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- Shareholders' Agreements that are which is most suitable for your needs in three different levels of detail, the Long-form Shareholders' Agreement, the Short-form Shareholders' Agreement, and the Minority Shareholder according to

- company it is advisable to properly

- between all of the holders of shares on terms relating to the establishment of a Shareholders' Agreement should essentially legislate for the company through management and not the Shareholders' Agreement. It is noted that Shareholders' Agreements are required to be registered at Companies House as a third party that one is in existence. These provisions regulate the operation of the company and are enforced against the company itself, not the behaviour of shareholders. They are enforceable against the shareholder insofar as they are governed by statutory rules and not contractual rules. In some cases, a Shareholders' Agreement but the company's Shareholders cannot use the statutory

- Memorandum and Articles of little importance for companies as it only contains information about the Agreements contain a clause that in case of conflict with the Articles will take the Articles. Any inconsistencies between the Memorandum and Articles could be avoided.

the Company and individuals who
the Company.

- ments, conditions of employment, be required.

- between a public company and a

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private company.

- B.2 A private company is the usual vehicle for a joint venture. Companies limited by guarantee and other entities are available but they are not used for a trading venture. Partnerships, Limited Liability Partnerships or unincorporated joint ventures can be used as alternatives to a company in certain circumstances.

- B.3 A company can be formed from a ready made form ("off the shelf") or incorporated as a new company from a company formation agent (most online) or incorporated as a new company, which takes place in England & Wales (although Companies House can also be used for a higher fee).

C. Parties to a Shareholders' Agreement

The parties will comprise:-

- C.1 The shareholders - the parties to the agreement are the shareholders of the company or other party which is expected to support the venture;
- C.2 The directors - if the directors are to undertake specific duties as directors/employees of the company over and above their usual duties as directors/employees of the company;
- C.3 The Company - but only if the company is to have obligations with regard to the investors or vice versa. See the provisions of the agreement.

D. Corporate Administration for the Company

- D.1 What is the Company's business names?
- D.2 Who is to be the Company's secretary? Where will its registered office be located? Since April 2008, a company is not required to have a secretary but the duties that are required of a company secretary will still apply.
- D.3 Where is the Company's registered office?
- D.4 Are there to be any other offices?
- D.5 Does the Company require any particular licences, authorisations or registrations?
- D.6 Is the Company to be involved in any trademark registrations, or are there any other registrations?
- D.7 Who will be the Company's auditor?
- D.8 Who will be the Company's accountant? The limited companies with turnover in the financial year not more than £2.8 million or a balance sheet total for the year not more than £2.8 million are exempt from the requirement for an audit.
- D.9 What will be the Company's financial year end (the "reference date")? The default position is that the financial year end ("reference date") will fall at the end of the calendar year.

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of the month in which
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incorporated. However, the company is not required to provide a 12-month reference period, although there is no restriction on the period used to calculate the average done in any financial year.

- D.10 Is the Company to do [REDACTED] what terms?
- D.11 Does the Company [REDACTED] on scheme?

E. Tax

Tax considerations will influence this aspect in detail. In the resident companies there should take advice from

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| E.1 | Is it intended that the Company will be able to claim relief under the Enterprise Investment Scheme? If so, does the Company also qualify for the "Standard" or "Long-term" relief? If so you should use either the "Standard" or "Long-term" Agreements, which place an obligation on the member to invest in the business in a manner consistent with the Company's objectives and to facilitate the growth of the business. |
| E.2 | Is it intended that the Company will be able to claim relief under the Enterprise Investment Scheme? If so, does the Company also qualify for the "Standard" or "Long-term" relief? If so you should use either the "Standard" or "Long-term" Agreements, which place an obligation on the member to invest in the business in a manner consistent with the Company's objectives and to facilitate the growth of the business. |
| E.3 | Do individual investors have to provide evidence of their source of funds? If so, what evidence is required? If not, what evidence is required? |
| E.4 | Do individual investors have to provide evidence of their source of funds? If so, what evidence is required? If not, what evidence is required? |
| E.5 | Are employees to be treated as investors for the purposes of the Enterprise Investment Scheme? If so, what evidence is required? If not, what evidence is required? |
| E.6 | Does it suit employees to be treated as investors for the purposes of the Enterprise Investment Scheme? If so, what evidence is required? If not, what evidence is required? |
| E.7 | Is there scope for an employee to be treated as an investor for the purposes of the Enterprise Investment Scheme? If so, what evidence is required? If not, what evidence is required? |
| E.8 | Do UK corporate investors have to provide evidence of their source of funds? If so, what evidence is required? If not, what evidence is required? |

