rwk goodman

Shareholders' Agreement – A Plain English Guide

What is a shareholders' agreement (SHA)?

A SHA is a contract between a company and some or all shareholders of that company, which can be used to set out how key decisions about the company are made, what happens in the event of a share sale and how the company will manage certain situations.

It is not a legal requirement to have a SHA, but shareholders may decide it is beneficial to enter into one to give them certainty on how the company will be run, which can be important for care businesses who have a high compliance and regulatory burden.

Key benefits

Private vs public information

A SHA is a private contract and allows the shareholders to set out commercially sensitive information that relates to the company, unlike the articles of association, which are publicly available on Companies House.

Clear control and decision-making

Shareholders can set out clear rules for decision-making and what matters a director of the company must seek approval for. Provisions can be included that request the directors report to the shareholders on what is going on at the company.

Where a shareholder is not involved in the day-to-day running of a home, requiring the company to provide information on things like occupancy rates, fee increases, changes to local authority frameworks and CQC or regulatory updates can be useful.

It is important, however, to not over burden the directors with the information required, and to set reports to be quarterly or to coincide with other reporting obligations the directors may have.

Minority shareholders may have little control in the absence of an SHA. Rights for minority shareholders can be built in to protect their interests. For example, they can be provided with rights to receive information and rights to vote on decisions made by the company, which they otherwise would not have.

Share sales

A key clause in a SHA is how a sale of shares is dealt with, be this between existing shareholders, potential new investors or where all of the shares of the company are being sold to a third party.

For example, restrictions can be set so that shares can only be sold in certain circumstances without the agreement of every shareholder (for example, to a family member), or otherwise known as 'permitted' transfers. Restrictions often give a right of first refusal to existing shareholders to prevent shares being sold to third parties or provide that a certain percentage of shareholders must agree before the shares are sold to a third party.

Provisions can also be included to deal with the sale of shares when a certain event occurs. Such an event might be the death or critical illness of a shareholder, if a shareholder were to become insolvent, or if a shareholder was convicted of an offence. These are called 'compulsory' transfers, and the SHA often includes specific rules on how and for what value those shares are transferred, if such events occur.

If there was no SHA setting out the above, and a dispute arose in respect of a transfer or the ownership of shares, the only recourse for the shareholders would be through the courts. Without these protections there is nothing to govern the situation. This can cause ambiguity and expensive disputes.

Restrictive covenants

Another important matter to be aware of is restrictive covenants. These are a form of protection for shareholders and prevents those shareholders who sell their shares and leave the business from competing with the company following their exit.

This is beneficial for care businesses, as restrictive covenants prevent the exiting shareholder from poaching residents, or staff, or from conducting a competing business within a certain radius of the home for a certain amount of time. If they did, it provides the remaining shareholders with a contractual remedy against the exiting shareholder.

Are SHAs important for the sale of your company?

When preparing for a sale of your company an SHA can be useful as it will set out how the shareholders go about selling their shares and what procedure they need to follow to do so. It will also set out how minority shareholders (if any) are dealt with (will they 'tag' along for the sale or will they have to be forced to sell their shares).

As above, a SHA is not a legal requirement, but it can provide shareholders with comfort that there are clear rules on how their shares are treated when it comes to a sale.

RWK Goodman can assist your business with the preparation of a SHA and provide further advice on how SHAs can protect your position when it comes to a potential sale.