

APPLICATION FORM

Shareholders Agreement

Please read the following before completing the application form.

A Shareholders Agreement covers the funding, structure, management and direction of the business. It outlines the responsibilities and obligations of the business owners. It is designed to deal with the issues that may arise during the life of a business, by determining in advance, how such issues should be dealt with. The process of developing a Shareholders Agreement and the content included will differ between each entity after discussion and input involving all the relevant shareholders.

The key issues list outlines issues which business owners should consider when managing their business.

By completing and submitting the application you confirm as follows:

1. you have considered the items listed in the issues list; and
2. the information provided is correct.

If you have any questions about completing the application form please contact:

Neal Dallas

Principal

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Anthea Faherty

Principal

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KEY ISSUES LIST

Issue	Details
Commercial objectives	<p>For the agreement, it is important to establish the commercial objectives of the business and the parties entering into the document. These include:</p> <ol style="list-style-type: none"> What are the business's principal activities? What will each shareholder bring to the business and when? What are the shareholders' expectations including profit distribution and realisation of the investment? Are there any changes required to be made in order to achieve those objectives? If so, what are those changes?
Involvement	<p>To what extent are shareholders or a representative of a shareholder required to participate in the business and to co-operate with each other to ensure the success of the business. The document should set out the minimum involvement of the shareholders or their representatives and any remuneration that will be payable.</p>
Structure	<p>In terms of the structure of the ownership of the business, it is necessary to consider:</p> <ol style="list-style-type: none"> Who will be the shareholders and what will be their interest-holding proportions? Are the interestholdings on the same terms? What are the rights of the shareholders: <ol style="list-style-type: none"> to vote at meetings; to attend meetings and receive notices of meetings; to share in the profits from the business; to bring the business to an end.
Conditions	<p>Are the arrangements between the shareholders subject to any conditions? If so, what are those conditions and when should these conditions be satisfied by?</p>
Funding arrangements	<ol style="list-style-type: none"> Loans Further capital
Term	<p>The shareholder agreement should deal with:</p> <ol style="list-style-type: none"> when the arrangements between the shareholders commence; when and how the arrangements between the shareholders will cease.
Controller	<p>The document will need to state who has the control over the day to day operation of the business. This may not necessarily be all of the shareholders.</p> <p>In addition, it should outline the rights of the shareholders to vote on relevant/ significant matters to the business.</p> <p>The shareholders should agree on the following:</p> <ol style="list-style-type: none"> How are decisions of the business made? Who will be the decision makers for the business and how will the decision makers be appointed? Will all shareholders have the right to appoint? Can a representative of a shareholder be removed? What happens when a representative of a shareholder is removed? How and when will meetings be held? What are the requirements in order to hold a meeting (i.e. quorum, notice periods etc)?

Issue	Details
Decision-making	<p>Unless otherwise agreed, all decisions as to the business operations are made by majority of each of the appointed controllers. The decision making process can be controlled by ensuring that key decisions require a certain level of consent or approval before an action can be taken.</p> <p>In the event that there is a deadlock on decision making, the agreement should address ways in which the deadlock can be broken (e.g. shotgun clause, forced sale, wind up clause).</p> <p>The document should set out which decisions require a majority consent or unanimous consent of the shareholders.</p>
Management	<ul style="list-style-type: none"> a. Business plan <ul style="list-style-type: none"> i. Will the business be operated in accordance with an agreed business plan? ii. What must the business plan deal with? iii. When will each business plan be prepared? iv. What period will be covered by each business plan? v. When will each business plan be reviewed? b. Reporting <ul style="list-style-type: none"> i. When is the business legally required to prepare financial reports which are then made available to shareholders? ii. Is there any requirement to have financial reports audited? iii. What entitlement do shareholders have to access financial information and records of the business? c. Voting <ul style="list-style-type: none"> i. What are the voting rights of the representative? ii. Is there a chairperson? Will they have a casting vote?
Interests	<ul style="list-style-type: none"> a. Issue: <ul style="list-style-type: none"> i. Will future interests be offered to existing shareholders before they are offered to potential shareholders? ii. Will there be any restrictions on the issue of interests to new shareholders? iii. Who determines price? b. Transfer: <ul style="list-style-type: none"> i. Will a shareholder wishing to sell their interests be required to first offer them to existing shareholders before they are offered to new shareholders? ii. If the existing shareholders do not acquire the exiting shareholder's interest, will there be any restrictions on those interests being sold to new shareholders? iii. Will the remaining shareholders have an option to: <ul style="list-style-type: none"> A. sell their interest to the new shareholder on the same terms as the exiting shareholder (tag along); B. buy the exiting shareholder's interests on the terms offered to the new shareholders (first or last right of refusal)?

