

INVESTORS AGREEMENT CONTRACT TEMPLATE



The Investors Agreement Contract is a type of shareholders agreement whose purpose is twofold: for the founding shareholders of the company, to ensure that the investor shall meet his/her financial undertakings; and for the investor, to protect his/her investment without jeopardising the development of the project or the relationship with the proper founding shareholders. This model of **Investors Agreement** includes clauses on the investment and capital increase of the company, responsibility and functions of the management team, decision making, exclusivity undertakings, non-competition, confidentiality and permanence of the founding shareholders in the company etc.

INVESTORS AGREEMENT

DATE

ON THE ONE HAND,

Mr./Mrs., of legal age, [*include professional qualifications*], with registered office at [*address, city, country*] and holder of Tax Identification number..... (which hereinafter shall be referred to as the, "Shareholder 1), acting herein in his/her own name and interest and as shareholder of the company [*include legal name of the company which executes the Agreement*] (which hereinafter shall be referred to as the "Company").

Mr./Mrs., of legal age, [*include professional qualifications*], with registered office at [*address, city, country*] and holder of Tax Identification number..... (which hereinafter shall be referred to as the, "Shareholder 2), acting herein in his/her own name and interest and as shareholder of the company [*include legal name of the company which executes the Agreement*] (which hereinafter shall be referred to as the "Company").

.....
[*include the data of all shareholders who are to sign the Agreement*]

AND ON THE OTHER,

Mr./Mrs., of legal age, [*include professional qualifications*], with registered office at [*address, city, country*] and holder of Tax Identification number....., acting herein as [*include legal appointment: Administrator, Attorney-in-fact etc.*] of the company [*include legal name of the person or company acting as an investor*], with registered office at and holder of Tax Identification number (which hereinafter shall be referred to as the "Investor")

Both Parties hereto mutually acknowledge the standing to be bound under the terms and conditions of the present "Shareholders Agreement" (which hereinafter shall be referred to as the "Contract" or the "Agreement"), and shall be referred, to individually as a Developer Shareholders and Investor, respectively, or, collectively, as Parties.

RECITALS

- I. Whereas the Developer Shareholders have accepted that the Investor is to carry out an investment in the Company through the subscription and disbursement of new equity shareholdings of the company representing % *[include percentage]* of the share capital for an amount of *[include amount and currency]*, plus a share premium of *[include amount and currency]* Euros, so that the total investment is *[include amount and currency]*.
- II. Whereas the purpose of this Agreement is to establish the respective positions of all the Developer Shareholders of the Company in relation to the capital increase mentioned in Whereas Clause I, and likewise for the purposes of the new internal organisation of the Company, the Parties hereto have convened to sign this Agreement subject to the following:

CLAUSES

1. PURPOSE OF THE CONTRACT

The purpose of this contract is to regulate the characteristics of the investor's participation in the capital of the Company, pursuant to the terms and conditions set forth in Clause 2.

2. CAPITAL INCREASE OF THE COMPANY

The subscription and disbursement by the Investor of the new equity shareholdings of the Company are undertaken under the terms and conditions of the minutes of the General Shareholders' Meeting held on (date) *[include date]* and which is enclosed hereto, by means of a copy, as Annex 1 of the present Contract.

As a result of the capital increase and subsequent subscription and disbursement thereof, the ownership of the company's equity shareholdings is as follows:

Shareholder 1: Mr./Mrs....., owner of the equity shareholdings of to....., in total,equity shareholdings which represents% of the share capital of the Company.

.....

This is a sample of the Investors Agreement.

To get more information about this contract click here:

 [**INVESTORS AGREEMENT TEMPLATE**](#)

USER GUIDE

The Investors Agreement is a type of agreement that serves to govern the relationships between the founding shareholders who have created or to create a company, or startup and the investor (or *business angel*) who shall finance their growth. The purpose is twofold: for entrepreneurs to ensure that the investor shall meet his/her financial undertakings; and for the investor, to protect his/her investment without jeopardising the development of the project or the proper founding shareholders.

