

## *Issues to consider in Shareholder Agreements / LLC Operating Agreements*

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### Control / Management

Who will manage the business?

- owners
- manager(s)
- officers

How will they be selected?

- by agreement
- elected by owners
- other

Employment agreement(s) for manager(s) / officers?

How will decisions be made by managers?

- CEO or President
- majority rule
- unanimous

When will owner approval be required for decisions?

- sale of business or assets
- hiring key personnel
- large expenditures
- other major decisions

How will decisions be made by owners?

- majority (by shares)
- super-majority (e.g. two-thirds, 75%)
- unanimous

### Economic Benefits

How will owners be compensated?

- salary
- distributions

How will profits be shared?

- pro rata according to ownership
- equally
- according to work performed / revenue generated

When distributed? Who decides amount and timing?

### Changes in Ownership

What restrictions on transfer of ownership interest?

- prohibit transfers, unless unanimous agreement of owners
- allow only certain transfers (e.g. to a family member)
- allow transfers, subject to right of first refusal and/or participation right

How will significant events be handled?

- death
- disability
- retirement
- breach of employment agreement
- loss of interest / shift in focus / failure to participate
- disagreement

When will buy-sell be permitted or required?

What valuation will be used in each circumstance?

- fair market value of interest
- share of fair market value of business
- book value
- stated amount
- amount of insurance proceeds

How will amount determined?

- appraisal
- agreement
- periodically set

Will insurance be used to fund buy-out?

Under what circumstances will new owners be allowed to join the business?

### Dispute Resolution

How will disputes be handled?

- mediation
- binding arbitration
- lawsuit / judicial intervention

Will a buy-out be provided for in the event of deadlock?

- “put-call” provision