F. Finance

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| F.1 | How much is being provided for the donor and when? Is there to be an obligation to provide for the future? |
| F.2 | Is the investment to be in cash or services/assets? If the latter how are they to be valued? |

- F.3 Will investors take company shares (not subject to EIS relief), loan stock (subordinated debt) or other types of security?
- F.4 If further cash calls are made, will investors be under any obligation to meet them? Are they simply diluted or will they suffer some form of disadvantage?
- F.5 Will the Company require bank borrowings or other external funding? If guaranteed by the investors agree to share any liability in the ratios?
- F.6 Are any borrowings secured? Are there any special arrangements concerning the rank of the borrowings?
- F.7 What is the timetable for investments?

G. Shares

- G.1 Are further issues of shares permitted altogether or permitted subject to consent by the investors? If shares are permitted must new shares be offered first to existing shareholders on a rights issue basis? All Simply-docs Shareholder Agreements require additional shares to be issued on a rights issue basis.
- G.2 Where new shares are issued, on what basis of rights (i.e. pro rata to existing holders):-
- (a) what procedure will be followed (e.g. a thirty day offer period)? Are there any exceptions permitted;
 - (b) are different classes of shares to be dealt with separately;
 - (c) are shares to be offered first to the member to whom they are offered? If not, how are shares to be allocated? Are shares not taken up by the member to whom they are offered to be offered to other members who apply for excess shares? Are shares not taken up on the rights issue available to other members?
- G.3 Should the board have the power to issue shares to outsiders in return for assets or services? If so, is there an exception to any pre-emptive rights of existing members? If so, what consent would be required?
- G.4 Are there to be exceptions to the pre-emptive rights? For example to enable shares to be issued or options granted, to enable shares to be issued in exchange of share capital should be available for such exceptions?
- G.5 Are the shares to be issued in different classes? If so, what rights will each class carry? Will the rights vary by the nature of the holder (so that shares of one class may be converted into shares of another class if they are converted)? Will the classes remain distinct or will the classes remain distinct?

H. Pre-emption

It is usual to restrict the share capital of the company by imposing pre-emption

rights (i.e. a requirement to offer first to other shareholders). All Simply-docs Shareholder Agreements contain provisions relating to pre-emption rights on share transfers. The Long Shareholder Agreement contains more detail however on the procedural aspects of a transfer.

H.1 Are any types of transfers exempt from the pre-emption procedure without needing to comply with the procedure?

- (a) transfers to or from family members of the seller, provided that the exact extent of the family will need to be specified in the Long Shareholders' Agreement;
- (b) transfers to or from the company, provided that if the companies are part of the same group the shares must be returned to the company;
- (c) transfers with a view to the company's reconstruction or amalgamation, provided that if the companies involved cease to exist the shares must be returned to the company;
- (d) transfers approved by a majority of the other shareholders.

The exceptions are set out in the Long Shareholders' Agreements.

H.2 An investor wishing to acquire shares must offer them first to the other shareholders. If the shares are offered to a class of shares the holders of the same class are usually given the same common procedure is along these lines:-

