

Shareholders deed instruction sheet



Hall&Wilcox
Lawyers

This instruction sheet highlights some of the key information that is required to prepare a shareholders deed. To help us prepare the shareholders deed as efficiently as possible, please fill out as much of the information requested as you are able to.

There may be sections of this sheet that do not apply as a large number of variables are involved in preparing a shareholders deed. For example, the number of shareholders, the level of participation of the shareholders in the day to day business of the Company and also the rights attaching to the various classes of shares.

In any case where you are unsure of the information being requested, we suggest that you refer to the guidance notes or contact Adrian Lynch at Hall & Wilcox on (03) 96033584.

1 Company

Company incorporation

Is the company already incorporated? <i>If yes, provide copy of constitution</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Are there any existing shareholders deeds or agreements? <i>If yes, provide copies</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If not, is Hall & Wilcox to incorporate a company?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Company information

Name:	
ACN or ARBN:	
Trading name <i>(if different)</i> :	
Registered address:	
Postal address <i>(if different)</i> :	
Telephone:	
Fax:	
Email:	
Mobile:	
Contact person:	

Company share capital

Are there any existing shares on issue? <i>If yes, provide details and copy of share register</i>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Class of share	Number of shares on issue	

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2 Shareholders

Shareholder 1 - shareholder information

Name:	
ACN (if company):	
Address:	
Telephone:	
Fax:	
Email:	
Mobile:	
Contact person:	
Is shareholder acting as trustee? <i>If yes, provide name of trust and attach copy of trust deed</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Shares in Company

Number	Class	Status	Amount to be paid	Beneficially held?	Proportionate interest ¹
	<input type="checkbox"/> Ordinary <input type="checkbox"/> Other, specify:	<input type="checkbox"/> Currently held <input type="checkbox"/> To be issued	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	%
	<input type="checkbox"/> Ordinary <input type="checkbox"/> Other, specify:	<input type="checkbox"/> Currently held <input type="checkbox"/> To be issued	\$	<input type="checkbox"/> Yes <input type="checkbox"/> No	%

Key individuals

If a corporate shareholder, will there be key individuals? <i>If yes, provide key individual details in section 2</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Director (of Company)

Will shareholder 1 appoint a director to the board of the Company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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¹ Proportionate interest is the proportion of shares held by each shareholder expressed as a percentage of the total number of issued shares in the Company.

Shareholder 2 - shareholder information

Name:	
ACN (if company):	
Address:	
Telephone:	
Fax:	
Email:	
Mobile:	
Contact person:	
Is shareholder acting as trustee? <i>If yes, provide name of trust and attach copy of trust deed</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No

Shares in Company

Number	Class	Status	Amount to be paid	Beneficially held?	Proportionate interest ²
	<input type="checkbox"/> Ordinary <input type="checkbox"/> Other, specify:	<input type="checkbox"/> Currently held <input type="checkbox"/> To be issued	\$ \$	<input type="checkbox"/> Yes <input type="checkbox"/> No	%
	<input type="checkbox"/> Ordinary <input type="checkbox"/> Other, specify:	<input type="checkbox"/> Currently held <input type="checkbox"/> To be issued	\$ \$	<input type="checkbox"/> Yes <input type="checkbox"/> No	%

Key individuals

If a corporate shareholder, will there be key individuals? <i>If yes, provide key individual details in section 2</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Director (of Company)

Will shareholder 2 appoint a director to the board of the Company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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² Proportionate interest is the proportion of shares held by each shareholder expressed as a percentage of the total number of issued shares in the Company.

