

**CHECKLIST FOR A SHAREOLDER AGREEMENT**

Details	Fill in here
<p><b>Name of the company</b></p>	
<p><b>Details of shareholders</b>  <i>(Please note under the Kenyan Companies Act, 2015 a private company may have one shareholder)</i></p> <p><b>Shareholder 1</b></p> <ul style="list-style-type: none"> <li>✓ Name</li> <li>✓ Postal address</li> <li>✓ Residential Address</li> <li>✓ Email Address</li> <li>✓ Telephone Number</li> <li>✓ Occupation</li> <li>✓ Nationality</li> </ul> <p><b>Shareholder 2</b></p> <ul style="list-style-type: none"> <li>✓ Name</li> <li>✓ Postal address</li> <li>✓ Residential Address</li> <li>✓ Email Address</li> <li>✓ Telephone Number</li> <li>✓ Occupation</li> <li>✓ Nationality</li> </ul> <p><b>{insert more shareholders as necessary}</b></p>	
<p><b>Board of Directors</b></p> <ul style="list-style-type: none"> <li>✓ Will the board of directors have management control of the company?</li> <li>✓ Will there be a managing director with day-to-day responsibility for running the business?</li> <li>✓ Will a chairman be appointed? Will he/she have the right of a second or casting vote in the event of a voting deadlock?</li> </ul>	

<ul style="list-style-type: none"> <li>✓ Will any shareholder(s) have a specific right to appoint a director to the board and remove or replace that director</li> <li>✓ Will the board have the right to appoint new directors?</li> <li>✓ Will appointment of additional directors or removal of existing directors require majority/unanimous approval of directors?</li> </ul>	
<p><b><u>Share capital</u></b></p> <ul style="list-style-type: none"> <li>✓ Will there be different classes of shares with different rights attached to them? (<b>Indicate the classes and rights attached</b>)</li> <li>✓ If any new shares are to be offered in the company, should they first be offered to the existing shareholders in proportion to their existing holdings?</li> <li>✓ Should any shareholder have the right to veto any issue of shares?</li> <li>✓ Will new shareholders be required to become party to the Shareholders' Agreement?</li> </ul>	
<p><b><u>Transfer of shares</u></b></p> <ul style="list-style-type: none"> <li>✓ If an existing shareholder wishes to transfer their shares to another or sell them to a third party, should they first be offered to the existing shareholders in proportion to their existing holdings?</li> <li>✓ Should the company have the right to acquire a shareholder's shares if it is able to do so?</li> <li>✓ If an existing shareholder wishes to transfer or sell their shares, should they be required to transfer or sell all of them or just some?</li> <li>✓ If there is competition between shareholders to purchase another shareholder's shares, how should they be allocated between them?</li> <li>✓ In the case of a voluntary transfer of shares, how should the shares be valued? For example: <ul style="list-style-type: none"> <li>• Fair market value (with/without a discount for</li> </ul> </li> </ul>	

the size of the shareholders' holding)

- On a predetermined basis of valuation.
- ✓ Who will determine the value of the shares if this cannot be agreed? (**For example the company accountant, auditor or an independent third party**)
- ✓ Should a shareholder have the right to withdraw his offer if he does not like the value determined by the valuer of the shares?
- ✓ Should the basis of valuing shares be any different if a shareholder is a "bad leaver"? (For example, if a shareholder is guilty of gross misconduct in his capacity as a director or terminates his contract within a defined period, should his shares be valued at a certain discount or on a nominal value basis?)
- ✓ Should one party have the right to require the other party/parties to purchase their shares in certain circumstances? (**For example, on a given date or upon certain financial targets being met**)
- ✓ In which circumstances should a shareholder be obliged to offer their shares for sale? (**For example, where a shareholder is declared bankrupt, is dismissed as an employee, resigns as a director/employee, dies or suffers from some physical/mental disability**)
- ✓ What should happen if a shareholder's shares are not or cannot be purchased by other shareholders? For example, should the company have the option to buy those shares back (at which point they are either cancelled or 'held in treasury' for a later date) or should the company be liquidated/wound-up?
- ✓ Will the board of directors be required to register the transfer of shares of a third party or should they have the right to refuse registration of any transfer of shares to a third party which they do not approve of?

