



A Guide to Shareholders Agreements

Shareholders Agreements

1. Introduction

- 1.1 A private company limited by shares is one of the main reasons for the success of capitalism as it allows someone to do business and take risks but only be liable for the nominal value of the shares they hold in that company (all other things being equal). This allows people to hold shares in a company knowing that their risk is the nominal value of the shares which could be just £1.00 per share and that their personal assets are protected in the event of the insolvency of the company (although any premium paid on the shares or other money invested in the company may be lost).
- 1.2 A shareholder knows that under English law (especially the Companies Act 2006 (as amended)), there are provisions which regulate the management and administration of the company. For example, certain shareholder thresholds are required to pass ordinary or special resolutions, there is some minority shareholder protection, certain aspects of the management of the company have legal protection through Directors duties, but only a limited amount of information is publicly available mainly through reports at Companies House.
- 1.3 Outside of the protection and thresholds set out in statute and common law, a shareholder does not have any authority to be involved with the day to day management of the company, or be automatically provided with information, or influence the strategic direction of the company. Consequently, shareholders may look for a way in which they can more closely monitor the company and influence its operations in order to protect their interests.
- 1.4 The relationship between a shareholder and the company is just one aspect of the control matrix, the other being the relationship between different shareholders who may have differing ideas on how to protect their interests and the strategic direction and priorities of the company. If a company finds itself in a situation where there are fundamental differences between shareholders as to the strategic direction of a company and how it should be managed then this can lead to a stalemate and inertia, and the eventual collapse or loss of competitiveness of the company.
- 1.5 There are two main ways in which the relationship between shareholders and the company, and between shareholders themselves, can be regulated. The first is through the company's Articles of Association (the company's rulebook) and the second is through a private contract normally called a shareholders agreement (although the same matters may be covered in an investment agreement).
- 1.6 This guide mainly discusses the benefits and limitations of a shareholders agreement and the key considerations when deciding whether or not to enter into such an agreement. The information in this guide is provided in the context of private limited companies only. For information relating to public companies, please contact one of our corporate solicitors.

2. Articles of Association vs Shareholder Agreement

- 2.1 Every private company limited by shares is legally required to have Articles of Association ('Articles'). These serve as the company's rulebook and provide the

administrative system for the company (such as Board or Shareholder meetings). The Articles are a contract between the company, its Directors, and the shareholders, and are often based on Table A or the Model Articles (introduced by the Companies Act 2006 implemented from 1 October 2009), however a company is free to use Articles different to the prescribed form provided they comply with applicable legislation.

2.2 Summary table of Articles versus Shareholders Agreements

So what are the fundamental differences between the Articles and a shareholders agreement:

Articles	Shareholders Agreement
Legally required.	Not legally required but a commercial necessity in order to regulate the relationship between shareholders, and between the company and shareholders.
Publicly available at Companies House.	Private contract normally with confidentiality provisions. Not publicly registerable.
Amended by special resolution (75% of shareholders), any changes must be filed at Companies House although the Articles can be amended to provide for tighter restrictions on amendments.	No requirement to file changes although amendments usually require consent of all parties. If all parties consent is required for amendment this can give minority shareholders parity with major shareholders on this issue.
As the Articles are publicly available they shouldn't contain any commercially sensitive information.	As the shareholders agreement is a private contract more detail regarding the management of the company can be included.
Binding contract between the company, the directors, and the shareholders.	Usually a contract between all the shareholders (although it could be only between some of the shareholders). We usually recommend that the company is also a party so that it is also bound. In order to practically bind the company the directors may need to be made aware of the contents of a shareholders agreement and at least one director would need to sign the shareholders agreement.
The Articles must comply with applicable legislation eg the Companies Act 2006.	As the shareholders agreement is a private contract the shareholders can agree matters as they wish subject to applicable contract law
The Articles are a contract between	A shareholders agreement can deal with

