

Proper Business – template article provisions¹

These template article provisions are designed to limit private profit extraction and redirect surplus value. They establish binding restrictions on shareholder returns and employee remuneration that survive throughout the company's life and any exit event. There are four key mechanisms for this:

- Maximum Permitted Remuneration - this limits the highest employee/worker/contractor remuneration to a specified multiple of the lowest (or the Real Living Wage if there is only one employee or the workforce is all on the same salary). This ensures equitable pay structures within the company;
- Investor Return Cap - this is a cap on all amounts payable to shareholders who are not employees of the Company, calculated as a multiple of the total subscription price (including premium) paid for their shares. This applies cumulatively to all dividends, exit proceeds, and returns of capital;
- Founder and Employee Wealth Cap - this is a cap on all amounts payable to founders and employee-shareholders in their capacity as shareholders. This excludes employment remuneration (salary, bonuses, benefits) but includes dividends, exit proceeds, and capital returns. As with the Investor Return Cap, this is a cumulative cap;
- Surplus Nominee - this is a pre-determined charity or other public benefit vehicle to which all surplus amounts exceeding the Investor Return Cap and the Founder and Employee Wealth Cap are donated.

The provisions are intended to be inserted into a company's articles of association and will require integration with the company's other governance documents such as a shareholders' agreement or investment agreement. Consequential amendments may also be required to the articles of association to ensure consistency.

Investors and companies intending to adopt these provisions must take their own tax and legal advice prior to adoption. Neither the Proper Business organisation nor its advisors accepts any liability for any person or entity relying on this template, which is provided for guidance purposes only and must be adapted to individual circumstances with appropriate professional advice.

1 DEFINITIONS²

1.1 In these articles the following terms have the meanings set out in this table:

Remuneration Multiple	[NUMBER]
Investor Return Multiple	[NUMBER]
Wealth Cap Amount	£[NUMBER]
Surplus Nominee	[COMPANY OR CHARITY NAME & NUMBER] or any other charity, trust, foundation or other public benefit vehicle agreed by the directors of the Company (acting with Shareholder Consent).

¹ Please note all cross-referencing will need to be updated when embedding these provisions in the articles of the relevant investee company.

² To be inserted into the interpretation and definitions section of the articles (usually article 1). You will need to ensure that references used within these provisions are consistent with the articles into which they are being inserted e.g. is "Company" the correct term for the relevant company.

- 1.2 In these articles, unless the context otherwise requires, the following words and expressions have the following meanings:

Acting in Concert	has the meaning given to it in the UK City Code on Takeovers and Mergers published by the UK Panel on Takeovers and Mergers (as amended from time to time).
Acquisition Price	means: (a) in respect of any shares held by a shareholder which were issued to that shareholder by the Company, the original subscription price, in cash or in kind, including any share premium; and (b) in respect of any shares held by a shareholder which were transferred to them, the consideration paid for those shares, in cash or in kind.
Asset Sale	the disposal by the Company of all or substantially all of its undertaking and assets [(where disposal may include, without limitation, the grant by the Company of an exclusive licence of intellectual property not entered into in the ordinary course of business)].
Control	in relation to a company or entity, directly or indirectly: (a) the holding and/or ownership of the legal and/or the beneficial interests in and/or the ability or right to vote in respect of more than fifty percent (50%) of the shares of a company or other entity in shareholder meetings; and/or (b) the power or right to control, appoint or remove more than fifty percent (50%) of the members of the board of directors or the equivalent management body of the company or other entity; and/or (c) the power to direct or cause the direction of the general management and policies of that person whether through the ownership of share capital, the possession of voting power, by contract or otherwise.
Exit	a Share Sale or an Asset Sale. ³
Exit Proceeds	(a) in respect of a Share Sale, the consideration payable (including any deferred and/or contingent consideration) whether in cash or otherwise [but less any fees, costs and expenses, including any warranty and indemnity insurance premiums payable in respect of the Share Sale]; or (b) in respect of an Asset Sale, the surplus assets remaining after payment of the Company's liabilities (to the extent it is lawful for the Company to distribute its surplus assets).
FEWC Shares	any shares in the Company which were allotted and issued or transferred to a shareholder at a time when that shareholder was an employee, worker or contractor of the Company.
Founder	[NAME]
Founder and Employee Wealth Cap	has the meaning given in article 3.1.2.
Investor Return Cap	has the meaning given in article 3.1.1.
IRC Shares	any shares in the Company which were allotted and issued or transferred to a shareholder at a time when that shareholder was not an employee, worker or contractor of the Company.

