Self-Assessment Checklist for  
Preparing a Shareholders Agreement

The following questions are intended to help you understand the types of issues that should be addressed in your shareholders agreement. Note that this checklist is intended as a starting point for discussion. As detailed as they may first appear, there may be other issues that will need to be considered and addressed. You may also wish to consult our detailed guide on shareholders agreements in conjunction with this checklist, which you can access [here](https://www.turtons.com/shareholders-agreements-a-comprehensive-guide).

|  |  |  |  |
| --- | --- | --- | --- |
| Background | | | |
|  | Does the company have a shareholders agreement at the moment? | |  |
|  | What has prompted you to start thinking about a shareholders agreement? | |  |
|  | Do you have the company’s constitution? (You will need to provide a copy.) | |  |
| About the company | | | |
|  | What is the nature of the company’s business? | |  |
|  | What is the structure of the business? Are there multiple companies and/or trusts? | |  |
| About the share register | | | |
|  | Who are the shareholders, and what type of shares do they hold? | |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | | **Shareholder Name** | **% of shares** | **Class of Shares** | **Voting or non-Voting** | **Does this shareholder work in the business?** | **Age (approx)** | |  |  |  |  |  |  | |  |  |  |  |  |  | |  |  |  |  |  |  | | |
|  | Has the company issued any options, convertible notes or other interests that could be converted into shares? If so, what are the details? | |  |
|  | Is there an employee share scheme, or any intention to implement one in the near future? If so:   * + 1. What are the details?     2. Will the employee shareholders (or the trustee of the share scheme) be bound by the shareholders agreement? | |  |
|  | Are there any family or other close personal relationships between any of the shareholders? If so, what are they? | |  |
|  | If different classes of shares have been issued, what are the differences between classes? | | |  |  | | --- | --- | | Class | Rights | |  |  | |  |  | |  |  | |
|  | Are there any existing arrangements in favour of any shareholder that are intended to protect the shareholder against dilution? If so, what are they? | |  |
|  | Are any of the shareholders required to give formal commitments in relation to their ongoing involvement in the business? (For example, they are committed to remain involved in a full time capacity for [x] years.) If so, what will happen if the commitment is not honoured? | |  |
| Financing and future share issues | | | |
|  | Are there any existing shareholder loans? If so, what are the details? | |  |
|  | If the company requires future capital, how will this be raised? Shareholder loans, equity fundraising, or some combination? | |  |
|  | Will the Board be allowed to issue shares in the future (for example, for a specific fundraising round, or for an employee share scheme)? If so, what are the limitations on this (if any)? For example, is there a minimum price or a maximum number of shares? Do the shares need to be offered to the existing shareholders? | |  |
| Decision-making and the Board of Directors | | | |
|  | What levels of authority are required for different types of decision? | | See the matrix at the end of this checklist. |
|  | Who are the directors at the moment? | |  |
|  | Are any of these directors non-executive (ie they are not actively involved in the business)? | |  |
|  | Does the company have any active plans to appoint further directors? If so, what are they? | |  |
|  | Are future directors required to hold any minimum qualifications (eg [x] years of experience, tertiary educated etc)? | |  |
|  | What is the maximum Board size? | |  |
|  | Should the Board be required to have a minimum number of non-executive directors? | |  |
|  | Can a shareholder with a minimum percentage of shares appoint directors? If yes, what is the minimum percentage? | |  |
|  | Should the shareholders agreement prescribe meeting times for the Board? If so, how often should the Board meet? | |  |
|  | What is the quorum for directors meetings? | |  |
|  | Can directors appoint alternate directors to represent them?  Consider whether you are happy for other people to potentially be involved in decision-making. If alternate directors are permitted, should this require the consent of the other directors or shareholders? | |  |
|  | Should the agreement contain streamline processes for decision-making? For example, should the company be allowed to pass resolutions on paper (without a meeting) even if less than 100% of the directors or shareholders approve the resolution?  This might be appropriate for some types of decisions, but not others, to ensure people cannot be outvoted without being given an opportunity to express their views. | |  |
| Share Transfers | | | |
|  | Should the agreement contain a compulsory share acquisition clause if a shareholder defaults? If yes, what types of ‘default’ will trigger the clause? Common examples include breach of confidentiality, restraints and breaches of prohibitions on share transfers, as well as insolvency, bankruptcy and engaging in criminal conduct. | |  |
|  | Should there be a forced buy/sell regime if there is a falling out between shareholders? (ie Should a shareholder or group of shareholders be able to buy out the others?) If yes, how should this work? | |  |
|  | What happens if a shareholder dies or becomes permanently incapacitated? Is the position the same for all shareholders? | |  |
|  | If a shareholder wishes to sell their shares, should they be required to offer those shares to the other shareholders before being able to sell them to a third party? (Usually the answer to this is yes.) | |  |
|  | Should there be any restrictions on third parties to whom shares can be sold? For example, what if one shareholder wishes to sell shares to a person who has a relationship with a competitor? | |  |
|  | Will there be a drag along provision? If yes, what percentage of shares is required to trigger the drag along? | |  |
|  | Will there be a tag along provision? If yes, what percentage of shares is required to trigger the tag along? | |  |
|  | Should shareholders be permitted to grant security interests over their shares (eg to secure a personal loan)? If yes, does this require any level of shareholder approval? | |  |
| Miscellaneous | | | |
|  | When will the company pay dividends? Should the shareholders agreement contain a prescribed dividend policy? | |  |
|  | What information will the company provide the shareholders, and how often? For example, management reports, operational updates, annual financial statements? | |  |
|  | Do the shareholders have (or should they have) buy/sell insurance to fund the purchase of shares if another shareholder dies or becomes permanently incapacitated? | |  |
|  | Beyond the usual business insurance policies, what insurances should the company be required to maintain to protect the shareholders? Does the shareholders agreement need to deal with this? Consider buy/sell insurance, key man insurance and directors & office insurance. | |  |
|  | Should the agreement contain shareholder restraints? If yes, what should they be? Examples are prohibitions on being involved with a competing business, diverting clients or business away from the company and poaching employees. Consider the geographic reach and duration of any restraints. | |  |