Issue	Details
Obligations of parties	<ul style="list-style-type: none"> a. Finance and security <ul style="list-style-type: none"> i. Will the shareholders be required to lend money to the business? If so, at what rate? ii. Are there any limitations on borrowing? iii. Will these loans be in their interest holding proportions? iv. Will the business pay interest on the loans? v. When will they be repaid? vi. Will they be secured over the business assets? vii. Will the shareholders be required to support any debt incurred by the business by guarantee or other security? Will this security be given in their shareholder proportions? b. Restraint <p>Should the shareholders be restrained from competing with the business after they cease to be shareholder? If so:</p> <ul style="list-style-type: none"> i. what activities are restrained? ii. how long should these restraints last? iii. to what geographical area should these restraints apply? c. Confidential information <ul style="list-style-type: none"> i. Sensitive information about the financial position or operations of the business will inevitably be disclosed to shareholders. ii. Which of that information is confidential to the business and not to be disclosed to the public? iii. When can the shareholders use that confidential information? iv. To whom and upon what terms may shareholders disclose that confidential information?
Exits	<p>What process will be adopted to allow the shareholders to sell their interests in the business?</p> <ul style="list-style-type: none"> a. Buy/Sell Option <p>A minority interest in a business usually confers little, if any, practical control over the business. For this reason a minority interest is notoriously difficult to sell.</p> <p>If there is no ready market for the shareholders to sell their interests, an artificial market may be created.</p> <p>One method to create a market is through the grant of options. An option is a right to buy or to sell the interest for a specified price at a specified time. There are two options which are commonly used.</p> <ul style="list-style-type: none"> i. The first option is a buy option: It allows one or more shareholders to compulsorily buy another shareholder's interests. ii. The second option is a sell option: It allows a shareholder to compulsorily sell its interest to the other shareholders. <p>You need to consider:</p> <ul style="list-style-type: none"> i. When may an option be exercised? ii. What are the terms of sale on exercise of an option? iii. How will the sale price be determined on exercise of an option? For example: <ul style="list-style-type: none"> A. By an agreed pre-determined figure. What is that figure? How and when is it determined? How is it recorded? B. By an independent valuation. How is the valuer appointed? What direction, if any, is the valuer to be given as to how he/she is to value the business?

