



Shareholders' Agreement Procedure

ACTION	NA	DATE DUE	DATE DONE	Notes
1. Initial Contact <ul style="list-style-type: none"> Arrange initial interview. 				
<ul style="list-style-type: none"> Ask the client(s) to bring all relevant information, such as incorporation documents, memorandum and articles, financial information and any existing agreements to which the company or shareholders are party (particularly if the company is already in existence). 				
<ul style="list-style-type: none"> Verify the client's identity in accordance with the Law Society of Saskatchewan's Client Identification and Verification Rules. 				
2. Initial Interview <ul style="list-style-type: none"> Determine for whom you will be acting. Ensure there is no conflict of interest and consider implications of acting for the corporation and/or shareholders. In case of a corporate client, confirm who is authorized to give you instructions. Consider a directors' resolution authorizing you to accept instructions from a specific individual. Find out the names and addresses of other parties and their solicitors, if any. 				
<ul style="list-style-type: none"> Advise the client regarding calculation of your account, method and timing of payment, and conditions upon which you undertake to act as a solicitor and privacy matters, and consider an engagement letter clarifying your role and the matters referred to in this item. If your retainer will be limited to (for example) confidential drafting advice, ensure client understand the limited scope of the retainer and confirm the understanding, where reasonably possible, in writing. 				
<ul style="list-style-type: none"> Discuss the background of the parties and their relationship – including relative importance of parties to the business of the company and their respective financial positions, business of the 				

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company, general nature of the proposed agreement (as your client understands it), and your client's objectives and expectations.				
<ul style="list-style-type: none"> • If the company has not been incorporated: <ul style="list-style-type: none"> • Find out who will be drawing up the incorporation documents. If you are instructed to do so, refer to Incorporation under The Business Corporations Act checklist. 				
<ul style="list-style-type: none"> • Review and discuss articles (or proposed articles), including matters such as: <ul style="list-style-type: none"> ○ The fact that, without a shareholders' agreement, the company is managed pursuant to <i>The Business Corporations Act</i>, RSS 1978, c B-10 (the "Act"), and articles. How does this differ from what the client proposes? 				
<ul style="list-style-type: none"> ○ Whether it is preferable to include certain provisions in the articles or in the shareholders' agreement, bearing in mind such considerations as: <ul style="list-style-type: none"> ➤ Amendment procedures in each case (e.g., the Act may provide a minimum level of shareholder approval in a shareholders' agreement). 				
<ul style="list-style-type: none"> ➤ Public nature of articles. 				
<ul style="list-style-type: none"> ➤ Effect of the provision in <i>The Business Corporations Act</i>, section 97, that directors are obliged to manage, subject to articles (e.g., if it is proposed that directors' powers be restricted, this can be done in articles or in the shareholders' agreement). 				

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<ul style="list-style-type: none"> ○ Whether articles raise any problems with respect to provisions that might be included in the shareholders' agreement. 				
<ul style="list-style-type: none"> • If you are representing a minority shareholder, ensure the client is protected as much as is consistent with the interests of efficient management. 				
<ul style="list-style-type: none"> • Discuss in detail the proposed agreement, referring to clauses set out in the Shareholders' Agreement Drafting checklist. Include points such as: <ul style="list-style-type: none"> • Management of the company and role of shareholders: <ul style="list-style-type: none"> ○ In general, who are the directors and employees, who has banking authority, who is responsible for day-to-day management and how are major decisions made? 				
<ul style="list-style-type: none"> ○ If there is a corporate shareholder, how will it be represented, and what will be the effect of various circumstances such as death of representative? 				
<ul style="list-style-type: none"> ○ Is it intended that all shareholders be and remain actively involved in management? If your client is not going to be actively involved, advise the client to keep informed of financial affairs. Consider desirability of your client being a signing officer. 				
<ul style="list-style-type: none"> ○ Is your client going to be an officer or director? If so, advise regarding duties and potential liability. The potential liability of directors is an evolving area of law and care should be taken to ensure your client is made aware of their duties on an ongoing basis. 				
<ul style="list-style-type: none"> ○ Is your client going to be an employee of the company? If so, consider the need for a separate employment 				

