

# SHAREHOLDERS' AGREEMENT: ITEMS FOR CONSIDERATION

## **BUSINESS AND AFFAIRS OF THE CORPORATION**

- Number of directors and who will comprise the initial board meeting of directors – when; whom; etc.; who can attend
- Quorum – number of directors required to constitute a valid meeting
- Casting vote – right to cast a deciding vote
- Officers – who officers will be; what their duties are; remuneration (if any)
- Fiscal Year End
- Deadlock provision
- Employment Contracts

## **CONTROL PROVISIONS**

- In addition to the matters set forth under Business and Affairs of the Corporation, consider adding special voting approval threshold (unanimous, special majority, etc.) for shareholder/director resolutions concerning: amendments to articles, by-laws, and with respect to other fundamental corporate changes
- Compensation of directors, officers and key employees
- Issue, redemption and/or purchase of securities
- Incurring of indebtedness
- Declaration of dividends and dividend policy
- Capital expenditures, new business ventures
- Disposition of substantially all of the assets of the corporation

## **FINANCING OF THE CORPORATION**

- Third-party financing (any requirement of shareholders to give guarantees)
- No obligation of shareholders to provide financing or obligation to finance with dilution provision for failure to finance

## **GENERAL MATTERS RELATING TO SHARE OWNERSHIP AND PERMITTED TRANSFERS**

- General prohibition on transfer
- Permitted transfers by shareholders to controlled companies, relations
- Covenant regarding entering into a marriage contract pertaining to spousal rights on matrimonial breakdown to shares/profits of the corporation
- Rules respecting pledging of shares to financial institutions
- Prohibitions on registration of transfer unless transferee is bound
- Legend on share certificates
- Insurance (on whom, what beneficiary, what type(s))



## MATTERS RELATING TO DISPOSITION AND ACQUISITION OF SHARES

### BETWEEN THE SHAREHOLDERS

- "shot-gun", "buy/sell" provision (consider whether this is appropriate in your circumstance)
- "put" provision (usually to create liquidity for a minority shareholder)
- "call" provision (usually to give a majority shareholder the right to remove a minority shareholder in specific circumstances)
- Consideration of a Family Law Act, R.S.O. 1990 c.F.3 "call" right
- Basis of valuation method for "puts" and "calls" (net asset value, earnings or established market price, if available)
- General closing mechanics

### RESPECTING THIRD PARTIES

- Rights of first refusal (consider whether the right should be "hard" or "soft" right)
- Consider whether "piggyback" rights (to ensure the protection of minority shareholders) or "carry along" rights (to increase the majority shareholder's flexibility for sale) are appropriate either alone or in addition to any rights of first refusal clause
- Addition of general closing mechanics and, if appropriate, obligation of transferee to become bound by the shareholders' agreement
- Transmission of shares on death, i.e., to whom; at what price; how funded
- Transmission of shares on permanent disability and/or retirement, i.e., how defined; to whom; at what price; how funded
- Transmission of shares on insolvency, i.e., how defined; to whom; at what price; how funded

### NON-COMPETITION AND CONFIDENTIALITY

- These covenants are particularly important in the context of employee shareholders but will be equally important to the extent that the agreement provides for sale mechanics between the shareholders
- Consider a covenant respecting confidentiality of disclosures made in a family law context
- Confidentiality should also be considered where certain confidential information is required to be disclosed

