



## SHAREHOLDERS' AGREEMENT CHECKLIST

### What you should consider including in your Shareholders' Agreement

A shareholders' agreement is a contract between the shareholders of a company regarding their dealings with one another and the company.

It is not compulsory to have a shareholders' agreement, but it can be invaluable for enabling a company to continue trading during a period of shareholder death or disruption, and may also set out a process for dealing with complicated situations, departures of one or more shareholders, or disputes.

Any number or combination of the following can be addressed as relevant to your company.

- Directors:** Who? How many? How are they hired / fired? Does each shareholder get to appoint a director? What is each director responsible for – for example is there a managing director? Obligations of directors?
- Management / operations of company:** How will the company be run and managed on a day to day basis? What about financial reporting and other reporting?
- Remuneration:** Will shareholders / directors be paid? What about other benefits (for example, car, computer, use of credit card).
- Information about shares and shareholders:** Who can be a shareholder? How many shares? Are there different classes of shares with different voting rights?
- Purchase of shares:** Do shares have to be paid for immediately? How can they be paid?
- Control of shareholders:** Are there certain decisions that require unanimous shareholder support? For example, sale of the business, new shareholders, hiring staff, major purchases / sales? Do all shareholders have the same voting rights (for example, the appointment of directors)?
- Roles of shareholders:** Do shareholders have different roles and responsibilities within the company? If so, what are they?
- Meetings:** How often? Quorum? Notices?
- Exiting the company:** Can a shareholder be compulsorily bought out? If so, when? Can a shareholder require others to buy him/her out? If so, when? What is the process if all shareholders want out?
- Pre-emptive rights of shareholders:** If a shareholder wants to sell shares, must they be offered to the other shareholders first?

- Drag along / Tag along:** Can a majority shareholder who wishes to sell his/her shares force the minority shareholder(s) to also sell their shares (“drag along”)? If a majority shareholder is selling his/her shares, can a minority shareholder(s) require the majority shareholder to also negotiate the sale of the minority shareholder’s shares?
- Valuation of shares:** How will shares be valued? Will this be the same in all circumstances? For example, if a shareholder wishes to sell up or in the event of the death/disability of a shareholder?
- New shareholders:** How are new shareholders introduced?
- Deadlocks:** If shares are held evenly, what is the process for dealing with deadlocks? For example, after a certain period of time, can a shareholder force the other(s) to buy them out, or force the liquidation of the company? Will this only apply for certain decisions?
- Employee shareholders:** Will the company issue shares to employees? Will employee-shareholders have different voting rights to ensure that the control stays with the other shareholders? Will there be a different class of shares for employees? What happens if an employee-shareholder is no longer employed by the company?
- Family succession:** Are family members entitled to acquire shares in the business after the death of their parent/sibling?
- Restraint of trade:** Are departing shareholders subject to a restraint of trade? If so, on what terms?
- Non-competition:** Are shareholders prevented from carrying on business in competition with the company?
- Disputes:** What process will be followed if there is a dispute? At what point in a dispute should/can the agreement be terminated?
- Distributions:** When / how will dividends be paid? Must a certain percentage of profit stay in the company?
- Funding:** How will capital be raised? How else will the company be funded? What is the nature and amount of financial contributions by the shareholders?
- Insurance:** Will the company (or individual shareholders) hold an insurance policy to buy the shares in the event of death or serious injury of another shareholder? If not, is there a provision for the company to pay the family of the shareholder to acquire the shares?
- Confidentiality:** Will shareholders be subject to confidentiality restrictions?
- Intellectual property:** Does the company own all intellectual property?