

The purpose of this document is to outline the information contained within a Shareholders' Agreement. It also highlights the main areas for which we will need information, in order to prepare the Agreement.

Please note this is not an exhaustive list. Due to many Shareholders Agreements being bespoke to the clients wishes and circumstances, other matters may arise that are not envisaged below.

If there are any queries when completing this document, please do not hesitate to call us.

The boxes are provided for your comments to be entered but please provide additional information if it is required.

### **1 – Parties be included in the agreement**

- This may be all or some of the shareholders.
- Some of the shareholders may be new investors.
- Some of the shareholders could also be employees and in this instance specific provisions may need to be included pertaining to their employment (i.e compulsory transfer of shares should they leave employment – this point is considered in more detail further in this document).
- The company can be a party to the agreement which will allow the shareholders to impose direct obligations on the company (i.e requiring the company to give effect to matters to which the shareholders can only agree or impose restrictions on the company pertaining to matters such as borrowing and salary caps).
- In some situations the shareholders may prefer the contractual relations not to include the company. Please note terms that fetter the company's exercise of its statutory powers will not be enforceable against the company.
- Whether the company is a party to the agreement will be specific to your requirements.

<b>Company Name</b>	
<b>Shareholder 1 (inc. residential addresses)</b>	
<b>Shareholder 2 (inc. residential addresses)</b>	
<b>Shareholder 3 (inc. residential addresses)</b>	
<b>Shareholder 4 (inc. residential addresses)</b>	

## **2 – Objects of the company**

These should be included in the agreement (even if the company objects are unlimited by virtue of the Companies Act 2006) together with a statement that the business should be conducted in the best interests of the company, on sound commercial principles to generate the maximum achievable maintainable profits.

<b>The primary objects of the Company / nature of business</b>	
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## **3 – Completion**

Completion of a Shareholders' Agreement may be subject to certain conditions or the fulfilment of an action. A number of example conditions for completion are outlined below:

- Subscription for shares.
- New directors.
- Service contracts.
- Loan stock.
- Change of articles of association.
- (please note this is not an exhaustive list)

<b>The subscription for and issuing of shares to the shareholders</b>	<p>(please provide the number of shares or share split and class of share required for each shareholder)</p> <p><b>SHAREHOLDER 1</b></p> <p><b>SHAREHOLDER 2</b></p> <p><b>SHAREHOLDER 3</b></p> <p><b>SHAREHOLDER 4</b></p>
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<p><b>Rights attached to shares</b></p>	<p>(if there is to be more than one class of shares please specify the rights attached to each class of share)</p>
<p><b>The appointment of the shareholders as directors or the ability of the shareholders to appoint a director of their choice</b></p>	<p>(where other directors are to be appointed please provide their details, if known)</p>
<p><b>Additional condition</b></p>	
<p><b>Additional condition</b></p>	
<p><b>Additional condition</b></p>	
<p><b>Additional condition</b></p>	

#### **4 – Directors**

Further to point 3 above, if there is a requirement for directors to be appointed then there are a number of other matters to consider.

If a director no longer holds shares then a provision will stipulate that they have to resign the appointment. Additionally, a minimum limit of the amount of shares held (as a percentage) could be set which will require the director to resign should they fall below this limit.

<b>Chairman casting vote? (including who should be chairman)</b>	
<b>Quorum for meetings?</b>	
<b>Number of meetings to be held annually? Or as required?</b>	
<b>Minimum shareholding?</b>	
<b>Weighted voting in favour of a director or director(s)?</b>	

#### **5 – Conduct of the company's affairs**

The parties will agree to use their best efforts to ensure the company complies with the agreement.

The parties shall have full access to books and records.

Some management decisions can require specific consent of the parties and this would be noted in the agreement. A number of examples are provided below. Please note these are generally matters for the directors and therefore this section may be dictated by whether the shareholders are to be appointed as directors and/or the specific requirements of the client.

<b>Change of accounting reference date</b>	
<b>Appointment of bankers</b>	
<b>Bank signatory powers (i.e who do the parties want to be stated on the bank mandate and what are the terms?)</b>	
<b>Appointment of auditor/accountants</b>	
<b>Change of registered office</b>	
<b>Appointment of legal representatives</b>	
<b>Obtaining finance</b>	

<b>Other matters</b>	
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The board of directors determines the general policy of the company (subject to the point above) but there may be other matters that the shareholders agree will require their unanimous consent. A number of examples are provided below.

