

Why Every Business Needs a Shareholders' Agreement

Because Broken Trust Costs More Than Legal Fees



No agreement? No clarity.

Without a Shareholders' Agreement, You're Just Hoping Nothing Goes Wrong.

Imagine opening a café with friends. Everyone is excited. But soon, arguments start, who does more work, who takes more profits, who makes the big decisions. Without clear rules, these disputes can sink your dream.

A shareholders' agreement is your team's private playbook. It spells out:

- Who gets what
- Who decides what
- What happens if someone wants out

It's different from your company's constitution (the public rulebook) because it's confidential, tailored, and designed to keep the partnership fair, drama-free, and future-proof. Set it up early, and you're not just avoiding headaches, you're building a team that works together for the long haul.

Company Constitution vs. Shareholders' Agreement: The Key Difference

Think of your business as a house:

- **Company Constitution** = The blueprint. Shows the structure and basic rules for everyone—owners, directors, future investors. Publicly filed and visible.
- **Shareholders' Agreement** = The roommates' pact. Decides who pays for groceries, who cleans the kitchen, and what happens if someone moves out. Private and confidential.

What's the Difference Between a Company Constitution and a Shareholders' Agreement?

The company constitution sets the general rules for the game, while the shareholders' agreement defines how *your* team plays it. Think of the constitution as the official league rulebook—broad, standardised, and public—covering things like share issuance, meeting procedures, and director powers. The shareholders' agreement, meanwhile, is your private team playbook—customised to suit the specific needs of the shareholders, and detailing how you work together, share profits, make big decisions, and handle someone leaving.

Feature	Company Constitution	Shareholders' Agreement
What It Is	Official public rulebook for the company	Private contract between shareholders
Who it Affects	All stakeholders (present & future)	Only signing shareholders (and the company, if included)
What It Covers	Big-picture corporate rules	Specific shareholder rights & obligations
How to Change	75% shareholder approval	Agreement between the parties
Examples	<ul style="list-style-type: none"> - Company's name and registered address - Rules for issuing and transferring shares - Powers and duties of directors - Shareholder meeting procedures 	<ul style="list-style-type: none"> - Shareholder funding obligations - Share transfer restrictions (e.g., pre-emptive rights, drag-along, tag-along) - Dividend policies - Exit strategies
Filing Requirement	Public document filed with the Companies Commission of Malaysia.	Private agreement, not filed with any regulatory authority.
Confidentiality	Accessible to the public.	Private and confidential.

The shareholders' agreement is essentially your go-to tool for keeping your partnership smooth and private, tailored to your team's needs.



Why You Need a Shareholders' Agreement

1. Focus on Profits, Not Just Shares

Disputes in partnerships usually aren't about ownership—they're about *interests*. You and your partner might each own 50%, but what if you're doing all the work while they only invested money? Splitting profits equally suddenly feels... unfair.

Imagine this: You and a friend start a food truck. You're up at 5 a.m. prepping, cooking, serving. Your friend just put in some cash upfront—but now wants half the profits. Doesn't sit right, does it?

That's where a **shareholders' agreement** comes in. It's not just about who owns how much, it's about how value is created *and* shared. Whether someone contributes time, money, or skills (like marketing), the agreement can reflect that in how profits are divided, *regardless* of ownership percentage.

Tip: "People don't fight over shares; they fight over interests." Focus on building value together—then use a clear agreement to split the 'pizza' based on contribution, not just capital.

2. Recognizing Different Roles

Not every shareholder contributes the same. Some bring money, others bring time, skills, or hustle. **Fairness doesn't mean treating everyone identically**, it means rewarding people in proportion to what they bring to the table.

Splitting everything 50/50 might *look* fair—but if one person is working 60-hour weeks while another just wrote a check, it's not. A **shareholders' agreement** helps you match **rewards to roles**: investors might get more profits, while active contributors get more control or decision-making power.

Tip: "Fair doesn't mean equal. Equal splits punish hard workers." Use a shareholders' agreement to reward effort, money, and skills appropriately.

Story: In ancient China, Liu Bang secured power by rewarding his generals based on their contributions—not status. That turned them into loyal allies. Your business should do the same. Use your agreement to **build loyalty by recognizing contribution**.

3. Prevent Fights Before They Start

Legal battles are expensive. So is drama. That's why smart business owners prevent problems *before* they happen, just like buying insurance before you get sick.

Without clear exit terms, a partner who leaves can cause chaos: demanding a massive payout, taking clients, or worse, holding your business hostage.

A **shareholders' agreement** sets the rules in advance. For example: "*If you leave without contributing, we buy your shares for RM1.*" Simple. Clear. Enforceable.

Tip: "Prevention is cheaper than cure." Don't wait for things to go wrong. A solid agreement protects your business, your team, and your sanity *before* conflict ever starts.

4. Turn Employees into Partners

Bonuses motivate short-term. Ownership motivates for the long term.

If you want your team to think and act like owners, not just employees, give them more than a pay check. A **shareholders' agreement** can outline how employees earn or buy shares, turning them into real partners.

Bonuses fade. Ownership sticks. When employees invest in the business, like buying a small stake in your café, they suddenly care more about costs, customer experience, and growth. Why? Because they have *skin in the game*.

This isn't charity. It's strategy. A clear agreement ensures that only committed team members earn equity, and stay loyal because they helped build it.

Tip: “Bonuses make people lazy; investing makes them owners.” Use a shareholders' agreement to build a team of partners who fight for your success—not just their next raise.

5. Keep Great People and Avoid Creating Competitors

Wait too long to set clear terms, and your best people might walk—straight into a competing business.

Without a **shareholders' agreement**, discontented partners or key team members can leave, take your ideas, and start a rival. Imagine your star chef quitting and opening a café down the street—just because you never agreed on how profits would be shared.

A solid agreement **locks in loyalty**. It gives people a reason to stay, by making the rules fair, transparent, and hard to dispute.

Tip: “Don't lose your best people—don't create your own competition.” A shareholders' agreement keeps partners happy, committed, and on your team.

Story: In ancient China, the brilliant general **Han Xin** left his first leader, **Xiang Yu**, after being undervalued. He joined Liu Bang—and helped him win the empire. A clear agreement could have changed history. In business, it can change your future too.

How to Create a Shareholders' Agreement

- 1 **Talk About Money First**—Decide how profits are split based on roles.
- 2 **Define Roles Clearly**—Investors, managers, specialists—each gets different rights and rewards.
- 3 **Plan Exit Strategies**—Agree what happens if someone leaves.
- 4 **Review as You Grow**—Update when adding partners or preparing for a sale.
- 5 **Get Legal Help**—A lawyer ensures clarity, legality, and enforceability.

Final Word

A shareholders' agreement isn't just paperwork—it's a strategic safeguard.

It protects relationships, prevents costly disputes, and sets a clear foundation for sustainable growth. Whether you're starting up or scaling up, getting these terms right early can save you years of stress later.

👉 *Act early. Plan clearly. Build partnerships that last.*

About the Author

Hi! I'm Esther Tang, a business lawyer based in Sarawak and Kuala Lumpur. I help business owners structure partnerships, manage shareholder relationships, and resolve shareholding issues—simplifying complex legal matters so they can spend less time worrying about compliance and more time focusing on what they do best: building their business with clarity and confidence.

Get in Touch

Starting a business, restructuring ownership, or facing shareholder challenges? Let's work together to bring clarity and peace of mind to your business journey.

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