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contract (possibly tied to the shareholders' agreement) or for employment clauses in agreement.				
<ul style="list-style-type: none"> ○ Will a directors' discretion to manage, subject to articles, be unfettered, or will certain powers be transferred to one or more persons. Consider incorporation provisions in the articles transferring power to manage to shareholders, and then deal with management in the shareholders' agreement. 				
<ul style="list-style-type: none"> ○ Consider how to balance the need for protecting minority rights against the discretion of the directors to manage. Consider how to avoid deadlocks, and whether to increase the minimum level of shareholder approval, if any, required under the Act for decisions on certain matters. 				
<ul style="list-style-type: none"> ○ Consider requiring shareholder approval on spending and borrowing over and above amounts approved in budget. 				
<ul style="list-style-type: none"> ○ Consider whether the corporation obtaining life insurance on any of the shareholders, or their principals is necessary and what is to occur upon the death of a shareholder or its principal. 				
<ul style="list-style-type: none"> ○ Consider what approval will be needed for paying bonuses, dividends or other amounts to shareholders, directors and officers. 				
<ul style="list-style-type: none"> ● Financing: <ul style="list-style-type: none"> ○ In general, how much money is needed for the proposed venture, for what purposes is it to be spent (on what, how much, when), how is the company going to be financed, what will be the composition of share capital, will shareholders put money into the company by share 				

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purchase or loan and on what terms, how will shareholders get their money out?				
<ul style="list-style-type: none"> ○ If the client has not already done so, advise them to discuss financing issues with a financial advisor (e.g., prospective auditor). 				
<ul style="list-style-type: none"> ○ Consider advising your client to meet with other parties and draw up a pro forma budget. This might be attached to the shareholders' agreement as a statement of intention. 				
<ul style="list-style-type: none"> ○ Discuss methods by which shareholders can get a return from the company (e.g., salary, interest payments on loans, repayment of loans, dividends). 				
<ul style="list-style-type: none"> • Restrictions on transfer of shares: <ul style="list-style-type: none"> ○ In general, whether there are to be any restrictions and, if so, in what circumstances and why such restrictions are needed, particularly to qualify for the private issuer exemption under <i>National Instrument 45-106 Prospectus and Registration Exemptions</i>, BC Reg 227/2009, adopted pursuant to the <i>Securities Act</i>, RSBC 1996, c 418. 				
<ul style="list-style-type: none"> ○ Advise regarding prohibitions on transfer of shares, and that restrictive clauses are likely to be narrowly construed. 				
<ul style="list-style-type: none"> ○ Advise regarding rights of first refusal, whether such rights are triggered by having received an offer or not and drag-along and piggy-back rights (should the company or the other shareholders have the first right of purchase?). 				
<ul style="list-style-type: none"> • Consequences of certain types of events: 				

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<ul style="list-style-type: none"> ○ In general, discuss various types of events that might occur, and desired consequences. Determine whether consequences are to be optional or mandatory. 				
<ul style="list-style-type: none"> ○ Events should include: death, termination of employment, shareholders' desire to sell their interest in the company, retirement, incapacity, bankruptcy, default under shareholders' agreement or employment contract, change in control of corporate shareholder, criminal charges/convictions, application under <i>The Family Property Act</i>, SS 1997, c F-6.3, against shareholder for division of shares in the capital of the company, etc. 				
<ul style="list-style-type: none"> ○ Ensure you have covered all circumstances in which shareholders can force the company or other shareholders to buy them out, and in which the company or other shareholders can force shareholders to sell to it or them. 				
<ul style="list-style-type: none"> • Where a sale to a company or to other shareholders is contemplated: <ul style="list-style-type: none"> ○ Is the sale to a company, shareholders, or both, and, if both, how is this to be handled (e.g., priority, procedures, timing)? 				
<ul style="list-style-type: none"> ○ How is a purchase to be funded? 				
<ul style="list-style-type: none"> ○ What standard representations, warranties, covenants, etc., should enter any purchase and sale transaction (e.g., title, no encumbrances)? Should there be standard terms relating to guarantees, closing arrangements, indebtedness, resignations, third party approvals, non-competition clauses, restrictive covenants? 				

