



# THE LAWWAY WITH LAWYERS JOURNAL

**VOLUME:- 4 ISSUE NO:- 4 , NOVEMBER 26, 2023**

ISSN (ONLINE):- 2584-1106

Website: [www.the-lawway-with-lawyers.com](http://www.the-lawway-with-lawyers.com)

Email: [thelawwaywithlawyers@gmail.com](mailto:thelawwaywithlawyers@gmail.com)

## SHARE HOLDING AGREEMENT

PRAKHAR SINGH

LAW FACULTY UNIVERSITY OF LUCKNOW

### ABSTRACT

In March 2023 Adani Enterprises through its indirect subsidiary RRPR bought the additional 1.76 crore shares of NDTV for ₹602 crore, from NDTV promoters Radhika and Prannoy Roy. This amounted to a 27.26 percent stake in the company.

With this transfer of shares, Adani owns a 64.71 percent stake in the company. RRPR was initially a promoter-owned company, which Adani Group's AMG network acquired in August 2022 by conversion of warrants.<sup>1</sup> Now the question arises what are these shares and how do they manage the administration of the company? In day-to-day life, many company's shares are bought or acquired. Companies with huge profits someday shut down and company with less recognition a society gets a boom in the economic era. Companies sometimes time not have a single administrator or owner, it is run by a group of people who have their share in a company and to make the legally binding share, an agreement is signed by the members of the body who have real authority over the company, which is soon treated as contract.<sup>2</sup> With time many startups and new companies are evolving and how it manage a smooth run with so many shareholders.

---

<sup>1</sup> <https://www.thehindubusinessline.com/companies/adani-group-officially-becomes-majority-shareholder-in-ndtv>

<sup>2</sup> Indian Contract Act 1872, Section 2H

This article deals with the shareholding agreement, its legal foundation and framework, and how it protects minority as well as majority shareholders. Major case laws that shape the corporate sector are more relevant. It defines the rights of the majority as well as the minority and the role of government in a shareholding agreement. It deals with the transaction of cross border as well as individual stakeholders of companies.

The legal environment is largely created by governments, but when creating shareholding agreements, businesses and legal experts must understand and abide by these regulations. To guarantee that agreements comply with the law and reduce the risks of non-compliance, legal advice is necessary.

A shareholding agreement is an essential tool for encouraging cooperation, safeguarding the interests of shareholders, and offering a strategic road map for long-term success.

## **INTRODUCTION**

### **DEFINITION AND PURPOSE OF SHAREHOLDING AGREEMENTS**

Shareholding agreements<sup>3</sup> are private documents in the form of an inter se contract between the shareholders of the company defining the rights, obligations, and privileges and it helps in the management of the company. These are also known by the name of stakeholder agreements.

It is a legally binding contract between the stakeholders of the companies, it supplements the company's constitutional document such as the company's constitution and its article and it provides more detailed regulation. It is an arrangement among the company's shareholders that describes how the company should be operated. The role of these agreements in corporate life is much more significant to avoid future ambiguousness or intricacies

### **PURPOSE OF THE SHAREHOLDING AGREEMENT**

- CLARIFYING THE RIGHTS AND OBLIGATION OF SHAREHOLDER
- SAFEGUARDING THE MINORITY SHAREHOLDER

---

<sup>3</sup> Company Act, 2013, Section 399

- MANAGING THE TRANSFER OF SHARE
- RESOLVING DISPUTE AMONG STAKEHOLDER
- ESTABLISHING THE REGULATION FRAMEWORK FOR DECISION MAKING
  1. VOTING RIGHTS AND PROCEDURE
  2. BOARD COMPOSITION AND APPOINTMENT PROCESS

When it comes to running a company smoothly, a well-drafted shareholder agreement serves as an indispensable tool. Armed with protection for shareholders and a robust framework for decision-making, this vital document paves the way for effective governance. Whether you're embarking on a new venture or looking to solidify an established business, understanding the key components and intricacies of shareholder agreements is paramount. It lays the groundwork for growth and success in the ever-evolving world of corporate enterprise.

## **A Solid Foundation for Growth and Success**

Imagine a ship sailing through uncharted waters without a compass or a well-defined direction. Without a shareholder agreement, a company could find itself in a similar predicament. This agreement acts as a navigational guide, providing shareholders with a clear roadmap for their collective journey. By outlining important provisions such as rights and responsibilities, share transfer procedures, and dispute resolution mechanisms, it ensures clarity and transparency amongst stakeholders.