the company and the shareholders (as a shareholder) and is not a personal contract, such that the Articles cannot fetter a company's statutory powers.	the personal rights and obligations of shareholders eg how they will exercise their voting rights.
Ordinary and special resolution thresholds will normally prevail (although it is possible for the Articles to be amended by 75% of the votes to require, say, that consent from a minority shareholder is also required).	Shareholders can contract that voting thresholds are different to those required under the Companies Act 2006, for example, that matters which require a special resolution require 100% of shareholders to agree. This gives minority shareholders greater influence in the company but they cannot agree thresholds lower than statutory minimums.
Entrenched provisions of Articles will need to be informed to Companies House.	Entrenchment is not relevant to shareholders agreements.
New shareholders are automatically bound by the Articles.	New shareholders will need to enter into the shareholders agreement to be bound by it.
Articles that fetter the company's statutory powers are not in any event enforceable against the company.	Terms that fetter the company's statutory powers may be enforceable as between the shareholders but are not enforceable against the company.
An action breaching the Articles may be invalid. Damages and injunctions available. Remedies for breach may be more effective than under a shareholders agreement.	A breach of the shareholders' agreement gives rise to contractual remedies, notably damages (which may be difficult to quantify). Injunctions may be available at the court's discretion.
Third parties are deemed to have notice of the Articles.	Not applicable. Third parties dealing with the company will not have knowledge of the shareholders agreement and will not be bound by it.
State which prevails, the Articles or the shareholders agreement, in order to avoid a conflict between the two.	State which prevails, the Articles or the shareholders agreement, in order to avoid a conflict between the two.

- 2.3 A shareholders agreement can include a wide range of matters which the shareholders don't want to be made publicly available such as dividends policy, valuation of shares for a departing shareholder, restrictive covenants such as non-compete, terms on which directors can be appointed and removed, limitation on authority etc. and consequently can be a flexible document.

- 2.4 Shareholders need to weigh up the pros and cons of using the Articles or a shareholders agreement in order to regulate arrangement between themselves, and also with the company, on the basis of their specific situation.

3. What are the benefits of entering into a Shareholders Agreement?

- 3.1 One of the main benefits of entering into a shareholders agreement is that it will bind all of the parties to its terms thereby providing certainty on many key issues. It will also provide contractual remedies against those who breach it. In particular, a shareholders' agreement can offer greater protection of minority shareholders interests than is available under the Companies Act 2006: This is particularly important if a shareholder has contributed more than just nominal share capital to the company.
- 3.2 Minority shareholders can be in a vulnerable position in a private company limited by shares, particularly when that company does not have many shareholders in the first place. Minority shareholders can be out voted by those who have a greater shareholding, making it difficult for them to have any say over how the company should be run. A shareholders agreement can protect against such circumstances by using a Shareholders Consent threshold (discussed in more detail below) which would include minority shareholders in the voting arrangements. This method ensures that the majority of shareholders have a say in the running of the company and is particularly important where shareholders are also directors but shareholdings are fragmented. In fact, the more shareholders there are, the greater the requirement for a shareholders agreement.
- 3.3 If shareholders do not use, for example, a shareholders agreement to regulate the sale of shares in the company, or what happens in the event of a dispute between shareholders, then the situation can become difficult if one shareholder wants to sell to a third party the other shareholders do not approve of, or there is a breakdown in the relationship.
- 3.4 We regularly hear clients concerns over cost versus benefit of entering into a shareholders agreement, however, our message is the same – prevention is better than cure. Invest in a shareholders agreement so that you know that many key issues are regulated by mutual agreement instead of trying to negotiate with someone after the relationship has already broken down, or you are just relying on the provisions of the Companies Act 2006.
- 3.5 Whether the company is family owned, owned by friends, a joint venture, or owned by a group of strangers, a shareholders agreement can be negotiated and drafted to fit the requirements of the specific situation.