3 Key individuals³

Will key individuals be parties to the shareholders deed or named in the shareholders deed? ⁴	<input type="checkbox"/> Parties (signatories) to deed <input type="checkbox"/> Named in deed only
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Shareholder 1 - key individual

Name:	
Address:	

Shareholder 2 - key individual

Name:	
Address:	

Shareholder 3 - key individual

Name:	
Address:	

Shareholder 4 - key individual

Name:	
Address:	

4 Board of directors

Is every shareholder entitled to representation on the Board?	<input type="checkbox"/> Yes <input type="checkbox"/> No
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If no, what is the requirement for representation? ⁵	
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Initial directors

Shareholder 1 - director

Name:	
Address:	
Telephone:	
Fax:	
Email:	
Mobile:	

³ The concept of key individuals is relevant where any of the shareholders is a company. A key individual is the person principally associated with a particular shareholder. Usually the rights of that shareholder to hold shares are linked to the performance and behaviour of its key individual. For example, if ABC Pty Ltd (**ABC**) is a shareholder in the Company and Mr Jones is the sole shareholder and director of ABC, Mr Jones will be a key individual. If Mr Jones ceased to be involved with ABC then ABC would no longer be entitled to hold shares in the Company.

⁴ Key individuals can be named as parties to the shareholders deed so that they are personally bound by the restraint and confidentiality clauses. Alternatively, key individuals can be defined within the document.

⁵ Examples of requirements for Board representation include a minimum proportionate interest naming specific shareholders and all directors with the consent of the shareholders as permitted by the *Corporations Act 2001* (Cth).

Shareholder 2 - director

Name:	
Address:	
Telephone:	
Fax:	
Email:	
Mobile:	

Shareholder 3 - director

Name:	
Address:	
Telephone:	
Fax:	
Email:	
Mobile:	

Shareholder 4 - director

Name:	
Address:	
Telephone:	
Fax:	
Email:	
Mobile:	

Board composition

Minimum number of directors:	
Maximum number of directors:	
Will there be independent directors (now or in future)? ⁶	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will observers be allowed? ⁷	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will alternate directors be allowed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Quorum for meetings of Board:	
Are any directors representing particular shareholders a compulsory part of the quorum?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	
Will a managing director be appointed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Name:	

⁶ Independent directors are generally not associated with any of the shareholders.

⁷ A key individual representing a particular shareholder but who is not a director of the company may wish to attend and observe board meetings.

Address:	
If yes, provide details of duties and responsibilities:	
Are directors entitled to remuneration?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Board meetings

Should the shareholders deed include procedures for calling and conducting directors meetings?	<input type="checkbox"/> Yes <input type="checkbox"/> No
How frequently will directors' meetings be held?	
Are there any specific consequences if a director fails to attend a certain number of meetings?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	
Should the directors capacity to delegate their powers be limited?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	

Voting and decision making

Is each director entitled to one vote?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If not, will each director's voting rights be linked to the proportionate interest of their appointing shareholder?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any issues that require a percentage approval that is greater than a simple majority, before a Board resolution can be carried?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, what is the required percentage of votes in favour?	%
If yes, provide details of issues:	<input type="checkbox"/> Varying directors terms of service <input type="checkbox"/> Granting or varying directors' remuneration <input type="checkbox"/> Altering number of Board positions <input type="checkbox"/> Redemption of Company's securities <input type="checkbox"/> Granting encumbrances over Company assets <input type="checkbox"/> Entering into non arm's length transactions including related party payments <input type="checkbox"/> Loans other than in the ordinary course of business <input type="checkbox"/> New issues of equity securities <input type="checkbox"/> Adopting an employee incentive plan <input type="checkbox"/> Determining dividends <input type="checkbox"/> Commencing or defending litigation <input type="checkbox"/> Adopting a formal budget and/or business plan including ratifying material deviations <input type="checkbox"/> Material changes to the Company's business or new businesses

	<input type="checkbox"/> Capital expenditure above a threshold of \$ <input type="checkbox"/> Employment of senior management above a threshold of \$ <input type="checkbox"/> Other, specify:
Are there any issues that require a unanimous vote before a Board resolution can be carried?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details (<i>refer to list of possible issues above</i>):	
Are there any issues that require the agreement of directors representing particular shareholders before a Board resolution can be carried?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details (<i>refer to list of possible issues above</i>):	
Does the chair have a casting vote? ⁸	<input type="checkbox"/> Yes <input type="checkbox"/> No