³ This would commonly be included as a definition in a company's articles in any event so you may not need to insert it but we have included it here for completeness.

Maximum Permitted Remuneration	the maximum permitted annualised Remuneration payable by the Company to any employee, worker or contractor, calculated as follows: $A = \text{Remuneration Multiple} \times B$ where: A = the highest Remuneration paid to an employee or worker or fee paid to a contractor by the Company B = the lowest Remuneration paid to an employee or worker or fee paid to a contractor by the Company. Where the Company only has one employee, worker or contractor or all employees, workers and contractors are on the same Remuneration, B shall be the annualised Real Living Wage.
Original Shareholder	the shareholder who held the relevant shares immediately prior to: (a) the transfer of the relevant shares to a Permitted Transferee for the purposes of articles 4 and 6;⁴ or (b) the relevant structuring, arrangement, transfer, disposal, sale or other transaction for the purposes of article 5.4.
Permitted Transferee	[the definition in the existing articles of association should be used.]
Real Living Wage	the hourly rate of pay published by the Living Wage Foundation (or any successor) from time to time, being the London Living Wage for any employee, worker or contractor ordinarily based in Greater London and the UK Living Wage for anyone else.
Remuneration	all salary, wages, fees payable to contractors, bonuses, commission, benefits, and any other form of monetary or non-monetary compensation payable by the Company to, or for the benefit of, any employee, worker or contractor, but excludes any dividends, return of capital, proceeds from a Share Sale or other payment received in a person's capacity as a shareholder of the Company.
Shareholder Consent	the prior written consent of the holders of at least 95% by nominal value of all shares in the capital of the Company from time to time [but excluding any shareholders who have otherwise been disenfranchised pursuant to these articles of association]. ⁵
Share Sale	means any sale of shares in the Company by a shareholder, including but not limited to: (a) the sale of shares by any shareholder to another shareholder or to a third party including without limitation, a share buyback by the Company (but excluding any transfer to a Permitted Transferee of that shareholder); or (b) the sale of (or the grant of a right to acquire or dispose of) any of the shares in the capital of the Company (in one transaction or as a series of transactions) which will result in the purchaser of those shares (or grantee of that right) and persons Acting in Concert with such purchaser together acquiring Control of the Company, except (i) in connection with a solvent reorganisation or (ii) where following completion of the sale, the shareholders and the proportion of the shares held by each of them are the same as the shareholders and their shareholdings in the Company immediately prior to the sale.

⁴ This definition may need to be amended if the articles allow Permitted Transferees to make onward transfer to other Permitted Transferees of the Original Shareholder.

⁵ You will not need to include this every time but in some instances a company's articles may include provisions suspending a shareholder's voting rights in certain situations. If that is the case then this wording should be included.

