QAPITA

The Shareholders' *Agreement Guide*

What actually governs a company after the money lands, the clauses that decide control, the exits that decide outcomes, and the silent gap between your agreement and your cap table that most founders never see coming.

TABLE OF CONTENTS

What's inside

CHAPTER 01

What Is a Shareholders' Agreement, Really

Every company has two rulebooks. One is public: the Certificate of Incorporation (or Articles of Association) filed with the state or registrar, which binds the company itself and everyone who deals with it. The other is private: the Shareholders' Agreement (SHA), a contract signed only by the people who hold shares today. It never gets filed anywhere public, yet it is usually the document that actually decides who controls the company, who gets paid first, and who can block a deal.

The Public Constitution

- Certificate of Incorporation / Articles of Association
- Filed with the state or registrar - third parties can rely on it
- Binds the company and every shareholder, present and future
- Changes require a formal, often public, amendment

The Private Contract

- Shareholders' Agreement (SHA)
- Signed only by current shareholders - silent to outside parties
- Binds only its signatories, not the company
- Amended privately, often deal by deal, round by round

That split matters more than it sounds. A right that lives only in the SHA a veto, a pre-emptive right, a drag-along is enforceable between the people who signed it, but it does not automatically bind the company or a new investor who never countersigned. This guide treats the SHA as what it is: the real operating agreement of the business, and shows you where its authority quietly runs out.

ALSO WORTH KNOWING

ALSO CALLED

A "stockholders' agreement" in most US corporate contexts - same document, different label depending on entity type and jurisdiction.

WHO SIGNS

Only current shareholders. New investors must be joined by a deed of adherence, or the agreement never binds them.

WHERE IT LIVES

In the data room, not the public registry - which is exactly why it needs a deliberate owner inside the company.

CHAPTER 02

Why It Belongs on Day One

Founders rarely skip a Shareholders' Agreement out of ignorance. They skip it out of sequencing "we'll formalize this once we're further along." That delay is the single most common root cause of the disputes this guide later covers. Alignment is cheapest exactly when it feels least necessary: before anyone has a reason to disagree.

WHAT CHANGES IF YOU WAIT

Before any capital moves

Every founder has equal leverage. Terms get set on merit, not on who needs whom more.

After the first outside check

An investor now has a say in terms they didn't have when founders were negotiating alone and the founders' own splits are still being renegotiated under an audience.

After the first disagreement

Whatever informal understanding existed becomes evidence in a dispute, not a governing document. Courts default to statute and the AoA, which rarely reflect what was actually promised.

After someone wants out

A departing co-founder with no vesting schedule and no buy-back mechanism keeps their full stake i.e fully vested, fully priced at today's value for work done at yesterday's company.

THE RULE OF THUMB

Put the Shareholders' Agreement in place the moment there is more than one shareholder that's it. Not at Series A, not "once things are more real." The moment a second name appears on the cap table, sign it.

CHAPTER 03

Anatomy of an Agreement

Agreements vary by drafter, but nearly every functioning SHA is built from the same four articles. Read in order, they tell a simple story: who is at the table, how the company will be run, what happens to money and shares, and how the story ends. Skim past any one of the four and you've left a gap someone else will eventually find.

1

Parties & Purpose

Who is bound, what the company does, and the recitals that later resolve ambiguity in every other article.

2

Governance & Management

Board composition, reserved matters, voting thresholds, and information rights the day-to-day control layer.

3

Economic & Transfer Rights

Issuance, ROFR, vesting, anti-dilution and dividend policy the money layer.

4

Exit & Termination

Drag-along, tag-along, deadlock and what happens if the agreement itself needs to end.

Standard templates (YC's, NVCA's, or your counsel's boilerplate) are a reasonable Article I and IV starting point. Articles II and III are where genuine negotiation happens, and where the next several chapters spend most of their time.

A USEFUL TEST BEFORE YOU SIGN

Hand a copy of the agreement to someone who wasn't in the room for negotiations. If they can answer "who approves a new board seat," "what happens if I want to sell my shares," and "what happens if we can't agree," purely from the text — the four articles are doing their job. If they can't, the gap is usually in Article II or III, not in the boilerplate.

CHAPTER 04

Core Economic Rights

These are the clauses that decide who owns what, and whether that ownership can quietly change without a shareholder's consent. Three show up in almost every negotiation.

Issuing & Transferring Shares

Issuance covers new shares the company creates (a fresh round, an option exercise). Transfer covers existing shares changing hands. An SHA typically requires board and sometimes shareholder consent before either the mechanism that stops a co-founder from quietly diluting the cap table or selling into the wrong hands.

