

Mugomeza & Mazhindu

Legal Practitioners

Checklist for shareholders' agreement

1 Introduction

- 1.1 Company name and registration number
- 1.2 Company's business
- 1.3 Authorised share capital
- 1.4 Description of shares and number in each class
- 1.5 Current shareholders' particulars
- 1.6 Current directors' and secretary's particulars

2 Equity investment particulars

- 2.1 Particulars of new shareholders
- 2.2 Number and class of shares to be allotted to each

3 Loan particulars

3.1 Particulars of lender

3.2 Amount of loan

3.3 Rate of interest

3.4 Date of repayment

4 Particulars of share class rights

5 Transfer of shares

5.1 Is there to be an initial period during which the transfer of shares will be prohibited?

5.2 Will there be an obligation to offer shares which are to be sold to the other shareholders before being offered to an unrelated person?

5.3 How will employees' shares be dealt with once the employee leaves the company?

6 Future share issues

6.1 Will newly issued shares be offered to existing shareholders before being offered outside the company?

- 6.2 If so, will existing shareholders have the right to buy such shares in any amount other than their proportion of the current shareholding which they hold?

7 Management

- 7.1 What is the quorum for a board meeting?
- 7.2 What is the quorum for a shareholders' meeting?
- 7.3 In the case of a board meeting, is the quorum a simple number or does it reflect the presence of the board appointee of each shareholder—and the procedure to be followed in the case of repeated non attendance of any board member?
- 7.4 Does the chairman of the board of directors have a casting vote?
- 7.5 Does the chairman of a shareholders' meeting have a casting vote?

8 Items requiring unanimity or a specified majority

In so far as this does not conflict with statutory provisions, which of the following issues require unanimity among the directors or the shareholders or both? If unanimity is not required is there a specified majority which would be necessary in each case:

- 8.1 Altering the share capital (authorised or issued)

- 8.2 Subdivision or consolidation of shares
- 8.3 Issue of bonus shares
- 8.4 Reduction of capital
- 8.5 Acquisition of shares in another company
- 8.6 Establishing a new office in the United Kingdom
- 8.7 Establishing a new office overseas
- 8.8 Entering into any onerous or long term agreement and define those terms
- 8.9 Taking the company overseas
- 8.10 Authorising expenditure outside the budget and define the extent of such spending
- 8.11 Varying banking arrangements—additional accounts authorised signatories
- 8.12 Exceeding agreed borrowing limit
- 8.13 Making any loan

- 8.14 Taking any substantial loan or issuing a debenture or creating a mortgage
- 8.15 Paying a dividend or other distribution of profit
- 8.16 Establishing a new business
- 8.17 Changing the company or business name
- 8.18 Selling the business or disposing of any substantial assets and define that term
- 8.19 Giving any guarantee or other security
- 8.20 Altering the constitution of the company
- 8.21 Varying the voting or other rights attached to any class of shares
- 8.22 Appointing new directors
- 8.23 Removing a director
- 8.24 Increasing directors' fees, salaries or other benefits (by more than a specified percentage)
- 8.25 Entering into any agreement with a director or connected person or shareholder or any other non arm's length contract

8.26 Recruiting, dismissing or varying the employment of any 'employee' or 'senior employee' (and a definition of such term to be included)

8.27 Agreeing to grant an option over the share capital

8.28 Registering a transfer of shares other than strictly in accordance with their terms

8.29 Settling any claims over a specified amount and define that term

8.30 Any others?

9 Financial matters

9.1 Requirement for formal budgets and business plans, their frequency and system for review and approval

9.2 Dividend policy

10 Capital requirements

10.1 Obligation to provide further capital

10.2 Circumstances in which further capital may be required

10.3 Will there be an obligation to provide such capital in proportion to the original investment?

11 Guarantees

- 11.1 Does the bank require all or any of the shareholders to give a guarantee?
- 11.2 If only some of the shareholders are to give a guarantee will the other shareholders indemnify them?

12 Employment

Will the shareholders all enter into employment contracts with the company?

13 Voting deadlock

How will deadlocks be resolved:

- 13.1 By arbitration
- 13.2 By the chairman's casting vote
- 13.3 By termination of the agreement, involving winding up the company, or offering it to the shareholders to acquire at value?

14 Company protection

Which of the following protections are required in contracts with shareholders, directors and senior employees or other employees:

14.1 Confidentiality

14.2 Restrictions after termination of the relationship with the company

14.3 Non-solicitation

15 Miscellaneous

15.1 Should the company be made a party to the agreement to enforce post-termination covenants?

15.2 Provide an opportunity for the client to raise any other concerns which might be dealt with in the shareholders' agreement (eg death of a shareholder)