Operative provisions⁶

2 STAFF REMUNERATION

- 2.1 The Company shall pay all employees, workers and contractors an annual salary or fees (in the case of a contractor) which is not less than the annualised Real Living Wage calculated on the basis of that employee, worker or contractor's contracted working hours. [For the avoidance of doubt, the calculation of such salaries or fees (in the case of a contractor) shall be exclusive of any bonus, commission, benefits or equity-linked incentives to which such employee, worker or contractor may be entitled pursuant to their contract.]⁷
- 2.2 The total Remuneration for any employee, worker or contractor shall not exceed the Maximum Permitted Remuneration.
- 2.3 The Company shall not deliberately take any action for the purpose of avoiding its obligations under articles 2.1 to 2.2 above.
- 2.4 Each shareholder shall procure (so far as it is lawfully possible in the exercise of their rights and powers as a shareholder of the Company) that the Company shall comply with its obligations under articles 2.1 to 2.3 above.

3 SHAREHOLDER CAPS⁸

- 3.1 For the purposes of articles 4, 5 and 6 of these articles:
- 3.1.1 the **Investor Return Cap** shall be the maximum aggregate amount that may be received by a shareholder in respect of any IRC Shares which that shareholder holds or has at any time held, calculated as Investor Return Multiple x C, where C is the aggregate Acquisition Price paid or payable by that shareholder for all IRC Shares which that shareholder holds or has at any time held.
- 3.1.2 the **Founder and Employee Wealth Cap** shall be the maximum aggregate amount that may be received by any shareholder in respect of any FEWC Shares held by that shareholder, being the Wealth Cap Amount.

For the avoidance of doubt, the Founder and Employee Wealth Cap excludes all Remuneration payable to the Founder or any employee, worker or contractor of the Company.

4 DISTRIBUTIONS⁹

- 4.1 The aggregate amount of all dividends and distributions payable to any shareholder in respect of any shares shall not exceed:

⁶ Rather than having this as a separate schedule, we suggest incorporating it into the main body of the articles. Alternatively, you should ensure you include wording within the main body of the articles incorporating the schedule.

⁷ To be considered whether this is appropriate depending on the type of business and the usual remuneration practices for that sector.

⁸ It is possible that one shareholder could hold shares subject to each of the caps. It will therefore be important that all shares are numbered with a record of which shares are subject to each cap so it is clear which cap should apply on sale or transfer of any of the shares.

⁹ These standard provisions do not set out the specific rights attaching to each class of shares as this will vary for each company. The articles of association of the company will need to include express provisions setting out those rights.

- 4.1.1 the Founder and Employee Wealth Cap for any FEWC Shares held by that shareholder; or
- 4.1.2 the Investor Return Cap for any IRC Shares held by that shareholder, in each case, after deducting the aggregate amount previously paid to, or otherwise received by, the relevant shareholder and any Permitted Transferee of that shareholder, in respect of any dividends, distributions, Exit Proceeds, return of capital or other amount to which the Investor Return Cap (in respect of any IRC Shares) or the Founder and Employee Wealth Cap (in respect of any FEWC Shares) has previously applied.
- 4.2 For the avoidance of doubt, any shares held by a Permitted Transferee of an Original Shareholder¹⁰ shall be treated as held by that Original Shareholder when calculating the total dividends paid to a shareholder in accordance with this article 4.
- 4.3 Where the aggregate amount previously received by an Original Shareholder and its Permitted Transferee(s), together with the amount of any further dividend or distribution which would otherwise be made to them, would exceed the applicable Investor Return Cap or Founder and Employee Wealth Cap, the Company shall donate the amount of such excess to the Surplus Nominee.
- 4.4 The donation shall be made to the Surplus Nominee at the time such distribution would otherwise have been made to that Original Shareholder and its Permitted Transferee(s) (or as soon as reasonably practicable thereafter).