Pre-emptive Rights / Right of First Refusal (ROFR)

Before the company issues new shares to anyone outside the current shareholder base, existing holders get the option to buy their pro-rata share first. This is the single biggest lever against involuntary dilution, and the one most first-time shareholders don't realize they need to actively exercise it rarely triggers automatically.

Share Vesting

Founder and early-employee shares typically vest over 4 years with a 1-year cliff. Vesting protects the company (and remaining shareholders) from a co-founder who leaves in month six keeping a fully-priced stake earned by four years of intended work. Reverse vesting on already-issued founder shares is standard in every serious US deal.

BENCHMARK

US seed and Series A deals in 2026 standardize on a 4-year vesting schedule with a 12-month cliff, and a ROFR exercise window of 15–30 days from transfer notice.

WORKED EXAMPLE: WHAT ROFR ACTUALLY PREVENTS

A company with three equal 33% shareholders wants to issue new shares to a fourth party without offering existing holders the chance to buy in first. Without a pre-emptive right, all three original holders drop to roughly 25% each. A 25% haircut on ownership none of them chose. With ROFR in place, each of the three can buy their pro-rata slice of the new issuance before it goes to the outside party, keeping their percentage exactly where it was if they choose to participate. The clause doesn't stop dilution from new capital, it stops dilution nobody agreed to.

CHAPTER 05

Governance & Control

Ownership percentage and control are not the same thing. A shareholder with 15% of the equity can hold a hard veto over the company's most important decisions, if the SHA gives them one. Three mechanisms do the actual work.

Board Composition

The SHA typically fixes board seats by investor class rather than by share count: one founder seat, one lead-investor seat, one independent, for example, so board control doesn't silently shift every time the cap table does.

Reserved Matters (Protective Provisions)

- Issuing new equity or debt above an agreed threshold
- Amending the Certificate of Incorporation or the SHA itself
- Selling substantially all assets, or approving a merger or sale of the company
- Changing the size or composition of the board
- Approving the annual budget or a material deviation from it

Information Rights

Major investors typically receive audited annual financials, unaudited quarterly statements, and an annual budget often tiered by check size, so a $5M lead sees more than a $50K angel. Left undefined, information rights default to whatever the founders feel like sharing, which is precisely the ambiguity that erodes trust fastest.

Why this list matters more than the vesting clause

Reserved matters are the clauses that get exercised the most, because they cover ordinary operating decisions not just an exit years away. A missing reserved-matter list is the fastest route to a founder discovering they needed sign-off after the fact.

CHAPTER 06

Exit Mechanics: Drag & Tag

The same clause pair appears in almost every SHA, because they solve opposite problems for opposite constituencies and a well-drafted agreement needs both, not one.

DRAG-ALONG

Protects the majority. If holders above an agreed threshold approve a sale of the company, they can force the remaining minority to sell on the same terms so one small holder can't block a deal everyone else wants.

Typical US threshold: 50–75% of shares voting to approve.

TAG-ALONG

Protects the minority. If a majority holder sells their stake to a third party, minority holders can insist on selling their shares on the same terms so small holders aren't left behind, stuck with a new, unwanted co-owner.

Also called "co-sale rights" in US term sheets.

The number that decides who controls your exit

The drag-along voting threshold is arguably the single most consequential number founders negotiate after valuation. Set it too low (near 50%) and one large investor can force a sale the founders don't want. Set it too high (near 90%) and a single small holdout can block an exit everyone else supports. Institutional investors typically push for 75% high enough to prevent unreasonable minority vetoes, not so high that consensus becomes impossible.

Negotiation note: founders should push back on any drag-along threshold below 75%, and should always pair it with a tag-along right for symmetry never accept one without the other.

Secondary Sales & Payout Order

Two more mechanics decide what happens when shares change hands outside a full-company sale, and what order the proceeds get paid out in when one finally happens.

Right of first offer (rofo) on secondary sales

Distinct from ROFR: before a shareholder can shop their stake to any outside buyer, they must first offer it to the company or existing shareholders at a price they set. Only if that offer is declined can they seek outside buyers and typically only at a price no lower than what was offered internally. This keeps ownership inside a known, vetted circle for as long as reasonably possible.

Liquidation preference, where the sha meets the cap table

The SHA's exit clauses don't operate in isolation they interact directly with the liquidation preference stack set in each round's financing documents. A 1x non-participating preference means preferred holders get their money back (or convert to common, whichever pays more) before common holders see a cent. Stack several rounds of participating preferred on top of each other, and a drag-along sale that looks attractive at the headline valuation can leave founders and employees with far less than the sale price implies.

