

SHAREHOLDERS' AGREEMENT

In a nutshell

What is a shareholders' agreement?

A shareholders' agreement is a contract that establishes the rules applicable to the relationships, rights and obligations that shareholders have towards each other and the corporation. Such agreement can also be used to mitigate the consequences of events that could compromise the company's sustainability such as a disability, death or withdrawal of a shareholder. While not mandatory, this document remains a valuable tool for adapting corporate governance to the reality of the shareholders.

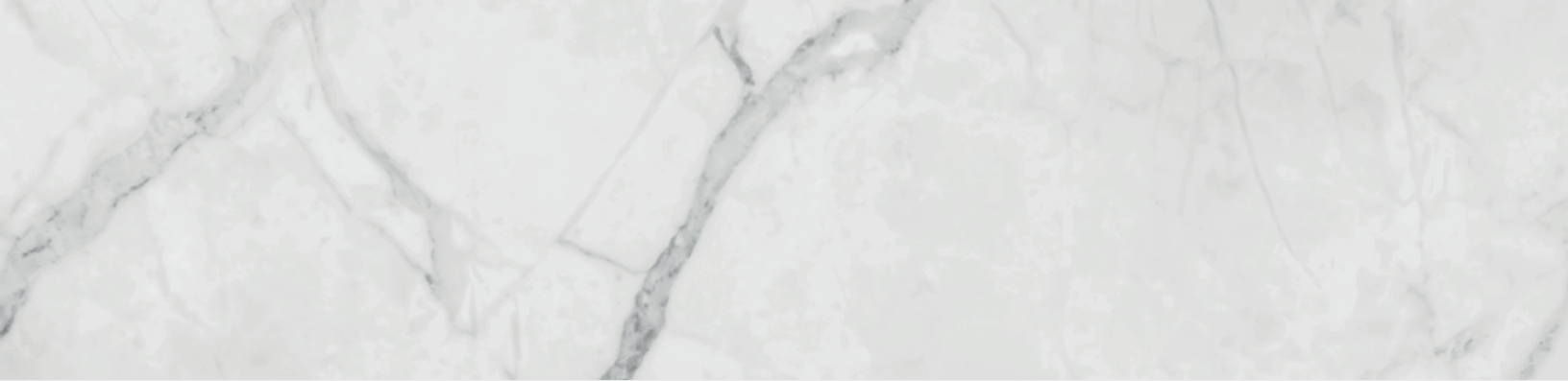
Who needs a shareholders' agreement?

A shareholders' agreement can be useful for all types of corporations. All business owners with more than one shareholder should consider setting up a shareholders' agreement. Ideally, this should be done from the moment the corporation is created. However, it can be signed or modified at any time, based on the will and needs of the shareholders.

What types of clauses are included in a shareholders' agreement?

In addition to clauses related to the company's administration and to the duties and obligations of each party, the shareholders' agreement can be used to proactively plan transactions and define actions to be taken in situations likely to alter the shareholder structure. It is common practice to include clauses governing the transfer, purchase and sale of shares to shareholders, the company or third parties. For example, right of first refusal, shotgun, piggyback and tag-along clauses are frequently included in shareholders' agreements.

Furthermore, the death or disability of a shareholder may have consequences contrary to the will of the surviving shareholders. In the event of a shareholder's death, if no arrangements have been made, the deceased's shares will devolve to their estate. Since this situation is generally undesirable, the shareholders' agreement may include clauses for the transfer of shares in the event of death. For example, irrevocable offer or double option clauses may enable surviving shareholders to retain control of the company.



On the other hand, since decisions are generally taken by majority vote, it is possible to include clauses that would subject certain decisions to a different percentage of your vote, depending on the will of the shareholders. Such clauses are particularly relevant, for example, to protect the rights of minority shareholders or to define the decision-making power of holders of different types of shares, such as preferred shares.

Finally, to ensure that shareholders comply with the agreement, penalty clauses providing for recourse and sanctions can be included. So, for example, a shareholder who fails to meet their obligations to the company could be obliged to have their shares bought back or have their future sale price reduced.

What about life insurance?

To facilitate the redemption of shares in the event of death, shareholders can take out life insurance. The death benefit paid will finance the redemption of shares in accordance with the transfer terms set out in the agreement. Term life insurance is often the preferred option for share redemption. However, depending on the situation, permanent life insurance products may represent a cost-effective alternative for both shareholders and the company. A detailed analysis should be carried out in this respect.

In the event of a shareholder's inability to perform their duties, disability or critical illness insurance can ensure the continuity of business activities. Depending on the situation, the insurance could also be used to buy back shares from a shareholder deemed to be permanently incapacitated.

It is advisable to call in a lawyer to assess the possibility of setting up a shareholders' agreement. A lawyer will also be in a position to draft, revise and periodically update such an agreement

iA Financial Group's Large Case Solutions team can help with the process of setting up, reviewing or amending a shareholders' agreement. Please do not hesitate to contact us.

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