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***CHECKLIST FOR SHAREHOLDERS AGREEMENT***

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**ISSUES TO THINK ABOUT BEFORE SEEING YOUR PROFESSIONAL ADVISORS**

(Note: This checklist is for discussion purposes only and may require advice from legal, accounting and tax advisors.)

**PARTIES**

Are shareholders individuals or holding companies?

\_\_\_\_\_

Names of shareholders:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**MANAGEMENT OF THE CORPORATION**

Number of directors:

Is each shareholder entitled to choose one director (standard)?

Yes:

No: Specify Number: \_\_\_\_\_

Names of directors:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Directors meetings:**

What percentage of directors should be present at a Directors' meeting in order to hold a valid meeting? \_\_\_\_\_

Voting - one vote per director (standard)? \_\_\_\_\_

What percentage of the votes present at a meeting should be required to make a decision? (e.g. majority, 2/3, all, etc.) \_\_\_\_\_

**Officers** - names and offices: (Note: the corporation should have, at a minimum, a President and a Secretary -- other offices, such as Vice President or Treasurer, are optional.)

President: \_\_\_\_\_

Secretary: \_\_\_\_\_

Another office \_\_\_\_\_

Another office \_\_\_\_\_

Another office \_\_\_\_\_

Cheque signing authority:

Who may sign? \_\_\_\_\_

Any monetary limit?

Yes: \$ \_\_\_\_\_

No:

**Shareholders meetings:**

How many shareholders or what percentage of votes must be present at a shareholders meeting in order to hold a valid meeting (e.g., majority, all, 2/3, etc.):

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What percentage of the votes present at a meeting is required to make a decision (e.g. majority, 2/3, all, etc.)

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Who is entitled to attend shareholder meetings? Only shareholders? What about spouses? Children? How about annual meetings, as a forum for sharing information with the family?

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Are there matters that will require **the unanimous consent of all shareholders** or greater than 51%, such as:

- The discontinuance of a major part of the Corporation's business?
- Undertaking a new type of business, entering into a partnership or joint venture
- The sale, lease, exchange or other disposition of all or substantially all of the assets of the Corporation?
- The acquisition or disposition by the Corporation of interests in other enterprises?
- The filing of Articles of Amendment or Articles of Amalgamation – e.g. creating new classes or amending existing rights and privileges?
- The enactment, revocation or amendment of any of the by-laws of the Corporation in a manner which would materially and adversely affect the interest of any Shareholder?
- The fixing or changing of any salary, bonus or other compensation to be paid to any Shareholder or director, or to any employee, if such employee does not deal at Arm's Length with any Shareholder?
- The declaration or payment of any dividend or distribution to any Shareholder?
- The granting of any loans by the Corporation to any Shareholder?
- The repayment of any loans owing by the Corporation to any Shareholder?
- The hiring or firing of any of the Individual Shareholders or Principals as employees of the Corporation, except in the case of termination for just cause?
- The purchase of major assets?
- The purchase, sale, mortgage or lease by the Corporation of any real property?

\_\_\_\_\_ The borrowing of money by the Corporation or the granting of mortgages, security interests or other encumbrances in the Corporation's assets, except pursuant to the use of a line of credit approved by the Shareholders

\_\_\_\_\_ The guarantee by the Corporation of the debts of any other Person?

\_\_\_\_\_ The granting of security on the assets of the Corporation?

\_\_\_\_\_ The entering into of any contract between the Corporation and any Person not dealing at Arm's Length with any Shareholder

\_\_\_\_\_ Any action or transaction not in the ordinary course of the business of the Corporation?

\_\_\_\_\_ The issuance of any shares out of the Authorized Capital of the Corporation, or the creation of any obligations, charges, options or debts convertible into such shares?

\_\_\_\_\_ The purchase of interests in other businesses, including, without limitation, subscribing for shares in other corporations?

\_\_\_\_\_ The creation of a stock option plan?

\_\_\_\_\_ The dissolution, liquidation or winding-up of the Corporation?

\_\_\_\_\_ Other?

Execution of contracts:

> Who may sign?

> Any monetary limit? \$

## CORPORATE FINANCING

Are there any shareholders loans to the corporation currently in existence that should be referred to in a shareholders agreement? Should the loans be secured?

Name of Shareholder	Amount of Loan

How should shareholders loans to the corporation be repaid?

\_\_\_\_\_ On demand?

\_\_\_\_\_ Out of the corporation's profits?

\_\_\_\_\_ At the discretion of the board of directors

\_\_\_\_\_ Other

Should the shareholders be required to contribute cash to the corporation, if requested by the board of directors?