Why this matters at negotiation, not at exit

Model the drag-along threshold against the current preference stack before signing, not after a term sheet lands. A 75% drag-along combined with a 2x participating preference from an earlier round can force common holders into a sale that clears the preference stack but pays them almost nothing.

CHAPTER 07

Protecting the Minority

Corporate law defaults to majority rule. Without a Shareholders' Agreement, a shareholder holding 10% or even 40% has almost no leverage beyond a lawsuit, and lawsuits are slow, expensive, and public. The SHA is where minority shareholders actually get enforceable protection, not statute.

Where the real protection lives

- Consent rights over the reserved matters in Chapter 05 a minority board seat or veto over specific decisions, not just a vote that's always outvoted
- Tag-along rights, so a minority holder isn't stranded when a majority holder cashes out
- Anti-dilution protection, so a down round doesn't silently erase a minority stake's value
- Information rights, so oversight doesn't depend on the majority's goodwill
- Pre-emptive rights, so new issuances can't be used to dilute a specific holder out of relevance

What it can't do

An SHA cannot give a minority holder control of day-to-day operations, and it shouldn't try to over-engineered minority protections routinely make companies unmanageable and unfundable. The craft is calibration: enough protection that a 10-20% holder isn't defenseless, not so much that a single small investor can freeze the company.

A Common Misconception

"49% of shares" sounds like meaningful leverage. Without specific consent rights written into the SHA, 49% has zero formal power to block a board decision, ordinary resolutions pass on a simple majority of those voting.

CHAPTER 08

When Shareholders Disagree

A deadlock is what happens when the board or shareholders can't agree on a path forward and the company's normal decision-making machinery simply stops. Every SHA needs a pre-agreed way out decided calmly, before anyone is angry, not negotiated for the first time in the middle of a dispute.

Shotgun / Buy-Sell Clause

One shareholder names a price and offers to buy the other(s) out. The recipient can either sell at that price or flip the offer, buying the initiator out at the same terms a self-policing mechanism, since naming an unfairly low price risks being forced to sell at it yourself.

Mediation

A neutral third party facilitates a resolution. Cheapest and most private option, but not binding either side can walk away without a result.

Arbitration

A binding decision from a neutral arbitrator, kept outside public court records. Faster and more confidential than litigation, though not free, and appeals are limited.

Forced Sale or Winding Up

The mechanism of last resort: a party can compel a sale of the entire company, or its formal winding up, rather than remain deadlocked indefinitely.

> Most well-drafted SHAs escalate through these in order mediation first, arbitration if that fails, forced sale only as the final resort. Naming the sequence in advance is what keeps a real disagreement from becoming an existential one.

CHAPTER 09

Confidentiality, IP & Non-Compete

Economic and governance clauses protect ownership and control. This set protects the thing that ownership is actually worth something because of: the business itself, and the ideas that make it work.

Confidentiality

Every shareholder, not just employees agrees not to disclose the company's proprietary information, financials, or strategy to outside parties, including competitors. This closes a real gap: NDAs typically cover employees and vendors, but a shareholder isn't automatically bound unless the SHA says so.

IP Assignment

Confirms that any intellectual property a founder or shareholder creates in connection with the business belongs to the company, not to them personally. Without this, a departing co-founder can walk away holding the patent, the codebase, or the trademark the company was built on.

Non-Compete / Non-Solicit

Restricts a shareholder from starting or joining a competing venture, or poaching employees and customers, for a defined period after they exit. Enforceability varies sharply by US state, California voids most non-competes outright, while Delaware and others enforce reasonable ones, so this clause needs state-specific counsel, not a copy-pasted template.

A US-SPECIFIC WATCH-OUT

The FTC's 2024 rule attempting to ban most employee non-competes nationally was vacated in federal court, but state-level bans (led by California) remain fully in force. Draft this clause per state of residence, not per company headquarters.

CHAPTER 10

The Cross-Border Reality

A US-headquartered company with an Indian subsidiary and a Singapore holding entity doesn't get to use one SHA. Each entity's shareholders agreement must work within a different statute, and the three don't treat the same clause the same way.

