

## Welcome to the November 2015 Commercial Newsletter.

In this issue we discuss the importance of having a **'Shareholders Agreement'** and take a look at **"Probation period Dismissals."** Finally, our Commercial expert Umberto Vietri suggests **5 top tips** to consider if you are **looking at selling your Business.**



## Why have a Shareholders Agreement *5 important reasons.*

### Why have a Shareholders Agreement?

A Shareholders Agreement can help to regulate the relationship between the business and the shareholders and helps to prevent confusion and disputes. Set out below are **"5 good reasons"** why you should seriously consider a Shareholders Agreement:

#### 1. Day to day affairs

The board of directors manages the day to day running of a company but occasionally shareholders will feel that certain important decisions should be made at shareholder level. A Shareholders Agreement will allow shareholders to approve fundamental decisions.

#### 2. Transferring and Valuing Shares

An agreement can detail the procedure for selling and transferring shares. Often the shareholders and the company will be offered first refusal of shares to be sold. This is useful for preventing competitors or persons outside the company from acquiring shares and can allow family run companies to ensure shares remain within the family. A Shareholders Agreement can also detail how the shares should be valued should a shareholder wish to transfer or sell their shares.

#### 3. Protection for minority Shareholders

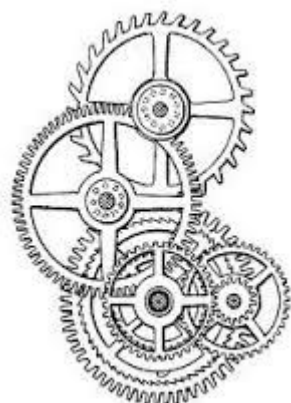
Ensuring that interests of the minority shareholders are protected is important. This can be achieved by providing within an agreement that fundamental decisions require the unanimous consent of all shareholders ensuring that the balance of power is redressed and minority shareholders are not prejudiced.

#### 4. Preventing fall outs

Disagreements may occur between shareholders, even if at the outset this is difficult to foresee. A Shareholders Agreement can provide a structure to resolve these disputes without having to resort to litigation which could save time and cost in the long run.

#### 5. What happens if a shareholder ceases to work with the Company or dies?

If a shareholder agreement is not in place it could mean that when an individual leaves the Company they could retain their shares which may not be desirable, especially if they go to a competitor. A similar problem could arise if a shareholder dies, becomes mentally incapacitated or becomes bankrupt. A Shareholders Agreement could provide the Company and shareholders with an option to acquire such shares



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## Shareholders agreement continued...

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preventing the shares falling into the hands of an unknown third party.

Unlike other company documents a Shareholders Agreement is a contractual document that remains private and confidential between the parties. Once in place the agreement can only be amended with the consent of all of the shareholders providing future protection for minority shareholders. A Shareholders Agreement provides security not only for the shareholders but also for the company making it an essential document for any company with multiple shareholders.



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## Probation Period Dismissals

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### Probation Period Dismissals

Many employment contracts contain a probationary period for new employees. Often this will be a three or six month period that the employer will use to monitor the employee's performance and which, in some cases, can be extended when the performance is not satisfactory. When the employee performs poorly can the employer use the probationary period for dismissal?

Although probationary periods are commonly used in employment contracts, employers do not automatically have the right to dismiss the employee without good reason. Failing a probationary period could give an employer reason to terminate the contract on capability grounds but the normal rules when dismissing an employee will apply.

As probationary periods can only run for a reasonable amount of time and are used mainly for new employees it is highly unlikely that the employee will have worked the two continuous years needed to gain the right to claim for unfair dismissal. This makes terminating

the employment contract somewhat easier for the employer.

However the employee can still claim where dismissal is deemed to be automatically unfair or is due to discrimination in relation to a protected characteristic.

Employers will be best scheduling meetings with the employee during the probationary period to discuss progress in the new role and to bring up any issues that may be arising. Documenting these meetings would also be advised in order for both parties to understand what is expected of them. Then, should the employee perform poorly, if the employer chooses to terminate the contract there will be documentary evidence to support the reasoning for the decision.

## Selling your Business- 5 top tips...

**Selling a business can be a long and difficult process but with the correct guidance you can sell your business in a way that can help it to grow and prosper in the future whilst still receiving a fair price for the work you have put into it. Set out below are “5 top tips” to help ensure you sell your business for the right price and to help the sale run smoothly:**

### 1. Have a clear plan.

Before you sell your business know which aspects of the business you want to sell. Carefully consider what assets the business has and if there is anything that needs to be excluded from the sale. If the company is incorporated then it is necessary to decide whether to sell the business as a going concern (selling all of the assets but not the company) or to sell the shares of the company (selling everything including the company). Careful consideration needs to be given to each option and aspect of the sale.

### 2. Get Professional Help.

Selling a business can be complicated and during this time the business needs to continue to run successfully. With your attention focused mostly upon the sale the business may suffer therefore it is necessary to get professional help allowing you more time to manage the business as normal. A lawyer will be needed to draw up or to review documentation to negotiate the best deal for you, and a business broker may be valuable in finding potential purchasers.

### 3. Value your business.

Your business is worth what a potential purchaser is willing to pay for it but it's good to have an idea of how much you expect in mind. Valuations can be made in a variety of different ways and different valuations will produce different figures however it is useful to hire an independent adviser to properly value the business. An independent valuation will have more credibility with the potential purchaser.

### 4. Get your Business affairs in order.

Make sure that during the sale the business is running as it normally would. Ensure that all records are up to date and try to pre-empt the things that the purchaser may request such as ongoing contracts and details for the employees.

### 5. Have Patience.

Don't be afraid to turn down a purchaser if their expectations do not fit with your own to ensure that when you do sell it's at the right time and for the right reasons.

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Umberto handles business sales and acquisitions and advises on trading terms and conditions and various aspects of commercial contracts. He provides Company Commercial and Employment Law advice for a range of businesses from start-ups to large, established companies.