### **Protection for Shareholders**

One of the primary objectives of a shareholder agreement is to protect the interests of shareholders. It acts as a safety net, safeguarding their investments and ensuring fair treatment. For instance, minority shareholders often face unique challenges in decision-making processes. A well-crafted agreement can empower them by incorporating provisions that protect their rights and prevent any undue marginalization. By doing so, it fosters an environment of inclusivity and encourages active participation from all shareholders, regardless of their stake size.

### **Establishing a Robust Framework**

Effective decision-making is the lifeblood of any successful business. A shareholder agreement plays a pivotal role in establishing a robust framework that facilitates this crucial process. By clearly defining voting rights, quorum requirements, and decision-making thresholds, it reduces ambiguity and enhances efficiency. This structured approach enables

shareholders to navigate through complex issues, make informed choices, and collectively steer the company toward its goals.

## **Navigating the Dynamic World of Corporate Enterprise**

In today's fast-paced and ever-changing business landscape, adaptability is key to survival. A shareholder agreement equips your company with the necessary tools to adapt and thrive amidst uncertainties. For example, it may outline mechanisms to address unforeseen contingencies like the entry of new investors or changes in ownership structure. By proactively addressing potential challenges, the agreement ensures stability and resilience within the organization

A shareholding agreement is essentially more than just a legal document; it is an agreement that fosters cooperation among shareholders and guarantees a just and equal environment for all parties. A strong shareholding agreement becomes essential for building trust, controlling expectations, and guiding the business toward long-term success as companies negotiate the complex terrain of ownership structures, decision-making procedures, and possible exits.

## **TRANSFER OF SHARE**

SEBI has recently amended relevant provisions of SEBI<sup>4</sup> to disallow listed companies from accepting requests for transfer of securities that are held in physical form, with effect from April 1, 2019.

### **Changes to Listing Obligations and Disclosure Requirements**

- SEBI has recently made amendments to its (Listing Obligations and Disclosure Requirements) Regulations, 2015.
- These changes prohibit listed companies from accepting requests to transfer securities held in physical form, effective from April 1, 2019.
- Shareholders who continue to hold shares and other securities in physical form after this date will not be able to submit them to the company or its RTA (Registrar and Transfer Agent) for further transfer.
- To initiate any transfer, they must compulsorily convert their physical securities into demat form.
- Listed companies and their RTAs will only accept requests for the transmission and transposition of physical securities.

---

<sup>4</sup> (Listing Obligations and Disclosure Requirements) Regulations, 2015

## **Purpose and Benefits of the Amendment**

- The main objective of this amendment is to prevent fraud and manipulation risks associated with the physical transfer of securities by unscrupulous individuals.
- The new regulation aims to enhance the ease, convenience, and safety of transactions for investors.
- Holding securities in a dematerialized (demat) form provides numerous advantages, including reduced paperwork, improved efficiency, and enhanced liquidity.
- By opening a demat account and dematerializing their shares, investors can safeguard the liquidity of their investments.

## **Encouraging Investors to Transition to Demat Accounts**

- It is strongly recommended that all investors who currently hold shares or other securities in physical form consider opening a demat account as soon as possible.
- By submitting a request for dematerialization of their shares, investors can ensure the longevity and accessibility of their investments.

This amendment by SEBI reflects their commitment to enhancing investor protection and fostering a secure and transparent securities market. The transition towards dematerialization is a progressive move that aligns with the evolving landscape of financial transactions. Taking advantage of the benefits offered by demat accounts positions investors to navigate the market with greater ease and confidence. Let's embrace this change and foster a more secure and efficient investment environment.

The Supreme Court held that the restriction to the transferability of shares are to be mentioned in the articles of association and since in the case it was not mentioned in the articles but shareholder agreement made it unenforceable against the defendants<sup>5</sup>. Hence it is necessary that the terms and conditions that are written in the shareholding agreement are to be followed and it is the agreement that defines the transferability of shares.

Not only this, the private arrangements between shareholders of the company on a voluntary basis, relating to sharing transfer restriction would be enforceable between the shareholders and it is not mandatory for the company to be a party to such an agreement. Further it is not essential to incorporate share transfer restriction in the article of the company. The division bench held that a restriction in Messer Holdings also stated that a restriction on the transfer of shares is enforceable unless barred by the bylaws of the company.<sup>6</sup>

---

<sup>5</sup> V.B Rangaraj VS V.B GOPALAKRISHNAN, AIR 1992SC 453

<sup>6</sup> Messer Holdings Limited V. Shyam Madanmohan Ruia

## **The Role of Government in Shareholding Agreements**

When it comes to shareholding agreements, the government's involvement may not be direct, but it certainly can't be ignored. While they may not be sitting at the negotiating table or drafting the agreements themselves, their influence is far-reaching and plays a crucial role in several key aspects. Let's take a closer look at how the government impacts shareholding agreements.

