

Shareholders' agreement questionnaire

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Questionnaire for shareholders' agreement

1.1 Full name **and ACN of company** _____

1.2 Business **of the company is** _____

1.3 Trading name **of the business will be** _____

1.4 Place **of business will be** _____

2. **Bank** details are:

2.1 Bank name _____

2.2 Branch _____

2.3 **Either** cheques signed by authority given from time to time to the bank

2.4 **Or** cheques signed by _____

3. The **working capital requirements** of the company will be

3.1 **Either** contributed to by the members in proportion to their shareholding

3.2 **Or** _____

4. If there are more than 2 shareholders, are there any requirements for future **capital raising** except possible issue of shares pro rata at an agreed issue price?

4.1 Yes

4.2 No

4.3 If yes, the requirements are: _____

5. **Dividend policy**

5.1 **Either** will be determined by the directors, but it will include to distribute profits to the greatest extent possible after allowing for working capital and expansion requirements

5.2 **Or** will be a fixed dividend policy

(a) Starting for year to 30 June _____

(b) Minimum dividend to be _____ % of after tax profits

6. **Initial shareholding:**

Shareholder	Number of shares

7. **Shareholder/employees:**

Full name	Position	Shareholder represented

8. The **key persons / representatives** for company and trust shareholders are:

Shareholder	Representative

9. **Are employment agreements required?** If so please supply details:

Name		
Start date		
Salary		
Super		
Vehicle		
Other benefits		
Annual Holidays		
Long Service		
Sick leave		
Maternity leave		
Expenditure limit		
Duties		

10. Can the **directors dismiss a shareholder/employee** for misconduct or non-performance?

10.1 Yes

10.2 No

11. **If a shareholder/employee ceases to be employed** is the shareholder represented taken to have offered to sell the shareholder's shares to the other shareholders?

11.1 Yes

11.2 No

11.3 If yes, on what terms?

- (a) At a price under the Valuation clause
- (b) On the following *terms* (if you do not specify these terms, based on your other answers, we will include a provision in the draft agreement for you to consider):

12. Are there any things that **shareholders must not do**?

12.1 Yes

12.2 No

13. Are there any things that **shareholders must do**?

13.1 Yes and if yes, what are they?

13.2 No

14. **Shareholders' meetings** will be held:

14.1 Monthly

14.2 Quarterly

14.3 Other

14.4 **A quorum for shareholder meetings will be** _____

15. The chairman of member's meetings will have a **casting vote**

15.1 Yes

15.2 No

16. **If some shareholder decisions** normally requiring a simple majority of votes require a special majority, that majority is:

16.1 100%

16.2 85%

16.3 75%

16.4 Other _____ %

17. **The following shareholder decisions** must be approved by the majority of votes specified:

Please reconcile these to some of the decisions by the board at question 28.

Decision	Yes	No
Liquidating the Company or its subsidiaries		
Merging with another company		
Amending the constitution or this agreement		
The dividend policy if not set out in this agreement		
Changing the dividend policy (if any) in this agreement		
The Company's reconstruction, consolidation or reorganization		
The capitalisation of profits or reserves of the Company or its subsidiaries		
Appointment or removal of an auditor		
Capitalisation of profits or reserves of the Company		

18. Will **members be entitled to appoint a director** to represent their interest?

18.1 Yes and if so, only that member can remove that director

18.2 No and if so, directors will be appointed and removed by simple majority

19. **Initial directors:**

Full name	Occupation	DOB	POB

20. If a **director employee ceases employment** and their appointment as a director ends, will they be entitled to appoint another director?

20.1 Yes

20.2 No

21. Will the directors be paid **fees**?

21.1 Yes

(a) \$ _____ per month

(b) other, as determined by the members unless stated

21.2 No

22. Will the company take out **director's and officer's insurance**?

22.1 Yes

22.2 No

23. Will there be an **external chairman** of directors?

23.1 Yes

23.2 No

23.3 If yes, the first one will be: _____

23.4 The external chairman will be paid a fee of \$ _____ per month

24. How often will **directors meetings be held?**

24.1 Monthly

24.2 Quarterly

24.3 Other (*specify* _____)

24.4 **What is the period of** notice for a director's meeting? _____

24.5 **What is a** quorum for a directors meeting? _____

24.6 Where will directors meetings be held? _____

25. Are there any **limitations on a director or shareholder** dealing with the company except with full disclosure?

25.1 Yes

25.2 No

25.3 If yes, the limitations are: _____

26. **Can a director vote** on a dealing in which he or she has an interest provided the interest is disclosed?