<b>The winding up of the company</b>	
<b>Entering a new area of business or deviating from business plan</b>	
<b>Transferring, assigning or granting a lease or licence of company property</b>	
<b>Establish a subsidiary</b>	
<b>Authorise issue of shares</b> (note pre-emption rights outlined below)	
<b>Acquisition of another business or trade</b>	
<b>Adoption of new articles of association</b>	
<b>Enter into a loan agreement / borrowing</b>	
<b>Other matters</b>	

Please note company law stipulates that various matters (such as adopting articles of association or disapplying pre-emption rights) require shareholder consent by way of a special resolution (75% approval required). However, it may be that the shareholders agree that unanimous consent is required instead this may also depend on the split of shares between the parties.

## **6 - Staff**

Staff will be recruited as required for the proper conduct of the business. However, if there are specific provisions pertaining to staff (i.e salary reviews for an employee shareholder) then please provide information in the box below.

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## **7 – Transfer of shares**

Shares will not normally be freely transferable.

If they are transferable then they should be subject to pre-emption rights on transfer where they are first offered to the remaining shareholders. It is also possible to specify that they are first offered to a specific shareholder or holders of a specific class of shares.

They could be transferred with the written consent of the shareholders.

Shareholders could be allowed to transfer shares to specific individuals (i.e permitted transfers to fellow shareholders or family members).

The provisions of the articles of association of the company may already include these provisions.

A number of questions to consider are outlined below.

<b>Are the shares freely transferable?</b>	
<b>Transferable with written consent?</b>	
<b>Transferable to other shareholders?</b>	
<b>Transferable to family members/spouse?</b>	
<b>Transferable but offered to shareholders first?</b>	<p>(should this be to all shareholders or should it be in a specific order?)</p> <p>(should the shares also be offered back to the company?)</p>

Compulsory transfers can be required in certain circumstances and often act to protect the other shareholders. A number of different circumstances are outlined below.

<b>Death</b>	
<b>Bankruptcy</b>	
<b>Arrangement with creditors</b>	
<b>Leaves employment (if applicable)</b>	
<b>Divorce from a fellow shareholder</b>	
<b>Ill Health</b>	
<b>Breach of agreement</b>	
<b>Other circumstances</b>	

### **8 – Pre-emption rights on issue of shares**

The majority of companies will have modified pre-emption rights on the issue of shares contained in their articles of association or will rely on the statutory pre-emption rights contained in the Companies Act 2006. In these instances the rights will ensure that when shares are issued they are first offered to existing shareholders pro rata to their holdings. As standard these pre-emption rights will be included in the shareholders agreement, but it may be that bespoke provisions are required (such as unanimous consent as opposed to the 75% required for a special resolution). Any further provisions should be included in the box below.

### **9 – Good and bad leavers**

These provisions will stipulate the different values attached to shares in different circumstances. Normally good leavers will receive market value whilst bad leavers will receive the lower of the market value or the issue price. These values can be tailored.

<b>Good leaver value</b>	
<b>Bad leaver value</b>	

The definition of each type of “leaver” needs to be confirmed. An example of a good leaver is as follows:

- Death of the shareholder.
- Disability, illness or ill health.
- Redundancy.
- Retirement.
- Unfair dismissal.

Please note in most cases a good leaver will be defined and then a bad leaver will be a shareholder leaving in any other circumstance, although in some cases leaving employment will be specifically classed as a bad leaver. However, these provisions can be tailored.

<b>Good leaver</b>	
<b>Bad leaver</b>	

### **10 – Drag and tag provisions**

Drag and tag provisions act to encourage a sale of the company. The drag provisions ensure that shareholders holding over a certain percentage of the share capital can drag the minority shareholders with them when selling the company. The tag provisions ensure the minority shareholders are protected by giving them the same sale price per share as the minority shareholders. The “majority” can be defined as shareholders holding a combined total of 51% or more.

<b>Definition of majority shareholders</b>	%
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## **11 - Dividend and distribution policy**

A dividend policy can be provided stipulating how these are calculated. For example:

- Differ depending on the class of share held.
- Fixed amount.
- Percentage of profit.
- At the directors' discretion.

In many cases it will be left to the directors' discretion but provisions (such as those above) can be stated.

## **12 – Deadlock provisions**

These provisions can be important to ensure that the company does not find itself in a deadlock scenario for an extended period of time, which can be detrimental to the business. In practice it is unusual to enforce the deadlock clause because having to implement it is often enough to break the deadlock.

They will come into force in the event of a dispute between the shareholders that cannot be reconciled, and after a period, of say 2 months, the following could apply;

- The parties enter into binding arbitration.
- The company is wound up.
- One or more shareholders buy out the others.

The provisions here will be very dependent on the relationship between the parties, therefore please provide additional information below.