

Checklist

Shareholders' Agreement



The law relating to companies in the United Kingdom has quite a bit to say about the relationship a company has with its directors and shareholders, but says very little about the relationship between shareholders. It is very often the case that directors are also shareholders, blurring the lines between the rights and duties of an individual as a director and their rights and duties as a shareholder.

The main purpose of a Shareholders' Agreement is to regulate the relationship between individual shareholders, a company and its directors. It also ensures that a shareholder's shares are not diluted and can ultimately be realised.

In order to help us prepare your Shareholders' Agreement, please answer the following questions. These questions are designed to enable discussion between shareholders and identify any major issues requiring further exploration. If any questions do not appear relevant, please answer "Not applicable".

1.	Management	Answers
1.1.	Except for any restrictions (see below), will the board of directors have management control of the company?	
1.2.	Will there be a managing director with day-to-day responsibility for running the business?	
1.3.	Will a chairman be appointed? Will he/she have the right of a second or casting vote in the event of a voting deadlock?	
1.4.	Will any shareholder(s) have a specific right to appoint a director to the board and remove or replace that director? (It is not uncommon for this right to be included and for a shareholder to appoint himself as a director)	
1.5.	Will the board have the right to appoint new directors?	
1.6.	Will appointment of additional directors or removal of existing directors require majority/unanimous approval of directors? (Directors can be removed by 51% vote of members, subject to a statutory process being followed)	

2.	Access to information	Answers
2.1.	Will the board be required to provide monthly or periodical reports to shareholders?	
2.2.	If the answer to question 2.1 is yes, what information will need to be provided? (For example: financial, commercial and operating matters; sales forecasts; comparison with budget etc.)	
2.3.	Will shareholders have a general right of access and inspection of company records? (Company law does not automatically provide this right – shareholders generally have the same rights as members of the public to access certain information about a company which is published online or which it is required to hold at its registered office for inspection)	
3.	Dividends	Answers
3.1.	Will there be a specific policy in relation to the payment of dividends? (For example, a company can be required to distribute a minimum percentage of its profits each year)	
3.2.	If the answer to question 3.1 is yes, how regularly will “payments on account” of dividends be made?	
4.	Finance	Answers
4.1.	How is the company to be financed on a continuing basis?	
4.2.	Will each party be required, or entitled, to contribute to future funding and, if so, on what basis will any contribution be calculated? (For example, the agreement can provide that contributions can only be made if other shareholders contribute and in proportion to the number of shares held by them)	
4.3.	When a shareholder leaves the company, are they to be released for all guarantees or indemnities given to the company or any third parties? Would the position be any different if a shareholder leaves on bad terms with other shareholders?	

5. Approvals		Answers
5.1.	Are there any matters which will require majority/unanimous approval of the shareholders? (See the list at the end of this questionnaire)	
5.2.	In the case of matters requiring majority approval only, what percentage of the total issued shares will be considered a majority? (For example 51%, 75%, 90%)	
6. Share capital		Answers
6.1.	Will there be different classes of shares with different rights attached to them? (For example, it is possible to have a class of shares which have voting rights, but no rights to dividends)	
6.2.	If any new shares are to be offered in the company, should they first be offered to the existing shareholders in proportion to their existing holdings? (This is quite common and ensures that an individual's holdings and the rights are attached to them are not diluted)	
6.3.	Should any shareholder have the right to veto any issue of shares? (This might be in addition to the shareholder's right of first refusal as described under 6.2)	
6.4.	Will new shareholders be required to become party to the Shareholders' Agreement? (If so, they would sign something called a "deed of adherence", making them a party to the agreement)	
7. Transfer of shares		Answers
7.1.	If an existing shareholder wishes to transfer their shares to another or sell them to a third party, should they first be offered to the existing shareholders in proportion to their existing holdings?	
7.2.	Should the company have the right to acquire a shareholder's shares if it is able to do so?	
7.3.	If an existing shareholder wishes to transfer or sell their shares, should they be required to transfer or sell all of them or just some?	

7.4.	If there is competition between shareholders to purchase another shareholder's shares, how should they be allocated between them?	
7.5.	If the answer to question 7.1 is yes, will there be any exceptions? (For example, shareholders may be given the right to transfer shares to spouses, certain family members or family trusts)	
7.6.	In the case of a voluntary transfer of shares, how should the shares be valued? For example: <ul style="list-style-type: none"> • Fair market value (with/without a discount for the size of the shareholders' holding) • On a predetermined basis of valuation (which may be suitable for certain types of business such as professional firms) • Using "Russian roulette" (see below) or some other mechanism 	
7.7.	Who will determine the value of the shares if this cannot be agreed? (For example the company accountant, auditor or an independent third party)	
7.8.	Should a shareholder have the right to withdraw his offer if he does not like the value determined by the valuer of the shares?	
7.9.	Should the basis of valuing shares be any different if a shareholder is a "bad leaver"? (For example, if a shareholder is guilty of gross misconduct in his capacity as a director or terminates his contract within a defined period, should his shares be valued at a certain discount or on a nominal value basis?)	
7.10.	Should one party have the right to require the other party/parties to purchase their shares in certain circumstances? (For example, on a given date or upon certain financial targets being met)	
7.11.	In which circumstances should a shareholder be obliged to offer their shares for sale? (For example, where a shareholder is declared bankrupt, is dismissed as an employee, resigns as a director/employee, dies or suffers from some physical/mental disability)	