### **Legal Framework:**

- **Company Law:** Governments establish and regulate company laws, which serve as the foundation for businesses. These laws outline the fundamental rules and requirements for the formation, structure, and governance of companies. Any shareholding agreement must adhere to these provisions set out by the government.<sup>7</sup>
- **Regulatory Authorities:** In order to oversee corporate activities, governments often establish regulatory authorities or agencies like SEBI.<sup>8</sup> These bodies have the power to review and regulate certain aspects of shareholding agreements, especially those related to securities and the financial markets.

### **Protection of Shareholders:**

- **Corporate Governance Standards:** Governments may establish corporate governance standards that companies are expected to follow. While these standards may not dictate the specific details of shareholding agreements, they undoubtedly influence the overall governance structure. This influence may impact certain provisions, especially those concerning the protection of shareholders' rights.
- **Minority Shareholder Protection:** Government regulations often include provisions aimed at safeguarding the rights of minority shareholders. Shareholding agreements can complement these protections or provide additional safeguards for minority interests.

---

<sup>7</sup> Company law 2013

<sup>8</sup> SEBI ACT OF 1992

## **Regulation of Financial Markets:**

- **Securities Regulations:** Governments play a critical role in regulating the issuance and trading of securities through entities such as securities commissions. Shareholding agreements may be subject to regulatory scrutiny to ensure compliance with these securities regulations, particularly in the context of private placements, share transfers, or other securities-related provisions.
- **Disclosure Requirements:** When it comes to publicly traded companies, governments may impose certain disclosure requirements. While shareholding agreements are typically private documents, there are instances where specific information needs to be disclosed to regulatory authorities. This disclosure can influence the terms and conditions outlined in the agreement.

## **Contractual Enforcement:**

- **Legal System:** The government provides the necessary legal infrastructure for the enforcement of contracts, including shareholding agreements. Courts and legal systems ensure that the terms agreed upon by shareholders are legally binding and enforceable.
- **Dispute Resolution:** In cases where disputes arise from shareholding agreements, government-established legal processes such as courts and alternative dispute resolution mechanisms come into the picture. Governments ensure a fair and impartial environment for resolving these disputes.

## **Taxation:**

- **Tax Policies:** Government tax policies can have an impact on the structuring of shareholding agreements, especially in terms of ownership transfers, dividends, and other financial transactions. Shareholders need to consider the tax implications when negotiating and drafting their agreements.

## **Anti-Money Laundering and Compliance:**

- **Regulatory Compliance:** Governments enforce anti-money laundering and compliance regulations. Shareholding agreements may need to incorporate provisions to ensure compliance with these regulations, particularly when dealing with high-value transactions or multinational entities.

government may not directly participate in the negotiation and drafting of shareholding agreements, its role is significant in establishing the legal framework, protecting shareholders' rights, regulating financial markets, and ensuring the enforceability of contracts. Businesses and legal professionals must be aware of these regulatory influences when crafting shareholding agreements. Seeking legal advice and complying with applicable laws is crucial in creating agreements that can withstand regulatory scrutiny and provide a solid foundation for effective corporate governance.

## **Understanding Consumer Protection Laws**

### **Investor Protection**

When it comes to shareholding agreements involving individual investors, governments play a critical role in safeguarding their rights. Consumer protection laws are put in place to ensure that investors are treated fairly and provided with all the necessary information they need. By adhering to these laws, companies can build trust and maintain a healthy relationship with their shareholders. Transparency is key!<sup>9</sup>

### **Transparency Requirements**

Compliance with transparency requirements mandated by government regulations is essential for shareholding agreements. This means that accurate and timely information must be provided to both shareholders and regulatory authorities. By doing so, companies can promote transparency and accountability, ensuring that all parties are well-informed and have a clear understanding of the company's operations.

---

<sup>9</sup> CYRUS INVESTMENT PVT.LTD AND Anr. V Tata sons limited and ors.

# **Foreign Ownership Restrictions**

## **National Security and Foreign Ownership**

In certain sectors deemed critical to national security, governments may impose restrictions on foreign ownership. This is done to protect sensitive information and preserve national interests. Shareholding agreements must take these restrictions into consideration and ensure compliance with laws related to foreign ownership. By doing so, companies can navigate the intricacies of international business while preserving national security.