4. What does a Shareholders Agreement do?

- 4.1 Shareholders agreements regulate a range of matters between shareholders, and between the shareholders and the company (if the company is a party), such as:
- 4.1.1 the issue of new shares;
 - 4.1.2 the transfer of shares (ie a shareholder wants to sell their shares to a third party);

- 4.1.3 the dividends policy;
- 4.1.4 administration of the company eg attendance at board meetings and voting rights;
- 4.1.5 appointment and removal of directors;
- 4.1.6 information on the company, especially financial information (which is very important as it may not be otherwise available until the company has submitted its annual accounts to Companies House);
- 4.1.7 spending authority in the company (see Shareholders Consent later);
- 4.1.8 pre-emption rights and the value at which shares can be purchased;
- 4.1.9 detail what happens in the event of a dispute;
- 4.1.10 what happens in the event of the death of a shareholder; and
- 4.1.11 restrictive covenants.

These are more fully examined below.

5. What is usually included in a Shareholders Agreement?

- 5.1 Although shareholder agreements are tailored to each specific shareholding arrangement, there are a number of clauses typically used in most shareholder agreements:
 - 5.1.1 **Voting Matters:** as owners of the company, shareholders usually want a say on the larger decisions concerning it. Such decisions are normally made through ordinary or special resolutions, both of which require certain percentages of shareholder approval to pass. A shareholders agreement can determine what matters require shareholder, rather than director, consent and what percentage is required to pass a resolution (provided the percentage is greater than any statutory limit);
 - 5.1.2 **Issuing, Transferring and Selling Shares:** clauses determining the issuing of further shares or the transferring or selling of existing shares will normally be included. It is within these clauses where share valuations and rights such as the statutory right of pre-emption (the right to purchase or refuse new shares before they are offered elsewhere) will be found;
 - 5.1.3 **Dividends:** there will be a clause setting out the percentage of company profits to be distributed as dividends to shareholders. There could also be a clause detailing when a company does not have to pay dividends at all (the most likely scenario being that it cannot afford the dividends payments at that time);
 - 5.1.4 **Directorship/Employee Rights:** there can be clauses concerning the right for specific parties to also be directors and/or employees of the company or the right to nominate a specified number of directors;
 - 5.1.5 **Company Financing:** there may be clauses setting out how the company is to be funded, such that if further investment or financing is required how this will be achieved, ie through bank borrowing, investment from shareholders, and whether there can be security over the company's assets (or any restrictions on giving security);

- 5.1.6 **“Tag Along” and “Drag Along”**: in the event of a proposed sale of shares by a shareholder, the shareholders agreement can require that either the other shareholders have to sell their shares as well (drag along) or the buyer can be procured to offer to buy the shares of the other shareholders on equally favourable terms (tag along);
 - 5.1.7 **Non-Compete and Non-Solicitation**: it is common to find clauses that restrict the ability of an outgoing shareholder to either set up a competing business and/or to take employees or customers with them when they leave;
 - 5.1.8 **Deadlock**: where there is a deadlock between shareholders or shareholders and directors, the shareholders agreement can outline what happens. This can be an important clause to draft in as it can assist with the prevention of disputes (see “Deadlock: What Options are Available to Shareholders?” below);
 - 5.1.9 **Confidentiality**: as one of the main reasons for using a shareholders agreement rather than amending the Articles is often to maintain confidentiality of the contents, there is usually a confidentiality clause requiring the parties to maintain the confidentiality of the contents of the agreement, trade secrets and any other confidential information relating to the company;
 - 5.1.10 **Shareholder Departure**: it is common to find clauses that outline what happens in the event that a shareholder chooses to leave, is forced to leave or dies. These clauses will also tend to discuss the procedure concerning that departing shareholders’ shares, who can purchase them, and their value;
 - 5.1.11 **Meetings**: there can be clauses included that confirm how many shareholders are required to make a quorum for a shareholders’ meetings, and when and how notice is to be given regarding the calling of a shareholders meeting; and
 - 5.1.12 **Dispute Resolution**: there will usually be a clause determining the procedure to deal with any disputes that arise between shareholders. We suggest that in the first instance the shareholders consider mediation or thereafter disputes are referred to arbitration in order to try to preserve the confidentiality of the arrangements.
- 5.2 This is not an exhaustive list and each shareholders agreement can be drafted in a bespoke manner to include or exclude whatever the parties wish. As these are private contracts, they will also usually include other standard contractual clauses such as governing law and jurisdiction, third party rights (or lack of), assignment and variation clauses.