7.12.	What should happen if a shareholder's shares are not or cannot be purchased by other shareholders? For example, should the company have the option to buy those shares back (at which point they are either cancelled or 'held in treasury' for a later date) or should the company be liquidated/wound-up?	
7.13.	Will the board of directors be required to register the transfer of shares of a third party or should they have the right to refuse registration of any transfer of shares to a third party which they do not approve of?	
7.14.	Will shareholders be permitted to use their shares as collateral/security for personal or corporate borrowing? (If so, consider whether any limits or restrictions are necessary)	
7.15.	Should the majority shareholder(s) have the right to require the minority shareholders to sell their shares to a third party where the majority shareholder(s) has been made an offer? If so, what is the appropriate percentage majority? (This is known as a 'drag along right')	
7.16.	Should the minority shareholder(s) have the right to sell their shares to a third party where the majority shareholder(s) has been made an offer which would result in a 'change of control' of the company? If so, what percentage of the total issued shares should constitute a 'change of control' (This is known as a 'tag along right')	
8.	Restrictions	Answers
8.1.	Will shareholders be prohibited from competing with the company? If so, for how long and over what geographic area?	
8.2.	Will there be any restrictions prohibiting shareholders from soliciting customers, dealing with suppliers, offering employment to staff or using the company name?	

9.	Deadlock	Answers
9.1.	<p>If there is a deadlock at board level (where shareholders are also directors) or at shareholder level (for example on a vote which is taken on a show of hands as opposed to a poll vote, which is based on the number of shares held by each shareholder), how should the deadlock be resolved? For example:</p> <ul style="list-style-type: none"> • 'Put and call options' where A has the right to require B to purchase their shares or to require B to sell their shares to A (in each case for fair market value or on some other basis) • 'Russian roulette' where A offers to sell their shares to B at a price specified by A and B must either accept the offer at the price specified by A or sell all of their shares to A at the same price • 'Texas shoot out' where A and B submit sealed bids to an "auctioneer" and the party who makes the higher bid buys the company at that price (more suitable for joint ventures) • An expert or arbitrator is appointed to resolve the dispute • A chairman has a casting vote • Selling the company • Selling the business and assets and winding-up the company 	
10.	Administrative matters	Answers
10.1.	Who are the company bankers?	
10.2.	Who are the company accountants?	
10.3.	Who are the company solicitors?	
10.4.	Who are the directors/secretary?	
10.5.	Who is the chairman?	
10.6.	How often will the board of directors meet?	
10.7.	How many directors must attend a meeting to constitute a valid meeting?	
10.8.	Will there be any restrictions on where meetings are to be held? Can meetings be conducted remotely?	
10.9.	How much notice for directors' meetings?	

List of matters requiring majority/unanimous board/shareholder approval

Please tick the relevant boxes below to identify whether a matter requires approval at board or shareholder level and, in any case, what type of approval is required. If any matter appears irrelevant or you do not want to address it in the Shareholders' Agreement, leave the boxes unticked.

Description of matter	Whose approval?		What type of approval?	
	Board	Shareholder	Majority	Unanimous
Sale of the business of the company or any subsidiary	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Purchase of a new business or company	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Winding up the company or any subsidiary (on a solvent basis)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entering into any contract other than on arm's length terms	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Borrowing or raising new money or giving any guarantees (other than in the course of trade)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Borrowing or raising new money or giving any guarantees where the amount is £.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Granting any charges, mortgages or other security rights over the assets of the business	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Settling or bringing any litigation where the dispute is over £.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Incurring capital expenditure in respect of any item or project in excess of £.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Holding any meeting of shareholders unless all/specified shareholders are present	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Exercising any second or casting vote of the chairman (whether at board or general meetings)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Amending the constitutional documents of the company (e.g. articles of association)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Altering any rights or restrictions attaching to any class of share in the capital of the company	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Issuing any additional shares otherwise than in accordance with the agreement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Changing the nature or manner of conducting the business of the company	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Changing the registered legal name of the company in any manner	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Providing loans to directors, employees or others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Making gifts or political or charitable donations	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Changing a director's service contract or increasing his pay in excess of% or £..... per annum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Terminating the service contract/ consultancy agreement of any key employee/consultant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Adopting or amending a business plan or agreeing expenditure in excess of any amount in an agreed business plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Establishing a profit-share bonus incentive or employee option scheme	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Establishing or amending a pension scheme	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ceasing to be a private company	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Selling or disposing of assets, property or other interests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Merging, amalgamating or otherwise restructuring the company	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Entering into any contract or arrangement with a value in excess of £.....	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Holding any meeting without each shareholder being present (whether in person or by proxy)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional matters	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Notes and additional comments