Issue	Details
Exits (continued)	<p>b. Trigger events:</p> <p>The shareholders will need to agree what, if any, events will trigger an exit of a shareholder from the business. This may include:</p> <ul style="list-style-type: none"> i. death of a shareholder; ii. total and permanent incapacity of a shareholder; iii. retirement of a shareholder; iv. termination of employment of a shareholder or a person related to a shareholder; v. family law event in respect of a person related to a shareholder, including a separation or the signing of a binding financial agreement pursuant to the Family Law Act that purports to deal with the interest holding in a way that is inconsistent with this agreement; vi. persistent breaches of the shareholder’s obligations. <p>In some cases, a trigger event may mean that the shareholder will exit from the business but will receive 100% of the value of their interests in the business. In other circumstances (e.g. a shareholder breaching their obligations) it may receive a lesser proportion of the value of their interests.</p> <p>c. Sale terms</p> <p>It is important that the document outlines what the terms of a sale are. That is, how will the purchase price be paid and when? As an example, the purchase price might be paid by instalments over a period of time. Interest may or may not be payable at the same time as the instalments are paid.</p> <p>d. Pre-emption arrangements</p> <ul style="list-style-type: none"> i. Is there a restriction on the ability of a shareholder to dispose of their interests to an outside party (e.g. the requirement to offer its interest to the existing shareholders)? ii. If so: <ul style="list-style-type: none"> A. What restrictions apply? B. What is the notice period? C. Is there any circumstances which will give rise to a compulsory acquisition of a shareholder’s interests (e.g. death/ TPD/ divorce)? D. How long do the continuing shareholders have to accept or reject an outgoing shareholder’s interest? E. Is there a discounting in the value of the shareholder’s interest? F. What is the price for the interest and how is it calculated (i.e. set price, market value or using a formula (e.g. a multiplier))? G. Is there a requirement to approve the incoming shareholder? H. In what circumstances do the pre-emption provisions not apply?
Dispute resolution	<p>The document should outline a mandatory process for resolving disputes. This can be done by mediation/ arbitration or some other form of dispute resolution.</p> <p>The document should also deal with circumstances where the dispute is not resolved and a disgruntled shareholder can sell their interests in the business. The remaining shareholders can choose to buy the shareholder’s interests for the price offered or make a counter offer to the shareholder to dispose of their interests at the same price. The counter offer may bind the disgruntled shareholder to the deal. This will ensure that the outgoing shareholder act reasonably in respect of the offers made.</p>

Issue	Details
Termination	The document should contemplate circumstances that will terminate the agreement and the timeframe for this termination to occur.
Inconsistency clause	Which document prevails? e.g. trust deed, constitution.

By completing and submitting the form you confirm as follows:

- a. It is the purchaser’s responsibility to ensure that the information supplied is correct.
- b. If new documents have to be prepared as a result of errors in the information a further fee will be payable.

Please ensure you complete all details below, and contact us with any questions you have prior to submitting the form.

PRICES (GST EXCLUSIVE)

Preparation of initial draft of the Shareholders Agreement on the basis of the instructions provided. \$2,500 plus GST

Amendments to the document on the basis of further instructions or negotiation – At hourly rates
Please note the cost of the document will increase depending on the level of amendments made.

Company search (company extract)	Yes	No	TBC*
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Documents by email delivery only.

*Please contact a member of our team for current search fees.

PURCHASER’S DETAILS

First name

Surname

Name of firm (if applicable)

Email address

Telephone	Fax
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Street Address

Suburb/City	State	Postcode
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Postal Address
(if different from above)

Suburb/City	State	Postcode
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INFORMATION REQUIRED / TO BE CONFIRMED / TO BE PROVIDED

- | | | |
|---|-----|----|
| 1. Any constitution, trust deed or other establishing document for the Company and each business owner. | Yes | No |
| 2. The balance sheet/ financials of the business have been included with the application form. | Yes | No |
| 3. Copy of a valuation of the business or report or correspondence outlining the value of the business and how this was calculated. | Yes | No |

COMPANY DETAILS AND STRUCTURE

Business Name	Business Number	
Company Name		
ACN	ABN	
Principal place of business address		
	State	Postcode
Registered office address		
	State	Postcode
Postal address		
	State	Postcode
Nature of the Business / Description of the business (industry, specialty, etc.)		
What is the principal business activity?		

Related Entities

Are there any related entities or holding companies which should be included in the agreement?

Yes No

If Yes, please provided the details of the entity(ies) (Name, ABN, ACN, ARBN etc)

Full Name

ACN

ABN

Full Name

ACN

ABN

OWNERSHIP DETAILS

Interest Holder 1

Full name

Name of related entity
(if applicable)

ACN/ ABN/ ARBN

Address

State

Postcode

Structure of the interest-holder

Discretionary Trust / Family Trust
Company / Corporate Trustee
Hybrid Trust

Self-Owned
Unit Trust

Interest holding details

Percentage Interest

% Date of acquisition

Class of interest held

Number of interests held

Estimated value of interest

Paid up capital amount

Name of Director being appointed / key person

Address:

State

Postcode

Interest Holder 2

Full name

Name of related entity
(if applicable)

