

IN-CPsha04

Shareholders' agreement: existing company; some shareholders have also invested debt

Agreement between shareholders for the regulation of

[\[Company name\]](#)

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This agreement is dated: [date]

The Company is: [company name] ("the Company")

The Company's registered office is: [company r/o]

The Shareholders are:

[name] of [address]

[name] of [address]

[name] of [address]

[name] of [address]

The background to this agreement is:

1. The shareholders have come together to form the Company with a view .
2. The Company is a private limited company, incorporated []
3. Before completion of this agreement:
 - 3.1 the Company has an authorised share capital of INR [000] divided into [000] ordinary shares of INR [500] each, of which [000]

;

- 3.2 the shareholdings in the Company are:

Name of shareholder	number of shares	beneficial owner / formation agent
[name]	[00]	[beneficial owner / formation agent]
[name]	[00]	[beneficial owner / formation agent]
[name]	[00]	[beneficial owner / formation agent]

4. It has been agreed that the authorised share capital of the Company will be increased to INR [000] divided into [000] ordinary shares and each new .

5. [Zain] has agreed to lend money to the company in the terms of a

6. The parties have agreed these terms in order to

These are the terms of the agreement:

1. Definitions

These definitions apply unless the context

“Business” means the business of [state
]

“Confidential Information” means all information about the Company and the other parties to this agreement but does not include information that it is reasonably necessary to disclose to a customer or other person in the usual course of business so far as that information is disclosed in those circumstances. It includes among other things: information about staff, their personal contact information, , , , .

“Directors” mean the directors of the Company.

“Fair Price” means the price of Sale Shares or Transfer Shares certified by the auditors of the Company or by accountants instructed for the purpose of such

2 .

"Intellectual Property" means intellectual property of every sort, whether or not registered or registrable in any country, including intellectual property of kinds coming into existence after today; and including, among others, patents, , , , , , .

“PR”	means the personal representatives or other person in control of the affairs of a shareholder as
“Sale Notice”	means a notice given by a shareholder to the Company,
“Sale Price”	means the price specified in a Sale Notice.
“Sale Shares”	means the shares which a shareholder wishes to transfer by gift or ,
“Transfer Date”	means the date when a shareholder transfers the last of .
“Transfer Event”	means any one of: <ul style="list-style-type: none"> • the death of a shareholder; or • the registration of an enduring power of attorney in respect of ; • the certification of a shareholder as a patient.
“Transfer Shares”	means shares which are owned by a shareholder whose affairs

2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to a person includes a human individual, a corporate entity and any organisation
- 2.2. a reference to a person or party includes reference to that person’s successors, legal representatives, permitted assigns and any person to whom rights and obligations are transferred or pass as

2.3. a references to a paragraph or schedule is to a paragraph or schedule to this agreement unless the context

2.4. the headings to the paragraphs and schedules (if any) to this agreement are inserted

2.5. unless the context requires otherwise, words importing the singular

2.6. any agreement by any party not to do or

2.7. [\[except where stated otherwise\]](#),

2.8. a reference to the knowledge, information, belief or awareness

2.9. The words “without limitation” shall

2.10. a reference to an act or

2.11. this agreement is made only in the English language. If there is any

3. Relationship of parties

3.1. Nothing in this agreement shall create a partnership or agency

3.2. Other than matters contained in a loan agreement dated [date], this agreement contains the entire agreement between

3.3. Each shareholder undertakes to use his

4. Subscription for shares

Each shareholder will

Name of shareholder	number of shares	price per share
[Name]	[00]	INR [00]
[Name]	[00]	INR [00]
[Name]	[00]	INR [00]

5. Completion

The parties agree

5.1. to conduct such business of the Company and sign such resolutions and minutes

5.2. each shareholder shall subscribe for such number of

3

5.3. The Company shall not be obliged to issue shares

6. Company's use of money

The Company will use the

7. Appointment and removal of Directors

7.1. Each shareholder may be a

7.2. To appoint a nominated director, a shareholder shall write to the Company secretary and to

OR

7.3. The maximum [].

7.4. The board :

7.4.1 Managing director

7.4.2 Marketing director

7.4.3 Production director

7.4.4 [. . .as required . .]