6. Shareholder Consent

- 6.1 Although directors manage the day to day running of a company, as shareholders are, in effect, the owners, it is important to be clear what decisions and actions do and do not require shareholder consent.
- 6.2 The Companies Act 2006 keeps the most important decisions affecting a company with the shareholders, such as amending the Articles of Association (s.21), changing

the company's name by special resolution (s.77(1)) or disapplying shareholders' pre-emption rights (s.569 – 571), to name a few.

6.3 These statutory rights can be reinforced and/or added to in the shareholders agreement, which can further state what decisions require shareholder consent. Shareholders consent is often a defined terms in the shareholders agreement and it is often defined as a percentage, say, 100% of shareholders consent is required for certain actions. The decision over the percentage of shareholders which are required for consent is often an issue for serious thought as it can give minority shareholders (or a group of minority shareholders) considerable rights above and beyond their rights preserved under the Companies Act 2006.

6.4 Common examples of matters which may required Shareholder Consent include:

- amend the Articles (must be at least 75%);
- change of name (must be at least 75%);
- sell or dispose of a subsidiary or assets;
- alter any share rights;
- deviate from an agreed business plan;
- the company being wound up;
- purchase assets above, say, £10,000;
- borrow or lend any money;
- remove a director appointed by a shareholder;
- make no substantial change to the business.

Careful consideration needs to be given to the percentage of shareholders which are required for shareholder consent.

7. Deadlock: What Options are Available to Shareholders?

7.1 Disagreements over decisions or changes are not uncommon in business. Where the company is a private limited company, these disagreements can often lead to a “deadlock” between shareholders. This is particularly so if the company in question is small and only has two equal shareholders or Shareholders Consent is required. The big question that does not tend to get answered by the Articles is: what happens in such a situation?

7.2 Clauses can be inserted into a shareholders agreement that outline what happens in the event of a deadlock and this can include a number of stages such as in the first instance discussions between the shareholders, and in the event the issue is not resolved then there could be mediation (say by an independent expert), but if this fails then arbitration (which may or may not be legally binding).

7.3 In the event that there is a deadlock which remains unresolved then the shareholders agreement could provide that shareholder(s) can buy out the other shareholder(s), however, the issue here will be the value at which the shares are purchased plus which shareholder can buy the other shareholder. This can be a tricky situation and some novel methods are used to resolve this issue including two of the more commonly used ones “Russian roulette” and “Texas shoot-out”.

7.4 **Russian roulette:** this provision requires one of the parties in deadlock to serve a notice on the other confirming a price that they value their share of the company. The

other shareholders must then decide whether to either buy the shares at the price stated or sell all of their own shares at the same price.

- 7.5 **Texas shoot-out:** this provision requires each deadlocked shareholder to provide a sealed bid for the other's shares to an independent party. The shareholder who has the highest bid must buy the other shareholder out at the bid price.
- 7.6 Both types of provision aim to enact a change in share ownership as a way of bypassing the deadlock – if one party is bought out, they can no longer hold up the vote and the company can move forward.
- 7.7 It is also possible to insert a deadlock provision that provides a number of options for dealing with these situations, the benefit being that the size of the dispute can have a corresponding solution rather than resorting to buying out the opposing shareholder every time there is an issue.

