

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, you should consider implementing a Shareholders' Agreement:

SUBJECT	YOUR EXPECTATIONS...
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	<ul style="list-style-type: none"> ▪ Not all shares will carry the same rights to dividends 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ A shareholder will be entitled to employment with the company ▪ An executive must resign if they sell their shares.
Managing Director or CEO	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ These loans will not be unsecured, interest-free and repayable on demand ▪ A shareholder must sell their loan, if they sell their shares.
Management	<ul style="list-style-type: none"> ▪ 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	<ul style="list-style-type: none"> ▪ 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.

*These materials are for general information purposes only and do not constitute legal advice.
Before acting on any views expressed in this publication, careful consideration of the case specific facts should be undertaken by a qualified lawyer.*