

# Shareholders Agreement Checklist

Name of Company			
Current authorised share capital	£	divided into	shares of £
Current issued share capital and proposed issued share capital	Current:		
	Proposed:		
Current shareholders <small>(please specify number of shares held)</small>	Name	No. of shares	Class
Proposed new shareholders <small>(please specify number of to be shares held)</small>	Name	No. of shares	Class
Address of shareholders	Name	Address	

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Current directors and company secretary	
New directors and company secretary	
Primary business of the company	
<b>Are there any matters that should require the approval of the holders of a certain percentage of the issued shares of the company? Consider the following:</b>	Percentage approval required [    ] %  (tick those required and if different from %age specified above state %age approval required)
• Amend Articles	
• Change name of company	
• Otherwise than in ordinary course of business dispose of any assets	
• Altering rights attaching to shares	
• Merge with any other company or business	
• Purchase or lease assets in excess of a certain amount (please specify amount)	
• Entering into any contract of a value in excess of a certain amount (please specify amount)	
• Increase/reduce/cancel shares	
• Allot/issue new shares	
• Borrow money in excess of a certain amount (please specify amount)	
• Create any mortgage, debenture or other encumbrance over assets of the company	
• Fact or assign or otherwise dispose of book debts	
• Enter into any guarantee	
• Lend or grant credit otherwise than in the ordinary course of business	

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<ul style="list-style-type: none"> <li>Remove a Director</li> </ul>	
<ul style="list-style-type: none"> <li>Change the nature of the business of the company</li> </ul>	
<ul style="list-style-type: none"> <li>Hold any shareholders meeting</li> </ul>	
<ul style="list-style-type: none"> <li>Sell these or dispose of assets at less than market value</li> </ul>	
<ul style="list-style-type: none"> <li>Enter into partnership or joint venture arrangements</li> </ul>	
<p><b>Regarding transfers of shares, consider the following:</b></p>	
<ul style="list-style-type: none"> <li>Should a shareholder be entitled to transfer shares freely to his or her spouse/children/other relations/family trust?</li> </ul>	
<ul style="list-style-type: none"> <li>As an alternative to free transferability of shares where a shareholder wishes to transfer to anyone should the shares proposed to be transferred first be offered to other shareholders pro rata to their existing shareholdings?</li> </ul>	
<ul style="list-style-type: none"> <li>In the event of dispute as to value of transfers of shares between the parties, should the matter be referred to the company's accountant to value the shares or an independent expert?</li> </ul>	
<ul style="list-style-type: none"> <li>In the event of valuing shares either by the parties themselves or the accountant/expert would you like a schedule attached setting out the basis of valuation of those shares (please note this will require the input of your accountant)</li> </ul>	
<ul style="list-style-type: none"> <li>If the Shareholders Agreement will contain restrictions on transfer of shares:</li> </ul>	
<p>Can a shareholder transfer part only of his or her shareholding?</p>	

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<p>If shares are not taken up should the shareholder who offered them for sale be free to sell to an outsider of his choice for a certified period?</p> <p>If yes should it be subject to the sale being on no more favourable terms than those offered to the other shareholders?</p>	
<p>Are there are other circumstances in which a shareholder must sell, e.g.</p>	
<ul style="list-style-type: none"> <li>• death</li> </ul>	
<ul style="list-style-type: none"> <li>• bankruptcy</li> </ul>	
<ul style="list-style-type: none"> <li>• insanity</li> </ul>	
<ul style="list-style-type: none"> <li>• being unable to carry out Duties for 6 months in any 12 month period</li> </ul>	
<ul style="list-style-type: none"> <li>• in the case of a shareholder who is an employee, resigning or being lawfully dismissed</li> </ul>	
<ul style="list-style-type: none"> <li>• in the case of a shareholder who is an employee, resigning or being lawfully dismissed</li> </ul>	
<ul style="list-style-type: none"> <li>• Material breach of shareholders agreement</li> </ul>	
<ul style="list-style-type: none"> <li>• Being convicted or charged of a criminal offence punishable by imprisonment?</li> </ul>	
<ul style="list-style-type: none"> <li>• Ceasing to be a director of the company</li> </ul>	