8. What happens if a Shareholder dies?

- 8.1 This is an often overlooked but nevertheless important consideration to take into account. If there are no relevant procedural guidelines, a number of problems can arise, such as the remaining shareholders losing the ability to influence where the shares end up, the inheriting shareholder having a say in the running of the company that the other shareholders disagree with, or the deceased shareholder's will containing conflicting provisions to the company's Articles.
- 8.2 The ability to control where the shares go in the event of a shareholder dying can be controlled to an extent by the company (such as by having pre-emption rights in their Articles), but it is also possible (and preferable) to draft an arrangement into a shareholders agreement confirming that these shares will transfer to existing shareholders at a pre-agreed price or valuation method.
- 8.3 One further option is to have in place a cross option agreement. This is a clause under which the company takes out a life insurance policy for each shareholder (or those owning over a certain percentage). In the event of the death of a shareholder then the life insurance policy will be triggered and the company will receive funds to enable it to buy the shares from the deceased shareholders estate. The value of the shares is normally stipulated to be market value or fair value. The cross option allows either the company to force the personal representative of the deceased shareholder to sell the shares to the company, or the company can force the personal representative to sell the shares.

9. Good Leaver versus Bad Leaver

- 9.1 In some circumstances where a shareholder is an employee or a Director, and the relationships between working in the company and being a shareholder of the company are linked (ie shares are 'given' to an employee or a Director as a part of their incentive package but outside of EMIS scheme), then 'good leaver bad leaver' provisions may be requested. The provisions normally regulate the circumstances in which someone is no longer an employee and the price at which their shares can be purchased by the other shareholders. The 'good leaver bad leaver' provisions may

also regulate other issues such as compliance with the shareholders agreement although we have not gone into this issue here.

- 9.2 A 'good leaver' is normally defined as someone who leaves the company in good circumstances which may include their involuntarily departure due to death, physical and/or mental incapacity, by mutual agreement, or redundancy. Conversely, a 'bad leaver' tends to be somebody who leaves for a 'bad' reason which can be specified (eg dismissal for gross misconduct) or simply as any other reason than being a 'good leaver'.
- 9.3 The second important element outside of the definition of a 'good leaver' or a 'bad leaver' is the value of the share relating to each situation. It is often the case that a 'good leaver' will obtain full market or fair value for their shares, however, a 'bad leaver' may only receive 50% of market or fair value, or even par value. Consequently being a 'bad leaver' can have serious consequences.
- 9.4 As can be seen, the definitions used for 'good leaver and 'bad leaver' are extremely important, as it the value which will be paid for the shares in each situation.

10. Conclusion

- 10.1 The main reason for using a shareholders agreement tends to be to enable shareholders to further protect their interests in addition to any provisions under statute, the common law, or in the Articles.
- 10.2 Although a company's Articles provide the constitutional foundation on which that company is run, it can be found lacking with regard to certain situations involving shareholders that a shareholders agreement would usually cover (such as deadlock). In addition, a shareholders agreement can provide agreement on a wide range of issues, such as the valuation of shares, pre-emption rights on a proposed transfer by a shareholder, a different level of shareholder consent than that required by the law (thereby enabling minority shareholders to have some decision making powers).
- 10.3 Articles are a publicly available document, whereas shareholders agreements are private contracts, allowing shareholders peace of mind when it comes to including important issues such as the right to receive dividends (and how much those dividends would be). Given the advantages of a shareholders agreement we are surprised when shareholders do not have one in place.
- 10.4 For advice on shareholders agreements, or to have one drafted, please contact one of our corporate solicitors for further information.

About Whitehead Monckton

With offices in Canterbury, London, Maidstone and Tenterden, Whitehead Monckton is one of the largest legal practices in Kent. We offer a wide range of services specifically for businesses together with legal support for you as an individual. You can see our lawyers at the office most convenient to you or we can meet at your office or home. It's important to us that we are recognised within Kent as being a very approachable and professional firm. Many of our staff, including a number of Directors, completed their legal training with the firm and our ethos of client support and care is very important to all members of the firm.

Our mains service lines include:

1. Company, commercial and finance
2. Commercial and residential property
3. Employment
4. Dispute resolution
5. Wills and estates
6. Succession planning
7. Family law including pre-nuptial agreements
8. Wealth management

As part of our commitment to excellent client care, in April 2017 we obtained the quality management standard ISO9001. In addition we have achieved specific Law Society accreditations through the following schemes:

- Wills and Inheritance Quality Scheme
- Conveyancing Quality Scheme
- Family Law Accreditation Scheme

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Disclaimer

This guidance note is in no way held out to be legal advice and should not be viewed as such. If you require further information on this subject, please contact one of our solicitors.

