



# Joint Venture Toolkit

## Plain Language Guide: Understanding the Shareholders Deed



**This document has been prepared by Jackson McDonald in collaboration with the Waalitj Hub and is funded by the National Indigenous Australians Agency.**

This document is intended to provide a limited summary and overview of certain information to assist in the establishment of a joint venture or other commercial arrangement. This document has been put together having regard to the typical interests of Indigenous businesses but does not take into account any particular persons interests or circumstances and it is not intended to be comprehensive.

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# Understanding the Shareholders Deed

## Background

A shareholders deed is a contract that sets out how the parties who have set up a joint venture company will work together. It also contains the rules for how the company will operate and works alongside the company's constitution.

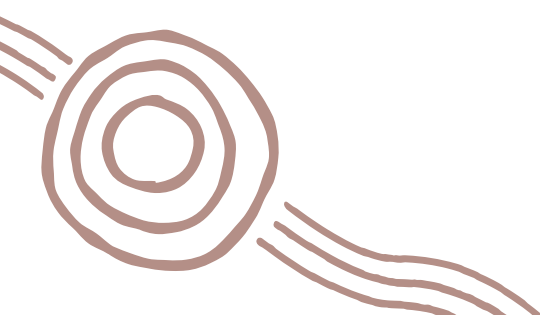
The template Shareholders Deed has been developed for an incorporated joint venture. It addresses a range of matters that will help to guide the relationship between the shareholders and, together with the constitution sets up the governance arrangements for the company. The Shareholders Deed sets out all of the key rules for how the company is run.

This document provides a summary of the key provisions of the template Shareholders Deed (including the relevant rules from the constitution) and addresses some 'frequently asked questions' that arise in respect of a shareholders deeds and constitution. It also addresses some of the terms of the constitution to the extent that these also impact on matters dealt with in the Shareholders Deed.

Where a term or phrase in this document uses capital letters (e.g. Shareholders) then that word or phrase has the meaning given in the Shareholders Deed.

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# Summary of provisions

Clause	Topic	Notes
1	Definitions and interpretation	This clause sets out the definitions of key terms used in the Shareholders Deed and explains the rules for interpreting certain words and phrases that are used in the Shareholders Deed.
2	Term and termination	The Shareholders Deed will apply from the date its signed until the earlier of: <ul style="list-style-type: none"> <li>• all of the Shareholders agree that the Shareholders Deed will end;</li> <li>• the Company is wound up;</li> <li>• a Shareholder buys out the other Shareholders; or</li> <li>• an Exit occurs.</li> </ul>
3	Business and objectives	The Company will only conduct the business that's described in Schedule 1 of the Shareholders Deed. The objectives of the Company include 'maximising the Company's value and doing business in a way that aligns with the Company's commitment to support Indigenous participation.
4	Paramourncy of deed	This clause explains that the Constitution must be consistent with the Shareholders Deed and if something isn't consistent then the rules in the Shareholders Deed will generally apply. The only circumstances where the Constitution will apply instead of the Shareholders Deed is if the inconsistency relates to rights or restrictions that apply to Shares.
5	Indigenous participation	If the Company is registered or certified with Supply Nation, the Shareholders need to do what's necessary to maintain that registration or certification. The Shareholders must ensure that the Company: <ul style="list-style-type: none"> <li>• complies with its Indigenous Participation Standard;</li> <li>• looks for, and pursues, opportunities for Indigenous people and businesses to participate in the Company's activities;</li> <li>• maximises employment, training and business opportunities for Indigenous people; and</li> <li>• provides culturally appropriate training.</li> </ul>
6	Business Plans	The Company must prepare a business plan within 3 months of the date of the Deed and before each new financial year. The business plan must include an Indigenous Participation Plan, a budget for the new financial year and the fees expected to be charged under any Management Agreement. This is an important document, as it will outline what the JV parties hope to achieve in a financial year.