26.1 Yes

26.2 No

26.3 Will the chairman have a **casting vote** at board meetings?

26.4 Yes

26.5 No

26.6 Will each director have only 1 vote at meetings?

26.7 Yes

26.8 No and if not, what will be the voting rights? _____

27. If some decisions require other than a simple majority of directors **that majority is:**

27.1 All directors

27.2 All directors but 1

27.3 All directors but 2

27.4 Other _____

27.5 The following board decisions **must be approved by the majority specified:**

Please reconcile these to some of the decisions by the members at question 17.

Decision	Yes	No
Appointment of a chief executive officer		
Dismissal of a shareholder/employee		
Employment of any person or consultant costing more than \$ per yer		
Issue of new shares or other securities		
The acquisition of any equity or shares convertible into equity		
Borrowing any money		
Borrowing any money resulting in a total debt (excluding debts arising in the ordinary course of business) exceeding \$		
Creation or of any mortgage, debenture or charge over a company asset		
The Company lending money to or on behalf of any person other than in the ordinary course of business		
The Company giving guarantees to or on behalf of any person other than in the ordinary course of business		
Exceeding budget expenditure on any item by more than \$		
Making a contract that will last for more than 1 year		
Disposal of all or most of the Company's business or assets		
The disposal in any year of any asset of the Company with book or market value (whichever is the greater) exceeding \$		
Forming, acquiring or disposing of a subsidiary		
Changing directors of subsidiaries		

Acquiring another business		
Diversification into new activities		
Major changes in the Company's business		
Major changes in the Company's business methods		
Instituting, withdrawing or settling any legal proceedings		
The Company entering into any arrangement or incurring any liability which is not on arm's length terms		
Entering into any agreement or arrangement (whether oral or in writing) with a party to this agreement or an associate of that party		
The Company entering into any arrangement or incurring any liability which is not in the ordinary course of the Company's business		
Adoption of a budget		
Approval of any material deviation from the budget		
Approval of every business plan prepared under the requirements of this agreement and any material deviation from a business plan		
Approval of any material deviation from a business plan		
The creation of any committee of the directors		
The delegation of any power of the directors		
The recommendation or declaration of any interim or final dividend		
Incurring capital expenditure on any 1 item in any 1 year great than \$		
Incurring leasing expenditure in any 1 year for a an item with a value more than \$		

Ordering goods or services in any year costing more than \$ for any one item		
Buying or selling any real property		
Directors' fees		
Establishing any pension scheme for employees or any scheme covering superannuation generally		

27.6 Will there be any instances where directors will be required to **consult with minority members** before exercising their powers? (eg changes to the constitution that affect rights or interest of a member, appointment of a CEO)

28. Will any **director's duties** be specific to particular directors (eg sales director, marketing director etc)?

28.1 Yes and if yes, please advise separately what they are to be

28.2 No

29. Will there be a **managing director**?

29.1 Yes and if yes, who? _____

29.2 No

30. If there is a **further share issue**, must existing members have the right to participate first in priority to that issue and in proportion to their existing shareholding?

30.1 Yes

30.2 No

31. **A shareholder wanting to sell** must first offer the shares for sale to other shareholders:

31.1 At the price offered

31.2 At the price offered by a third party

31.3 At market value

31.4 At a price under the Valuation clause

31.5 Other _____

32. **If the other shareholders don't buy**, shares can be sold to a third party:

32.1 Without consent of other shareholders

32.2 Only with consent of other shareholders

32.3 Other _____

33. **If the other shareholders don't buy, but refuse consent** to transfer to a third party, what happens?

Option	Yes	No
Sale proceeds if non consenting shareholder also bought out		
Seller has a put option for market value		
Seller has a put option at a discount of _____ % off market value		

34. Can a shareholder force the **company to buy back its shares** if the shareholder wants to exit the company but can't find a buyer for the shareholder's shares?

34.1 Yes

34.2 No

35. Can a shareholder force the **other shareholders to buy its shares** if the shareholder wants to exit the company but can't find a buyer for the shareholder's shares?