Upon the successful completion of the first steps by the new company (or *start-up*), it is in a position to resort to secure external financing in order to have expansion capability. In this search for the financial partner, it is essential to have an Investor and Shareholders Agreement Model which governs the relationships between both parties: founding shareholders and the new shareholder (investor). For the negotiation of this agreement it is important to have a prior agreement, the so-called *Shareholders Agreement to Create a Company*, given that many of the aspects included in said agreement shall be transposed to the investor agreement.

DOCUMENT IN PUBLIC DEED

Unlike the Shareholders Agreement to Create a Company, insofar as the Investor and Shareholders Agreement is concerned, it is recommended to execute same before a notary public, in a public deed, given that same includes capital increases of the company and the acquisition of equity shareholdings, which must be executed in a public document, to be able to register the shareholding changes in the Mercantile Register.

Generally, this agreement is signed by all the founding shareholders of the company, given that if any of same disagrees with the agreement, the investor shall possibly interpret same as a dispute in the relations between the shareholders, and shall withdraw their proposal.

ESSENTIAL ELEMENTS

There is no standard Investor and Shareholders Agreement document, given that each company is different as regards its activity, evolution and prospects for growth and profitability. Furthermore, the amount and characteristics of the investment are likewise very different. Nevertheless, this type of agreement must incorporate clauses that are common to all agreements and are specified hereinbelow.

Capital Increase: as it is an injection of capital into the company, in the shareholders minutes the number of equity shareholdings/shares which the founding shareholders and the investor shall have must be included therein, with an expression of the percentage corresponding to each founding shareholder and including the numbering thereof. Customarily in this type of operations the investor holds a minority stakeholding, but it may likewise be the case that the investor wishes to control the company through a majority stakeholding in the capital.

Corporate Management: consists of a set of rules which are stipulated to resolve conflicts and deadlocks in decision-making, in particular the most appropriate bodies, such as the

Shareholders' Meeting and the Board of Directors. Similarly, it is likewise stipulated who are the Administrators are - and in the event of there being two administrators, one representing the shareholders and the other representing the investor - whether said administrators are to act in a joint and several or joint manner. Insofar as the Board of Directors is concerned, the investor shall have at least one seat on the Board and, depending on the amount of the investment, and may be the case that the investor holds the office of Chairman.

Shareholders right to information: all shareholders must have access to corporate information. This information is furnished on a monthly/quarterly/semi-annual basis. It is common for investors to demand full access to information; that is, not only the monthly reports or board meetings. In online world companies, there are investors who demand access to tools for online traffic assessment and positioning such as Google Analytics, Adwords, etc. In these cases, it is necessary to reach a consensus with the investors and translate said consensus into the agreement, the format and periodicity with which the investor shall be informed. In either event, said reports shall be used for the inherent internal management of the company, that is why there should be no difficulty in this aspect.

Manager remuneration: in the event that the investor acquires a significant stakeholding in the company (for example, over 30%) it is convenient to include in the agreement the remuneration of the managing shareholders as regards salary and incentives, but if different offices and responsibilities are stipulated, the remuneration must be different; hence the importance of including this aspect in the agreement.

Expenses: As in the preceding section, likewise a clause may be stipulated in the agreement with the Investor which restricts the spending capacity of the management team, in particular the Managing Director (CEO) and provision thereof, that is, his/her capacity to sign. A ceiling (amount in Euros) may be stipulated so that any amount exceeding said ceiling, it shall be necessary for the CEO to obtain the approval of the Board of Directors.

Exclusivity and non-competition: the investor may require that the managing shareholders focus their work activity and all their endeavours in the development of the company, without having any other business activity, unless this is evinced in the agreement. In the same regard it may likewise be stipulated in the agreement that the Shareholders shall render his/her services or to be Shareholders of other companies with similar activities.