Clause	Topic	Notes
7	Services to be provided to Company	<p>Each Shareholder, or an entity connected to a Shareholder, can be paid to provide property, services and personnel to the Company for its operations if all of the Shareholders agree (i.e. a Shareholder can be contracted to provide things to the Company).</p> <p>The terms of any contract with a Shareholder must be reasonable, commercial and comparable to what would be expected if the contract was with a third party.</p>
8	Capital structure and ownership of shares	<p>Each Shareholder will own Shares in the Company (as specified in Schedule 2 of the Shareholders Deed).</p>
9	Governance	<ul style="list-style-type: none"> <li>• The Board of directors is responsible for the overall management and operation of the business and the Company.</li> <li>• There must be the number of directors set out in clause 9.2 and, if applicable, the composition of the Board must comply with the relevant Supply Nation criteria.</li> <li>• Each Shareholder who holds the required number of Shares may appoint and remove a certain number of Nominee Directors (see clause 9.3). Nominee Directors can be appointed and removed by telling the Company and each other Shareholder in writing about the change. The agreement is designed to give equal Board representation.</li> <li>• Each Nominee Director can have regard to the interests of their Nominating Shareholder when making decisions as a director of the Company.</li> <li>• A Nominee Director can tell its Nominating Shareholder anything about the Company that it learns as a director of the Company, including giving the Nominating Shareholder copies of any documents they receive.</li> <li>• The Board can appoint more directors.</li> <li>• If the JV company has subsidiaries, their boards must have the same composition as the board of the JV company (unless the Board decides differently).</li> <li>• The Board can elect a chairperson. For Supply Nation registered or certified businesses, the chairperson must be a Nominee Director appointed by the Indigenous party.</li> <li>• The Company must maintain insurance for each director to cover any liability that may arise from their actions as a director of the Company.</li> </ul>
10	Board meetings and decisions	<ul style="list-style-type: none"> <li>• The Board must meet at least 4 times a year, but you can meet as often as you wish.</li> <li>• A Board meeting can be held using technology (with different directors in different places).</li> <li>• All directors must be told about a Board meeting at least 5 Business Days' before the meeting. The notice must be in writing. A Board meeting can be held on shorter notice if all of the directors who are entitled to vote at the meeting agree.</li> </ul>

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Clause	Topic	Notes
10	Board meetings and decisions <small>From previous page</small>	<ul style="list-style-type: none"> <li>• A director can appoint another person to attend Board meetings in their place (this is known as an 'alternate director' and is allowed under rule 6.15 of the Constitution).</li> <li>• A majority of directors, including at least 1 Nominee Director from each Shareholder, must be present for a Board meeting to go ahead (this is called a quorum).</li> <li>• Each Director has 1 vote, and the chairperson does not have a casting vote.</li> <li>• All resolutions at meetings of the Board must be decided by a simple majority vote.</li> <li>• A Nominee Director has an extra vote if another director appointed by their Nominating Shareholder isn't at the meeting or is present but is not allowed to vote on a resolution (e.g. if there's a conflict of interest), or if their Nominating Shareholder is entitled to appoint more people to the Board (e.g. if the Nominating Shareholder can appoint 3 directors but has only appointed 1 director, then that 1 director has 3 votes).</li> <li>• A resolution can be passed without a Board meeting, as long as all the directors agree in writing (e.g. by email or by signing a printed copy of the resolution).</li> <li>• If the Board is considering a matter that involves a director or a business connected to that director (known as a Related Party), that director must not be present for any discussions or decision making about the matter (i.e. they can't vote). This includes any decisions about a Management Agreement, for example.</li> </ul> <p>In these circumstances, the number of people required to form a quorum (i.e. the number of directors that need to be present for the meeting to go ahead) is to be counted based on the number of directors who are able to vote on the matter (i.e. a majority of directors that are able to vote on the matter must be present).</p>
11	Shareholders	<ul style="list-style-type: none"> <li>• The Board can decide when to hold a Shareholders meeting.</li> <li>• A Shareholders meeting can be held using technology.</li> <li>• Shareholders must receive at least 21 days' notice of a meeting. The notice must include an agenda for the meeting.</li> <li>• At a Shareholders meeting, each Shareholder will have one vote for each Share held by that Shareholder. The chairperson of the meeting does not have a casting vote.</li> <li>• To have a valid meeting, 2 or more Shareholders who hold at least 75% of the Shares that are entitled to vote on the matters being considered must be present (in person, by proxy, or representative). If a quorum is not met, the meeting is adjourned and, at the next attempt to hold the meeting, 2 or more Shareholders that hold more than 50% of the Shares that are entitled to vote on the matters being considered must be present.</li> </ul> <p style="text-align: right;"><small>Continue next page</small></p>

