be registered with Companies House or made public.

Why should we have a Shareholders' Agreement?

The primary purpose of a shareholders' agreement is to protect the shareholders' investment in the company and to establish a fair relationship between them.

However, there are many situations where the shareholders will not be happy with the standard voting rights in accordance with shareholdings. For example, a company may be reliant on the skills and knowledge of a minority shareholder, or that shareholder may have lent money to the company.

A shareholders' agreement provides a more equal distribution of power and protects minorities. It can also set out strategies to help resolve the issues that arise when:

- A deadlock occurs between the shareholders
- A shareholder decides to sell his interests
- One of the shareholders dies

What should be contained in a Shareholders' Agreement?

A shareholders' agreement sets out detailed and practical rules for the company and its shareholders, and will deal with some or all of the following matters:

- Purpose of the company
  - Does the company have a business plan?
  - What are the expectations of the shareholders?
- Shares
  - When, to whom and at what price can shares be sold?
  - What are the terms regarding the distribution of any new shares?
  - What will happen if a shareholder dies, sells their shares or becomes incapacitated?
- Matters requiring unanimous consent
  - Should minority shareholders be given veto rights?
  - What decisions can only be made with unanimous consent?
- Directors
  - Who can appoint and remove directors?
  - What should the salary of the directors be?
  - What rights of management are delegated to the directors?
- Finance
  - How will the company be funded?
  - Will there be an allotment of new shares to raise capital?
- Exit strategies
  - What provisions will be made when a shareholder wishes to exit?
  - Should they be able to transfer shares to family members?
  - Will existing shareholders have first right of refusal on the shares?
  - What if the shareholder wants to sell their shares to a third party considered undesirable by other shareholders?
- Dispute resolution
  - How will disputes be resolved?
  - Will a third party be appointed to arbitrate?
- Defining the power of shareholders
  - To what level can individual shareholders act on behalf of the company without consultation and agreement?
  - How can shareholders be prevented from competing with the company and poaching clients or staff?

An understanding of the statutory provisions, the common law provisions and the company's Articles are all required when drafting such an agreement, along with a clear understanding of the common issues that could arise within the company and the range of possible solutions that could be included.

At Burton & Dyson, we can advise you on how your company might benefit from a shareholders' agreement and can draft an agreement appropriate to the needs of your company.

To find out more about how we can help you, please contact us:

- **Phone:** 01427 610761
- **Fax:** 01427 610761
- **Email:** enquiries@burtondyson.com
- **Web:** www.burtondyson.com