<ul style="list-style-type: none"> <li>✓ Will shareholders be permitted to use their shares as collateral/security for personal or corporate borrowing? (If so, consider whether any limits or restrictions are necessary)</li> <li>✓ Should the majority shareholder(s) have the right to require the minority shareholders to sell their shares to a third party where the majority shareholder(s) has been made an offer? If so, what is the appropriate percentage majority? (This is known as a 'drag along right')</li> <li>✓ Should the minority shareholder(s) have the right to sell their shares to a third party where the majority shareholder(s) has been made an offer which would result in a 'change of control' of the company? If so, what percentage of the total issued shares should constitute a 'change of control' (This is known as a 'tag along right')</li> </ul>	
<p><b><u>Restrictions</u></b></p> <ul style="list-style-type: none"> <li>✓ Will shareholders be prohibited from competing with the company? If so, for how long and over what geographic area?</li> <li>✓ Will there be any restrictions prohibiting shareholders from soliciting customers, dealing with suppliers, offering employment to staff or using the company name?</li> </ul>	
<p><b>Administrative Matters</b></p> <ul style="list-style-type: none"> <li>✓ Who are the company bankers?</li> <li>✓ Who are the company accountants?</li> <li>✓ Who are the company solicitors?</li> <li>✓ Who are the directors/secretary?</li> <li>✓ Who is the chairman?</li> <li>✓ How often will the board of directors meet?</li> <li>✓ How many directors must attend a meeting to constitute a valid meeting?</li> <li>✓ Will there be any restrictions on where meetings are to be held? Can meetings be conducted remotely?</li> <li>✓ How much notice for directors' meetings?</li> </ul>	
<p><b>Access to Information</b></p> <ul style="list-style-type: none"> <li>✓ Will the board be required to provide monthly or periodical reports to shareholders?</li> </ul>	

<ul style="list-style-type: none"> <li>✓ If yes, what information will need to be provided? (For example: financial, commercial and operating matters; sales forecasts; comparison with budget etc.)</li> <li>✓ Will shareholders have a general right of access and inspection of company records?</li> </ul>	
<p><b>Dividends</b></p> <ul style="list-style-type: none"> <li>✓ Will there be a specific policy in relation to the payment of dividends? (For example, a company can be required to distribute a minimum percentage of its profits each year) If yes, how regularly will “payments on account” of dividends be made?</li> </ul>	
<p><b>Finance</b></p> <ul style="list-style-type: none"> <li>✓ How is the company to be financed on a continuing basis?</li> <li>✓ Will each party be required, or entitled, to contribute to future funding and, if so, on what basis will any contribution be calculated? (<b><i>For example, the agreement can provide that contributions can only be made if other shareholders contribute and in proportion to the number of shares held by them</i></b>)</li> <li>✓ When a shareholder leaves the company, are they to be released for all guarantees or indemnities given to the company or any third parties? Would the position be any different if a shareholder leaves on bad terms with other shareholders?</li> </ul>	
<p><b>Approvals</b></p> <ul style="list-style-type: none"> <li>✓ Are there any matters which will require majority/unanimous approval of the shareholders? (See the list at the end of this questionnaire)</li> <li>✓ In the case of matters requiring majority approval only, what percentage of the total issued shares will be considered a majority? (For example 51%, 75%, and 90%)</li> </ul>	
<p><b>Payments</b> How do you prefer to pay?</p>	<ul style="list-style-type: none"> <li>✓ Bank Cheque</li> <li>✓ Electronic Transfer</li> <li>✓ MPESA</li> </ul>

**Client Details**

Name	
Email	
Mobile phone Number	

**FEES**

**Please note fees is payable before work begins.**