Clause	Topic	Notes
11	Shareholders <small>From previous page</small>	<ul style="list-style-type: none"> <li>Significant decisions (called Shareholder Reserved Matters which are set out in Schedule 3) can only be made Shareholders holding at least 75% of the shares support the decision.</li> <li>A resolution can be passed without a Shareholders meeting, as long as all the Shareholders agree in writing (e.g. by email or by signing a printed copy of the resolution).</li> </ul>
12	Financial reporting and maintenance of records	<ul style="list-style-type: none"> <li>The Company must: <ul style="list-style-type: none"> <li>report on its progress on implementing the Indigenous Participation Plan;</li> <li>keep proper books and records;</li> <li>prepare a profit and loss statement and a balance sheet each Financial Year;</li> <li>submit monthly management reports to the Board (including a profit and loss statement, balance sheet and cash flow statement);</li> <li>provide each director with copies of the books and records as requested; and</li> <li>on request, provide annual financial statements to all Shareholders.</li> </ul> </li> <li>All receipts and cash must be deposited in the bank accounts approved by the Board, and can only be withdrawn by authorised signatories approved by the Board.</li> <li>Each Shareholder may, at its own expense, inspect and make copies of all books, records, accounts and documents in the possession of the Company relating to the Business, assets or affairs of the Company.</li> </ul>
13	Financing the Company	<ul style="list-style-type: none"> <li>The Shareholders agree that any loans provided by Shareholders on or before the start date of the Shareholders Deed must be formalised in a written agreement.</li> <li>If the Company needs additional funding for its operations, this may be obtained by: <ul style="list-style-type: none"> <li>Shareholders buying more Shares in the Company;</li> <li>the Company borrowing from third parties (with certain restrictions); or</li> <li>Shareholders lending money to the Company.</li> </ul> </li> <li>Shareholders are not required to provide funding or guarantees to the Company. The Company can borrow money from a Shareholder if the Board unanimously agree. If the Company borrows money from more than 1 Shareholder, then each loan should have equal terms.</li> <li>If the Company can obtain loans from third parties. It's preferred that Shareholders don't give guarantees in respect of any loans (but can do so if agreed).</li> <li>The Board needs approval from 75% of the Shareholders to issue new Shares (or any other Security) in the Company.</li> </ul>

Clause	Topic	Notes
14	Restrictions on transfer of Securities	<p>A Shareholder can only transfer Shares:</p> <ul style="list-style-type: none"> <li>in connection with an Exit (i.e. a sale of the company agreed by the parties);</li> <li>in accordance with the process for selling Shares (see clause 15);</li> <li>to a related party (if certain conditions are met);</li> <li>if the Shares are sold following an Event of Default; or</li> <li>with the prior written consent of all the other Shareholders.</li> </ul>
15	Sale of Shares	<ul style="list-style-type: none"> <li>If a Shareholder wants to sell all of their Shares, they must tell the Company and the other Shareholders in writing, by providing an Offer Notice that sets out: <ul style="list-style-type: none"> <li>the number of Shares for sale;</li> <li>the price; and</li> <li>the details of any third-party that has offered to buy the Shares.</li> </ul> </li> <li>An offer to sell Shares remains open for acceptance for at least 30 days.</li> <li>Continuing Shareholders have the option to accept, reject, or dispute that the sale price is fair within the offer period. If there is a dispute over the sale price, the Company must get the Shares valued.</li> <li>If an offer to sell is accepted, the selling Shareholder must sell the Shares.</li> <li>If more than one Shareholder wants to buy the Shares, the Shares are sold based on the amount requested by each Shareholder, or divided amongst all Shareholders based on the percent of Shares each Shareholder currently owns (e.g. if a Shareholder owns 25% of the Company's shares, they would be entitled to buy 25% of the Shares being sold).</li> <li>The Shares must be transferred to the buying Shareholder 10 days after the end of the Offer Period.</li> <li>If the continuing Shareholders do not buy all of the Shares offered, the selling Shareholder can sell the remaining Shares to a third-party, with consent from the Shareholders.</li> <li>If the Continuing Shareholders refuse to allow the sale of Shares to two different third parties within a 3 month period, the selling Shareholder can require the Company to be sold in full.</li> </ul>
16	Deed of Accession	<p>A new Shareholder must sign a Deed of Accession (a document where the Shareholder agrees to be bound to the terms of the Shareholders Deed) before being registered as a Shareholder.</p>