\_\_\_\_\_ No

\_\_\_\_\_ Yes -  As a Loan?  By Subscribing for additional shares of the Corporation

Should the corporation be required to attempt to borrow money from financial institutions before calling on the shareholders for a financial contribution?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Shareholder guarantees of corporation's debt:

Should the shareholders be required to guarantee any loan or line of credit of the corporation to the corporation's bank, if requested by the bank?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Should the guarantees be several or joint and several? (Note: "several" means each guarantor will be liable for a certain percentage of the guaranteed debt, while "joint and several" means a guarantor will be liable for the full amount of the debt being guaranteed).

\_\_\_\_\_ several guarantees  
 \_\_\_\_\_ joint and several guarantee

Should the corporation and/or other shareholders indemnify each shareholder providing a guarantee? What about security for the indemnity?

\_\_\_\_\_ Yes  
 \_\_\_\_\_ No

Will interest be payable on shareholders loans or will they be interest free?

\_\_\_\_\_ interest free  
 \_\_\_\_\_ Interest bearing -- rate: \_\_\_\_\_%

If a shareholder fails to advance his/her required share of the funds required by the corporation, what happens?

\_\_\_\_\_ shareholder must sell his/her shares  
 \_\_\_\_\_ other shareholder(s) can advance the funds and get paid back in priority  
 \_\_\_\_\_ shareholder(s) who contributed can receive additional shares of corporation  
 \_\_\_\_\_ What about voting rights during failure to advance?

## FINANCIAL MATTERS

Name of the corporation's auditors or accountants

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Name of the corporation's bank

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Should shareholders' personal accountants and other representatives have access to the books and records of the corporation?

\_\_\_\_\_ Yes (standard)

\_\_\_\_\_ No

## EMPLOYMENT OF SHAREHOLDERS

Will the shareholders be employed by the corporation?

Yes - all?

Some?

Names:

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No \_\_\_\_\_

If some or all shareholders will be employed by the corporation, specify details:

Name of Shareholder	Position	Duties	Salary

If the shareholders are to be employed by the corporation, how are the terms of the employment to be recorded?

\_\_\_\_\_ by a separate employment agreement

\_\_\_\_\_ by including employment provisions in shareholders agreement

Disability of a shareholder: What does disability mean?

Does salary continue to be paid to a shareholder who becomes disabled?

\_\_\_\_\_ Yes - how long?

\_\_\_\_\_ No

Is the disabled shareholder required to sell his shares?

Yes What is the purchase price and how will the purchase price be funded?

\_\_\_\_\_

\_\_\_\_\_

No

Will there be disability insurance available to fund a buy-out?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Who pays for the disability insurance?

\_\_\_\_\_ individual shareholder

\_\_\_\_\_ corporation

## TRANSFER OR FURTHER ISSUANCE OF SHARES

No issuance, transfer, mortgage or encumbrance of the shares of the corporation, without the consent of the other shareholders (standard).

Allow individual shareholder to transfer shares to shareholder's immediate family at any time?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Allow individual shareholder to transfer his/her shares to a personally controlled holding company, provided the individual shareholder continues to control the holding company?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

**CORPORATE DIVORCE PROVISIONS**

"Call" -- should the corporation be able, at any time, to require one or more shareholders to sell their shares back to the corporation?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

If Yes? At what price? How determined?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When and how paid?

"Put" -- should a shareholder, at any time, be able to require the corporation to purchase his/her shares?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

If Yes? At what price? How determined?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

When and how paid?

"Shot-gun" buy-sell -- should one shareholder be able to set a price and the other shareholder be required either to buy the first shareholder's shares, or to sell his/her own shares to the first shareholder?

\_\_\_\_\_ No  
\_\_\_\_\_ Yes

Right of first refusal (this is the right of a shareholder to be able to sell to a third party after first offering the shares to the remaining shareholders).

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

"Piggy-back" rights -- should a minority shareholder be able to automatically sell his/her shares to the same purchaser if the majority shareholder sells his/her shares?

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

"Matching Bid" / "Drag along" Rights -- should a specified majority of the shareholders be entitled to force all of the shareholders to sell all of their shares in the corporation to a third party along with the majority?

\_\_\_\_\_ Yes  
\_\_\_\_\_ No

Compulsory sale of shares in certain circumstances -- should a sale of shares, at the option of the company, be compelled if certain events occur, such as bankruptcy, disability or termination of employment?

\_\_\_\_\_ No

\_\_\_\_\_ Yes

If Yes?

At what price? \_\_\_\_\_

\_\_\_\_\_

When and how paid? \_\_\_\_\_

\_\_\_\_\_

NOTE: References above to a sale of a shareholder's shares would typically also provide for a purchase or assignment of such shareholder's shareholder loans.

## DEATH

Is the purchase of a deceased shareholder's shares mandatory? If so, what should the payment terms be – with insurance, and without insurance?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Will there be insurance available to fund the purchase of the shares? (Note: insurance advice may be required.)