7.5. A new director may be []
[]

7.6. No director shall be appointed unless his appointment is approved by shareholders entitled to [75] %

7.7. A director may be removed by a vote to that effect at

8. Duties of directors

8.1. After completion of this

:

[Name],

[Name],

[Name],

8.2. The following duties are specifically allocated to the director

[

75] % , .

[Name],

[Name],

[Name],

9. Proxy votes

9.1. Any action or decision which may be taken

,

,

9.2. A shareholder

.

9.3. No person may act as proxy until his principal has

[24]

10. Company's obligations

10.1. The Company

:

10.1.1 carry on the Business efficiently;

10.1.2 ensure that any decision reasonably likely to affect the
()

;

10.1.3 maintain insurances

;

10.1.4 buy, sell and deal at all

;

10.1.5 keep accurate accounts and records of the Company and the
Business

,

;

10.1.6 provide each shareholder within [four]

;

10.1.7 deliver to each shareholder as promptly as reasonably
practicable

;

10.1.8 prepare such accounts in respect of each accounting reference
period as are required

[]

.

10.2. A shareholder may agree in writing that he shall have no right to
information relating , ,

.

10.3.

10.4. The shareholders agree to exercise their powers in relation

.

10.5. Each shareholder undertakes with each of the other parties that whilst
he remains

11. Actions requiring shareholder consent

11.1. The shareholders, whether as directors or shareholders, will not permit the Company

[75] %

:

11.1.1 change the name of the Company;

11.1.2 change its memorandum or articles of association;

11.1.3 pass any resolution for - ;

11.1.4 capitalise, repay or distribute money ,

;

11.1.5 in any way change the quantity, structure, value,

;

11.1.6 change any contractual arrangement with any

;

11.1.7 except in emergency, appoint a new ,

;

11.1.8 sell, transfer, lease,

,

;

11.1.9 buy any new business or company or make a substantial investment

;

11.1.10 otherwise than in the normal course

11.2. Each shareholder undertakes to use his

12. New intellectual property

12.1. Each shareholder understands that whilst associated with the Company, he may discover or

12.1.1 do his utmost to

12.1.2 tell the Company

12.1.3 provide to the Company whatever full code, passwords, specification,

12.2. To make this effective each shareholder now undertakes to do whatever is

12.3. This paragraph does not apply to Intellectual Property created by

13. Assets introduced by a shareholder

13.1. The assets listed under the

13.2. This paragraph applies to those assets and also

13.3. Unless a clear intention of gift

13.4. If any asset, being intellectual property, is incorporated into an object which is

13.5. Each shareholder who has permitted his assets of any description

13.5.1 is limited to

13.5.2 prohibits reproduction

13.5.3 shall terminate at any

14. Confidentiality

14.1. Each of the shareholders

14.1.1 remove from Company's premises or copy or allow anyone else to copy from

14.1.2 in respect of any part of the Confidential Information of the Company, from today until

14.2. This paragraph does not apply to disclosure:

14.2.1 made with the consent of the proper

;

14.2.2 of information or knowledge which

;

14.2.3 as may be

.

15. Exit strategy

Option 1

15.1. No party shall assign, mortgage, charge, or otherwise

,

75 %

.

OR

15.2. The shareholders agree that it is in the best

.

Option 2

15.3. It is a condition of

:

15.3.1 sell the whole of the issued

[]

;

15.3.2 offer for sale to

;

15.3.3 procure some other avenue whereby any shareholder may
dispose of his shares at

;

15.3.4 procure some other avenue whereby any shareholder may
dispose of his shares at