5 Shareholder meetings

Should the shareholders deed include procedures for calling and conducting shareholders meetings?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Are there any issues that require more than an ordinary resolution (ie a 'special resolution') before a shareholder resolution can be carried?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, what is the required percentage of votes in favour?	
If yes, provide details of issues:	<input type="checkbox"/> Winding up of the Company <input type="checkbox"/> Listing of Company on securities exchange <input type="checkbox"/> Sale or transfer of the Company's business <input type="checkbox"/> Acquisitions of another company or business <input type="checkbox"/> Changes to the Company's constitution <input type="checkbox"/> Modification or abrogation of rights attaching to Company's shares <input type="checkbox"/> Approval of potential new shareholders <input type="checkbox"/> Approval of changes in control of existing shareholders <input type="checkbox"/> Other, specify:

⁸ Where the Company will operate as a 'quasi partnership' with shareholders who are actively and directly involved in the management of the business, the potential implications of granting the chair a casting vote should be considered. For example, if there are two shareholders and each has 50% of the shares and each has appointed one director, granting the chair a casting vote significantly alters the power of the director who has the casting vote to control the outcome of decisions. If due consideration of the impact is not made by the shareholders, the casting vote may not be enforceable.

6 Conduct of business

Are there any objectives of the Company that should be specifically set out in the shareholders deed?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Company intend to adopt an employee incentive plan (now or in the future)?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Company intend to adopt an annual budget?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Does the Company intend to adopt a business plan?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Should the shareholders deed include a dividend policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will intellectual property be a significant asset of the Company? ⁹	<input type="checkbox"/> Yes <input type="checkbox"/> No

7 Issue of securities

Should the shareholders deed include pre-emptive rights for issues of new shares? ¹⁰	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	<input type="checkbox"/> New shares to be first offered to all existing shareholders in accordance with their respective proportionate interests <input type="checkbox"/> Other, specify:
If no, what is the required percentage of shareholder votes in favour of an issue of new shares?	%
If pre-emptive rights are included, will there be exclusions to the application of those rights?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	<input type="checkbox"/> Departing shareholder's shares to be first offered for sale to all existing shareholders in accordance with their respective proportionate interests, then to approved third parties <input type="checkbox"/> Other, specify:

⁹ If intellectual property is or will be a significant asset of the Company, consider including a specific clause in the shareholders deed stating that intellectual property of the Company is clearly distinguished from any intellectual property of the shareholders.

¹⁰ Where pre-emptive rights are included, any new issues of shares or transfers of existing shares must first be offered to the existing shareholders in accordance with their respective proportionate interests. Pre-emptive rights are commonly included in shareholders deeds.

8 Transfer of securities (where no default)

Should the shareholders deed include pre-emptive rights for issues of new shares? ¹¹	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	<input type="checkbox"/> New shares to be first offered to all existing shareholders in accordance with their respective proportionate interests <input type="checkbox"/> Other, specify:
Will there be exclusions to the restrictions on transfer?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details:	<input type="checkbox"/> Transfer to a shareholder's affiliate <input type="checkbox"/> Transfer under a drag along notice ¹² <input type="checkbox"/> Transfer under a tag along notice ¹³ <input type="checkbox"/> Transfer in context of an IPO <input type="checkbox"/> Transfer that all existing shareholders give written consent to <input type="checkbox"/> Other, specify:

9 Transfer of securities (where default has occurred)

What trigger events should be included in the shareholders deed?	<input type="checkbox"/> Material unremedied breach of shareholders deed of Company's constitution <input type="checkbox"/> Unauthorised transfer of shares <input type="checkbox"/> Insolvency <input type="checkbox"/> Change in control of shareholder <input type="checkbox"/> Death <input type="checkbox"/> Total and permanent disability <input type="checkbox"/> Resignation or termination of employment <input type="checkbox"/> Operation of law (criminal conviction) <input type="checkbox"/> Other, specify:
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¹¹ Where pre-emptive rights are included, any new issues of shares or transfers of existing shares must first be offered to the existing shareholders in accordance with their respective proportionate interests. Pre-emptive rights are commonly included in shareholders deeds.