Conveyance of equity shareholdings: this section is fundamental given that it conditions the incorporation and departure of new shareholders and, all things considered, the future shareholding structure of the company. There are different mechanisms which protect the founding shareholders against the investor and vice versa. The two most commonly used are the Drag-Along right and Tag-Along right (*or Co-Sale Rights*):

- **Drag-along right:** this clause ensures that all Shareholders shall be under the obligation to sell if certain terms and conditions are met, for example with a percentage of votes in favour (the percentage stipulated in the agreement), whether or not there is a majority. The purpose of this clause is to protect the departure of the majority shareholder (if for example the investor), ensuring the sale of the capital in its entirety that the majority shareholder wishes to sell.
- **Tag-along right (or co-sale right):** contrary to the drag-along right, the Tag-Along right (or co-sale right) is intended to protect the minority Shareholders within the company. In the event that a third party makes a purchase offer to one of the Shareholders for his/her equity shareholdings in the company, the other Shareholders may offer the third

party under the same terms and conditions their own equity shareholdings. Therefore, the third party shall acquire the number of equity shareholdings that are initially desired, but on a pro rata basis to all the Shareholders who exercise this right. This clause serves to protect minority shareholders in the event of a possible change of control in the company (for example, that the investor sells his/her equity shareholding) and thus facilitate their disassociation from the project.

Deadlock (or blocking) rights: the deadlock (or blocking) right enables a Shareholder to block (not allow) any action/decision, no matter as to whether the other Shareholders are in 100% agreement. If that Shareholder does not wish same, it is not undertaken. A percentage of equity shareholdings over capital (for example, 20%) may be stipulated. This clause, intended for protecting the rights of minority shareholders, may block, for example, capital increases, indebtedness, hiring of personnel, salaries etc. It is not common to include this clause in the agreements with investors given that it may an element of being at a standstill in the decision-making process of the company.

Confidentiality: the investor and shareholders agreement does not cease to be a partial purchase sale contract of a company. To that end, during the course of the negotiation the shareholders must furnish confidential information (technical, commercial and financial) in order for the investor to assess and make a decision as regards the investment that shall be made in the company. Therefore, this type of agreement customarily includes a confidentiality clause.

Business Plan: in an Investor Agreement, the essential aspects of the Business Plan which have been submitted to the investor which lead to the making of their decision are enclosed in an annex. The essential points of this Plan are as follows: names, qualifications and offices in the company of the founding shareholders; description of the new product or services, activity sector analysis in which the company is located; strategic plan and marketing plan; financial plan and financing needs. The Business Plan is part of the confidential documentation.

In conclusion it may be said that there is no single specific Investor and Shareholder Agreement model given that the financial situation and financing needs to grow depend to a large extent on the sector in which the company is encompassed and that of its competition. In either event, it is always necessary to reach agreements as regards the most relevant aspects in the relationship of the founding shareholders with the investor shareholder. There are projects in which due to their business complexity, size and financial resources it is recommended to consult a legal advisor in order to review and complete the model wherein the Agreements between the shareholders and the investor shall be stipulated.

LEGAL WARNING

Depending upon your particular situation this contract might not meet your needs and requirements. In case of doubt, you should consult a legal advisor.

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BUSINESS CONTRACTS & AGREEMENTS TEMPLATES

BUSINESS CONTRACTS

- Strategic Alliance Agreement
- Joint Venture Agreement
- Manufacturing Contract
- Supply Contract
- Service Provider Contract
- Consulting Services Contract

COMMERCIAL CONTRACTS

- Exclusive Distribution Contract
- Commercial Agency Contract
- Sales Representative Agreement
- Sales Commission Contract
- Real State Agent Agreement

LICENSE & FRANCHISE CONTRACTS

- Trademark License Agreement
- Technology Transfer Agreement
- Software License Agreement
- Franchise Contract
- Master Franchise Contract

CONFIDENTIALITY CONTRACTS

- Confidentiality Contract between Companies
- Confidentiality Contract for Product or Business Idea
- Confidentiality Contract for Employees
- Confidentiality Contract for Consultants and Contractors

SHAREHOLDERS & INVESTORS AGREEMENTS

- Shareholders Agreement for a New Company
- Investors Agreement
- Business Plan for Investors
- Business Proposal for Investors

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