[100 , 000],

OR Option3

15.4. This paragraph may be amended only

15.5. All the provisions of this agreement whereby a particular percentage

15.6. The provisions of this paragraph may be enforced by any one
shareholder provided only ()

AND/OR

15.7. If by 31st December 2009, no offer satisfactory and acceptable to Zain
has been made for the sale of the whole of

00 , 000

15.8. Upon receipt of any such notice, the Company shall within [28]

15.9. If the Company shall fail to make the payment

15.10. The provisions in this paragraph shall

16. Transfer of shares and right of pre-emption

16.1. A shareholder may at any time transfer part

OR

16.2. A shareholder may freely dispose of some or all of his shares to his [spouse

,
/

16.3. If a shareholder wishes to dispose of all or any of his shares, [
]

:

16.4. The selling shareholder (“ ”)
;

16.5. The Sale Notice must specify:

16.5.1 ()
);

16.5.2 ,
(,
);

16.5.3
[3]

;

16.5.4 () ()
)

16.5.5

16.6.

16.7.

16.8.

16.9.

16.10.

[21]

16.11.

[21]

16.12.

16.13.

16.14.

()

16.15.

,

16.16.

,

17. Procedure after Transfer

17.1.

,

:

17.1.1

;

17.1.2

,

;

17.1.3

;

17.1.4

;

17.1.5

;

17.1.6

,

;

17.1.7

,

;

,

17.2.

,

(

).

18. Transfer of shares on death or incapacity

18.1.

,

,

.

18.2.

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18.3.

,

.

.

18.4.

:

18.4.1

(
)

[14]

;

18.4.2

,

18.5.

21

[21]

18.6.

18.7.

[90]

%

19. Transfer of shares on bankruptcy

19.1.

19.1.1 [

].

19.1.2

19.1.3

19.1.4

20. Restrictions on shareholder after transfer

Each shareholder agrees:

20.1.

;

20.2.

[]

,

20.3.

[],
;

20.4.

[]

,

;

20.5.

,

;

20.6.

;

20.7.

21. Shareholder's continuing obligations

21.1.

21.2.

21.3.

21.3.1

;

21.3.2

22. Life insurance provision

In this paragraph:

“Beneficiaries”

The “Life Assured” means each of:

[] [] []
[] [] []
[] [] []

The “Trigger Event”

▪

▪

The “Sum”

▪

22.1.

,

,

,

▪

22.2.

/

()

▪

22.3. ()

▪

22.4.

▪

22.5. The Sum shall be payable to the Beneficiaries.

22.6.

-

▪

23. Publicity

▪

24. Conflict with the articles

- 24.1. , :
- 24.2. ;

25. Breach of this agreement

- 25.1. () [30]
- [75] %
- 25.2. .

26. Dispute Resolution

27. Severance and invalidity

- 27.1. ,
- 27.2. ,

28. Miscellaneous matters

28.1. , ,

28.2.

28.3.

28.4.

28.5.

[72]

[24]

28.6. ,

Signed by [\[full name\]](#), duly authorised on behalf of the Company

Witness to signature:

name:

Address

Signed by [full name], a shareholder:

Witness to signature:

name:

Address

Signed by [full name], a shareholder:

Witness to signature:

name:

Address

Signed by [full name], a shareholder:

Witness to signature:

name:

Address

Schedule 1 Ownership of assets used by the Company

Schedule 2 - Letter of instruction to accountants for valuation

On the letterhead of the company

To: Bloggs accountants

Dear Sirs

Shares valuation - this company

%

To assist you we now enclose:

-
-
- details of the current and forward order book;
- budget for the next [\[two\]](#) years;

[OR](#)

Please make your valuation on the following assumptions:

1.

2.

3.

- %, [
4. / ,
5. , /
6. (,
) .
7. .
8. .
9. .
10. .
11. .

Yours faithfully,

Explanatory notes:

Shareholders' agreement: existing company; some shareholders have also invested debt

General notes

1. Just in case you are new to legal agreements: defined terms are given capital initial letters so that you are aware, as you read and come across caps, that the meaning of a word or phrase is “ ” .
:
 - so that you know what technical or obscure ,
 - to give a limited meaning to words or phrases which may otherwise ,
 - to enable a necessarily long definition to be given, so that when you come the word in the document, you are 50 .
2. Neither the front sheet nor the contents lists are part of a document, nor necessary for it to be effective. If you want to decorate the front of your document ,
!
3. Although all matters relating to the management, operation and structure of a company are regulated by statute, this agreement is comparatively unregulated. It is therefore open to the parties to make whatever arrangements they wish. The starting point for this agreement should therefore be a “wish list” .
 , !

