

SHAREHOLDERS AGREEMENT CHECKLIST

Consider:		Y/N
Decisions	Specify what decisions will be made by directors vs shareholders? What decisions must be made unanimously by all Shareholders or the Board? (e.g. purchase of major assets, loans or expenditure over a certain amount, appointment of CEO, buying, selling or issuing shares).	
Voting	Specify voting rights of shareholders and directors, including different classes or minimum percentage shareholders. (e.g. you may have a class of shareholder with no voting rights but a right to dividends, such as silent partner).	
Shareholder Rights	Do you have a right to appoint one (or more) directors on the Board (whether yourself or your nominee to represent your interests)? What is the minimum % shareholder for this right? Do certain classes of shareholder have observer rights only?	
Directors	How are directors appointed and removed? This could be solely by shareholders, a certain number by shareholders and some by the Board, or on a percentage vote/election basis.	
Dividends	Who has the right to a dividend and who decides the dividend amount? Importantly, how much profit must be retained by the company for working capital, cash flow or investment?	
New Shares	What is the process to issue new shares, buy back, split or convert shares and who decides this? Care should be taken to ensure your ownership interest is not diluted or one shareholder permitted to unilaterally issue more shares (to themselves or another person).	

Capital	Have you recorded capital contributions, loans and what assets are provided by each Shareholder? Consider the mechanism and/or priority for repayment of capital/loans. Specify how and when the shareholders will be required to contribute additional injections of capital or shareholder loans and implications for any shareholder who does not contribute in proportion to their shareholding.	
Sale	What is the process to sell existing shares (and the business as a whole), including: • First rights of refusal: This is where a shareholder who wishes to sell must first give notice to the other shareholder(s) and offer them the option to purchase their shares, before selling to a third party you do not know or approve of. • Drag Along: Majority shareholders can require the minority shareholders to sell their shares in the event of a sale (usually triggered in takeovers, with the minority shareholder able to sell on same terms and conditions and price). • Tag Along: Where the majority shareholder wishes to sell to a third party and the minority shareholder can elect to 'tag along' with the sale at the same price (or not sell and stay in business with the new owner of the majority shares).	
Share Price	How will the share price be valued in the event of a buy-out or sale to another party? Is there an agreement minimum price or agreed 'fair market value' calculation method?	
Bad Leavers	What events may lead to a shareholder being forced to sell their shares and leave the company? Is there a penalty, such as a percentage reduction in share price or reversion to buy in price?	
Employees	Retention incentives (where appropriate) for employee shareholders. (e.g. vesting and leaver provisions.) Check to ensure	

	employment agreements also align to ensure termination results in removal as a shareholder and vice versa.	
Operations	Who drafts and approves the Business Plan and Budget? What is the structure of the senior executive team? Will there be a Managing Director or CEO and who appoints them? How often will the directors meet?	
Reporting	What information must be provided to shareholders and how often?	
Deadlock	Who gets the casting vote if you can't agree, and the issue is tied? Consider a 'golden vote' or right to veto certain matters if you are the Founder. There are multiple deadlock methods, such as mediation, or deterrence (forced sale at 125% of market value).	
Disputes	How do you resolve disputes between shareholders? (e.g. commercial attempts to resolve between shareholders, mediation, arbitration, appointment of an expert such as accountant, Industry Association.)	
Default and Termination	What constitutes a breach or event of default by a Shareholder? What events will trigger the termination of the Agreement or removal of the Shareholder? Does default trigger a forced share sale and at what price? (e.g. physically or mentally incapacitated, breach of duties, conduct bringing company into disrepute.)	
Exits	What happens when a party wants to 'exit' the Agreement, retire or passes away? Are you stuck in business with their successors (family or estate) or do you have to find cash to buy them out?	
Company Protections	Non-competes, restraints and ownership of IP. This is rarely included in the Constitution and shareholders may not be employees, so this is critical to protect the business from competition and retain company intellectual property and confidential information if a shareholder leaves.	

Buy-Sell Agreement	Consider also whether you need a <i>Buy-Sell Agreement</i> setting out rights and obligations of shareholders to buy or sell their shares in circumstances such as insolvency, disability, death or retirement, with an appropriate valuation mechanism.	
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Check out our [Shareholders Agreement template](#)

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