

Investment Funding

Checklist for shareholders agreement

No	Issue	Points to consider
1.	Details of the company	Including the scope of the business carried on by the company
2.	Equity	Percentage of company to be acquired – the amount will affect the issues referred to below. Also details of current and proposed shareholders
3.	Management	Whether shareholders should have the right to appoint one or more directors Whether one of the nominated directors will be employed to manage the business
4.	Critical Business Matters	Whether unanimous (or specific majority) consent should be required at board or shareholder level for important matters, such as: <ul style="list-style-type: none"> ▪ adopting or varying the business plan ▪ changing the nature of the business ▪ amending the constitution ▪ appointing or removing a senior executive ▪ increasing payments or issuing bonuses to employees ▪ approving any borrowing by the company ▪ approving any loan to be given by the company ▪ creating any charge over the company's assets ▪ granting any company guarantees ▪ issuing more shares in the company ▪ acquiring or selling a business ▪ winding up the company ▪ approving capital expenditure above a certain level ▪ entering into or amending any material contract ▪ entering into a contract with a director or an associated company ▪ commencing any material litigation ▪ amending the company's insurance cover
5.	Quorum for board meetings	Whether a representative of each shareholder must be present
6.	Voting	Whether the chairman should have a casting vote
7.	Directors' remuneration	Whether non-executive directors should receive any remuneration and/or be entitled to reimbursement for expenses

8.	Quorum for shareholder meetings	Whether this should be one or more shareholders or shareholders holding a certain percentage of voting rights
9.	Pre-emption rights on new issues of shares	Whether new shares should be offered to existing shareholders before third parties
10.	Pre-emption rights on sale of shares	If one shareholder wants to sell its shares, should the shares be offered to the remaining shareholders before third parties? Should there be a total prohibition on sale to third parties?
11.	Permitted transfers of shares	Whether transfers to family members, family trusts and associated companies should not subject to pre-emption rights (in 7 above)
12.	Change of control of a shareholder	Whether there should be a mandatory transfer of shares to other shareholders if there is a change of control of one of the shareholding companies/trusts
13.	Drag along rights	If the majority shareholder wants to sell all of its shares to a third party, should it be able to force the minority shareholder to sell its shares on the same terms?
14.	Tag along rights	If the majority shareholder wants to sell all of its shares to a third party, should the minority shareholder be able to elect to sell its shares to the same purchaser on the same terms?
15.	Cessation of employment	If a director (who also owns shares directly or through a company/trust) ceases to be employed by the company, should he be required to sell his shares? Should the obligation to sell and/or the price of the sale be dependent on whether he is a good leaver (leaves due to ill health, death or by mutual agreement) or bad leaver (termination by summary dismissal or for breach of service agreement)?
16.	Restraint	Whether there should be restrictions on shareholders from competing against the company, or soliciting customers or employees of the company, for a specified period of time in a specified geographical area after they cease to be shareholders
17.	New shareholders bound by agreement	Whether a new shareholder must become a party to the shareholders agreement before it can be registered as a shareholder
18.	Default	If a shareholder breaches the shareholders agreement, should it be required to transfer its shares to the remaining shareholders at market/fixed value?

19.	Deadlock	In situations where there is a 50/50 deadlock at shareholder level and management of the company becomes untenable, should there be a provision allowing for one shareholder to acquire the shares of the other or for the company to be wound up?
20.	Business Plan	Whether there should be an obligation to carry on the business in accordance with the business plan unless unanimous shareholder approval is obtained to deviate from the plan
21.	Financial information to be provided to shareholders	Whether information above the statutory requirements should be sent to shareholders (for example, management accounts, cashflow statements etc)
22.	Financing	Whether shareholders should be required to provide financial guarantees or additional funding in the future
23.	Access to information for shareholders	Whether management information should be available to shareholders as well as directors
24.	Dividend policy	Whether this should be specified or left to directors' discretion
25.	Exit	Whether there should be an obligation to proceed with an exit (trade sale, share sale, IPO) after a specified period of time
26.	Warranties	These should be given by corporate shareholders to confirm they have the capacity to enter into the shareholders agreement
27.	Insurance	Whether the company should have an obligation to maintain general business insurance, D&O insurance and Keyman insurance
28.	Intellectual property rights	Any intellectual property created by employees should be stated to be the property of the company
29.	Constitution	Ensure the provisions are consistent with the terms of the shareholders agreement
30.	Termination of agreement	The shareholders agreement should terminate automatically if all parties agree, or if the company is wound up, or if only one shareholder remains

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Checklist for director's service agreement

No	Issue	Points to consider
1.	Job description	
2.	Commencement date	
3.	Duties	
4.	Conflicts of interest	Directors to declare other business interests which are to be approved by the company
5.	Hours and location	
6.	Salary and benefits	
7.	Annual leave	
8.	Sick leave	
9.	Confidential information	All information relating to the business to be kept confidential both during period of employment and after employment ceases
10.	Intellectual property	All rights in intellectual property generated by the employee to be automatically assigned to the company
11.	Termination	<p>Notice periods required from employee and employer</p> <p>Termination without notice (by summary dismissal) for serious misconduct including:</p> <ul style="list-style-type: none"> ▪ continuous neglect to perform duties ▪ fraud ▪ found guilty of a criminal offence ▪ disobeying reasonable lawful direction of company ▪ breach of confidentiality
12.	Gardening leave	
13.	Resignation from office	Simultaneous resignation as director if employment terminated
14.	Restraint	Restrictions on employees from competing against the company, or soliciting customers, suppliers or employees of the company, for a specified period of time in a specified geographical area after they cease to be employed
15.	D&O insurance	
16.	Deeds of access, indemnity and insurance for directors	Allowing directors access to board papers, indemnifying directors against liability incurred in the exercise of their duties as director of the company and providing insurance for directors for the period of their directorships and for a specified time after they cease to be directors