There are also some important preliminary decisions relating to who does what, how the whole deal terminates, and what happens when someone dies or wants to sell their shares. Each director should also have .
4. We envisage that this document will be most frequently used by a small number of colleagues working together. Many of the provisions in this document may seem excessive. But we do advise caution before wholesale deletions. An agreement of this nature is intended to cover the situation where friendships break and ties dissolve.
“ “ .

5. When two people each own 50% of the shares, you have stalemate from the start. This structure is sometimes essential, but avoid it if you can. Several clever ways have been devised to avoid conflict but they are built on :
 - 5.1 What if the buying shareholder has no money?
 - 5.2 What if one of the shareholders is indispensable to the business, so that if he goes, ?
 - 5.3 What if one shareholder is also the main lender to the company and he ?
6. The document contains five preliminary points which are technically called “recitals”. The main purpose of the recitals in this case is to set out the structure of the company before the agreement becomes effective. It is all too easy to make arrangements for change ! , .
7. Most companies are bought through company formation agents. When the new owners first take control, they therefore find themselves with two shares in the names of formation agents and two blank share transfer forms. This document assumes they will have by now completed the forms so as to transfer these single shares to the two first named shareholders. If the company has been formed by the shareholders themselves, or their accountant or solicitor, then it is likely that no further action will be required in , 3 , “ ” .
8. We have kept the structure of the company simple in that there is provision for only one class of shares. Where there are two or more classes, complications arise not only in the agreement, but in the articles too. If you would like , .

Paragraph specific notes:

Notes following the numbered paragraphs

1. Definitions

It is our policy to limit the number of definitions to the bare minimum. Those that we use are always very important. In this agreement however, a number of the definitions apply to one two specific paragraphs: those dealing with

sales and transfers of shares. If you delete those paragraphs, then of course, the relevant items in the

We do provide long definitions occasionally, not because they are important to the meaning of the document but so that anyone signing the agreement cannot later deny

2. Interpretation

There are some very important points here that affect many other parts of the document. Leave these items in place unless there is a good reason to edit or remove. We suggest that you read them a couple of times

3. Relationship of parties

This is a simple statement for the avoidance of doubt. Of course other documents may indeed create the relationships mentioned. For example, most directors will be employees. It is important however, that this document does not accidentally create other relationships. On the other hand, whilst it is important that this document is not confused with any other, there is no reason why it should not refer to other relevant documents, such as a long term purchase or sale contract with one shareholder. It may be that to become

4. Subscription for shares

The price per share is usually the nominal value. If the shares are INR 100 shares, then the price per share should be INR 100. However, there is nothing to prevent a subscription at any price. If one party has contributed an existing business to the deal, it could be that others may have to contribute many

5. Completion

The agreement does not of itself make things happen. So far as change must be made, it is likely to be through service contracts, minutes of meetings, and so on. It is therefore important

6. Company's use of money

Minority shareholders will be best protected if all parties are clear as to what !

7. Appointment and removal of directors

One way to marginalise a minority shareholder is to deprive him of day to day power of management of the company. Conversely, it is unlikely that the business will be efficient if one director constantly vetoes

Remember that the actual appointment or removal must take place within the framework of , ,

8. Duties of directors

The identity of the directors is an obvious requirement. It is good practice to specify areas of responsibility in some detail. It is certain that shareholders will not see each other's roles in the same light. 8.1 Sets out the general division of , 8.2

9. Proxy votes

The question of absence through holidays or sickness is often overlooked. It is likely that the articles cover the situation at meetings, but will not cover other situations. You need to be able to appoint someone to vote your shares if

A proxy votes his principal's shares. He stands in the shoes of the principal only for the purpose

10. Company's obligations

The Company and the shareholders are parties. Although the Company can act only through its directors, it does have a separate legal identity. It is the Company that

A director must sign this

10.1. There is provision here for a shareholder to be denied access to passwords. At law, a director is responsible for every aspect of the affairs of the Company and so must have access to all information. The same does not apply to a shareholder.

