

Cross Option Agreements

What are they and why do I need one?

- Cross option agreements (otherwise known as “double option agreements”) are suitable for any Company with two or more “owner manager” shareholders.
- They provide for business continuity on the death of a key shareholder and provide for the next of kin of a deceased shareholder.
- Cross options usually provide for two options on the death of a shareholder for the purchase, by the remaining shareholder(s), of the deceased shareholder’s shares, from the deceased shareholder’s estate.
- Life assurance policies are put in place for the term of the agreement to pay out a specified sum to the other shareholder(s) on the death of any of them.
- The money under the life assurance policies goes to the other shareholder(s) so that he / she / they have the cash available to purchase the deceased shareholder’s shares.
- The first option is a “call” option granted for the benefit of the remaining shareholder to call for the deceased shareholder’s shares to be transferred to him / her.
- The second option is a “put” option granted for the benefit of the deceased shareholder’s estate to force the remaining shareholder to purchase the deceased shareholder’s shares.
- The purchase price for the shares is linked to the amount paid out under the relevant life assurance policies.

Why can’t I just provide for my shares to pass to the remaining shareholders in my Will?

- Wills can be changed unilaterally without the consent of the remaining shareholders. Cross option agreements are binding contracts between the parties.

I’ve been told I can use a “standard form” cross option agreement for any situation? Why do I need a solicitor?

- A standard form can never cover all situations in every individual case – each case is different and requires a bespoke agreement, albeit using similar principles.

- For example, complications can arise if you want to review the purchase price for the shares (or put another way, review the amount which the deceased shareholder is entitled to on his / her death). For instance, you may want this to be linked to the “market value” of the company. If this increases, you will need additional life cover. A particular shareholder may have become uninsurable during that time or it may be prohibitively expensive to insure his or her life because, for example, that shareholder has contracted a terminal disease. You can provide for what happens in this situation, but clearly, a standard form document is not going to be able to provide properly for this.
- There are many other situations that may arise in a particular case like the example above that require bespoke wording.
- Each company has a separate constitution; known as its articles of association. It may be that certain provisions in the articles of association need to “tie in with” the provisions of a cross option agreement. It is important that one can spend the time to make sure that no two provisions contradict each other.
- Our job as a solicitor is (1) to find out what you want to happen; (2) advise you of the consequences and possible other ways of dealing with the situation; (3) drafting a document unambiguously such that the wording can only mean one thing, that is, what you intend it to.

What else can you do for me or my company?

- It may be that you are or have minority shareholders (shareholders with less than a 50% share in the Company). We can provide for a shareholders’ agreement to give minority protection to those shareholders, preventing abuse by the majority. For example, by giving rights of first refusal to existing shareholders on the transfer or issue of shares.
- It may be that you want an “exit strategy” from a company. We can put in place additional options for the remaining shareholders on, for example, the bankruptcy of an “owner manager” shareholder leaving the company. We can allow for a minority shareholder to be included in a sale by the majority (“tag along rights”) or for a majority to force the minority to sell their shares to a buyer chosen by the majority (“drag along rights”).
- There are plenty of situations in which we can assist your company in planning for the future and we would be delighted to discuss your requirements.

To arrange a meeting to go through your requirements, call Hopkins Solicitors on 01623 468 468 and ask to speak to Tom Stendall (Solicitor).