35.1 Yes

35.2 No

36. **Can shareholder/employees resign and what happens to their shares?**

- 36.1 Yes, at any age, and without having to offer to sell their shares
- 36.2 Yes, at any age with the other shareholders having a call option for a price set under **Valuation** clause
- 36.3 Yes at age _____ with other shareholders finding a new shareholder and in default buyout at discount of _____ % value under **Valuation** clause
- 36.4 Yes at age _____ with buyout under **Valuation** clause
- 36.5 Yes but a buyout at discount of _____ % of the value under the **Valuation** clause applies if a shareholder retires under set age
- 36.6 Other _____

37. **Must a shareholder exit their shareholding at a set age?**

- 37.1 No
- 37.2 Yes and if yes what age? _____

38. **Can a majority of shareholders force another shareholder to sell his or her shares?**

- 38.1 Yes
- 38.2 No

38.3 If yes these are the reasons:

Event	Yes	No
Bankruptcy		
Divorce		
Breach of a material obligation not fixed in 7 days		
Breach of any Member – Duties clause provision that is not material and which is not fixed in 28 days		
Competing with company's business		
Transferring shares contrary to agreed restriction		
Committing a criminal offence involving dishonesty		
Prohibited by law from being a member		
Nominated director ceases to be a director and there is no right to appoint a substitute		

Ceasing to be an employee		
Control of a shareholder ceasing to be held by its key person		

- 38.4 If yes, the majority of the members other than the affected member required for that purpose is:
- simple majority of 50% +
 - 75% +
39. **If a shareholder is forced to sell to the others** is the price a discount on the valuation clause?
- 39.1 Yes
- 39.2 No
- 39.3 If yes the discount is _____ %
40. **Can a minority shareholder** force the other shareholders to buy that minority shareholder's shares?
- 40.1 Yes
- 40.2 No
41. **If a minority shareholder** can force the other shareholders to buy, is the price a discount on the valuation clause?
- 41.1 Yes
- 41.2 No
- 41.3 If yes the discount is _____ %
42. **Can one shareholder force a sale** of the whole business on the other shareholders?
- 42.1 No
- 42.2 Yes, but only if shareholders with _____ % of shares agree and the price exceeds the value under the Valuation clause by at least _____ %
43. Will the company take out life insurance to cover **debts of the Company**?
- 43.1 Yes and if so, how much \$ _____
- 43.2 No

44. Will the company have keyman insurance?

44.1 No

44.2 Yes

44.3 If yes, for these amounts

Shareholder/employee	Amount

45. If a shareholder/employee **suffers sickness or incapacity** not amounting to permanent disability will his or her salary diminish?

45.1 Yes

(a) to _____ % of normal after _____ months, then

(b) to _____ % after another _____ months, then

(c) to nil after another _____ months

45.2 No

45.3 Will the company take out **loss of income insurance** for employee/shareholders?

45.4 Yes

45.5 No

45.6 If yes:

(a) the cover will be 75% of salary plus dividends from company with 3 month waiting period

(b) the cover will be _____

46. Shareholder/employee **death or disability** will be covered by:

46.1 Buy/sell by self insurance for \$ _____ with premiums shared equally

46.2 Buy/sell by self insurance for \$ _____ with premiums paid by self

(self insurance can be more tax effective and transportable then cross insurance)

46.3 Buy/sell by cross insurance for \$ _____ with premiums shared equally

- 46.4 Buy/sell by cross insurance for \$ _____ with premiums paid by self

All Buy/sell arrangements will have annual reviews of the insurance cover to match the value of the business.

(Where the exiting member is relying on the payment for retirement purposes, in deciding on what amount you will insure for, you should allow for any capital gains tax that may be payable by the exiting member)

- 46.5 Buy/sell by finding new shareholder

- 46.6 The company will fund loss of income insurance, which the disabled shareholder will accept in exchange for his or her interest

- 46.7 Buy/sell for \$ _____ with no insurance

- 46.8 Other: _____

47. If there is a sale of shares between shareholders for any reason the **goodwill of the company will be valued:**

- 47.1 At a capitalization rate of EBIT to be determined by _____

- 47.2 At a capitalization rate of sustainable earnings to be determined by _____

- 47.3 By a method to be determined by firm's accountant

- 47.4 At a multiple of profits

- 47.5 At a percentage of fees

- 47.6 At Fair Market Value determined by 2 people if no agreement (see note 3)

- 47.7 Fair Market Value determined by 3 people if no agreement (see note 4)

- 47.8 By this formula

- 47.9 Other

48. **Other assets** of the company will be valued:

- 48.1 by a method determined by _____

- 48.2 At Market Value determined by _____

- 48.3 At Fair Market Value determined by 2 people if no agreement (see note 3)

- 48.4 Fair Market Value determined by 3 people if no agreement (see note 4)

- 48.5 Other

49. **If some shareholders buy shares from another shareholder** the terms will be:

49.1 Time for payment of full price or instalments _____

49.2 Interest rate payable from exit date until payment _____ %

49.3 Will there be a discount or premium on the share value based on the level of control?

49.4 Yes

49.5 No

50. **If a shareholder sells its shares** what provisions of the agreement continue to apply (apart from the confidentiality clause, which will continue unless you say otherwise)?