\_\_\_\_\_ Yes

\_\_\_\_\_ No

Who will own the insurance policies and/or purchase the shares of the deceased shareholder? (Note: tax advice may be required.)

## VALUATION OF THE SHARES OF THE CORPORATION

Different ways of valuing shares:

\_\_\_\_\_

\_\_\_\_\_ the shareholders agree to periodically value the shares of the corporation, and the valuation remains in effect for a specified time period

\_\_\_\_\_ the shareholders agree on the value of the shares at the time of sale (with arbitration if they cannot agree)

\_\_\_\_\_ the value is determined on the basis of a pre-set formula

\_\_\_\_\_ valuation/arbitration

\_\_\_\_\_ professional valuation

\_\_\_\_\_ Who will be the valuator?

\_\_\_\_\_ corporation's accountants

\_\_\_\_\_ Other

\_\_\_\_\_ How many valutors? \_\_\_\_\_

\_\_\_\_\_ How chosen? \_\_\_\_\_

\_\_\_\_\_ Arbitration if the shareholders cannot agree on a valuator? Mediation followed by arbitration?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

## GENERAL PROVISIONS THAT APPLY WHEN A SHAREHOLDER SELLS SHARES

If payment in full is not made at the closing, is there to be security for payment of the outstanding balance owing to the departing shareholder? (such as a mortgage on lands owned by the purchaser, pledge of shares, etc.)

\_\_\_\_\_ Yes - type of security? Ranking behind Bank, ahead of Shareholder loans?

\_\_\_\_\_ No

Is the shareholder selling required to resign as a director and officer of the corporation? What about other family members related to that shareholder?

\_\_\_\_\_ Yes (standard)

\_\_\_\_\_ No

Release of guarantees:

If a selling shareholder has guaranteed the corporation's debts to the corporation's bank:

\_\_\_\_\_ the guarantee must be released

\_\_\_\_\_ only best efforts must be used to obtain a release of the guarantee

If a release cannot be obtained, should the corporation and/or the remaining shareholder be required to indemnify the departing shareholder? What about security for the indemnity?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

## NON-COMPETITION AND NON-SOLICITATION

How long should a former shareholder be restricted from competing with the corporation? Can a shareholder be engaged in a competing business while a shareholder? If the company is an investment vehicle for the shareholders, is each shareholder obligated to bring investment opportunities to the remaining shareholders before proceeding independently?

\_\_\_\_\_

Describe the corporation's business that needs to be protected:

\_\_\_\_\_

\_\_\_\_\_

Where does the corporation carry on business, that it requires protection from competition?

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Non-solicitation: should the departing shareholder be prevented from soliciting customers and employees of the corporation after leaving?

\_\_\_\_\_ Yes – How long? \_\_\_\_\_

\_\_\_\_\_ No

## **MATRIMONIAL**

Will marriage contracts be required for each shareholder? (Note: a marriage contract may simply state that the shares in the corporation are not to be transferred to a shareholder's spouse as part of an equalization payment. All marriage contracts require full disclosure of each spouse's financial position and independent legal advice for the spouses.)

\_\_\_\_\_ Yes

\_\_\_\_\_ No

If a marriage contract will not be compulsory, should standard protective provisions be included in the shareholders agreement, such as requiring a shareholder who is involved in a family law action to notify the other shareholders? Should there be a right on the part of the Company to purchase the interest of that shareholder if the matrimonial action is not settled within a certain time period?

\_\_\_\_\_ Yes

\_\_\_\_\_ No

## **LIFE INSURANCE FOR SHAREHOLDERS**

Who is insurance to be owned by? \_\_\_\_\_

Is insurance to be:

mandatory

optional, as decided by the board of directors

Are there existing policies that should be referred to?

Yes – specify \_\_\_\_\_ -

No

Should a stipulated amount be required to be maintained?

Yes -- \$ \_\_\_\_\_

No

Are all shareholders in good health?

Yes

No – specify \_\_\_\_\_

Are there wide variations in the age or health status of the shareholders?

Yes – specify \_\_\_\_\_

No

## OTHER MATTERS

Should there be a formal communication policy – e.g. periodic sharing of financials; who is entitled to see?

\_\_\_\_\_

Should the company have an employment policy for family members?

\_\_\_\_\_

Should it be different from the employment policy for employees who are not family members? Are all family members entitled to a job?

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Should the Company create an annual budget? Should that operate as a control mechanism for Management expenditures?

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Should the company have a dividend distribution policy? How to provide for a return to shareholders not employed in the business?

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How should the company determine compensation for management?

Should management roles and responsibilities be defined?

What are the limits of Management's authority before they must bring a decision to the Board or to the shareholders?

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Should the company create an advisory board? What is the role of the advisory board?

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What is the company's 5 year plan? What arrangements should be made for strategic planning? How often should the company's strategic plans be reviewed?

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