¹² A drag along right is the right of a shareholder to force other shareholders to sell their shares. For example, if shareholder 1 holds 75% of the shares and wishes to sell to a third party, that shareholder can 'drag' the shareholders holding the other 25% along with the sale and require those other shareholders to sell their shares to the third party.

¹³ A tag along right is the right of a shareholder to require a buyer to buy its shares. For example, if shareholders 1 and 2 collectively hold 80% of the shares and wishes to sell to a third party, the remaining shareholder holding the other 20% can 'tag' along with the sale and require the potential buyer to purchase its shares as well.

Trigger event	Who can give notice	Price
Material unremedied breach of shareholders deed or Company's constitution	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Unauthorised transfer of shares	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Insolvency	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Change in control of shareholder	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Death	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Total and permanent disability	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Resignation or termination of employment	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value <input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Operation of law	<input type="checkbox"/> Any other shareholder <input type="checkbox"/> Company via the directors	<input type="checkbox"/> Price paid <input type="checkbox"/> Fair value

		<input type="checkbox"/> Discount to price paid of % <input type="checkbox"/> Discount to fair value of % <input type="checkbox"/> Other, specify:
Other, specify:		
How far will it be determined? ¹⁴	<input type="checkbox"/> Independent valuation <input type="checkbox"/> Board determined mechanism	
How will payment for a transfer of shares due to death or total and permanent disablement be funded? ¹⁵	<input type="checkbox"/> Proceeds of insurance policies <input type="checkbox"/> Other, specify:	
When will payments for a transfer of shares be due? ¹⁶	<input type="checkbox"/> Lump sum at completion <input type="checkbox"/> Instalments, with interest <input type="checkbox"/> Instalments, without interest	

10 Disputes

If only two shareholders, should shareholders deed include a deadlock mechanism? ¹⁷	<input type="checkbox"/> Yes <input type="checkbox"/> No
Should shareholders deed include a dispute resolution clause?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide details: ¹⁸	<input type="checkbox"/> Parties to negotiate <input type="checkbox"/> Mediation <input type="checkbox"/> Arbitration with arbitrator's decision to be binding

11 Restraint

Should shareholders deed include a restraint clause?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If yes, provide area of restraint: ¹⁹	
If yes, provide time frame for restraint:	<input type="checkbox"/> Period from date of shareholders deed until years/months after departure <input type="checkbox"/> years/months after departure <input type="checkbox"/> Other, specify:
Can individual shareholders/directors/key individuals be involved in similar or competing businesses?	<input type="checkbox"/> Yes <input type="checkbox"/> No

¹⁴ Both methods can be included in the shareholders deed so if there is no existing Board determination, external independent valuation will be used.

¹⁵ A combination of funding options can be included in the shareholders deed so that if the proceeds from insurance policies are insufficient, the remaining amount is funded by the shareholders from other sources.

¹⁶ A combination can be included so that different payment time frames apply to different trigger events.

¹⁷ A deadlock mechanism operates so that if there are two shareholders who cannot settle a dispute, either shareholder can trigger a sale process. Shareholder 1 could either buy all of shareholder 2's shares or require shareholder 2 to buy shareholder 1's shares.

¹⁸ A cascading framework can be included in the shareholders deed, for example, first the parties try to negotiate a resolution and if this fails, then the dispute must be submitted to mediation or arbitration.

¹⁹ Any restraint must be reasonable in the circumstances and if challenged, will be considered against an objective standard of reasonableness rather than what the parties involved subjectively think is reasonable or unreasonable.

Will individual shareholders/directors/key individuals be restrained from approaching or accepting business from customers of the Company?	<input type="checkbox"/> Yes <input type="checkbox"/> No
Will individual shareholders/directors/key individuals be restrained from approaching employees of the Company?	<input type="checkbox"/> Yes <input type="checkbox"/> No

12 Other information

Please provide any other information you consider relevant: