SHAREHOLDERS AGREEMENT FOR A NEW COMPANY OR STARTUP: TEMPLATE AND MAIN ELEMENTS

The Shareholders Agreement for a new company or startup is an agreement signed by the Shareholders whose purpose is to govern the internal relations within the company, as well as to establish the dispute resolution channels of any conflicts which may arise.

Whereas a Shareholders' Agreement may be executed at any given moment during the life of a company, the most appropriate course of action is to sign same prior to the incorporation thereof for the purposes of laying the foundations of the future relationship between the Shareholders and to that end to avoid uncertainties, disagreements and, all things considered, possible conflicts which may jeopardise the running of the company. Another option is to execute this agreement, coinciding with the company's own incorporation.

PRIVATE CONTRACT OR PUBLIC DEED

It is recommended that this document be signed by all the Shareholders of the future company and for endowing same with more relevance and assurance, to be recorded in a public deed before a Notary Public. In this regard, upon the incorporation of the company, it is necessary to verify that the aspects which are regulated in the Shareholders' Agreement are not contrary to the Articles of Association of the company to be incorporated, as well as to the commercial code and the laws governing the businesses in the country where the new company shall be incorporated.

ESSENTIAL ELEMENTS

The Shareholders Agreement for a New Company or Startup must be adapted to the type of business that will be created, as well as to the needs and demands of the partners that will share effort, capital and benefits.

The essential elements which must be convened upon in a Shareholders Agreement are as follows:

Capital: the amount of capital must be set and, in particular, the number of equity shareholdings to be subscribed by each Shareholder. Ideally, there should be parity between all Shareholders, but need not be necessarily so, depending on the dedication and responsibilities assumed by each Shareholder.

Dividends: it is not usual for profits to be obtained in the initial stages of a company; generally there are losses which must be covered with capital increases in order to continue to grow as quickly as possible until obtaining profits Nevertheless, it may be the case for obtaining profits in the first years (which is really the objective of every company) reason why in the Shareholders' Agreement the percentage in which it is divided, and who decides same must be regulated It may be that, as a rule, a specific % is divided or that the Board of Directors must approve same, or that a Shareholder has a preference/priority to collect same.

Corporate Governance: the 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.

Incorporation and departure of Shareholders: it is necessary to include a series of terms and conditions to regulate not only the relationship between the founding Shareholders, but likewise for the incorporation of new Shareholders and likewise as regards investors. In the event that a Shareholder leaves the company, the agreement must convene on the terms and condition of the outgoing shareholder, how same affects the shares he/she owns and, otherwise, a permanency commitment or some type of condition such as the payment of a compensation is stipulated.

Duties of each shareholder: for the purposes of avoiding possible misunderstandings, the agreement must stipulate the offices, responsibilities, duties and including, the time of dedication of each Shareholder.

Remuneration: ideally the founding Shareholders of a company must have the same remuneration 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: there may be likewise a clause 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. For higher amounts the approval of the Board of Directors must be obtained.

Exclusivity: undertaking of the Shareholders to 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.

Non-competition: in the event that the Shareholders hereby undertake not to render his/her services or to be Shareholders of other companies with activities similar to that of the newly incorporated company, a clause must be included in this regard.

Intellectual Property Rights: this clause is particularly important in newly created technology companies in which the Shareholders themselves develop a certain type of innovation (patent, utility model, software) which can be registered as an intellectual property right. In this event, a clause is stipulated wherein the founding Shareholders waive any right of this type, for the benefit of the company.

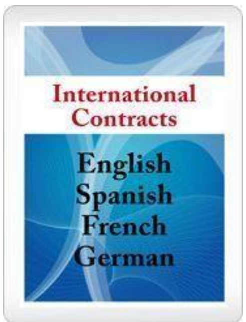
Preferential right of purchase: depending on the laws which regulate business in the country wherein the company is incorporated, the Shareholders may or may not have a preferential right to purchase shares. If this were the case, all the Shareholders of a company have that right, that is, under the same terms and conditions, said shareholders shall have preference to acquire or resort to a capital increase before any third party. If, in said case, no Shareholder wishes to resort to a capital increase or acquisition of the equity shareholdings, he/she shall waive the exercise of his/her right as a Shareholder. Likewise, a Shareholders Agreement may include this clause but for the purposes that in all possible future operations said right is waived. Said clause, if included in the Shareholders' Agreement, would free the sale of equity shareholdings to any third party, without the possibility of safeguarding the capital among the remaining current Shareholders In this fashion the Shareholders may sell their equity shareholdings to whomever they wish, without any restrictions whatsoever.

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.

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, ensuring the sale of the capital in its entirety, if said majority shareholders wishes to sell.

Tag-along right (or *Co-sale Rights*): contrary to the Drag-alone right, the Tag-Along 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 wanted, 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 and thus facilitate their disengagement from the project.

To conclude, it can be said that the partners that are going to create a new company or startup must have a shareholders agreement template that takes into account the needs of the business project that is going to be developed and defines from the beginning the important issues mentioned above.



To obtain the Shareholders Agreement for startup click here:

SHAREHOLDERS AGREEMENT FOR A NEW COMPANY

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