Clause	Topic	Notes
17	Events of default	<ul style="list-style-type: none"> <li>An Event of Default occurs if:               <ul style="list-style-type: none"> <li>a Shareholder breaches the Shareholders Deed and the breach can't be remedied within 20 Business Days of being told about the breach;</li> <li>an Insolvency Event occurs in respect of a Shareholder or a person who Controls that Shareholder;</li> <li>a Change of Control occurs in respect of a Shareholder without the prior written consent of the other Shareholder; or</li> <li>a Shareholder that is a natural person dies.</li> </ul> </li> <li>If an Event of Default occurs in respect of a Shareholder, the Company can sell that Shareholders Shares to the other Shareholders.</li> <li>The Company must offer to sell the defaulting Shareholders' Shares to the other Shareholders after the occurrence of an Event of Default at a price determined by an independent valuer.</li> <li>The rights and entitlements of a Shareholder are immediately suspended where there is an Event of Default, and remain suspended until the Event of Default has been remedied or the Shares have been sold.</li> </ul>
18	Power of Attorney	<ul style="list-style-type: none"> <li>Each Shareholder authorises the Company and its directors to effect any sale of Shares that happens where there has been an Event of Default or there is a Deadlock (the Company or the directors will act as 'attorney' for the Shareholder).</li> <li>The Shareholders agree to ratify and confirm the actions taken by the Company or directors when acting as the Shareholders attorney.</li> <li>A Shareholder cannot grant anyone else as its attorney without the Board's consent.</li> </ul>
19	Deadlock	<ul style="list-style-type: none"> <li>A Deadlock will occur if:               <ul style="list-style-type: none"> <li>there is no quorum at a Shareholders meeting or a Board meeting, or at a reconvened meeting following an adjournment;</li> <li>resolutions on at least 2 different Shareholder Reserved Matters are not approved in any 3 month period because the same Shareholders are voting against the resolutions; or</li> <li>a particular resolution has been passed at 2 successive meetings of the Board because there were equal votes for and against.</li> </ul> </li> <li>Within 28 days after the meeting at which the Deadlock occurs, a party can tell the other parties that a Deadlock has occurred.</li> <li>Within 5 days of a Deadlock Notice being received, each Shareholder must nominate a person who must meet with the representatives of the other Shareholders to try and resolve the Deadlock within 20 Business Days.</li> </ul>

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Clause	Topic	Notes
19	Deadlock From previous page	<ul style="list-style-type: none"> <li>If the Deadlock is not resolved within 20 Business Days, a Shareholder can initiate mediation by serving a Mediation Notice. The Shareholders must appoint a mediator within 5 business days. If they cannot agree on a mediator, the Resolution Institute can appoint a mediator.</li> <li>If the Deadlock is not resolved after at least 3 attempts to mediate the Deadlock within a 6 month period, a Shareholder can require the Company to be sold.</li> </ul>
20	Non-compete	<p>Shareholders must not do any activities that will compete with the Business of the Company.</p> <p>This can be tricky to negotiate where the JV parties have their own businesses in related sectors.</p>
21	Confidentiality	The parties must keep confidential information confidential and not disclose it, except in specific permitted circumstances. When a Shareholder is no longer bound by the Shareholders Deed, it must stop using the Confidential Information and return or delete it.
22	Intellectual Property Rights	<p>All intellectual property (other than Indigenous Cultural Intellectual Property (ICIP)) developed by the Company, or its employees, will be the property of the Company.</p> <p>The Company may use ICIP under a revocable licence granted by the person that created the ICIP. The Company must stop using the ICIP when the Indigenous JV Partner no longer holds Shares in the Company.</p>
23	Dispute resolution	If a dispute arises under the Shareholders Deed, the parties must meet to try and resolve the issue. If the issue can't be resolved, a Shareholder can commence legal proceedings.
24	GST	This clause explains how GST will be calculated on any payments that are made under the Shareholders Deed.
25	Notices	This clause sets out the process that must be followed to issue a formal notice under the Shareholders Deed.
26	General	This clause sets addresses a number of standard matters that may be needed in certain circumstances (e.g. how to change the contract, how the contract can be signed, which laws apply to the contract).



# Frequently asked questions

## What is a joint venture?

A joint venture (**JV**) refers to a business arrangement where two or more parties come together to collaborate and work on a specific project or business opportunity.

A company is usually set up to undertake the JV. The participants in the JV own shares in the JV company.

A Shareholders Deed is a contract that sets out how the parties have decided the JV company will operate and function.

## What is a shareholder?

Shareholders are individuals or entities who own shares in a company.

Shareholders are also referred to as members of the company. Each shareholder holds a portion of ownership in the company.

Shareholders have several rights, including the ability to appoint directors, participate in general meetings, vote on company matters, access financial information, and make changes to the JV company's rules.

## When does the Shareholders Deed start and when will it end?

### The Shareholders Deed:

- starts when it is signed by all parties; and
- ends when the parties agree to terminate it, the Company is wound up, a shareholder buys out the other shareholders or an Exit occurs.

