

## SHAREHOLDER AGREEMENT

A Shareholder Agreement, also known as a Stockholder Agreement, is a contract between the shareholders and the company. Shareholder's agreement is entered in order to dissolve any dispute amongst the shareholders and/or the company. It also helps to protect the investment made by a shareholder interest. Further it lays down the rules and regulations for the shareholders and any other party related to the company. It is essential to regulate the operations of since every shareholder has its own way of thinking. An agreement has to be drafted keeping in mind that every person is different and has the different opinion on subjects or matter concerned. And that they may or may not agree with each other. The contents in a Shareholder Agreement depends on the company and the shareholders, but it usually spells out: Shareholder rights and responsibilities.

- Share ownership and valuation
- Management of finances, business, assets, capital, and shares
- Rules for issuing new shares and restrictions on share transfers
- Conflict of interest rules, such as a non-compete clause or non-solicitation clause

### **Article of Association**

An Article of Association (AOA) lays down the rules and regulations for the internal management of the company. It specifies the duties, rights, and powers of the management of the company. An Article of Association is complimentary to the Memorandum of Association (MOA).

## **Shareholder Agreement (SHA) Vs Article of Association(AOA)**

According to the provisions of Companies Act, 2013 any provision which is not consistent or not incorporated in the Articles of Association ("**Articles** ") is ultra vires and hence void.

In general alteration of the Articles of Association of, the investee company to reflect the position in SHA. The incorporation of clauses of SHA in AOA ensures that none of the provisions of the SHA are rendered inoperative by virtue of them being contrary to the constitutional documents of the investee company.

A breach of Shareholder agreement which does not breach the articles of association is a valid corporate document. In Indian Judicial system, number of cases have held that a Shareholder agreement is said to be void if the same is not embedded into the Articles of a company. Therefore, mere execution of Shareholder agreement is not sufficient; it is required to be duly incorporated into the Articles so that its enforceability is not put to challenge. Any provision in a SHA, if not incorporated in the Articles will be deemed inconsistent and hence void.

What is binding to shareholder agreement or Article of association?

Shareholder agreement is binding to shareholder if it is not inconsistent with Article of the company. It is always recommended to make a company as party to Shareholders' Agreement.