	United States (Delaware)	India (Companies Act)	Singapore
Governing framework	Delaware General Corporation Law + contract law	Companies Act 2013 SHA is a private contract layered on statute	Companies Act 1967 common-law contract enforceability
SHA vs. charter conflict	Charter typically amended to mirror key SHA terms directly	SHA often silent to the company unless AoA is amended to match	AoA amendment strongly recommended for enforceability against the company
Drag-along enforceability	Broadly enforceable as drafted	Enforceable between signatories; company-level effect needs AoA alignment	Enforceable, courts generally uphold freedom of contract
Typical timeline to close	Fast, standardized NVCA-style paper	Slower, RBI/FEMA filings for any foreign shareholder	Fast, pro-business registrar processes

The practical takeaway: draft each entity's SHA to its own jurisdiction first, then reconcile the group's rights across entities as a second, deliberate step, never assume a US-style term travels intact into an Indian or Singaporean subsidiary's agreement.

CHAPTER 11

The Silent Drift

Why your Shareholders' Agreement and your cap table quietly stop agreeing with each other and almost nobody notices until an exit forces the question.

The problem nobody assigns an owner

Chapter 01 established the split: the SHA is a private contract between shareholders; the Certificate of Incorporation (or Articles of Association) is the public constitution that binds the company. Most legal and market commentary stops there, treating the SHA as a static document you sign once and file away.

In practice, an SHA is amended at nearly every financing round new protective provisions, new board seats, new drag-along thresholds layered on top of whatever the previous round negotiated. The charter documents and the cap table platform, however, don't automatically update every time the SHA does. The result is a gap that opens quietly, round after round, between what the contract says a shareholder can do and what the company's actual governing and operating records reflect.

Why this is under-discussed

Legal teams focus on getting each round's SHA signed correctly. Cap table tools focus on getting each round's numbers right. Almost nobody owns the reconciliation between the two, because it isn't obviously anyone's job.

The Phantom Veto Problem

The clearest symptom of the drift is what we call the phantom veto: a protective provision granted to an early investor that technically still requires their consent for an action, long after that investor's practical influence or even their continued involvement has become nominal.

HOW IT ACCUMULATES, ROUND BY ROUND

SEED

Seed investor gets a consent right over any new debt above $250K, plus a board observer seat.

SERIES A

Lead investor negotiates a broader reserved-matters list new equity issuance, budget approval, board size, largely superseding, but not formally replacing, the seed rights.

SERIES B

A new lead adds its own consent rights and a board seat. Nobody revisits whether the seed investor's original debt-consent right still makes sense it's still in the document.

Exit event

A clean sale needs consent from seed, Series A and Series B investors on overlapping, sometimes contradictory clauses including a seed investor holding under 2% of the company, who never expected to still hold a veto.

The Underlying Cause

SHAs are almost always amended additively — a new schedule appended, a new side letter signed — rather than fully restated and re-issued clean at each round. Additive amendment is faster to close, but it is exactly what lets superseded rights survive on paper.

Closing the Gap: A Reconciliation Framework

The fix isn't a better SHA template it's a recurring discipline that treats the SHA, the charter, and the cap table as one connected system rather than three documents maintained by three different people on three different schedules.

A Quarterly Reconciliation, In Four Checks

1. Consent-right audit

List every consent right and veto across every amendment and side letter still in force. Flag any holder whose current ownership is below the threshold that originally justified the right.

---

2. Charter alignment check

Confirm every reserved matter, board-composition rule, and transfer restriction in the SHA is mirrored in the current Certificate of Incorporation / AoA not just the version filed at formation.

---

3. Cap table cross-check

Verify the platform of record reflects every ROFR, drag-along, and anti-dilution mechanism as an enforceable rule, not just a historical note in a document repository.

---

4. Sunset review

For every provision older than two funding rounds, explicitly ask: does the rationale that created this right still hold? If not, retire it in the next restatement rather than letting it survive by default.

Who Should Own This

Give this reconciliation an explicit owner general counsel, finance, or whoever administers the cap table with a standing quarterly calendar entry, the same way a board calendar has a standing audit item. A right nobody is checking is a right nobody can rely on.

CHAPTER 12

Red Flags & Negotiation

Most SHA disputes trace back to a handful of recurring red flags clauses that read as boilerplate but quietly favor one side. Here's what to flag before signing, not after.

Asymmetric drag-along with no tag-along

If majority holders can force a sale but minority holders have no matching right to join one, push back immediately this is the single most common one-sided term.

Reserved matters with no materiality threshold

"Any new debt" without a dollar floor means routine vendor financing needs the same investor sign-off as a $10M credit facility. Add thresholds to every reserved matter.

Vesting with no acceleration on involuntary termination

Without single-trigger or double-trigger acceleration, a founder fired without cause just before a cliff or milestone loses unvested equity they were counting on.