Decision-making matrix

*The table below is merely intended as a starting point for discussion. Individual line items may need to be varied, removed or supplemented based on your circumstances. For each type of decision, indicate the level of approval that is required. Note that some types of decision may be regulated by the Corporations Act*. *A decision will need to be made as to what the ‘Special Majority’ threshold should be. Subject to those decisions governed by the Corporations Act, the percentage for Special Majority is usually determined by reference to the share register.*

|  | | Managing Director | Board  (majority) | Special Majority | Unanimous Shareholder Approval |
| --- | --- | --- | --- | --- | --- |
| **Trading** | |  |  |  |  |
|  | Entering into a new contract or varying an existing contract with value of less than $[insert] in the ordinary course of business |  |  |  |  |
|  | Entering into a new contract or varying an existing contract with a value between $[insert] and $[insert] in the ordinary course of business |  |  |  |  |
|  | Entering into an new contract or varying an existing contract with a value of more than $[insert] |  |  |  |  |
|  | Entering into an agreement with a shareholder or a shareholder’s related entity |  |  |  |  |
|  | Compromising a debt owed to the company where the total amount of the compromise is more than $[insert] |  |  |  |  |
|  | Commencing legal proceedings, including court proceedings or arbitration |  |  |  |  |
| **Acquisitions, Disposals and Other Commitments** | |  |  |  |  |
|  | Acquiring or disposing of any asset with a value of up to $[insert] in the ordinary course of business |  |  |  |  |
|  | Acquiring or disposing of any asset with a value of more than $[insert] in the ordinary course of business |  |  |  |  |
|  | Entering, varying or terminating any lease, contract for sale or other agreement in relation to real property |  |  |  |  |
|  | Sale of the company or business or a material part of it |  |  |  |  |
|  | Acquisition of any business |  |  |  |  |
|  | Merger with any other business |  |  |  |  |
|  | Material alteration to the nature or scope of the business |  |  |  |  |
|  | Making a loan to anyone of more than $[insert] (excluding credit extended to customers in the ordinary course of business) |  |  |  |  |
|  | Giving a guarantee to any person |  |  |  |  |
|  | Borrowing any money resulting in the company having a total debt of more than $[insert] (excluding liabilities incurred in the course of ordinary trade) |  |  |  |  |
| **Corporate and Other** | |  |  |  |  |
|  | Changing the company’s name |  |  |  |  |
|  | Creating any encumbrances over the company’s assets |  |  |  |  |
|  | Changes to the corporate structure of the company (eg formation of subsidiaries) |  |  |  |  |
|  | Issuing new shares |  |  |  |  |
|  | Conducting a share buy-back or other capital reduction |  |  |  |  |
|  | Approval of a new budget or varying the existing budget |  |  |  |  |
|  | Approval of a new business plan or varying the existing business plan |  |  |  |  |
|  | Employment of any new staff or consultants with a total remuneration package of $[insert] or more (including superannuation and bonuses) |  |  |  |  |
|  | Terminating or varying the terms of any employment of an employee shareholder |  |  |  |  |
|  | Terminating or varying the terms of any employment of the CEO |  |  |  |  |
|  | Voluntary liquidation or winding up of the company |  |  |  |  |
|  | Finalisation, adoption and approval of the company’s accounts |  |  |  |  |