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# International Best Practices Relating to Shareholders' Agreements

Dechert  
LLP

# Shareholder Agreements

- I. Preliminary Thoughts
- II. Key Issues
- III. Other Provisions
- IV. Conclusion

# Shareholder Agreements

## I. Preliminary Thoughts

A. Why?

B. When?

C. How?

# Shareholder Agreements

## I. A. Why?

- Secure stability of partnerships
- Predictability
- Building a clear partnership with a clear set of rules
- Knowing the rules of the marriage!

# Shareholder Agreements

## I. B. When?

- Two or more shareholders
- Governance is key
- Financial investor
- Exits – plan them in advance

# Shareholder Agreements

## I. C. How?

- No need for anything complex
- Start with Term Sheet
- Deal with important issues for shareholders
- Brainstorm
- Determine what is key for each shareholder

# Shareholder Agreements

## II. Key Issues

- A. Governance
- B. Transfer of Shares
- C. Exits
- D. Minority Rights
- E. Other

# Shareholder Agreements

## II. A. Governance

- Management / Board of Directors
- Supervisory Board
- Shareholder Matters

# Shareholder Agreements

## II. B. Transfer of Shares

1. Permitted transfer within group
2. Call Option: When? How? Why?
3. Put Option: When? How? Why?

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## II. C. Exits

1. TAG – Along
2. Drag Along
3. Right of First Refusal / Preemption
4. Russian Roulette

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## II. D. Minority Rights

1. Minority Protection

2. Reserved Matters

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## III. Other Provisions

- A. Dividend Policies
- B. Anti Dilution
- C. Enforceability
- D. Deed of adherence
- E. Non-Compete
- F. Disputes

# Shareholder Agreements

## III. A. Dividends

- Establish a clear policy
- Class of shareholders
- Taxation
- Investments / No dividends

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## III. B. Anti-Dilution

- Usually the pro rata rule applies
- Can be also found in the charter
- Provide clear wording

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## III. C. Enforceability

- Jurisdiction
- Governing Law
- Identity/Nationality of parties
- Specific performance

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## III. D. Deed of Adherence

- Why?
- How?
- Good thing?

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## III. E. Non Compete

- Local partners
- Foreign investors
- Why?
- Drafting issues
- No leakage!!!

# Shareholder Agreements

## III. F. Disputes

- Mediation
- Third party experts
- Litigation
- Exits

# Shareholder Agreements

## IV. Concluding Remarks

- Focus on the key options
- Use established concepts
- Don't over rely on precedents
- Make sure non-lawyers can deal with it!

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