A shareholder no longer needs to follow the Shareholders Deed once it sells all of its Shares in the Company.

## What are the benefits of an Indigenous business signing the Shareholders Deed and being a Shareholder?

### Some of the benefits to the Indigenous business include:

- **Decision-making power:** By being a shareholder, the Indigenous business has a voice in the decision-making processes of the Company.  
The Shareholders Deed outlines the rights and obligations of shareholders, including the ability to appoint directors, participate in meetings and vote on important matters that impact the Company's operations and strategic decisions.
- **Financial returns:** As a shareholder, the Indigenous business is entitled to receive a share of the Company's profits or dividends.
- **Influence and representation:** Being a shareholder gives the Indigenous business the opportunity to have its voice heard and influence the policies of the Company.

## What are the risks of signing the Shareholders Deed and being a shareholder?

- **Financial risks of investing:** Investing in the Company, by buying Shares or lending money, carries financial risks.  
If the Company does not perform well or faces financial difficulties, the value of the Shares may decrease or the Company might not be able to repay the money in the agreed timeframe.
- **Regulatory and Compliance risks:** There are legal and regulatory requirements associated with being a Shareholder.  
Failure to comply with these obligations, such as reporting or disclosure requirements, can result in penalties or legal consequences.  
The Directors of an incorporated JV company will also have statutory and legal duties, which if breached can lead to personal liability.
- **Governance risks:** Shareholders rely on the Board and management to make sound business decisions.  
However, if there are conflicts of interest, mismanagement, or unethical practices within the Company, it could negatively impact on Shareholders, usually by the value of the Company going down.

## What are Shareholder Reserved Matters?

Shareholder Reserved Matters refer to specific matters that require approval from shareholders holding at least 75% of the shares.

These matters are listed in Schedule 3 to the Shareholders Deed and include significant decisions affecting the Business's direction, finances, or governance. Usually, both shareholders need to approve these matters.

## What happens if the Shareholders or the Board can't make decisions?

A deadlock occurs where decisions can't be made (either because enough people aren't attending meetings, there are an equal number of votes for or against a particular decision or the Shareholders aren't on the same page about 2 or more Shareholder Reserved Matters).

If a deadlock occurs, the Shareholders have to try to resolve the issue through mediation. If mediation doesn't work, a Shareholder can require that the Company be sold.

## What happens if a director can't attend a Board meeting?

If a director can't attend a Board meeting, they can appoint a person as their alternate (called an alternate director) (see rule 6.15 in the Constitution). An alternate director can step in and attend the meeting on behalf of the absent director (and be counted for the purposes of determining if a quorum is present).

The alternate director is authorised to participate, vote, and fulfill the responsibilities of the absent director during any Board meeting that the absent director isn't attending. An alternate director has the same legal duties and responsibilities as any other director.

## Can Shares be sold to a third party?

Yes, Shares can be sold to a third party purchaser, provided that the process in the Shareholders Deed is followed.

Before selling shares to a third party, the selling Shareholder must offer to sell the Shares to the existing Shareholders on the same terms as those offered to the third party. If the existing Shareholders decide not to sell their Shares and consent to the sale of the Shares to the third party, the selling Shareholder can sell the Shares to the third party.

If the continuing Shareholders decide not to approve a sale to two different third parties, the selling Shareholder can require that the Company be sold.

An Indigenous shareholder is not required to find an Indigenous third party to buy the Shares – the Indigenous party can sell to any third party (with the approval of the other Shareholders). If the business is Supply Nation registered or certified, the other Shareholder may not consent to the sale to a non-Indigenous business.

## How can a Shareholder get out of a JV company?

A Shareholder can stop being a party to the Shareholders Deed by selling its Shares in the Company.

### **A Shareholder who wants to sell their Shares must either:**

- Sell their Shares to the other Shareholders.
- Sell their Shares to a third party that the other Shareholders are comfortable to do business with (i.e. the other Shareholders must consent to the third party buying the Shares).
- **Force a sale of the Company where:**
  - the other Shareholders have not agreed to a proposed sale of Shares to a third party on two different occasions within 3 months; or
  - the Shareholders or directors are in a Deadlock and can't make decisions.

## Am I entitled to Company information?

As a Shareholder, the Shareholders Deed gives you a right to access the books and records of the Company. It also requires the Company to give you financial reports, management accounts and a report on compliance with the Indigenous Participation Plan.

Under the general law and the Corporations Act, directors have rights to access all company information, books and records. The Shareholders Agreement provides a similar right.