5 EXIT

- 5.1 On an Exit, the Exit Proceeds paid to a shareholder shall not exceed:
 - 5.1.1 the Investor Return Cap in respect of:
 - 5.1.1.1 in the event of a Share Sale, all IRC Shares sold by that shareholder; or
 - 5.1.1.2 in the event of an Asset Sale, the amounts received by that shareholder in respect of any IRC Shares held by that shareholder; or
 - 5.1.2 the Founder and Employee Wealth Cap in respect of:
 - 5.1.2.1 in the event of a Share Sale, all FEWC Shares sold by that shareholder; or
 - 5.1.2.2 in the event of an Asset Sale, the amounts received by that shareholder in respect of any FEWC Shares held by that shareholder, in each case, after deducting the aggregate amount previously paid to, or otherwise received by, that shareholder and any Permitted Transferee of that shareholder, in respect of any dividends, distributions, Exit Proceeds, return of capital or other amount to which the Investor Return Cap (in respect of any IRC Shares) or Founder and Employee Wealth Cap (in respect of any FEWC Shares) has previously applied.
- 5.2 The amount payable under article 5.1 shall be calculated as follows:
 - 5.2.1 where a shareholder sells some but not all of their shares in an Exit, the maximum amount payable to that shareholder shall be calculated as follows:

¹⁰ The reference to Permitted Transferees may need to be refined or removed in a context where there are shareholders which would fall within those definitions but have in fact independently subscribed for shares in the company, e.g. if a husband and wife are both shareholders.

$$(D \times E/F) - G$$

where:

D = the applicable Investor Return Cap or Founder and Employee Wealth Cap

E = the cumulative number of IRC Shares or FEWC Shares (as the case may be) sold by that shareholder up to and including in the relevant Exit

F = the total number of IRC Shares or FEWC Shares (as the case may be) which that shareholder holds or has at any time held

G = the aggregate amounts previously paid to, or otherwise received by, that shareholder and any Permitted Transferee of that shareholder, in respect of any dividends, distributions, Exit Proceeds, return of capital or other amount to which the Investor Return Cap (in respect of any IRC Shares) or Founder and Employee Wealth Cap (in respect of any FEWC Shares) has previously applied; and

5.2.2 where a shareholder participates in multiple Exits over time (whether selling all or part of their remaining shareholding on each occasion), the calculation in article 5.2.1 shall apply to each Exit.

5.3 Where the Exit Proceeds due to a shareholder and its Permitted Transferee(s) in connection with an Exit exceed the amount payable pursuant to article 5.1 above, the shareholder undertakes to donate (or to procure the donation of) any surplus Exit Proceeds to the Surplus Nominee. Where completion of the Exit is structured such that the Company receives the Exit Proceeds and distributes them to shareholders, the Company shall donate any surplus Exit Proceeds directly to the Surplus Nominee on behalf of the relevant shareholder and its Permitted Transferee(s) at the time of distributing the Exit Proceeds to the other shareholders (or as soon as reasonably practicable thereafter)¹¹.

5.4 No shareholder shall structure, arrange or enter into any transfer, disposal, sale or other transaction involving their shares (or any rights attaching to those shares) for the purpose, or with the effect, of circumventing the Founder and Employee Wealth Cap or Investor Return Cap (as applicable). Without limitation:

5.4.1 any such transaction shall be deemed to be a Share Sale, and the provisions of article 5.1 and article 5.2 shall apply accordingly;

5.4.2 any shares transferred by the Original Shareholder (whether to a Permitted Transferee or otherwise, and whether in a single transaction or a series of transactions) shall be deemed still to be held by that Original Shareholder for the purposes of calculating:

5.4.2.1 the applicable Investor Return Cap or Founder and Employee Wealth Cap; and

5.4.2.2 the aggregate amount paid or transferred to, or received by or for the benefit of, the Original Shareholder or any transferee or other person in respect of those shares, or otherwise as a result of the relevant transaction.

¹¹ Where there is a shareholders' agreement or investment agreement in place, that agreement should also contain an express obligation on the shareholders to comply with the provisions of the articles of association, including an express covenant by each shareholder not to enter into or complete any Exit in breach of article 5.5.

