Preparing a shareholders' agreement

Discussion worksheet for the owners of a Swiss LLC (Sàrl/GmbH) or limited company (SA/AG).

Use this document to agree the decisions that will form the basis of your contract. It is not an agreement ready to sign. Each owner should complete it separately first, then compare answers and have clauses drafted to reflect the decisions reached.

Company and legal form: _____

Owners involved and discussion date: _____

1 Signatories and other documents

Identify who will be bound, which equity interests are covered and how new owners will join the agreement. Compare it with the articles of association and any employment or loan contracts. The agreement does not replace decisions by the company's governing bodies.

Decision and documents to coordinate: _____

2 Roles and commitment

Specify roles, time commitments, remuneration and what happens if someone reduces their involvement. If equity rewards future work, define the vesting timetable or repurchase mechanism for an early departure.

Roles and measurable expectations: _____

3 Decisions and information

Define spending that each person may authorise alone, matters requiring agreement and how often financial information will be shared. With a 50/50 ownership split, plan a way to resolve deadlock. Requiring unanimity for every routine action can paralyse the business.

Reserved decisions and thresholds in CHF: _____

Information to share and frequency: _____

Funding and ownership changes

4 Future funding

Distinguish equity contributions, loans and personal guarantees. State the maximum commitment, timing, any interest and what happens if someone declines to contribute. Owning 30% does not automatically mean funding 30% of every future need.

Maximum commitment and terms: _____

5 New owners and voluntary sales

Decide who may buy, in what order and at what price. Distinguish pre-emption rights, call options, tag-along rights and drag-along obligations. Set clear notice requirements and response periods.

Mechanisms and procedure: _____

6 Early departure, death or incapacity

Define triggering events and their consequences. Do not treat every disagreement as misconduct. Coordinate death or incapacity provisions with succession arrangements and funding needs. Distinguish an agreed departure from a serious breach.

Events and agreed consequences: _____

7 Valuation, buyer and payment

Set the valuation method and date, the expert to appoint in a dispute, the buyer, payment schedule and security. For discussion: a total equity value of CHF 400,000 gives CHF 200,000 for 50%, before expressly agreed adjustments. The buyer must still be able to pay.

Valuation method and reference date: _____

Buyer and payment terms: _____

If the company will buy its own interests, check available funds, statutory limits and tax consequences. A promise that it will repurchase 50% of the capital does not make that transaction legally possible.

Difficulties and final decisions

8 Confidentiality and competition

Define the information protected, competing activities covered and a proportionate duration and territory. Some obligations may be included in a Swiss LLC's articles within the limits of the Code of Obligations. For a limited company, personal shareholder duties beyond paying up shares must be arranged contractually.

Duties and documents concerned: _____

9 Duration, termination and penalties

Choose the duration, termination rights, notice periods and clauses that survive the contract. There is no universal six-month notice rule for every shareholders' agreement: the legal classification and valid terms matter. If you use a contractual penalty, specify the breach, amount or calculation, and its relationship with performance. A court may reduce an excessive penalty (CO Articles 160 and 163).

Duration, termination and proposed penalties: _____

10 Disputes and updates

Provide for a formal discussion, mediation or expert determination where appropriate, followed by a dispute-resolution route. State the governing law, court or arbitration arrangements and when to review the agreement: a new owner, major funding or a change of role.

Stages, people responsible and review triggers: _____

Before commissioning the agreement

Check compatibility with the articles, affordability of the commitments and the tax and social insurance consequences of transfers. List unresolved disagreements instead of concealing them in vague wording.

Points still to resolve: _____

References: Swiss Code of Obligations, particularly Articles 160, 163, 546, 659, 680, 783, 785, 786, 796 and 803; Civil Code Article 27; Withholding Tax Act Article 4a.

Guide and sources: entreprendre.ch/en/guides/shareholders-agreement-switzerland/