50.1 Yes, by the following provisions

50.2 No

51. **If there is a deadlock** at board or shareholder level, will disputes be resolved by **mediation**?

51.1 Yes, we will use a mediator appointed by _____

51.2 Yes, we will use our Accountant as the mediator

51.3 No, we prefer arbitration

51.4 No, we will leave it to litigation

51.5 Other

52. If mediation fails to resolve a dispute, the **deadlock will be resolved by:**

52.1 **Expulsion of a shareholder** by majority vote with a buyout for a price set under the **Valuation** clause

52.2 Texas auction (see note 1)

52.3 Dutch auction (see note 2)

52.4 Liquidation of the company

52.5 Other

53. **Restraint of Trade** for shareholder/employees after ceasing employment (see note 5)
- 53.1 Area _____
- 53.2 Time _____
54. **If a shareholder sells all its shares** is it free to compete with the company's business (see note 6)?
- (a) Yes...
- (b) No...
55. We will keep **company information confidential** for _____ years after this agreement ends
56. Will there be an obligation to have a **business plan**?
- 56.1 Yes
- 56.2 No
57. Will there be an obligation to have a **budget**?
- 57.1 Yes
- 57.2 No
58. How regularly will **management account profit and loss statements** be given to members and directors?
- 58.1 monthly and annually
- 58.2 annually only
59. How regularly will **management account balance sheets** be given to members and directors?
- 59.1 monthly and annually
- 59.2 annually only
60. **Profit and loss statements** and the **balance sheets** will be unaudited.
- 60.1 Yes
- 60.2 No

61. The company will **appoint an auditor**

61.1 Yes and if so it will be _____

61.2 No

62. The company will **appoint an accountant**

62.1 Yes and if so it will be _____

62.2 No

63. The company will **appoint a lawyer**

63.1 Yes and if so it will be _____

63.2 No

64. **Run Off Professional Indemnity Insurance**

64.1 Is there a need for run off professional indemnity insurance after a shareholder exits the company?

Yes

No

65. **Tag A Long & Drag Along Rights Applying to Sale of Shares**

65.1 If a Member is selling their shares, do you want to consider a provision by which the other members can insist on their shares also being purchased by the buyer? **[Tag Along]**

Yes

No

65.2 If a Member is selling their shares, do you want to consider a provision by which they can insist that the other members also sell their shares? **[Drag Along]**

Yes

No

Notes

1. Texas auction

- ❖ Shareholder A offers to buy the interest of shareholder B
- ❖ Shareholder B must either accept the offer or buy Shareholder A's interest for the same price
- ❖ May not be suitable unless the shareholders' financial strengths and ages are about the same

2. Dutch auction

- ❖ Shareholder A offers to buy the interest of shareholder B
 - ❖ Shareholder B must either accept the offer or offer to buy Shareholder A's interest for a higher price
 - ❖ Process continues until an offer is not matched by a counter offer
 - ❖ Each counter offer must be at least \$10,000 (or other specified amount) higher than the offer responded to
 - ❖ May not be suitable unless the shareholders' financial strengths and ages are about the same
3. **Fair Market Value determined by 2 people if no agreement**
- ❖ Initially Fair Market Value is whatever shareholders agree
 - ❖ If no agreement it is determined by a valuer chosen jointly
 - ❖ If no agreement about valuer it is the average of 2 valuations, one obtained by each shareholder
 - ❖ Valuers must have experience in industry
4. **Fair Market Value determined by 3 people if no agreement**
- ❖ Initially Fair Market Value is whatever shareholders agree
 - ❖ If no agreement it is determined by a valuer chosen jointly
 - ❖ If no agreement about valuer it is the amount agreed by two valuers, one retained by each shareholder
 - ❖ If no agreement a third valuer is appointed by external body (such as the Institute)
 - ❖ Value is then the average of the 2 valuations that are closest to each other
 - ❖ All valuers must have experience in industry
5. **Restraint of trade for employees**
- ❖ The restriction will be void unless reasonably necessary to protect the goodwill of the business
 - ❖ The area can't be outside the area the business operates in
 - ❖ The shorter the time the more likely it is enforceable
 - ❖ The restraint must not in effect deprive the employee from being able to work
6. **If a shareholder sells all its shares**
- ❖ A restriction on a former shareholder from competing with the company may not be enforceable.