## **Approval Processes**

Cross-border transactions can be complex, requiring companies and shareholders to navigate various government approval processes. These processes can have a significant impact on the timeline and structure of shareholding agreements. It's crucial for companies to work closely with legal professionals to ensure compliance with the necessary government regulations. With careful planning and execution, companies can successfully navigate these approval processes and establish fruitful partnerships across borders.

## **Data Security and Privacy**

In an era where privacy and data protection are paramount, governments have enacted laws to safeguard the personal information of individuals. Shareholding agreements must incorporate provisions that address the protection of sensitive shareholder information in compliance with data protection regulations. By prioritizing data security and privacy, companies can maintain trust and confidence among their shareholders and protect valuable information from unauthorized access.

**Cross-Border Data Transfers** For companies operating globally, cross-border data transfer restrictions may apply. Shareholding agreements must take into account these restrictions and consider data transfer mechanisms that comply with relevant regulations. By doing so, companies can ensure the secure and lawful transfer of data while operating on a global scale.

Understanding the multifaceted role of government in various regulatory aspects is crucial for businesses and legal professionals when negotiating, drafting, and implementing shareholding agreements. Staying informed about the legal landscape, seeking professional advice, and maintaining compliance with applicable laws and regulations are vital. By doing so, companies can develop effective shareholding agreements that promote collaboration among shareholders while operating within the parameters of the law.

## **HOW SHAREHOLDER AGREEMENT PROTECT MINORITY SHAREHOLDERS**

Individuals who possess less than 50% of a company's shares are considered minority shareholders. Minority shareholders should be protected because they have little influence on the company's management. Minority shareholder protection must so be covered by a shareholders' agreement. The 2013 Companies Act lists the minority shareholder's rights, including the<sup>10</sup>

- A Small Shareholder Director must be appointed (Section 151 of the Companies Act, 2013).
- **Right to file an application with the Board in the event of mismanagement or oppression** (Sections 241-246 of the Companies Act, 2013)
- the right to participate in the sale of shares made by the majority of shareholders. We call this strategy "piggy backing."
- the ability to file a class action lawsuit against the business and the Minority shareholder lacks voting control of the company

And in the absence of a shareholding agreement, these shareholders will exert minimal influence in the running of the company. Key management decisions can be made by the few controlling shareholders who own more than 50% of the company, and they may not consider input from the minority shareholders.

Even if the article of association protects the minority owners, the provision can often be changed through special resolution by the majority shareholders. The shareholder agreement addresses these loopholes and limits the ability of the majority to overrule minority shareholder to overrule minority shareholders when making a certain decision, such as the issue of new shares, taking new debt, and the appointment and removal of directors, etc<sup>11</sup>

## **HOW SHAREHOLDER AGREEMENTS PROTECT MAJORITY SHAREHOLDERS**

Apart from protecting the minority shareholder, the shareholder agreement may also protect the majority shareholder where minority shareholders are uncooperative. For example, a majority shareholder may be required to use **DRAG ALONG PROVISION**<sup>12</sup>, Which

---

<sup>10</sup> Shanti Prasad Jain V. Kalinga Tubes

<sup>11</sup> Executive Prime Ltd. V, BINKARDHAR , AIR 1995 SC 234

<sup>12</sup> <https://www.lexisnexis.co.uk/legal/guidance/drag-along-tag-along-fundamentals>

allows to sell part or all of the shares at a specific time and price even if the minority shareholders are unwilling to agree on the transaction.

These agreement helps in the smooth run of the company with a state of stability and even assist the stakeholders to sell and buy the shares of the company.

## **Anti-dilution provision**

Included in shareholder agreements, anti-dilution clauses are essential protections for investors, especially minority investors, shielding their ownership interests from unjustified dilution when a business issues new shares. There are usually two main types of these provisions: weighted average and full ratchet. In the first case, the conversion price is simply adjusted to the new issuance price; in the latter case, a more sophisticated adjustment is provided by taking into account both the price and the number of shares in the new fundraising round. Anti-dilution clauses, which provide protection from large ownership reductions during difficult financial times, have a substantial influence on current shareholders and are triggered by down rounds or the issue of additional shares. They must, however, strike a careful balance in their negotiations since they might irritate any new investors. Anti-dilution clauses must be carefully drafted and compliant with applicable laws in order to be legally enforced. Companies frequently use legal advice during the negotiating, writing, and possible amending procedures in order to manage this difficult terrain. These clauses are further refined by precedents and case law.