10.2. This provision is intended to prevent a shareholder from acting

11. Actions requiring shareholders' consent

This paragraph is most important. Without the agreement, shareholders controlling 51% or more of the shares can do pretty much as they please. The main purpose of the agreement is to control and re-distribute that power. The first point to consider is therefore what percentage of votes (one per share, not one per person), should be sufficient to act against the wishes of a minority.

100

%!

75 %.

80 %

100 %.

75 %

12. New intellectual property

The scope and potential value of intellectual property is very wide. It is also difficult to track. The provisions in this agreement are therefore thorough. As long as we do not know today what intellectual property

13. Assets introduced by a shareholder

Over time, shareholders tend to introduce assets for use in the Company. It might be a picture to hang on the office wall, or an old desk, or some graphic design or software. Later, arguments

This paragraph grants a formal licence to the

14. Confidentiality

It is for the parties to decide whether they think this provision is appropriate. This is where software, customer lists, and designs creep

15. Exit strategy

You do not have to have an exit strategy, but we strongly advise you to do so, even if set down in general terms as in this document. It is

This paragraph requires very careful thought. We have offered you alternatives, but you may decide to draw your own. The first alternative states no transfer without consent. The second set of paragraphs provides a binding obligation to use “reasonable endeavours”. The last alternative allows the “

An “outside” lender is certain to want to know when and how he will receive the return of his money lent and when and how he will receive money for

The alternative provisions at the end of this paragraph may be draconian. Once the Company has the lender's money, his position may be precarious, depending as it will on the strength only of this document and his loan agreement. He needs to have confidence in his position as set out in this agreement, so as to be able to relax and support

16. Transfer of shares and right of pre-emption

The transfer of shares is another issue requiring careful thought and the editing of this document to suit your precise requirements. A shareholder may want "out" because the relationship with colleagues has deteriorated, or he has difficulties in his private life, or wishes to live elsewhere,

The most common provision is for a transfer by gift to be permitted only to close family. However,

50 % ,

The provision should be made fair and simple. It is likely that the articles of the company do make some provision to cover such situations. They may be quite hopeless, or they may just fit your bill. We do therefore suggest

We have provided in detail for a right of pre-emption in the event that a shareholder wishes to sell. We have given you a provision

We advise against deleting this paragraph unless you are confident that the articles provide a solution

!

The draft letter of instruction

Important: The Company's Articles of Association may restrict the right of a member to transfer his shares and may require him, in specified circumstances, to

().

17. Procedure after transfer

The extent of these provisions is a matter of choice. If colleagues fall

18. Transfer of shares on death or incapacity

If the transfer is by operation of law, (bankruptcy)

A PR

This provision is intentionally precise and thorough because

Since most shareholders' agreements are between small numbers of shareholders it is likely that they will be able to discuss any offer made and

90 %

19. Transfer of shares on bankruptcy

We are sometimes asked what steps should be taken when a court order is made, declaring a

However, the shareholders can agree with each other as to how they buy

20. Restrictions on shareholder after transfer

The carefully chosen wording of these restrictions is necessary to withstand the general proposition that an agreement “in restraint

21. Shareholder’s continuing obligations

It is almost impossible to devise a deal whereby all shareholders are treated equally because at the moment when one decides

22. Life insurance

This paragraph may be deleted if

“ ”

.

23. Publicity

We have no comment

24. Conflict with the articles

As stated ,

.

25. Breach of this agreement

You may choose to deal with this

.

,

.

26. Dispute resolution

There are many ways to settle a dispute. But an action in court is the least desirable because it takes a long

.

.

.

“

”

.

.

27. Severance and invalidity

This is

.

.

28. Miscellaneous

A number of points

.

Letter to accountant - valuers

All good things come to an end. The “ ”

.

,

:

1. The valuation method

.

2. No matter what you put in the letter, or what valuation method you choose,

3. Remember, you are instructing the

4. Remember too, that there

End of notes