

# need to know

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Harbottle & Lewis

## Shareholders' Agreement Key Issues List

This document has been prepared by Ukie Associate Member, Harbottle & Lewis. It is a list of basic key issues for companies to consider before putting in place a shareholders' agreement.

This document assumes that the business has been incorporated as a private English company (i.e. it is not a legal partnership, limited liability partnership or an individual carrying on as a sole trader).

There is no such thing as a "standard" shareholders' agreement. The rights and obligations of shareholders will vary from deal to deal. We would advise you to seek legal advice before entering into any negotiations of the terms of the shareholders' agreement (such as, for example, negotiating a term sheet).

Note that a shareholders' agreement may not always be required. Shareholders' agreements are usually put in place to protect minority shareholders. If you, as a founder of a business, will remain the owner of the large majority of the shares of that business, there may be little benefit for you to enter into a shareholders' agreement.

Typically, the rights and obligations of shareholders in a Company are split across both the shareholders' agreement and the Company's articles of association. The articles of association will therefore need to be amended on the implementation or modification of a shareholders' agreement.

This document has been prepared in light of the applicable English law as at November 2014 and will not reflect any subsequent changes to the law after such date.

This document is intended to be used as a starting point for discussions on any shareholders' agreement and does not constitute legal advice from Harbottle & Lewis LLP. You should seek legal advice if you intend to implement such a document.

# Shareholders' Agreement Key Issues List

## 1. Shareholders

- 1.1. Who will be the shareholders of the Company?
- 1.2. What percentage of the share capital of the Company will each shareholder hold?
- 1.3. How will the shareholders acquire the shares - by a share transfer from the existing shareholders or a subscription of new shares?

## 2. Business plan

- 2.1. Do any of the shareholders require the Company to adopt a formal business plan?
- 2.2. Will such a business plan be updated, e.g. on an annual basis?
- 2.3. Will any shareholders be under an obligation to provide additional funds to the Company at certain times or after completion of certain milestones?

## 3. Board composition and governance

- 3.1. Who will be the directors of the Company?
- 3.2. Which shareholders will have the right to appoint directors? How many directors will each of such shareholders have the right to appoint?
- 3.3. What are the quorum requirements for a board meeting and/or a shareholder meeting?
- 3.4. Will a chairman be appointed and will he/she have a casting vote?
- 3.5. Should there be a list of reserved decisions which cannot be delegated by the board and which would require either the consent of all directors before being approved or the consent of all/some of the shareholders?

## 4. Information rights

- 4.1. Should shareholders be provided with financial reports, accounts or budgets?
- 4.2. If so, how frequently should these documents be provided?

## 5. Warranties<sup>1</sup>

- 5.1. Will any new shareholders expect the benefit of warranties from the Company or management?
- 5.2. If warranties are required, consider how the persons providing the warranties can limit their liability (such as disclosures against such warranties and financial caps on liability).

## 6. Share dealings

- 6.1. Should a shareholder be entitled to transfer its shares in the Company to any third party (perhaps subject to pre-emption rights) or should there be an absolute prohibition on this (perhaps for a limited time) without the consent of the other shareholder(s)?
- 6.2. If new share issues are permitted, must they be issued on a pre-emptive basis pro-rata to the existing holdings (to protect the existing shareholders from dilution)?
- 6.3. Should minority shareholders be forced to sell their shares if the majority shareholders are selling their shares?<sup>2</sup>
- 6.4. Conversely, should minority shareholders be allowed to sell their shares if the majority shareholders are selling their shares?<sup>3</sup>

## 7. Other obligations

- 7.1. Will restrictive covenants be imposed on the shareholders or the managers relating to competing activities and interests in rival businesses?

<sup>1</sup> Warranties are statements of fact describing different aspects of the business. If untrue, the new shareholder will have a right to claim against the person giving the warranty for breach of warranty.

<sup>2</sup> Commonly called "drag-along" rights. Purchasers normally require 100% of the shares on a sale of the company. This provision ensures minority shareholders can be forced to sell their shares and do not obstruct such a deal.

<sup>3</sup> Commonly called "tag-along" rights. This is the reverse of the drag-along provision.

### What should I do next?

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