ACN/ ABN/ ARBN

Address

State

Postcode

Structure of the interest-holder

Discretionary Trust / Family Trust	Self-Owned
Company / Corporate Trustee	Unit Trust
Hybrid Trust	

Interest holding details

Percentage Interest	%	Date of acquisition
Class of interest held		Number of interests held
Estimated value of interest		Paid up capital amount

Name of Director being appointed / key person

Address

State

Postcode

Interest Holder 3

Full name

Name of related entity
(if applicable)

ACN/ ABN/ ARBN

Address

State

Postcode

Structure of the interest-holder

Discretionary Trust / Family Trust	Self-Owned
Company / Corporate Trustee	Unit Trust
Hybrid Trust	

Interest holding details

Percentage Interest	%	Date of acquisition
Class of interest held		Number of interests held
Estimated value of interest		Paid up capital amount

Name of Director being appointed / key person

Address

State

Postcode

Interest Holder 4

Full name

Name of related entity
(if applicable)

ACN/ ABN/ ARBN

Address

State

Postcode

Structure of the interest-holder

Discretionary Trust / Family Trust
Company / Corporate Trustee
Hybrid Trust

Self-Owned
Unit Trust

Interest holding details

Percentage Interest

% Date of acquisition

Class of interest held

Number of interests held

Estimated value of interest

Paid up capital amount

Name of Director being appointed / key person

Address

State

Postcode

Interest Holder 5

Full name

Name of related entity
(if applicable)

ACN/ ABN/ ARBN

Address

State

Postcode

Structure of the interest-holder

Discretionary Trust / Family Trust
Company / Corporate Trustee
Hybrid Trust

Self-Owned
Unit Trust

Terms of the Shareholders Agreement	Details	
1. Do you have details of all the relevant individuals involved in the business, together with details of their related entities who own the business interests?	Yes	No
2. Are there existing agreements which may impose restriction or which may need to be considered prior to documenting the shareholders agreement? These may include company constitutions, trust deeds, other shareholders agreements or family law binding financial agreements etc.	Yes	No
3. Are there any conditions which need to be satisfied prior to entry into this agreement (i.e. provisions of loans, transfers of assets, capital contributions etc).	Yes	No
4. Are there any persons/ business owners with particular roles within the Company (i.e. managing director etc?).	Yes	No
5. Is there an obligation for the key person to work in the business of the company in order to maintain a shareholding?	Yes	No
6. Directors – appointment, number, meetings.	<p>Does each shareholder have the right appoint a director?</p> <p>Yes, if the shareholder holds at least one voting share Yes, if the shareholder holds% of the voting shares No, directors appointed by the majority shareholder or a majority of shareholders No, directors appointed by certain shareholders, please specify</p> <p>How often will shareholders meetings being held?</p> <p>How many directors will serve on the board (specify)?</p> <p>How often will board meetings being held?</p> <p>monthly bi-monthly quarterly annually</p> <p>other</p> <p>Quorum for meetings of directors</p> <p>one shareholder appointed representative for each shareholder two or more - not appointed by any particular shareholder, please specify combination of the above</p> <p>Decisions of the board will be passed by:</p> <p>simple majority special resolution unanimous resolution other agreed percentage</p> <p>Are there any decisions which require greater than a simple majority resolution of the board?</p> <p>Yes No</p>	