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<ul style="list-style-type: none"> • Valuation (calculation of purchase price, etc., in various circumstances): <ul style="list-style-type: none"> ○ Values or methods for calculating values should be set out in the shareholders' agreement and should be practical, reasonable and certain. 				
<ul style="list-style-type: none"> ○ Advise the client to consult a financial advisor as to the most appropriate methods. 				
<ul style="list-style-type: none"> • Mechanisms for dispute resolution (e.g., "shotgun" or a compulsory purchase clause, dissolution of company, arbitration, obligation to negotiate or mediate first, then arbitration). Consider appropriateness of various mechanisms in light of financial resources of parties and disparity in respective shareholdings. 				
<ul style="list-style-type: none"> • Advise regarding tax consequences of proposed provisions or advise the client to get specialized tax advice (particularly with respect to provisions dealing with purchase of interest of deceased shareholder). 				
<ul style="list-style-type: none"> • Ensure proposed provisions are workable and reasonable in the circumstances. 				
<ul style="list-style-type: none"> • Where the client has not already done so, advise them to discuss various issues with other parties and reach a satisfactory solution that will ensure continuing fairness to all parties, and then to inform you of the results. 				
<ul style="list-style-type: none"> • Get instructions to proceed with drafting the shareholders' agreement and, if appropriate, employment contract. 				
<p>3. After Initial Interview</p> <ul style="list-style-type: none"> • Send a letter to the client confirming retainer and instructions, setting out manner in which you will determine your fee for services, stating 				

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conditions upon which you have agreed to act and summarizing points discussed.				
<ul style="list-style-type: none"> Open file: Place checklist in file. Confirm compliance with Law Society of Saskatchewan Rules on client identification and verification. 				
<ul style="list-style-type: none"> Communicate by letter with the counsel representing other parties, advising them that you are acting for your client. If other parties have not retained counsel, send letters to them advising them to do so and advising that you are acting only for your client. 				
<ul style="list-style-type: none"> Conduct any relevant searches, including company search for each corporate party and a detailed search where company, which is the subject of agreement, is already in business. 				
<p>4. Drafting the Agreement</p> <ul style="list-style-type: none"> Prepare an outline of the shareholders' agreement, indicating clauses from your precedent file that will be included (Shareholders' Agreement Drafting checklist). Also, prepare outlines of any other documents required, such as employment contract. 				
<ul style="list-style-type: none"> Prepare a first draft. 				
<ul style="list-style-type: none"> Review the first draft, checking each segment to ensure it achieves the client's objectives, and check document as a whole to ensure it is internally consistent. Make the necessary corrections and prepare a second draft. 				
<ul style="list-style-type: none"> Go over the second draft with the client or send it to the client with a request that the client review it and note any changes or questions. Review any alterations with the client. 				
<ul style="list-style-type: none"> Prepare a final agreement (and employment contract) and arrange for signing. 				

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<ul style="list-style-type: none"> Ensure each party receives an executed copy of the agreement. Arrange for the company's copy to be filed in its minute book in a section not accessible to public. 				
<ul style="list-style-type: none"> Place any required legends on share certificates. 				
<ul style="list-style-type: none"> Give notice to the Corporations Branch of the entering into of the unanimous shareholder agreement. 				
<p>5. Closing the File</p> <ul style="list-style-type: none"> Send a reporting letter and a statement of account to the client. Advise that changes in circumstances, legislation (e.g., tax law), insurance requirements, etc., and make it essential that the agreement be reviewed from time to time. Ascertain whether the client wishes to meet with you for this purpose from time to time and, if so, make entries in your diary. 				
<ul style="list-style-type: none"> Close the file. 				

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