- (a) The investor must give notice to the company stating the number of shares he wishes to acquire and the price he wants.
- (b) Within a given period the Company offers the shares to the other shareholders on the terms offered by the seller. Within a further period (again to be specified in the Long Shareholders' Agreement) the other shareholders can accept the offer for the shares. If there is competition for the shares the offer is made to the other shareholders pro rata to their existing holdings.
- (c) If the remaining shares are not taken up by the end of the offer period and the asking price is too low, the offer period is extended until the asking price has been obtained. The basis of the asking price is to be determined, for example, the fair value of the shares as determined by the auditor's valuation of the shares as a going concern basis (sometimes a minority interest basis). If the auditor's valuation exceeds the offer price the seller has the opportunity to increase the offer price. If the offer price exceeds the price will be set at the auditor's valuation.
- (d) If the other shareholders do not acquire all the shares on offer during a period of say 3 months at a price not less than the asking price the other shareholders have the right to acquire the shares in respect of some but not all of

the shares to
sell all of the

sometimes nevertheless allowed to

H.3 Are there likely to be
shares for sale? The
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ch a member is bound to offer his
a shareholder, being an individual,
n or receivership. It can also apply
mployee, whether he resigns or is
price is then fixed at the auditor's
e some degree of penalty is to be

H.4 If the seller is unab
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are closely involved
has the ultimate rig
other way to realis
market in the share
other rather less dr
can offer his shares
not accept, he then

shares does he then simply have to
relatively few investors all of whom
-partnership), the seller sometimes
any on the basis that there is no
re there is unlikely to be a ready
liquidation is not realistic there are
can help. For example, one party
others on the basis that if they do
shares at that same price.

H.5 The pre-emption pro

nied by the following:

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er acquires more than a specified
30 and 50 per cent depending on
) he must make an offer to buy out

(b) a further sta
can re-purch
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cedure in which the Company itself
if it has the available resources and
ts for the re-purchase of shares;

(c) a requireme
specified pe
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disposing of
Company af

whose holding falls to less than a
ed share or of his original holding is
the pre-emption procedure. This
very small number of shares after
tactic to keep an interest in the

(d) a requireme
they operate
will procure
same price;

tain investors, (for example where
sell their shares to an outsider they
to buy out the other members at the

(e) a requireme
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their shareh

shes to acquire a minority holding,
right to sell a proportionate part of

I. Rights of Certain Sharehold

It may be that certain Share
is providing the majority of t
his shares. A minority sh
company may also wish to
his role in the management

ts if they are to invest. A party who
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orks or provides expertise to the
s services are refused and he loses

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I.1 Are any shareholders to sell shares if they retire from employment with the company or if they are wrongfully or unfairly dismissed?

I.2 Are any shareholders to sell shares if the agreement is breached?

I.3 Are any shareholders (or their estate) to sell their shares upon their death?

I.4 Are there to be any provisions where the majority shareholder sells his shares?

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J. Board of Directors

If you wish to make provisions for the Board of Directors and how and when it meets you should use either the Simple or the Advanced Shareholder Agreements.

J.1 Who are to be the first directors?

J.2 Will the investors have the right to elect or to appoint themselves or to appoint a given number of directors? Will any director be obliged to resign if the investor ceases to hold a minimum number of shares? A separate clause is available in the Advanced Agreement which can be incorporated into the Simple Agreement for certain shareholder or class of shareholders to be elected or appointed.

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J.3 Is the quorum to be a majority of the directors? Will the quorum require specific directors to be present?

J.4 If a quorum is not present, may the meeting (say seven days after the first meeting) constitute a quorum? Will this dispensation apply to the first adjourned meeting?

J.5 Will all directors have to be elected by a simple majority? Certain matters may require a two thirds) or of more than two thirds majority. This aspect is dealt with in more detail in Section L below.

J.6 What period of notice is to be given for ordinary meetings? Can urgent meetings be called at less notice than ordinary meetings? Directors' consent required?

J.7 Can directors appoint alternates? Can alternates be appointed as alternates and if so is board approval required?

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K. General Meetings

K.1 Are the shares to be issued with weighted voting arrangements? Are there to be weighted voting arrangements?

K.2 What is to be the procedure for shareholders' meetings? The same considerations apply to the shareholders' meetings. The same considerations apply to the shareholders' meetings.

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K.3 Apart from matters of law, are there any other matters on which the votes of members as a matter of law, are there any other matters on which investors would want to require a similar majority?

K.4 Who should have the right to call special meetings?

