

DO YOU NEED A SHAREHOLDERS' AGREEMENT?

A company that is not a family company may need a Shareholders' Agreement where company law and the usual Constitution may not satisfy shareholders' true expectations. If you answer, "yes", to any of the following, consider a Shareholders' Agreement.

Activities: You want to limit the kinds of commercial activities the company may undertake.

Name: The company name is tied to one of the shareholders, so if that shareholder leaves, the company name should change.

Shares:

- Not all shares will carry the same rights to dividend and return of capital
- Any new shares should be first offered to existing shareholders in proportion to their existing holdings
- Any existing shares up for sale should be first offered at fair market value to other existing shareholders
- If existing shares are so offered for sale, the other shareholders cannot elect to buy only some of the shares on offer
- A shareholder must offer to sell their shares if they become insolvent, fall under the control of a competitor or are guilty of bad behaviour
- If a shareholder finds a buyer for all the company at a good price, all shareholders should join in for their shares too.

Shareholder Meetings:

- At a shareholder meeting there should be restrictions on who can act as a proxy
- Not every share will carry one vote
- A share not fully paid up will not carry a full vote.

Directors:

- Each shareholder may appoint a director

- There should be restrictions on who can be appointed as a director or alternate director
- A director should only be removed by their appointor
- A director should resign if their appointor sells his or her shares
- An independent director will be appointed by all shareholders
- A director should not vote on a board matter in which he or she has a personal interest.

Board Meetings:

- It matters who is chairman
- The chairman has a casting vote
- Each shareholder must be represented at a board meeting
- Some decisions (such as approving budgets, issuing extra shares, selling capital assets) will require more than a simple majority vote.

Employees:

- A shareholder will be entitled to employment with the company
- An executive must resign if they sell their shares.

Managing Director or CEO:

- It matters who is managing director or chief executive officer
- It matters what their terms of engagement are.

Secretary: It matters who is secretary.

Chief Financial Officer: It matters who is chief financial officer.

Other providers: It matters who provides goods or services (including professional services, banking) to the company.

Shareholder Loans:

- These loans will not be unsecured, interest-free and repayable on demand
- A shareholder must sell their loan, if they sell their shares.

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Management:

- A current business plan should exist at all times
- A current budget should exist at all times
- Trading between a shareholder and the company should be on an arm's length basis
- Some kinds of matters should be specifically approved by the board before action by management
- Management should report to the board periodically about certain matters
- It matters who can operate on the company's bank accounts or write cheques
- It matters what kinds of insurance or risk management the company has.

Capital:

- The company should adhere to a gearing ratio of assets and liabilities
- There should be a commitment to extra capital contributions if the gearing ratio is breached
- A shareholder should support the company's bank debt with personal securities
- The company should have a conservative dividend policy.

Access: A shareholder should be able to inspect all company records.

Confidentiality: A party should keep confidential all private information learned within the company.

Restraint of Trade: A shareholder should not compete against the company while in the company or for a time after leaving it.

Dispute Resolution: If a dispute arises between shareholders/directors, there should be an attempt at resolution before any litigation.