EVERYDAY LEGAL
SOLUTIONS

FREE GUIDE · CONTRACTS & DOCUMENTS

Shareholders' agreement for founders: what to agree before you split equity

A shareholders' agreement isn't required by South African law, but for any company with more than one founder it's the document that decides what happens when things change. It should cover how decisions are made, what happens if a founder leaves, how shares can be sold, who owns the IP, and how deadlocks are broken. It must also match your Memorandum of Incorporation (MOI), because under section 15(7) of the Companies Act, any inconsistent clause is void.

REVIEWED BY THE ELS TEAM

Published 7 October 2026 · South Africa

Build on solid legal ground

everydaylegalsolutions.co.za

AT A GLANCE

- Not legally required, but the **main protection against founder disputes**.
- It must be **consistent with your MOI**. Conflicting clauses are void (s15(7)).
- Agree **vesting and leaver terms** before anyone leaves, not after.
- Make sure **IP created before incorporation** is transferred to the company.

Why founders need one early

Most founder disputes don't start with bad faith. They start with different expectations that were never written down: one founder works full-time while another keeps a day job, someone wants to sell and someone doesn't, or a founder leaves after six months still holding a third of the company.

The best time to agree the rules is at the start, while everyone is aligned and nobody knows who will be the one leaving.

How it fits with your MOI

Every South African company has a Memorandum of Incorporation. It's the company's constitution and binds the company, its shareholders and its directors. A shareholders' agreement is a private contract between the shareholders.

Section 15(7) of the Companies Act lets shareholders agree on any matter relating to the company, but the agreement must be consistent with the Act and the MOI. A clause that conflicts with the MOI is **void to the extent of the inconsistency**.

> **The practical lesson.** Courts read section 15(7) narrowly, applying it where there's a direct conflict. But if you sign a shareholders' agreement, check that your MOI says the same thing, and amend the MOI where it doesn't.

What founders should agree

1. Ownership and vesting

Record who holds which shares. Many startups also use **vesting**: founders hold their shares from day one, but the company or the other founders can buy back unvested shares if a founder leaves early. Four years with a one-year cliff is common, but it's a commercial choice, not a legal rule. A buy-back by the company itself must also meet the Companies Act requirements, including the solvency and liquidity test.

2. Good leaver and bad leaver terms

LEAVER TYPE	TYPICAL TREATMENT
Good leaver (death, incapacity, leaving on agreed terms)	Keeps vested shares, or sells them at fair value.
Bad leaver (misconduct, serious breach, walking away early)	May have to sell some or all shares at a lower price.

Be careful with heavy discounts. A bad leaver price out of proportion to the harm may be challenged as an unenforceable penalty, so keep the terms proportionate and clearly defined.

3. Decision-making and reserved matters

Day-to-day decisions sit with the directors. Big decisions should need shareholder approval, often by a higher majority or unanimously:

- Issuing new shares or bringing in an investor.
- Selling the business or a major asset.
- Taking on significant debt.
- Changing the MOI or the nature of the business.
- Appointing or removing directors.

4. Deadlock

With two 50/50 founders, every disagreement can stall the company. Agree a way out: escalation to a mediator, a casting vote, or as a last resort a buy-sell mechanism where one founder can buy the other out.

5. Share transfers

- **Pre-emptive rights:** a founder who wants to sell must offer their shares to the other shareholders first.
- **Tag-along:** if a majority sells, minority shareholders can sell on the same terms.
- **Drag-along:** if an agreed majority accepts an offer for the whole company, the minority must sell too, so one holdout can't block an exit.

6. Intellectual property

Code, designs, brand and content created before incorporation may legally belong to the founder who made them. The agreement, or a separate assignment, should transfer that IP to the company in writing. Investors check this early.

7. Contribution, roles and restraints

Record what each founder is expected to contribute (time, money, skills) and what happens if they don't. Confidentiality and reasonable non-compete or non-solicitation clauses protect the company if a founder leaves, but restraints must be reasonable to be enforced.

8. Funding, dividends and disputes

Agree who funds the company if it needs more money, on what terms, and when profits are paid out. Document founders' loans. Then agree a dispute process before you need one: negotiation, then mediation, then arbitration.

Five common founder mistakes

1. **Splitting 50/50 with no deadlock clause.** Equal ownership feels fair, but without a tie-breaker it can freeze the company.
2. **No vesting.** A co-founder who leaves after three months keeps their full stake.
3. **IP left with individuals.** The product the company sells may legally belong to one founder.
4. **An agreement that contradicts the MOI.** The conflicting clauses are void.
5. **Signing nothing until an investor asks.** By then, positions have hardened.

Frequently asked questions

Is a shareholders' agreement legally required in South Africa?

No. The Companies Act doesn't require one. But if you have more than one shareholder, it's the main protection against disputes.

What happens if our shareholders' agreement conflicts with our MOI?

The conflicting provision is void to the extent of the inconsistency, under section 15(7) of the Companies Act. Align the two documents.

Can we use the CIPC standard MOI?

Yes, many small companies do. But a standard MOI won't contain bespoke founder terms, so check that it doesn't conflict with your shareholders' agreement.

Do we need a new agreement when an investor comes in?

Usually yes, or a substantial amendment. Investors typically negotiate their own terms on board seats, information rights and protections.

Get your founders' agreement in place

The ELS Founders' / Shareholders' Agreement documents ownership, decision-making and leaver terms. For co-founders who also need client, NDA, contractor and privacy documents, see the Essential Legal Starter Pack. Not sure what you need? Take the free Legal Health Check.

VIEW THE AGREEMENT | TAKE THE FREE LEGAL HEALTH CHECK

INFORMATION, NOT ADVICE

ELS provides legal information, not legal advice. Nothing in this guide creates an attorney-client relationship. For advice on your specific situation, consult a qualified attorney. The law is stated as at 7 October 2026.

EVERYDAY LEGAL SOLUTIONS

Attorney-drafted legal documents and plain-English legal information for South African businesses. Not sure what your business needs? Take the free Legal Health Check.

Build on solid legal ground.