5.5 No Asset Sale, and no Share Sale falling within paragraph (b) of the definition of Share Sale, shall take place at a value for the Company below the aggregate Acquisition Price of all shares in issue without Shareholder Consent. For the purposes of this article 5.5, the value for the Company is:

5.5.1 in the case of an Asset Sale, the Exit Proceeds; and

5.5.2 in the case of a Share Sale, the aggregate consideration payable for the shares being sold, divided by the number of those shares, multiplied by the total number of shares in issue.

6 RETURN OF CAPITAL

6.1 On a distribution of assets, a liquidation, dissolution, winding up or a return of capital (other than a conversion, redemption or purchase of shares or an Exit), the surplus assets distributed to a shareholder shall not exceed:

6.1.1 the Founder and Employee Wealth Cap for any FEWC Shares held by that shareholder; or

6.1.2 the Investor Return Cap for any IRC Shares held by that shareholder, in each case, after deducting the aggregate amount previously paid to, or otherwise received by, that shareholder and any Permitted Transferee of that shareholder, in respect of any dividends, distributions, Exit Proceeds, return of capital or other amount to which the Investor Return Cap (in respect of any IRC Shares) or Founder and Employee Wealth Cap (in respect of any FEWC Shares) has previously applied.

6.2 For the purposes of applying this article 6, amounts received by any Permitted Transferee of a shareholder in respect of shares transferred by that shareholder shall be treated as having been received by that shareholder.

6.3 Where the amount of surplus assets that would be distributed to an Original Shareholder and its Permitted Transferee(s) would exceed the maximum amount that they may receive after applying the relevant Investor Return Cap or Founder and Employee Wealth Cap, the Company shall distribute, or procure the distribution of, the amount of such excess to the Surplus Nominee at the time of distributing the surplus assets to shareholders, or as soon as reasonably practicable thereafter.

7 ENTRENCHMENT¹²

7.1 The Company shall not amend, remove, replace or repeal:

7.1.1 articles 2 to 7 (inclusive)¹³ of these articles of association; or

7.1.2 any defined term in article 1 or any other article(s) in these articles of association which in each case would have the effect of amending, removing, replacing or repealing any of the articles specified in article 7.1.1 above, in each case, without Shareholder Consent.

¹² Any provisions in a company's articles which are entrenched (i.e. require a higher level of shareholder approval than the usual special resolution) must be notified to Companies House. At the time of preparing these template articles, the form for making this notification is Form CC01 but you will need to check this at the time of inserting the above into the articles for each company. You will then be required to file a statement of compliance each time that company's articles are amended, confirming that any entrenchment provisions have been complied with. For the avoidance of doubt, the provisions to be notified include article 5.5.

¹³ This article will also need to be entrenched otherwise shareholders could pass a special resolution removing the entrenchment provision from the articles which would then leave them free to amend the other provisions.

- 7.2 Each shareholder shall procure (so far as is lawfully possible in the exercise of their rights and powers as a shareholder of the Company) that the Company complies with article 7.1.

Appendix 1: Illustrative examples

The following examples are used to illustrate the application of article 5.1 and 5.2 for the reference of potential investors but are not intended to be included in the articles of the relevant investee company:

1. A shareholder holds 100 shares with an applicable cap of £1,000,000. They sell 25 shares (25% of their holding) for Exit Proceeds of £400,000. Having received no previous payments to which the applicable cap applies, the shareholder receives £250,000 (25% of their cap). The excess £150,000 is donated to the Surplus Nominee.
2. The same shareholder subsequently sells another 15 shares where the Exit Proceeds attributable to those shares is £500,000. In addition to the shareholder having received £250,000 as set out in example 1 above, the shareholder has also received a dividend of £5,000. The sale of 15 shares (in aggregate with the 25 shares previously sold) equates to 40% of the shareholder's original shareholding. The maximum amount payable to them would therefore be £400,000, of which the shareholder has already received £255,000. The shareholder therefore retains £145,000 of the Exit Proceeds and the balance of £355,000 is donated to the Surplus Nominee.