## **Role of shareholding agreement in the modern era**

The role of shareholding agreements in the modern realm is so significant as with the development of the private sector the corporate sector is also increasing., For which the legally binding contract that is a shareholding agreement is much more efficient.

Even in the space sector, the role of the private sector is increasing, with ISRO with the help of its privately owned company Antrix Corporate Limited<sup>13</sup> launching satellites for many nations.

Antrix Corporate Ltd<sup>14</sup> As the commercial and marketing arm of ISRO, Antrix is engaged in providing Space products and services to international customers worldwide. With fully equipped state-of-the-art facilities, Antrix provides end-to-end solutions for many of space products, ranging from supply of hardware and software including simple subsystems to complex spacecraft, for varied applications covering communications, earth observation and scientific missions; space-related services including remote sensing data service, Transponder lease service; Launch services through the operational launch vehicles (PSLV and GSLV); Mission support services; and a host of consultancy and training services.

Hence for the stability in the private company to avoid the future legal consequences or disbalance in a company, that is the commercial arm of the Indian space research organisation.

A legally binding document that describes the rights, obligations, and relationships between a company's shareholders is called a shareholder agreement or shareholding agreement. These kinds of agreements are especially important for privately held businesses whose stock is not traded on a public market.

Shareholder agreements frequently cover the company's internal decision-making procedures. This could cover things like the ability to vote, the appointment of directors, and the need for consent before making important business decisions.

As for the privately owned company, these agreements foster the framework for handling the administration as well as ownership changes and even the transfer of shares.

And, even to safeguard the business interests of the company, prohibitions may be placed on engaging in competition with it or contacting its clients or staff.

## **CONCLUSION**

Shareholding agreements are the protector of the stakeholders of the company either the minority or majority. These agreement defines the rights, and obligation and helps in the stability in the company. It works as a legally binding contract between the stakeholders. To sum up, a well-written ownership agreement is essential to efficient corporate

---

<sup>13</sup> <https://www.isro.gov.in/ANTRIX.html>

<sup>14</sup> Ibid

governance and stakeholder cooperation.<sup>15</sup> It is a thorough document that outlines the roles, obligations, and connections among shareholders. It also offers a precise structure for making decisions, resolving conflicts, and developing long-term plans. By incorporating essential elements like ownership structure, procedures for decision-making, departure plans, and safeguards for minority interests, a shareholder agreement promotes stability, equity, and openness in a business. Government has a significant influence on the legal environment in which these agreements function since business laws and regulatory frameworks affect the terms and enforceability of these agreements. For any business entity to succeed and last a long time, compliance with these laws is essential.

Moreover, because business environments are dynamic, shareholding agreements must be periodically reviewed and adjusted to reflect changing conditions. Legal counsel is essential in helping businesses navigate the complexities of drafting, negotiating, and revising these agreements; they stress the value of flexibility, clear and succinct language, and taking potential disputes into account. Businesses can learn a great deal from case studies of agreements that work well as well as those that end in conflict. These real-world instances highlight how important it is to plan ahead for different contingencies, deal with possible disputes, and include dispute resolution procedures.

A shareholding agreement is essentially more than just a legal document; it is an agreement that fosters cooperation among shareholders and guarantees a just and equal environment for all parties. A strong shareholding agreement becomes essential for building trust, controlling expectations, and guiding the business toward long-term success as companies negotiate the complex terrain of ownership structures, decision-making procedures, and possible exits.

In the present era corporate life is evolving day by day and the role of the private player in the corporate sector is increasing whether it is private companies collaborating with ISRO or multi-media companies such as NDTV. The role of shareholding agreements is very important and crucial. In the end, the conclusion restates the necessity of continuous legal compliance, recurring evaluations, and working with legal experts to make sure that shareholding agreements continue to be strong, current, and compliant with the constantly changing business environment. By doing this, businesses can position themselves for long-term success in the cutthroat and fast-paced business environment, win over potential investors, and inspire confidence among shareholders.

---

<sup>15</sup> SRI Gopal Jalan and Calcutta Stock EXCHANGE Association Ltd

**THE LAWWAY WITH LAWYERS JOURNAL**  
**VOLUME:- 4 ISSUE NO:- 4 , NOVEMBER 26, 2023**

ISSN (ONLINE):- 2584-1106

Website: [www.thelawwaywithlawyers.com](http://www.thelawwaywithlawyers.com)

Email: [thelawwaywithlawyers@gmail.com](mailto:thelawwaywithlawyers@gmail.com)