Broad non-compete with no geographic or time limit

Courts in many US states will strike an unreasonable non-compete entirely rather than narrow it an overreaching clause can end up unenforceable when a modest one would have held.

Information rights that are discretionary, not contractual

"The company will endeavor to provide updates" is not an information right. It should specify frequency, format and audited/unaudited status explicitly.

CHAPTER 13

The Drafting Checklist

A field-ready checklist to run through before anyone signs organized in the order this guide covered them.

Economic rights

- [ ] Share issuance and transfer restrictions are explicit
- [ ] ROFR / pre-emptive rights and their exercise window are defined
- [ ] Vesting schedule and acceleration triggers are specified

Governance

- [ ] Board composition is fixed by class, not raw share count
- [ ] Every reserved matter has a clear materiality threshold
- [ ] Information rights specify frequency, format and recipient tier

Exit & disputes

- [ ] Drag-along and tag-along thresholds are symmetric and benchmarked
- [ ] A deadlock mechanism is named and sequenced (mediation → arbitration → forced sale)
- [ ] Liquidation preference stack is modeled against the drag-along threshold

Protective & cross-border

- [ ] Confidentiality binds shareholders, not just employees
- [ ] IP assignment is confirmed for every founder and key contributor
- [ ] Non-compete is drafted per state/jurisdiction of residence
- [ ] Each entity's SHA is aligned with its own charter and cap table platform

CHAPTER 14

Benchmark Cheat Sheet

A one-page reference for where 2026 US market terms typically land. Use these as a starting anchor for negotiation, not a ceiling or floor every company's leverage differs.

Term	Typical US Market Range (2026)
Founder vesting schedule	4 years, with a 12-month cliff
ROFR / pre-emptive rights exercise window	15–30 days from transfer notice
Drag-along voting threshold	50–75% of shares voting, institutional investors push for 75%
Tag-along trigger	Any third-party sale by a holder above an agreed ownership %
Board composition (Seed/Series A)	1 founder, 1 investor, 1 independent - expanding to 5–7 seats by Series B
Information rights (major investor)	Audited annual, unaudited quarterly, annual budget
Non-compete duration post-exit	12–24 months, subject to state enforceability
Deadlock resolution sequence	Mediation → binding arbitration → forced sale / winding up

These figures reflect US venture-backed norms. Cross-border entities should re-benchmark against Chapter 10 before assuming a term travels unchanged into an Indian or Singaporean subsidiary's agreement.

Key Takeaways

Fifteen chapters, one thread running through all of them: a Shareholders' Agreement is only as good as the discipline that keeps it aligned with reality. Here's what to carry forward.

1. Sign it early. The cheapest time to agree on control and economics is before anyone has a reason to disagree - the moment a second shareholder exists, not at Series A.

2. The SHA and the company's charter are not the same document. A right that lives only in the SHA doesn't automatically bind the company or a new investor - align the two deliberately, every round.

3. Symmetry is the test for fairness. Drag-along without tag-along, or reserved matters with no materiality threshold, are the clearest signs a clause favors one side more than it should.

4. Name your deadlock mechanism before you need it. Mediation, arbitration, forced sale - decided calmly in advance, not negotiated for the first time mid-dispute.

5. Cross-border means three agreements, not one. Draft each entity's SHA to its own jurisdiction, then reconcile rights across entities as a deliberate second step.

6. Audit the drift, quarterly. Rights accumulate across rounds faster than anyone revisits them - a standing reconciliation is the only defense against a phantom veto surfacing at exit.

CHAPTER 15

Where Qapita Fits In

This guide has been about the agreement itself — the clauses, the thresholds, the negotiation. None of it holds up if the systems tracking who owns what fall out of sync with what the agreement actually says. That's the specific, narrow problem Qapita is built to close.

1

One system of record across entities

A single cap table that spans your US parent, Indian subsidiary and any other entity in the structure so a cross-border SHA has one operating record to reconcile against, not three.

2

Rights that live as rules, not PDFs

ROFR windows, drag-along thresholds and vesting schedules tracked as enforceable data on the platform, not buried in a signed document nobody re-reads before a transaction.

3

Built for the reconciliation habit this guide recommends

Structured for the quarterly audit, consent rights, charter alignment and cap table accuracy checked against each other on a cadence, not rediscovered at an exit.

Qapita doesn't replace legal counsel or the negotiation covered in this guide it's the system that keeps what gets negotiated from quietly drifting out of date.

Book A Demo