Terms of the Shareholders Agreement	Details
7. Decisions of directors.	
8. Shareholders – appointment, number, meetings.	<p>monthly bi-monthly quarterly annually</p> <p>other</p> <p>Decisions of the shareholders will be passed by:</p> <p>simple majority special resolution</p> <p>unanimous resolution other agreed percentage</p> <p>Are there any decisions which require greater than a simple majority resolution of the shareholders?</p> <p>Yes No</p> <p>Are there any decisions reserved to shareholders?</p> <p>Yes No</p>
9. Decisions of shareholders.	
10. Who can business owners sell their interests to if they decide to exit the business?	<p>Company first, then existing shareholders, then third parties</p> <p>Existing shareholders first, then the Company and then third parties</p> <p>Particular shareholders first, then the Company, existing shareholders, and then third parties</p> <p>Other</p>
11. If further shares are issued in the Company, whom should the Company offer the shares to?	<p>Existing Shareholders</p> <p>Particular shareholders</p> <p>Other</p>
12. What is the price received by a shareholder who exits?	<p>Price agreed by shareholders</p> <p>Market value</p> <p>Discounted market value</p> <p>Other Price offered by third party to shareholder</p>
13. If the share price is fixed or determined by the shareholders, how often will the parties review the value of the business?	<p>Each year</p> <p>Every second year</p> <p>Every third year</p> <p>Other</p>
14. What is the consequence of not reviewing the share price?	<p>No consequence (previously agreed value continues to apply, even if out of date)</p> <p>External company accountant or CFO:</p> <ul style="list-style-type: none"> • using a methodology / formula • no formula <p>Industry specialist who is an independent valuer:</p> <ul style="list-style-type: none"> • using a methodology / formula • no formula

Terms of the Shareholders Agreement	Details	
<p>27. What are the default or exit events?</p>	<p>A Business owner fails to pay any amount that is due and payable by it under this document</p> <p>A Business owner (or its key person) fails to comply with any of its obligations under the agreement and the failure is not remedied within 20 Business Days after receipt of notice from another Party requiring remedy of the failure</p> <p>A Business owner (or its key person) resigns as a director and/or employee</p> <p>A Director appointed by a Business owner fails to attend three (3) consecutive Board meetings without the consent of the other Business owners</p> <p>A Business owner suffers a Change in Control without the consent of the Company</p> <p>A Business owner or its respective key person suffers an Insolvency Event</p> <p>A key person and/or any director appointed by a Business owner fails to be Actively Engaged in the Business as resolved by the Board</p> <p>A key person and/or any director appointed by a Business owner is convicted of an Indictable Offence</p> <p>A Director or key person appointed by a Business owner reaches the Retirement Age</p> <p>A Director or key person appointed by a Business owner ceases to be employed by the Company or ceases to be a Director of the Company (for whatever reason)</p> <p>A Director or key person appointed by a Business owner dies or suffers a Total Permanent Disability or Critical Illness</p> <p>A Director or key person appointed by a Business owner is declared to be of unsound mind or his or her state becomes liable to be dealt with any way under the laws relating to mental health which apply in Queensland from time to time</p> <p>A Director or key person appointed by a Business owner experiences a separation from their spouse or de facto partner</p> <p>A Director or key person appointed by a Business owner executes a Binding Financial Agreement, as defined by Part VIIIAB of the Family Law Act, that deals with the interstholding in a way that is inconsistent with the terms of the shareholder agreement.</p> <p>Other</p>	
<p>28. Will a restraint of trade apply?</p>	<p>Yes</p>	<p>No</p>

RETURNING THIS FORM

After completing this form please either:

- print, sign, and fax it to McInnes Wilson Lawyers at (07) 3221 2921; or
- print, sign, scan, and email it to McInnes Wilson Lawyers at mcwonline@mcw.com.au; or

To print this form for signing click here:

To email this form to McInnes Wilson Lawyers, after confirming instructions below, click here:

CONFIRMATION OF INSTRUCTIONS

The purchaser agrees to purchase the goods and services indicated on this application form and acknowledges that legal or financial advice has not been given by McInnes Wilson Lawyers in relation to the preparation of the trust deed.

Signed by purchaser

Date (dd/mm/yy)

OR

Confirmed by purchaser

Date (dd/mm/yy)

Note: This application form will not be processed by McInnes Wilson Lawyers unless this section is completed.

CREDIT CARD PAYMENTS

Please debit the following credit card for the supply of goods and services indicated on this application form.

Note: Payment by credit card will incur a fee of 1.07% (incl GST) for VISA and MasterCard, and 3% (incl GST) for AMEX, on the GST inclusive price.

Credit card:

Visa MasterCard American Express

Total Remitted \$

Expiry date

 plus credit card fee specified above

Cardholder's Name

Card Number

Cardholder's Signature

Date