CONTACT US

If you would like to know about our law firm then please see: www.whitehead-monckton.co.uk. If you would like more information on the matters set out in this Guide, or you would just like to discuss a potential sale or purchase, then please do not hesitate to contact one of the following:

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Schedule – Shareholders Agreement Checklist

If you are thinking that you need a shareholders agreement then please complete the information below and send it to us.

Shareholders Agreement Checklist			
Name of Company			
Current authorised share capital	[£_____] divided into [____] shares of [£_____] each		
Current issued share capital and proposed issued share capital	Current:		
	Proposed:		
Current shareholders (please specify number and type of shares held)	Name	No. and type of shares	Class
Proposed new shareholders (please specify number and type of shares held)	Name	No. and type of shares	Class
Address of shareholders	Name	Address	

Shareholders Agreement Checklist

Current directors/company secretary	
New directors/ company secretary	
Primary business of the company	
Shareholders Consent: 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:	Shareholders Consent 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	
<ul style="list-style-type: none"> ▪ Remove a Director 	
<ul style="list-style-type: none"> ▪ Change the nature of the business of the company 	
<ul style="list-style-type: none"> ▪ Hold any shareholders meeting 	
<ul style="list-style-type: none"> ▪ Sell these or dispose of assets at less than market value 	
<ul style="list-style-type: none"> ▪ Enter into partnerships or joint venture arrangements 	
Regarding transfers of shares, consider the following:	
<ul style="list-style-type: none"> ▪ Should a shareholder be entitled to transfer shares freely to his or her spouse/children/other relations/family trust? 	
<ul style="list-style-type: none"> ▪ 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? 	
<ul style="list-style-type: none"> ▪ 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? 	
<ul style="list-style-type: none"> ▪ 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 tis will require the input of your accountant). 	
<ul style="list-style-type: none"> ▪ If the Shareholders Agreement will contain restrictions on transfer of shares. : 	
<ul style="list-style-type: none"> • Can a shareholder transfer part only of his or her shareholding? 	
<p>If shares are not taken up should the shareholder who offered them for sale be free 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>	

Are there other circumstances in which a shareholder must sell, e.g.	
▪ death	
▪ bankruptcy	
▪ insanity	
▪ being able to carry out duties for 6 months in any 12 month period	
▪ in the case of a shareholder who is an employee, resigning or being lawfully dismissed	
▪ Material breach of shareholders agreement	
▪ Being convicted or charged of a criminal offence punishable by imprisonment?	
▪ Ceasing to be a director of the company	
▪ Should there be different valuations applied depending on whether the shareholder is a 'good leaver' (eg he dies) or 'bad leaver' (eg he leaves because of gross misconduct)?	
▪ In any of the above circumstances does the shareholder then have to resign as a director?	
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".	
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".	
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?	
What is the quorum for meetings of the Board of Directors?	

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.	
How often should the Board of Directors meet?	
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?	
Will any member of the Board have a casting vote?	
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?	
Who will be the bankers of the company and at which branch?	
Will withdrawals on the bank account in excess 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.	
Who will be the accountants of the company?	
What will be the accounting reference of the company?	
Should the Shareholders Agreement contain restrictive covenants, ie:	
<ul style="list-style-type: none"> ▪ a clause preventing a shareholder whilst he is a shareholder and after he leaves the company from competing with the business. 	
<ul style="list-style-type: none"> ▪ approaching customers/suppliers and staff, 	
<ul style="list-style-type: none"> ▪ using confidential information and 	
<ul style="list-style-type: none"> ▪ using the company's name or a similar name for another business? 	
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.	
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:	
▪ the shareholder dies	
▪ he becomes insolvent	
▪ there is a material breach of the Agreement	
▪ the shareholder ceases to hold more than a certain percentage of shares in the company	
<p>Should there be a deadlock clause to cover a scenario where there is a 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>	
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.	
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.	