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Shareholder Agreement Checklist

Here is a very short checklist of the more common items that should be found in a shareholder agreement.

Initial considerations

- Should you use a full or abbreviated version of the shareholder agreement?
- Does the agreement meet the criteria of a unanimous shareholder agreement ("USA") under the governing law of the corporation?
- Are there majority and minority interests or is it a 50/50 corporation?
- Is this a joint venture?
- Are key employees, officers or directors also shareholders? If this is the case, there are often special considerations for these shareholders (such as employment contracts and non-competition provisions).

Parties and context

- Should the corporation be party to the agreement?

Share capital

- Are there multiple classes or series of shares issued?
- Will shareholders be required to put additional capital into the corporation?

Governance

Board of Directors, Officers and Committees

- Have the shareholders agreed on who will be members of the board of directors?
- Do certain shareholders have the right to appoint members of the board of directors?
- Do certain shareholders have the right to appoint committee members?
- What are the restrictions on the board? For example, shareholder consent may be required before the board adopts certain measures.

Shareholder approvals

- Are there any questions requiring a vote by a super-majority or the unanimity of the shareholders?

Restrictive clauses

- Are confidentiality provisions necessary?
- Is there a need for non-competition clauses?

Dividends

- Do certain shareholders or have priority over dividends?
- Does the corporation have a dividend policy? If so, it is recommended to include it in a USA?

Transfers of shares

- How should share transfers be restricted?
- Do shareholders have exit rights and/or piggyback rights? If so, what circumstances trigger them?
- Do shareholders have first offer or first refusal rights?
- How will the transferred shares be valued?
- Is it necessary to put in place deadlock clauses?
- What are the procedures for adding transferee shareholders to the shareholder agreement?

Preemption rights

- Do shareholders have a preemptive right?
- Can shareholders buy more than their quota of future share issues?

Representations and guarantees

- Do shareholders make representations and guarantees?

Termination

- What events put an end to the shareholder agreement?
- Do certain provisions of the shareholders' agreement survive upon termination?

Various

- What jurisdiction should govern the shareholders' agreement?
- What place and jurisdiction should be adopted in the event of a dispute under the shareholders' agreement?
- Should there be other dispute resolution mechanisms? Should arbitration settle any dispute?
- Is it appropriate to insert a shotgun provision?
- How can the shareholders' agreement be amended or corrected?

Appendices and tables

- Does the shareholder agreement contain schedules or tables?

Marque d'or offers the full range of corporate law services including drafting buy-sell agreements, unanimous shareholder agreements and customized shareholder agreements.

Jurisprudence

Cotnoir c. Martineau

November 13, 2017, Superior Court, [EYB 2017-287340](#)

Claim for costs, damages and declaratory judgment. Partially granted. Counterclaim. Rejected.

Verbal agreement to establish a joint project; continuous business relationship; misconduct of a partner's spouse; joint and several liability; wilful blindness. The parties formed a joint venture.

Summary

The plaintiffs have joined in a business venture with the defendants. It was a project related to the torrefied wood market. They agreed to operate the project as a business to build and sell torrefied wood buildings. However, the project failed and the plaintiffs jointly claim the defendants the sum of \$122,926.29 due for breaches to the obligations that the defendants had undertaken to respect in the implementation of the joint project.

Suivi

- Notice of Appeal, C.A. Quebec, no. 200-09-009661-171, December 13, 2017

Kraus c. Fagnoli

December 11, 2017, Superior Court, [EYB 2017-288126](#)

Oppression remedy and repayment of loans. Rejected. Application for declaration of abuse of legal process and reimbursement of extrajudicial fees. Partially granted.

Corporation incorporated to acquire the assets of another corporation; agreement in principle; initial investments; disagreement on the shareholders agreement; proposed share repurchase of a shareholder; liquidation of the corporation under the supervision of the court; claims to be treated as part of the liquidation; lack of transparency; positions modified during the procedures; manipulation of the factual framework. Deadlock.

Summary

In 2014, the plaintiffs agreed with the defendant to jointly purchase a corporation to be formed. On November 7, 2014, an initial agreement was reached to this effect. However, the parties were never able to agree on the shares ownership, the activities of the corporation or the plan to buy the defendant's shares.

Moisan Porte de garage inc. c. Rénovation 418 inc. (*Garage Expert*)

October 27, 2017, Court of Québec, [EYB 2017-288323](#)

Request for payment of goods and services. Partially granted. Counterclaim for damages due to lack of release after a judgment granting an application for revocation of a judgment. Rejected.

Corporation having given a third party sufficient grounds to believe in the existence of an apparent mandate.

Summary

The plaintiff claims the payment of invoices sent to the defendant. In 2016, a special clerk sentenced a corporation doing business under the name of Garages Expert (Palazzo) and another corporation also doing business under the name of Garages Expert (418), to pay the sums due to the plaintiff. 418 obtained a retraction of the judgment against it. The plaintiff now claims to 418 and its owner, the unpaid bills by Palazzo.alazzo.

2794209 Canada inc. c. Agence du revenu du Canada

November 27, 2017, Superior Court, [EYB 2017-289180](#)

Application for declaratory judgment. Rejected.

Appropriation of funds belonging to the owner of a corporation; rejection of the claim relating to the ownership of the shares of the corporation and to the parties in the sale of shares.

Summary

As a result of an audit, a taxpayer was personally ordered to pay various amounts arising from his status as a shareholder of a corporation. According to the plaintiffs, it is by mistake that the document recording the sale of shares identifies the taxpayer as the acquirer. Rather, it is the plaintiff, a corporation wholly owned by the taxpayer, who bought the shares of the corporation of the *mis en cause*, regardless what the document says. The plaintiffs argue that the court may, by way of a declaratory judgment, rectify the situation by declaring that the true owner of the shares is the plaintiff corporation.