

Checklist for Buy-Sell Agreements

Name of Corporation: _____

Corporate Address: _____

Date of Incorporation or Amalgamation: _____

Name and Address of Accountant: _____

Name and Address of Lawyer: _____

Location of Minute Book and Articles of Incorporation or Amalgamation: _____

Business Details:

Nature of Business: _____

Business ownership: Arm's Length

Non-arm's length (or family run)

Business operation: Key person

Non-key person

Shareholders Information:

Number of Shareholders: _____ Number of minority shareholders: _____

Particulars: _____

Are any of the shareholders Holding companies? yes no

Particulars of Holding companies _____

Are shares held in a Trust? yes no

Is there a Trust Agreement? yes no

Particulars: _____

Do any shareholders provide for a rollover of shares to a spouse in a Will? yes no

Particulars: _____

Are shares bequeathed to family members (other than a spouse) in shareholder's Will? yes no

Particulars: _____

Classes of Shares:

Commons issued: _____

Particulars of adjusted cost base (ACB): _____

Particulars of paid up capital (PUC): _____

Preferred issued: _____

Particulars of adjusted cost base (ACB): _____

Particulars of paid up capital (PUC): _____

Special issued: _____

Details: _____

Shares issued prior to April 26, 1995: yes _____ number _____ type no.

Funded by life insurance prior to April 26, 1995 yes no

Particulars if shares reissued: _____

Capital Gains Exemption:

Availability of capital gains exemption? yes no

Has capital gains exemption been claimed? yes no

Do shares qualify? yes no

Has the shareholder used any part of the exemption on any other property? yes no

Estate Freeze Utilized:

Has there been an estate freeze from common shares to preference shares? yes no

If yes, is there a fixed value of the preference shares? yes no

Particulars: _____

Are the preferences shares redeemable? yes no

Shareholders Agreement:

Does a Shareholders Agreement exist? yes no

Are there Buy-Sell provisions in the agreement? yes no

Are schedules attached regarding life insurance? yes no

Was a Shareholder Agreement in existence on or before April 26, 1995? yes no

When was the Shareholders Agreement last revised? _____

Definition of Triggering Event and Buy-Sell Procedure:

- Death
- Disability (is it defined in Shareholders Agreement and consistent with disability insurance definition?)
- Critical Illness (query as to whether this actually does trigger a buy-out)
- Bankruptcy
- Retirement/withdrawal
- Expulsion
- Amicable buy-out
- Dismissal of shareholder as employee
- Other

Buy-Sell Procedure on Death:

Criss-Cross Method – the surviving shareholders purchase the shares from the estate of the deceased shareholder using the proceeds of the individually owned life insurance (best where there are two shareholders)

Criss-Cross Method with Trustee – share certificates and life insurance ownership over to trustee and insurance proceeds administered by trustee (best where there are more than two shareholders)

Corporate Share Redemption Method – the corporation redeems the shares from the estate of the deceased shareholder using the proceeds of corporate-owned life insurance

- Shares are grandfathered under s. 112(3) of Income Tax Act
- Shares are not grandfathered under s. 112(3) of Income Tax Act

Promissory Note Method – the surviving shareholder(s) purchase the shares from the estate of the deceased shareholder using a promissory note then the corporation pays a capital dividend to the surviving shareholder(s) using the proceeds of corporate owned life insurance

Hybrid Method – a combination of the Corporate Share Redemption Method and the Promissory Note Method

- Shares are grandfathered under s. 112(3) of Income Tax Act
- Shares are not grandfathered under s. 112(3) of Income Tax Act

Buy-Sell Provision Upon Death:

- Obligation to sell-mandatory provision to sell shares to surviving shareholders and price determined on fair market value
- Transfer to spouse
- Put and call options
- Personal representative determines amount of shares to be redeemed and/or sold to other surviving shareholders
- Consideration as to who should be entitled to GRIP (general rate income pool) balance at death

Buy-Sell Provisions for Living Buy-Out:

