

IN-CPsha05

## **Shareholders' agreement: joint venture through company**

**Agreement between shareholders for the regulation of**

[\[Company name\]](#)

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The Schedule    Draft letter to accountants

**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 [50] each, of which [000 ]

;

3.2 the shareholdings in the Company are:

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

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. The parties have agreed these terms in order to

These are the terms of the agreement:

## 1. Definitions

These definitions apply unless the context indicates otherwise:

- “The Venture” means the Venture of / joint venture [ ]
- “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 any 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, businesses, , , , .
- “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 .
- “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, trade , , , , , .
- “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 offered for sale by a
“Transfer Date”	means the date when a shareholder transfers the last of
“Transfer Event”	means any one of: <ul style="list-style-type: none"> <li>• the death of a shareholder; or</li> <li>• the registration of an enduring</li> </ul>
	;
	<ul style="list-style-type: none"> <li>• the certification of a shareholder as a patient.</li> </ul>
“Transfer Shares”	means shares which are

## 2. Interpretation

In this agreement unless the context otherwise requires:

- 2.1. a reference to a person includes a
- 2.2. a reference to a person or party includes reference to that person’s successors, legal
- 2.3. a references to a paragraph or schedule is to
- 2.4. the headings to the paragraphs and schedules ( )

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 an agreement dated [date] and made between [names] )This agreement contains

#### 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. 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 Venture efficiently;

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

;

10.1.3 maintain insurances ;

10.1.4 deal at all times and

;

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

;

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

].

10.3. The shareholders agree to exercise their powers in relation

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

## 11. Actions requiring shareholder consent

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

[ 85 ] %

:

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 ;
  - 11.1.5 in any way change the quantity, structure, value, ;
  - 11.1.6 change any contractual arrangement with any ;
  - 11.1.7 sell, transfer, lease, , ;
  - 11.1.8 buy any new business or company or make a substantial investment ;
  - 11.1.9 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 .

### **13. Confidentiality**

Each of :

13.1. divulge or disclose to any person (and that includes ) ;

13.2. remove from Company's premises or copy or allow anyone else to copy from , , .

### **14. Exit strategy**

14.1. This paragraph may be amended only .

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

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

14.4. On or before the [ 2011 ],  
:

14.4.1 sell the assets / property comprising the  
;

14.4.2 pay all creditors;

14.4.3 obtain appropriate tax  
;

14.4.4 distribute the cash realised from

14.5. ( -  
1 )

## 15. Transfer of shares and right of pre-emption

OR

[ 01 2018 ],

:

15.1. ( “ ” )  
;

15.2. The Sale Notice must specify:

15.2.1 ( )  
);

15.2.2

( , ) ;

15.2.3

[ ] ;

15.2.4

( ) ( )

15.2.5

15.3.

, .

15.4.

.

15.5.

.

15.6.

( , )

,

15.7.

[ 21 ]

15.8.

[ 21 ] ,

15.9.

15.10.

15.11.

( )

15.12.

15.13.

## 16. Procedure after Transfer

16.1.

:

16.1.1

;

16.1.2

,

;

16.1.3

;

16.1.4

;

16.1.5

;

16.1.6

,

;

16.1.7

,

;

,

16.2.

,

(

).

## 17. Transfer of shares on death or incapacity

17.1.

,

,

.

17.2.



17.3.

17.4.

17.4.1

(  
)

[ 14 ]

17.4.2

17.5.

[ 21 ]

[ 21 ]

17.6.

17.7.

%

[ 90 ]

## 18. Transfer of shares on bankruptcy

18.1.

,

:

18.1.1 [

.]

18.1.2

;

18.1.3

,

,

;

18.1.4

,

.

,

.

## 19. Shareholder's continuing obligations

19.1.

,

:

19.1.1

;

19.1.2

.

## 20. Restrictions on shareholder after transfer

Each shareholder agrees:

20.1.

20.2.

20.3.

20.4.

20.5.

20.6.

20.7.

## 21. Conflict with the articles

21.1.

21.2.

## **22. Breach of this agreement**

22.1.

( ) [ 30 ]

[ 75 ] %

22.2.

## **23. Dispute Resolution**

## **24. Severance and invalidity**

24.1.

24.2.

## 25. Miscellaneous matters

25.1. , ,

25.2. ,

25.3. ,

25.4. ,

25.5.

[ 72 ]

[ 24 ]

25.6.

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 - 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: joint venture through company

### General notes

1. Just in case you are new to legal agreements: defined terms are given cap 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 given, so that when you come across two words in the document, you are 50 .
2. Neither the front sheet nor the contents list is part of a document, nor necessary for it to be effective. If you want to decorate the front of your document !
3. The shape of this document will depend to some extent on the description of the venture to be undertaken. The word “venture” has no legal meaning different from the everyday meaning of “a one off business”. A venture can therefore be , .
4. Because it is expected that a venture will conclude within a specified time frame, the ventures enter into it with a view to a specific end date. That is usually very important to one or more of them. The “exit strategy” is therefore very important. In this document, the exit strategy is not “ ” .
5. 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” . !

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 formations 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
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

Comments 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 others 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 shareholder 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 %

This list has been drawn to include catch-all provisions. It

## 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. Confidentiality

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

## 14. Exit strategy

You do not have to have an exit strategy, but we strongly advise you

Because you are engaged in a one-off venture, we assume that it is important to specify a termination date and provisions for winding up the venture. We have provided for a cut-off date, but there may be better indications of completeness of

## 15. 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.

50 %

The important things are to make the provision 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

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 offer his shares for sale Normally, such provisions would prohibit him from transferring his shares to an outsider at a given price unless existing members have been given

( ).

#### **16. Procedure after transfer**

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

#### **17. 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 %

## **18. 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

## **19. 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

## **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. Conflict with the articles**



As stated ,

## 22. Breach of this agreement

You may choose to deal with this

## 23. Dispute resolution

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

“

”

## 24. Severance and invalidity

This is

## 25. 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**