L. Management

The Basic Shareholder Agreement should contain a provision for the management of the company, stating merely that the Board. The Standard and Long Shareholder Agreements make more provisions, laying the responsibility of the day to day management on the Executive Directors, legislating for the Annual Business Plans and obliging them to report to the Board as and when required.

L.1 Who is to have responsibility for day management? If the investors themselves are not to have this responsibility, how are managers appointed and removed?

L.2 What (if any) role will the investors play in the management and to what extent are they to be obliged to provide services to the Company?

L.3 What matters will be referred to the executive management? How will the executives report to the Board?

L.4 What financial and other information is to be prepared for the investors, in respect of which period? How is it to be produced?

L.5 Are executives to have any special powers? And if so on what terms?

M. Reserved Matters

M.1 The investors are to have the right to prevent the Company doing various things which might affect their interest in the Company. Restrictions range from matters which directly affect the value of the shares to matters which do not. It is often more practical to apply a veto over the Company's business activities.

M.2 The restrictions will be subject to the investors' consent in one form or the other. This can be achieved by requiring prior written approval of all or a given proportion of the investors. This can be unwieldy and may be limiting the value of the shares. For this reason it is often more practical to apply a veto over certain matters which are of such a nature that they cannot be passed by the Board without the consent of the directors representing particular investors or a given proportion of the investors.

M.3 The usual restrictions are as follows:-

- (a) changes in the capital of the Company or the rights attached to the shares;
- (b) changes in the Articles of Association;
- (c) major changes in the nature of the business;

- (d) the sale of a business;
- (e) the acquisition of new business and the acquisition of property;
- (f) borrowing of money in the ordinary course of business and giving security for such loans and guarantees in respect of third parties;
- (g) transactions with directors and senior executives;
- (h) the issue of shares;
- (i) the appointment of directors and senior executives;
- (j) the appointment of auditors/bankers;
- (k) capital commitments at the level;
- (l) transactions in the ordinary course of business or involving expenditure;
- (m) the acquisition of interests in other companies and the formation of such interests;
- (n) litigation (other than in the ordinary course of business);
- (o) profit sharing arrangements;
- (p) approval of budgets;
- (q) service agreements and salary levels;
- (r) dividends; and
- (s) the winding up or any sort of insolvency procedure.

N. Dividends

N.1 It makes sense to allow the Company to distribute the outset. It is often provided that a particular percentage of the Company's profits available for distribution in any year shall be available for dividends. This does not stop the Company distributing its profits in other ways. It allows shareholders to be sure of at least some income.

N.2 Where all the investors in the Company agree to allow the Company, do you wish to allow for flexibility in the extra dividend to be paid to the company (for example bonuses or pension contributions) which may be more attractive in terms of taxation)?

O. Restraint of Trade

The Basic Shareholder Agreement sets out the actions of the parties beyond whatever restrictions are placed on the Standard and Long Shareholder Agreements do contain no solicitation clauses placing restraints

on the parties' future conduct

To what extent are the parties' activities both during and after their participation in the Company as follows:-

- O.1 no interest or involvement in any other company or activity (apart from small shareholdings)
- O.2 no solicitation of business
- O.3 no disclosure or misrepresentation;
- O.4 no use of the Company's name or position of commercial connection after the investor leaves the Company
- O.5 investors may be required to provide the Company's services exclusively during their association.

The period and extent of the obligations to be settled. Registration under the RTPA and European legislation is to be considered.

Where the investor is a company, the obligations may need to be extended to impose obligations on its employees.

P. Period

- P.1 Does the Company have to provide a winding up? If so it may be necessary to provide a particular occasion (unless the investors agree otherwise)
- P.2 If the Company does not, the investors acquire its business or any of its assets, the investors are entitled to preference in these circumstances. Should the investors be prohibited from the other hand be prohibited from acquiring assets or once the joint venture has come to an end?
- P.3 The investors may be required to list the company on a recognised stock exchange. If this is the case, the listing should be made.

Q. New Investors

Where new investors are to be admitted to the company in the future, a mechanism may be required to enable the company to be extended to include them. This will usually be in the form of a pre-emption right. Conversely no person should be permitted to acquire shares in the Company without agreeing to be a party to the shareholders' agreement.