

# Shareholders Agreement

What are they?

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## What is a Shareholders Agreement?

A contract entered into by the shareholders of a company. It can act as an extension to the company's articles of association in terms of governing how the company is run.

The Shareholders Agreement might contain provisions that cannot be included in the articles of association. The provisions in the Shareholder's Agreement can be tailored to suit the reasons the parties are entering into a business venture. The Shareholders Agreement is also private between the shareholders of a company unlike the articles of association which is a publicly available document.

## Do I need one?

Common circumstances where a Shareholders Agreement may be required include:

- The set-up of your company may not reflect your intentions, for example you may have agreed that all shareholders have an equal say in decision making but not an equal entitlement to dividends. The Shareholders Agreement can reflect this arrangement.
- If you are entering into a joint venture, a Shareholders Agreement (or a joint venture agreement as it may be referred to in these circumstances) would detail each parties' contribution to the arrangement and the terms of the relationship. By way of example, there may be an individual who sees a unique business opportunity and has the experience and another who has the capital to finance and support it. Our efforts to minimise 'legal jargon'.
- Venture capital investment – the Shareholders Agreement can set out terms upon which an investor shareholder is investing such as preferential rights attaching to shares, any special voting rights and when the investor can exit the agreement

## What should I include in the agreement?

The following provisions are usually included to deal with common issues that arise:

- **Deadlock resolutions** – these are necessary where there are equal shareholdings in the company. In the absence of deadlock resolutions there is no pathway out of deadlock rendering the company inoperable.
- **Dividend policy** – you may wish to delay the distribution of dividends until a certain period has passed or until a financial goal has been reached by the company. The rights attaching to the shares relating to dividends will not reflect this. You may have agreed that specific amounts will be distributed to each shareholder which is contrary to the shares held by the shareholders and should therefore be dealt with in a Shareholders Agreement.
- **Decision Unanimity** – you can increase the voting percentage that needs to be met to remove a director, from a majority to 100% by including this in the Shareholders Agreement. If this requirement was included in the articles of association it would be void as statute provides that only a majority of 50% is required to remove a director. This is an example of how to deal with measures and requirements that you want to implement for the company which cannot be set out in the articles of association.
- **Pre-emption on transfer of shares** – including rights of pre-emption in a Shareholders Agreement will prevent shares being sold without first being offered to existing shareholders. This is a way of existing shareholders exercising some control over which shareholders are brought into the company and increasing their stake in the company. The rights of pre-emption can also be included in the articles of association. Fixed Fee Consultations – 45 minute, no obligation specific legal advice sessions for just £99!
- **Drag along and tag along rights** – in the event there is a majority shareholder you may wish to include provisions which require a minority shareholder to sell their shares in the event that the majority shareholder wants to sell their shares to a third party. Tag along rights can also be included which provides that the majority shareholder cannot sell their shares to a third party unless an offer is made to the minority shareholder for their shares on the same terms. These clauses are useful in the event of refusal by a minority shareholder to sell their shares impacting a deal or in the event that a minority shareholder does not want to keep their stake in the company once the majority shareholder has been replaced by a new shareholder.

## Can new shareholders be part of the Shareholders Agreement?

Yes, any new shareholders of the company can be part of the Shareholders Agreement but they and all current parties to the agreement will need to sign to implement this.

## Can the Shareholders Agreement be changed?

You can include provisions which allow for amendments to the Shareholders Agreement. Such amendments are usually required to be in writing and signed by each party to the Shareholders Agreement.

## Can the Shareholders Agreement be terminated?

Provisions can be included in the Shareholders Agreement which set out the circumstances under which it can be terminated. The provisions usually include insolvency events, a transfer of the shares resulting in only one shareholder remaining, unresolved deadlock or any other specific provisions you require.

## What happens to the Shareholders Agreement if a shareholder leaves or dies?

You can include provisions which deal with the shares in the event of the death of a shareholder or any rights and restrictions placed on a shareholder when they sell their shares. This may include non-compete provisions for a period of time following the sale of shares.

## What about Articles of association?

The Shareholders Agreement is a contract between some or all of the shareholders and regulates the relationship between the shareholders that have entered into the agreement. It contains personal rights and obligations including how they will exercise their right to vote on certain decisions.

Articles of association are a contract between the company and the shareholders in their capacity as shareholders and every company must have them. They do not deal with the shareholders personal rights and obligations. The articles are subject to the Companies Act 2006 whereas a Shareholders Agreement is an arrangement in the personal capacities of the shareholders.

The Companies Act 2006 provides certain statutory powers to the company therefore articles should not be included which would restrict the statutory power as they would be void as statute will override the conflicting provisions in the articles.






## What happens if there is a breach of the Shareholders Agreement?

There will be a breach of contract and a claim for damages may be brought. The suffering shareholders may also seek a remedy of specific performance of the obligation (requiring a shareholder to comply with a certain provision). You may be able to obtain an injunction to prevent a breach if the threat of breach occurs.

## When should we enter into a Shareholders Agreement?

It can be entered into at any time by the shareholders that are willing to sign the agreement. It is advisable to consider this when you first incorporate a new company, when admitting new shareholders or in readiness for a specific event such as outside investment or on advice from your accountant.

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## What should I do first?

Call us and arrange a free no-obligation telephone conversation with one of our experts on shareholders agreement. We can discuss your options before you decide how you wish to proceed.

**Tel: 01474 546013**



# Please contact your Martin Tolhurst Solicitor to discuss Shareholders Agreement

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