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<ul style="list-style-type: none"> <li>Should there be different valuations applied depending on whether the shareholder is a 'good leaver' (eg he dies) or 'bad leaver' (eg he is leaves because of gross misconduct)?</li> </ul>	
<ul style="list-style-type: none"> <li>In any of the above circumstances does the shareholder then have to resign as a director?</li> </ul>	
<p>If the holders of a certain percentage of the company's shares wish to transfer their shares to a bona fide arm's length third party should that majority be able to force the minority to sell their shares as well? This is known as "drag along".</p>	
<p>Conversely should the minority be able to force the majority not to sell their shares unless the proposed third party purchaser also buys the minority shares on the same terms? This is known as "tag along".</p>	
<p>Should capital requirements be met as far as possible by borrowing from banks on reasonable commercial terms or should capital initially be sought from the shareholders equally according to their respective shareholdings?</p>	
<p>What is the quorum for meetings of the Board of Directors?</p>	
<p>Is there to be a specified policy for distribution of profits by the payment of dividends or otherwise? Ordinarily this is a matter for decision by the Board of Directors.</p>	
<p>How often should the Board of Directors meet?</p>	
<p>Can a director send an alternate person in his place to attend and vote on his behalf at meetings of the Board provided that name of that director shall have been given to the other directors at least 24 hours before the meeting?</p>	
<p>Will any member of the Board have a casting vote?</p>	

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<p>Will there be a Managing Director appointed by the Board to manage the day to day business of the company? If so, who will this be?</p>	
<p>Who will be the bankers of the company and at which branch?</p>	
<p>Will withdrawals on the bank account in excess of a certain amount require the signature of a specified number of shareholders or directors? If so, please specify the figure and the number of shareholders or directors required to sign such transaction.</p>	
<p>Who will be the accountants of the company?</p>	
<p>What will be the accounting reference of the company?</p>	
<p><b>Should the Shareholders Agreement contain restrictive covenants, ie:</b></p>	
<ul style="list-style-type: none"> <li>• a clause preventing a shareholder whilst he is a shareholder and after he leaves the company from competing with the business,</li> </ul>	
<ul style="list-style-type: none"> <li>• approaching customers/ suppliers and staff,</li> </ul>	
<ul style="list-style-type: none"> <li>• using confidential information and</li> </ul>	
<ul style="list-style-type: none"> <li>• using the company's name or a similar name for another business?</li> </ul>	
<p>If restraints are to be imposed consider the period (1 to 2 years is common) and geographical extent of the restraints. The restraints should be no more than are necessary to protect the company's legitimate business interests.</p>	
<p>Consider whether the Shareholders Agreement should continue for a fixed period or if it should be terminable by notice. Should it be terminable either wholly or as regards a shareholder if:</p>	
<ul style="list-style-type: none"> <li>• the shareholder dies</li> </ul>	

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<ul style="list-style-type: none"> <li>• he becomes insolvent</li> </ul>	
<ul style="list-style-type: none"> <li>• there is a material breach of the Agreement</li> </ul>	
<ul style="list-style-type: none"> <li>• the shareholder ceases to hold more than a certain percentage of shares in the company</li> </ul>	
<p>Should there be a deadlock clause to cover a scenario where there is deadlock on the board of directors? If so is the matter to be referred to the shareholders to vote upon or an independent expert to adjudicate, e.g. the company accountant?</p> <p>If you prefer an alternative arrangement please speak to us for further advice</p> <p>If there is a casting vote held by a director or shareholder, a deadlock clause may not be required.</p>	
<p>If the company is not a new company and has been under the control of the other shareholder(s), consider whether the existing shareholder(s) should provide the others with warranties regarding the company, e.g. as to ownership of assets and freedom from liability.</p>	
<p>Please provide brief details of any other issues which you think may need to be addressed in the Shareholders Agreement. Remember, a Shareholders Agreement is simply an agreement between shareholders and the points listed above are our suggestions as to the types of clauses which you may want to consider and if there are others please let us know.</p>	

If you would like to know more about this topic or our legal services, please contact Mark Williams on 01323 435955 or [mew@gabyhardwicke.co.uk](mailto:mew@gabyhardwicke.co.uk)

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