- Right of first refusal**- before a shareholder may sell to an outside third party he/she must first offer his/her shares to the remaining shareholders (offer will set purchase price)
- Right of first refusal piggy back**- other shareholders will piggy back on the offer put out to all shareholders
- Shotgun**- one shareholder offers to purchase other shareholder(s) shares; other shareholder (s) must sell or purchase offeror's shares on the same terms
- Compulsory obligation**- a mandatory provision where parties are obligated to buy-sell after a specified event at a predetermined price
- Put and call options**- optional provision where neither party is obligated to buy-sell but the price is determined in advance
- Auction Basis**- the price is determined by auction and there may or may not be an obligation to buy-sell
- Other clauses

Procedure for Valuation of Shares of Company:

- Fixed price
- Shareholders may annually determine value
- Determined by formula
- By business valuator or independent third party
- By book value
- By shotgun clause
- By right of first refusal

Ownership of Insurance:

- Shareholder-owned- each shareholder owns, pays the premium and is the beneficiary of an insurance policy on the lives of each of the other shareholder(s) – best where there are two shareholders
- Trustee-owned- share certificates and life insurance policies held by the trustees and in the event of death, critical illness or disability, the insurance proceeds are received and administered by the trustee in accordance with the agreement – best where there are more than two shareholders
- Corporate-owned- corporation pays the premium and is the beneficiary of an insurance policy on the lives of each of the shareholder(s)
- Split-dollar- the costs and benefits of the insurance are split between the corporation and each shareholder
- Holding company- owns insurance, pays the premiums and is the beneficiary of the policy
- other arrangements

Insurance Provisions:

- Obligation to purchase life and/or disability insurance and/or critical illness (how will proceeds be dealt with when critical illness occurs and shareholder returns?)
- Ownership and designation of policy consistent with agreement
- Payment of premiums By shareholder By company
- Procedure upon failure to pay premiums
- Policy not to be encumbered
- Direction for policy dividends, if a participating policy
- Ability to purchase additional insurance where fair market value of shares rises
- Shareholders to take all necessary steps to place insurance
- Flow of insurance proceeds to purchase shares
- Disposition of remaining policies upon death
- Disposition of policies on termination of agreement
- Deficiency of proceeds where insurance does not cover purchase price
- Surplus of insurance proceeds
- Right of surviving shareholder to policy
- Disability provision where agreement definition is consistent between policy and agreement
- Structure of buy-out where no insurance in place
- Other provisions

General Provisions:

- Share structure is set out in preamble
- Grandfathering status is set out in preamble
- Reference to life insurance funding for grandfathered shares
- Reference to trustee arrangement and agreement, if applicable

Disposal of Shares:

- Shares not to be encumbered
- Purchaser agrees to be bound by terms of agreement
- Restriction on transfer of shares does not apply to immediate family of shareholder

Purchase Price:

- Determined by fair market value of shares
- Determined by formula
- Business valuator or independent third party
- Book value
- Fixed price
- Shotgun clause
- Right of first refusal
- Price Adjustment clause

General Purchase and Sale Provisions:

- Requirement to obtain promissory note before dividend received, if applicable
- Requirement to pay a dividend out of capital dividend account, if applicable
- Details of closing, including procedure on purchase and sale transaction and closing procedures

Provisions to Amend Agreement:

Are there provisions to amend agreement? yes no

Is Amendment in writing? yes no

Other mechanism _____

Endorsement on Share Certificates:

Are shares subject to grandfathering? yes no

Are shares subject to provisions of agreement? yes no

Provision for Dispute Resolution:

By arbitration

By mediation

By other method

When there is a conflict, is there a provision to obtain independent legal advice?

Notice Provisions:

Time frame set out

In writing

Where notice should be sent

Provisions Regarding Assignor, Heirs and Successors:

Is agreement assignable yes no

If yes, binding on assignors? yes no

Is agreement binding on heirs, successors? yes no

Is there a provision requiring heirs and successors to comply with request of information by Canada Revenue Agency (CRA) for grandfathering purposes? yes no

Schedules to Agreement:

Particulars regarding life insurance, disability, and critical illness policies

Particulars regarding share structure

Trustee Agreement, if applicable

Value of shares

Other applicable agreements last updated date