

Shareholders' Agreement Checklist

- _____ **A. Date**
- _____ **B. Parties**
 - 1. Shareholder names (Principals)
- _____ **C. Conduct of Company Affairs**
 - _____ 1. Board of directors
 - (a) composition
 - (b) quorum
 - (c) matters requiring Board approval
 - i) salaries
 - ii) dividends
 - iii) capital expenditures
 - iv) contracts
 - v) other
 - _____ 2. Officers
 - (a) titles
 - (b) appointments of
 - _____ 3. Shareholders
 - (a) involvement in company affairs — both positive and negative clauses, i.e., obligation on a shareholder to perform certain tasks (being positive covenants) and requirements of shareholders not to interfere (being negative covenants)
 - (b) matters requiring approval by resolutions of shareholders with a particular majority (or unanimous approval)
 - i) sale or other disposition of a particular asset or of all or substantially all of the assets of the company
 - ii) changes in the capital of the company
 - iii) loans or guarantees by the company
 - (c) casting vote
 - (d) noncompetition clause — both during involvement with company and after termination of involvement, regardless of reason for departure
 - _____ 4. Articles
 - (a) additions to; such as special rights and restrictions and casting vote provisions (i.e., voting or nonvoting shares, redeemable preferred shares, pro rata rights, or first refusal on share transfers or allotments, etc.)
 - (b) amendment of articles to be consistent with provisions of Shareholders' Agreement
- _____ **D. Financial Matters**
 - _____ 1. Bank
 - (a) signing officers

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- (b) how many signatures required
 - (c) borrowing authority
 - _____ 2. Capital subscriptions
 - (a) amounts and timing
 - (b) issuance of different classes of shares (e.g., "A," "B," "C")
 - _____ 3. Shareholders' loans and guarantees
 - (a) amounts and timing
 - b) subordination of loans to other lenders
 - (c) collateral security for guarantees, such as houses
 - (d) repayment of shareholders' loans, such as when and in what amounts
 - (e) interest on shareholders' loans
 - (f) security from company to shareholders for shareholders' loans
 - _____ 4. Auditors-whether required or not
 - _____ 5. Accounting principles-such as how depreciation is to be taken, and method of valuation of inventory

 - _____ **E. Restriction of Alienation of Shares and Shareholders' Loans**
 - _____ 1. General prohibition — except in accordance with terms of agreement and if shareholders not in default under agreement
 - _____ 2. Right of first refusal
 - (a) pro rata offering just to same class or to all shareholders
 - (b) only applicable if all shares purchased or will it apply to a portion of shareholders' shares
 - (c) time offer to be left open to other shareholders
 - (d) if refused, time within which to sell to third parties
 - (e) third parties to sign agreement upon becoming a shareholder
 - _____ 3. Exempt alienations
 - (a) transfers to controlled entities
 - (b) other exemptions, such as conversions or redemptions
 - _____ 4. Only mortgage or pledge interest in shares and shareholders' loans if mortgagee or pledgee takes subject to terms of agreement and then questions whether or not consent of other shareholders required
 - _____ 5. Share certificates
 - (a) endorsed and left in possession, or
 - (b) escrow agreement

 - _____ **F. Buy/Sell Obligations**
 - _____ 1. Who buys?
 - (a) other shareholders, pro rata, or otherwise
 - (b) the company, or
 - (c) a third party
 - _____ 2. What is bought and sold?
 - (a) shares, all or a portion thereof
 - (b) shareholders' loans
 - (c) assets of the company

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- _____ 3. Buy/sell provisions
 - (a) compulsory buy/sell
 - i) death
 - ii) mental or physical incapacity
 - iii) bankruptcy
 - iv) termination of employment
 - v) default or agreement
 - (b) voluntary buy/sell
 - _____ 4. Purchase price
 - (a) termination
 - i) annual determination by shareholders— unanimous or otherwise
 - ii) independent third party determination — triggered by sale or done annually or otherwise
 - iii) formula to be applied
 - (b) discount or premium depending upon whether compulsory or voluntary buy/sell
 - (c) payment of purchase price
 - i) cash, stock, debt, or assets
 - ii) upon sale or by way of a pay-out
 - _____ 5. Funding of purchase price
 - (a) insurance
 - (b) other, such as company self-insurance
 - _____ 6. Election under Income Tax Act
 - _____ 7. Removal from guarantees of corporate indebtedness

_____ **G. Escrow Agent**

- _____ 1. Directions to escrow agent
- _____ 2. Rights of escrow agent

_____ **H. General Provisions**

- _____ 1. Probate provisions
- _____ 2. Insolvency restrictions where corporate repurchase
- _____ 3. Waiver of pro rata repurchase requirement where corporate repurchase
- _____ 4. Precedence over company articles
- _____ 5. Termination of agreement
- _____ 6. Notice provisions
- _____ 7. Time of essence
- _____ 8. Further assurances
- _____ 9. Revocation of previous agreements
- _____ 10. Interpretation
- _____ 11. Restrictions on assignment
- _____ 12. Enurement
- _____ 13. Arbitration
- _____ 14. Governing law (province)