

ARTICLE: SHAREHOLDERS' AGREEMENT

Best performing titles [*Select one*]:

1. Do I need a shareholders' agreement?
2. What are the key clauses for a shareholders' agreement?

Point of the article:

- Promotion of drafting, amending or reviewing a shareholders' agreement.
- Promotion of advice relating to shareholder disputes.

Primary area(s) of law:

- Commercial Law.

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DO I NEED A SHAREHOLDERS' AGREEMENT?

Imagine you and your best friend have just launched a promising tech start-up. Everything is going well until one day, a major disagreement arises about the company's direction. You want to focus on expanding into new markets, while your best friend insists on refining the current product. Without a clear framework for resolving such disputes, tensions escalate, jeopardizing both your business and personal relationships. This is where a shareholders' agreement can make all the difference. Shareholder agreements are often overlooked when forming a company, but if implemented correctly, they can save you and your shareholders from any future uncertainty and any potential conflicts arising down the line.

What is a shareholders agreement?

A shareholders' agreement is an agreement which sets out a framework to manage the relationships between all of the shareholders in a company. This agreement must be in line with the company's Memorandum of Incorporation (MOI) and the Companies Act, which set the minimum legal standards to comply with. While these documents provide a foundation, there is still a need for a shareholders' agreement, as it addresses specific issues and provides tailored solutions not covered by the MOI and the Companies Act.

Key clauses to consider and include in a shareholders' agreement:

1. **Board of Directors** – This clause will set out the maximum number of directors, the number of shares required to become a director and how directors can be removed. Also included are board meeting requirements and voting protocols.
2. **Money in and out** – This clause will detail how much money each shareholder will contribute (if at all), the process for acquiring additional funding for the company and how the profit will be distributed amongst shareholders.
3. **Shareholder economics** – This details how many shares each shareholder has, the different types of shares available and any restrictions that may be in place.
4. **Roles and responsibilities** – This clause sets out the roles and responsibilities of each shareholder. Oftentimes, each shareholder will bring a different skill to the table, so this clause clearly defines each shareholder's role in the company.
5. **Decision making** – This clause dictates the decision-making process, whether this is done by voting or if there is a leader who handles certain decisions on their own. It is generally advised that there is a leader who can push the company forward and make some decisions unilaterally to ensure efficiency.
6. **Issuing of new shares** – This clause details how new shares are issued to new shareholders. Usually, new shares will be offered to existing shareholders first and then to outside individuals or entities.
7. **Selling of shares** – This clause outlines the process for selling shares. Generally, shareholders will stipulate that the existing shareholders must be offered the shares before an outsider.
8. **Dispute resolutions** – This clause will detail the process to be followed where there may be disagreement or a deadlock between shareholders.

The abovementioned clauses aren't accounted for in the Companies Act, and many of them won't be regulated by the MOI either. As such, including them in a shareholders' agreement ensures smooth corporate governance and decision-making for your company.

If you require a new shareholders' agreement, or for an existing shareholders' agreement to be amended/reviewed, contact us at [insert] for expert advice. Alternatively, if you don't have a shareholders' agreement in place and disputes have arisen between shareholders, contact us for advice on how to navigate these issues.

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