

CHECKLIST FOR A SHAREHOLDERS' AGREEMENT

1. Structure

- Is a Partnership, Accounting Practice Company, Accounting Practice Trust or some other structure appropriate?
- Has consent for the Accounting Practice Company been obtained from The Institute?

2. Parties

- Normally the parties would be the Accounting Practice Company, the Shareholders of the Accounting Practice Company and the Directors of the Accounting Practice Company.

3. Date of Commencement

- New or Existing Accounting Practice Company?
- Capital Gains Tax Consequences
- Roll-over Relief under Section 122-15 or Section 122-125 of the 1997 Tax Act?

4. Scope of Practice

- General Accounting Practice
- Tax
- Management Consulting
- Only individuals can act as an auditor, liquidator, official liquidator, receiver or administrator under the Corporations Act

5. Company Name

- Note the requirements of Rules of Ethical Conduct REC1 on the use of the description 'Chartered Accountants'

6. Directors

- Note the provisions of paragraph 11 of Rules of Ethical Conduct REC2 on the requirements regarding the Directors of an Accounting Practice Company
- Quorum for Meeting of Directors
- Election of Chairman of Directors
- Chairman to have a second or casting vote?
- Management Committee Election and Powers
- Employment Contract for each working Director?

7. Shareholders

- Note the provisions of paragraph 11 of Rules of Ethical Conduct REC2 on the requirements regarding the Shareholders of an Accounting Practice Company
- Equal shareholdings?
- Election of Chairman of Shareholders' Meetings
- Chairman to have a second or casting vote?
- Quorum for Shareholders' meetings

8. Assets

- Company or Individual Assets?
- Are they owned by a Service Trust?

9. Profits

- Equal profit share, unequal profit shares or lock step system of profit shares
- Salary and Fringe Benefits Policy
- Directors' fees
- Special Bonuses
- Dividend Policy

10. Incoming Shareholders

- Goodwill payment
- Share of existing debtors
- Lock Step System
- Protocol for Admission of New Shareholders

11. Payments to Outgoing Shareholders Generally

- Formula for calculating payments
- Income Tax and Capital Gains Tax implications
- Should the amounts be different in the case of retirement, death and expulsion?

12. Retirement

- Compulsory retirement age - note the impact of Anti-Discrimination Legislation
- Notice
- Obligation to pay out retiring Shareholder and how much
- Funding of pay out to retiring Shareholder
- Pension entitlement

13. Death

- Insurance cover
- Compulsory pay out to estate and how much
- Payment terms

14. Expulsion

- In what circumstances can a Shareholder be expelled?

15. Sickness

- How long does profit entitlement continue?
- At what stage can the sick Shareholder be expelled?
- Insurance cover

16. Decisions Requiring a Certain Percentage of Votes

Normally decisions by the Directors and/or Shareholders under the Company's Constitution would be decided by a simple majority vote but there may be certain decisions where it is felt that a special majority (eg. 75% or unanimous vote) is required. Such decisions might include:

- Dividends
- Salaries to Directors
- Change in shareholding structure
- New Shareholder
- Amendment of Shareholders' Agreement and/or Constitution
- Sale of business or major asset
- Merger
- Incurring a debt above a certain amount
- Change in nature of business
- Opening a branch office
- Lease of premises
- Mortgage/charge of assets of the Company
- Acquisition of a business or a major asset
- Allotment of further shares or other securities of the Company
- Terminating any Managing Director or Senior Executive
- Winding up of the Company

17. Restrictive Covenant

- Geographical area and duration for a Shareholder who leaves the Practice
- Restrictions on acting for Practice Clients by an Ex-Shareholder

18. Management Issues

- Working Capital Policy
- Signing of cheques
- Terms of Shareholder Loans
- Simple or some other Majority
- Accounting records
- Motor vehicle expenses
- Insurance
- Leave including sabbatical leave
- Control of staff

19. Disputes

- Court
- Arbitration
- Alternative dispute resolution

20. Other Entities

- Is there to be a Service and/or Administration Entity?

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