

**Guide to NTAA Corporate's Shareholders  
Agreement**

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## **Law**

The law is as stated June 2018.

## **Table of contents**

What is a Shareholders Agreement?.....	1
Shareholders Agreement and the Company's Constitution .....	1
What can be covered by a shareholders agreement? .....	1
Can the Shareholders Agreement be varied? .....	2
What if there are other shareholder agreements in place? .....	2
What if there are new shareholders after the agreement is executed? .....	2
Disputes between the shareholders .....	3
Features of NTAA Corporate's Shareholders Agreement.....	3



## **What is a Shareholders Agreement?**

A shareholders agreement is a contract between the shareholders of a company (and typically the company as well) containing agreed terms as to how the company is to be managed. The agreement may cover a range of matters, including the funding, structure, management or conduct of the business carried on by the company, as well as the rights and obligations of the shareholders.

Given that the shareholders have the power to appoint and remove the directors of the company, and the company is generally a party to the agreement, it is also important that the directors understand the terms that the company and the shareholders have agreed to, and which the directors (in running the company) will also be required to consider.

It is important to consider the reasons for having a shareholder agreement and whether it is suitable for the purpose you are trying to achieve. If the company has a constitution, you should check whether the constitution already covers the matters that the shareholders are wanting to agree on. If you want to add to or change how certain things are dealt with in the constitution, but do not want to amend the constitution, it may be possible to achieve this using NTAA Corporate's Shareholders Agreement.

## **Shareholders Agreement and the Company's Constitution**

The constitution is a document that binds the company and its members in their capacity as shareholders of the company, and specifies the rules governing the relationship between the company, its directors and shareholders. It is always important to read the shareholders agreement in conjunction with the company's constitution (or the 'replaceable rules', if the company does not have a constitution).

If there is any inconsistency between the constitution and this Shareholders Agreement, the provisions of the Shareholders Agreement will prevail to the extent of the inconsistency. Refer to clause 2 of NTAA Corporate's Shareholders Agreement.

## **What can be covered by a shareholders agreement?**

A shareholders agreement can cover any matter that the shareholders wish to agree on regarding the business or management of the company.

For example, a shareholders agreement could cover one or more of the following issues:

- The right to appoint directors (and salaries for working directors, if any);
- The meetings of the board;
- Voting rights of shareholders and directors;
- Types of decisions requiring majority (50%), special (75%), unanimous (100%) or other approval;
- Who can be a shareholder;
- The meetings of the shareholders;
- Minority shareholder protection;
- Dividends and funding arrangements;
- Special rules for the issue, transfer or disposal of shares, or rights or options in relation to shares;
- Shareholder exit strategies;
- The consequences of a shareholder defaulting, and 'bad leaver' arrangements; and/or
- The management, structure or business plan of the company.

The above is not an exhaustive list and it should be remembered that there are a range of matters that can potentially be covered by a shareholders agreement (and NTAA Corporate's Shareholder Agreement will **only** include the matters specifically instructed to be included).

### **WARNING – Drafting a Shareholders Agreement**

NTAA Corporate's Shareholders Agreement is a simple agreement for shareholders to document certain matters that may not be covered in the company's constitution or which the shareholders wish to vary (perhaps temporarily) from the constitution. Details of these additional terms and conditions agreed between the parties can be set out in the instructions to prepare this agreement, and they will then be inserted in Schedule 3 of NTAA Corporate's Shareholders Agreement.

Note that NTAA Corporate's form of shareholders agreement should be used **only for simple and non-complex changes**. You should not use this agreement for changes requiring comprehensive clauses such as pre-emptive rights, drag-along rights, tag-along rights and complex restraint clauses. If you use NTAA Corporate's Shareholders Agreement to make such complex changes, there is a risk that there could be gaps in the agreement and that the provisions you have drafted may not cover all the consequences relating to the agreed matter. We will only include wording that we are specifically instructed the shareholders have agreed to include in Schedule 3. Therefore, for comprehensive changes, we strongly advise that you consult with an expert lawyer to draft a specific shareholders agreement suitable for your purposes.

### **Can the Shareholders Agreement be varied?**

This Shareholders Agreement can only be varied by agreement in writing signed by all the parties (i.e., by unanimous agreement). Refer to clause 9.10 of NTAA Corporate's Shareholders Agreement.

### **What if there are other shareholder agreements in place?**

If there are other shareholder agreements already in place, NTAA Corporate's Shareholders Agreement will supersede all prior such agreements unless it is specified in Schedule 3 that such agreements are to remain in force. Unless specified in Schedule 3, such prior agreements will be deemed to be terminated.

If there are any prior agreements to remain in force as specified in Schedule 3, it is important that such agreements be read in conjunction with NTAA Corporate's Shareholders Agreement (and the company's constitution) to ensure that there are no provisions in the documents which are inconsistent. To the extent that there is any inconsistency between this Shareholders Agreement and any prior shareholder agreement, the provisions of NTAA Corporate's Shareholders Agreement will prevail to the extent of the inconsistency (refer to clause 3.2 of the Shareholders Agreement).

### **What if there are new shareholders after the agreement is executed?**

Once the Shareholders Agreement has been executed, any person wanting to become a new shareholder must first deliver to the company a signed 'Deed of Accession' in the form of Schedule 2 of the Shareholders Agreement, agreeing to be bound by the Shareholders Agreement.

The company is prohibited from issuing, transferring or permitting the conversion of shares to any person until they have signed and delivered such a Deed of Accession.

### **Disputes between the shareholders**

If there is a dispute between the shareholders arising out of the Shareholders Agreement, the shareholders must use their best efforts to resolve the dispute through mediation and, if still not resolved, to refer the dispute for decision by arbitration.

Note that disputes between the shareholders relating to matters outside the Shareholders Agreement will not be governed by the dispute resolution mechanism under clause 6 (unless specified in Schedule 3), but may still be governed by any relevant provisions in the constitution.

### **Features of NTAA Corporate's Shareholders Agreement**

The following are some of the features of NTAA Corporate's Shareholders Agreement. However, the agreement should be read in full, and in conjunction with the company's constitution, to fully ascertain the relationship between the shareholders and the company.

- The provisions of the Shareholders Agreement will take priority over the company's constitution in the event of any inconsistency between the two documents – refer to clause 2. If necessary, the parties are also required to amend the company's constitution to resolve any such inconsistencies – refer to subclause 2.2. Each shareholder also agrees to exercise all voting rights to give full effect to the agreement (and do all other things as may be necessary or desirable to give full effect to every part of this agreement if asked in writing by one or more other shareholders to do so) – refer to subclause 9.1.
- The shareholders agree to be bound by the terms and conditions described in Schedule 3 of the agreement – refer to subclause 3.1.
- The shareholders agree that there are no other shareholders agreements in force prior to this agreement or, if there are (unless specified under Schedule 3), such agreements are deemed to be terminated – refer to subclause 3.2.
- Any new shareholder must sign and deliver a binding Deed of Accession to the company in the form of Schedule 2 – refer to clause 4.
- The agreement can only be varied by agreement in writing signed by all the parties – refer to subclause 9.10.
- The details of the specific matters of agreement between the shareholders (which may differ from the equivalent provisions in the constitution) are contained in Schedule 3.