

SHAREHOLDERS' AGREEMENT QUESTIONNAIRE

1. INTRODUCTION

This questionnaire is designed to consider many of the main issues which may be covered in a shareholders agreement and the company's complementary articles of association and directors service agreements.

Not all the issues referred to below will be relevant in all circumstances. However, this questionnaire will help identify issues and prompt consideration (and possibly negotiation) with the aim of drafting the shareholders agreement specifically to suit individual circumstances.

2. SHARES, SHAREHOLDERS AND TRANSFER OF SHARES

- 2.1. In what proportions will the shareholders hold shares?
- 2.2. Will there be different classes of shares with different rights attaching to them?
- 2.3. When the company issues new shares or issued shares are transferred, does it have to offer them first to existing shareholders pro rata?
- 2.4. Will the directors be given discretion to suspend the registration of shares, or block the transfer of shares, always or only in certain circumstances?
- 2.5. Will transfers be permitted between existing shareholders or to family members or to family trusts or to associated companies? Please take advice to consider any tax advantages.
- 2.6. Will you prohibit shareholders from creating a charge over shares?

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3. DIRECTORS AND THEIR MEETINGS

- 3.1. Do you wish to impose a maximum number of directors?
- 3.2. Will people/companies have to meet certain requirements in order to be appointed director? For example, be a shareholder?
- 3.3. Who will appoint a new director? For example, individual shareholders or by general meeting?
- 3.4. What will be the minimum number of directors required in order for a directors meeting (and an adjourned directors meeting) to transact business validly?
- 3.5. How often will board meetings be held?
- 3.6. Will the chairman be given a casting vote? Consider an even vote.
- 3.7. Will service agreements be required for the directors? This is recommended.

4. SHAREHOLDER MEETINGS

- 4.1. What will be the minimum number of shareholders required in order for a shareholders meeting (or an adjourned shareholders meeting) to transact business validly?
- 4.2. Will the chairman be given a casting vote? Consider an even vote.

5. SHAREHOLDER POLICIES AND CONSENTS

- 5.1. Will any policies be required in relation to specific issues, for example: approval of business plans; dividends; working capital; long term finance and loan capital; shareholders guarantees of borrowings?
- 5.2. Will the consent of all, a majority or only one of the shareholders be required for any situation, including:
 - 5.2.1 issue of new shares
 - 5.2.2 alterations to share capital
 - 5.2.3 introduction of new shareholders

- 5.2.4 company's purchase of own shares
- 5.2.5 financial assistance for purchase of shares
- 5.2.6 change in the nature of the company's business or commencement of a new business by the company
- 5.2.7 expansion into a new geographical area
- 5.2.8 signing of major contracts
- 5.2.9 substantial sale of assets or disposal of business by the company
- 5.2.10 amalgamation or merger
- 5.2.11 formation, acquisition and disposal of subsidiaries
- 5.2.12 charging assets of the company
- 5.2.13 borrowings in excess of limit
- 5.2.14 capital expenditure in excess of limit
- 5.2.15 lending or giving security or financial accommodation
- 5.2.16 appointment and dismissal of directors/employees/agents
- 5.2.17 directors and other employees remuneration
- 5.2.18 acquisition and/or disposal of property
- 5.2.19 factoring and/or assignment of debts
- 5.2.20 alterations to memorandum and articles
- 5.2.21 alterations to company's status as private company
- 5.2.22 winding up
- 5.2.23 distributions by the company
- 5.2.24 change of accounting reference date and/or auditors
- 5.2.25 dealings in intellectual property
- 5.2.26 acquisition of shares or debentures or participation in any partnership or joint venture by the company
- 5.2.27 legal action (except trade debt recovery) in the name of the company
- 5.2.28 unusual or long term transactions

- 5.2.29 alteration to bank mandate
- 5.2.30 transactions with connected persons
- 5.2.31 charitable or political donations.

6. NON-COMPETITION

- 6.1. Are non-competition covenants given by shareholders not to compete against the company for a specified period after ceasing to be a shareholder relevant?
- 6.2. Please note, for non-competition covenants to be enforceable, they must protect legitimate business interests only, they must also be limited in geographical scope, duration and be confined to the nature of the business in question.

7. CONFIDENTIALITY

- 7.1. Confidentiality clauses given by shareholders, to be effective during and after ceasing to be a shareholder?

8. OBLIGATIONS OF SHAREHOLDERS

- 8.1. Positive covenants given by the shareholders in relation to the following:
 - 8.1.1. duty to promote the company for the success of all shareholders; and
 - 8.1.2. duty to ensure the company carries on its business in accordance with its articles of association.

9. BREACH OF SHAREHOLDER AGREEMENT

- 9.1. A shareholder can be forced to transfer his or her shares (exit generally) in circumstances of, for example, fraud/dishonesty or for material breach of the shareholders agreement or physical incapacity or bankruptcy or in circumstances where a shareholder ceases to be a director/employee (each, a "Relevant Event").

- 9.2. Consequences of a Relevant Event:
 - 9.2.1. the departing shareholder ceases to be a director of the company;
 - 9.2.2. the departing shareholder offers all his or her shares to the remaining shareholders;
 - 9.2.3. if the remaining shareholders do not take up this offer then the departing shareholder is free to transfer to any third party, alternatively consider liquidation of the company; or
 - 9.2.4. any other consequences.

10. DEATH

- 10.1. On the death of a shareholder the deceased's shares can be dealt with in the same way as a departing shareholder's would be.
- 10.2. Alternatively, the personal representatives of a deceased shareholder have an option to demand to be bought out or the remaining shareholders have an option to demand to buy out the deceased shareholder. This arrangement is commonly referred to as "cross options". This has the advantage of enabling either party in the scenario the ability to take the initiative (and create a legally binding obligation to buy or sell as the case maybe) if he or she chooses to do so, which can be particularly useful to the personal representatives of a deceased shareholder. Please note, if cross options are to be adopted, a separate cross option agreement will need to be prepared and life insurance arrangements put in place.

11. GOOD/BAD LEAVER

- 11.1. Provision can be made in the documentation so that the departing shareholder's shares are valued on a different basis if he were a 'bad leaver', but this would not apply if he were a 'good leaver'.
- 11.2. For example, a bad leaver could be defined as a shareholder/director who has

committed an act of fraud, dishonesty or gross misconduct. A bad leaver's shares could be valued at 50% of their value (as determined pursuant to any arrangement adopted under paragraph 12 below) or at nominal value. Please note good/bad leaver clauses tend to be controversial. Any provision of this nature will need to be discussed in detail.

12. VALUATION OF SHARES

- 12.1. Basis for valuation of shares on departure of a shareholder either:
 - 12.1.1. pro rata (according to the percentage shareholding in the company and the value of the company); or
 - 12.1.2. minority (the shares are discounted to reflect they are a minority holding).
- 12.2. Are there any specific accounting principles which should be applied?
- 12.3. Should the company be valued on an asset basis (i.e. its current assets less its current liabilities) or on an earnings basis (usually a multiple on profits).
- 12.4. Should the future potential of the company be valued and if so, how? (N.B. If the company is to be valued at 'fair market value' future prospects would usually be taken into account).

13. PAYMENT FOR SHARES

- 13.1. Where a shareholder sells his or her shares to the other shareholder(s) should the purchasing shareholder(s) be granted a period of time to pay (i.e. immediate lump sum, instalments or deferred)?

14. LIFE AND/OR CRITICAL ILLNESS INSURANCE

- 14.1. Life and/or critical illness insurance to support cross options. This involves taking out insurance over each of the shareholders so that on the death and/or critical illness of one of the shareholders, the others each receive enough money from the policy to buy the deceased or critically ill shareholder's shares.
- 14.2. Will keyman insurance policies be required? This type of policy is usually aimed at compensating the company for the loss of key personnel.

15. DEADLOCK

- 15.1. Deadlock provisions are usually only applicable for joint venture arrangements and/or where the company is owned on a 50/50 basis (or similar) and are used as a means to resolve usually fundamental disagreements (particularly in relation to the future strategy of the company) between the shareholders.
- 15.2. Arrangements in the event of a deadlock:
 - 15.2.1. cooling off period (a few weeks/ months in which nothing can happen);
 - 15.2.2. a trigger (a specific time deadline whereby the deadlock provisions come into play) then one of the following alternatives: arbitration (alternative to court resolution); put/call options over shares (one shareholder demanding to be bought out or demanding to buy out the other shareholder); competitive bids for shares; liquidation; and other.

16. SALE OF COMPANY/ BUSINESS OR A LISTING

- 16.1. Provision can be made in the legal documentation to regulate the circumstances when a controlling interest in the company's shares is proposed to be sold to a third party and/or when the company proposes to sell a substantial part of its business to a third party and/or where the company proposes to be admitted for listing on a recognised investment exchange (e.g. AIM or London Stock Exchange).
- 16.2. For example 'drag along' rights could enable shareholders with a controlling interest in the company the ability to force minority shareholders to join into a sale. Similarly 'tag along' rights would enable shareholders to join with other shareholders who intend to sell to a third party.

17. CONFLICTS

- 17.1 There may be a certain amount of overlap between the shareholders agreement and the articles of association, and whilst the shareholders agreement can contain almost any arrangements regarding the company, the articles are governed by statute and must comply with company law.
- 17.2 It is important to avoid conflicts between the shareholders agreement and the articles.

- 17.3 Either document can prevail depending on the stated intention of the parties but it is common to provide that the shareholders agreement will prevail and this will be enforceable between the parties.
- 17.4 Please note that although the articles are a publicly available document, the shareholders agreement is private as between the shareholders.

18. COSTS

- 18.1. Who pays the company's costs and/or each shareholder's costs of the agreement? The company or the relevant shareholder?



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