

Table of Contents

Foreword	v
Table of Cases	xix
Introduction	1
WHAT IS A PRIVATE COMPANY?	2
OWNERS VS. MANAGERS	3
WHO IS A SHAREHOLDER?	4
Starting Up the Company	7
CHOOSING THE CAPITAL STRUCTURE	8
ISSUING THE SHARES	9
INCOME SPLITTING	10
USE OF A FAMILY TRUST	12
USE OF A HOLDING CORPORATION	12
VALUATION AND PAYMENT FOR SHARES	13
SHARE BUY-BACK RIGHTS	13
SHAREHOLDER LOANS	14
Dealing with Employees	17
EMPLOYMENT CONTRACT	17
INTELLECTUAL PROPERTY	20
OUTSIDE CONTRACTORS	21
EQUITY COMPENSATION	22
CHANGING THE EMPLOYEE RELATIONSHIP	24
TERMINATING THE EMPLOYEE RELATIONSHIP	25
WORK ENVIRONMENT	27
Protecting Intellectual Property	29
DETERMINING OWNERSHIP	30
MAINTAINING OWNERSHIP	31
TRADE SECRETS AND CONFIDENTIAL INFORMATION	32
PATENTS	34
COPYRIGHT	37
TRADEMARKS	38
INDUSTRIAL DESIGN	40

Creditor Proofing	43
COMPONENTS OF A CREDITOR PROOFING PLAN	44
Use of Multiple Corporations.....	44
Separating Ownership of Valuable Assets from the Operating Business.....	45
Investing in the Operating Business by Secured Loan.....	46
Providing Services to the Operating Business through Another Company	46
Holding Valuable Lease Separate from Operating Business.....	47
Keep Deposits and Loans Separate.....	47
Stripping Equity.....	47
Dividing Ownership amongst Family Members.....	48
COMMONLY USED STRUCTURES	48
Transfer of Assets to a Holding Company	49
Transfer of Assets to a Subsidiary.....	49
Transfer of Assets to a Sibling Company.....	50
LEGISLATIVE RESTRICTIONS.....	51
THINGS TO AVOID	54
Commingling of Assets.....	55
Failing to Identify the Business as a Separate Corporation	55
Interlocking Boards and Management.....	55
Failing to Maintain Separate Records and Record Inter-corporate Transfers.....	56
Transferring Assets for only Nominal Consideration	56
EXAMPLE OF A CREDITOR PROOFING STRUCTURE	56
PROCEED WITH CAUTION.....	58
 Leasing Commercial Property	61
OFFER TO LEASE	62
GROSS LEASE VS. NET LEASE	62
PERCENTAGE RENT.....	63
ASSIGNMENT AND SUBLETTING	64
OPTION TO RENEW AND RIGHT TO EXTEND	65
OPTION TO PURCHASE AND RIGHT OF REFUSAL	67
EXCLUSIVITY AND OTHER RESTRICTIONS	68
SUBORDINATION AND ATTORNMENT	68
LEASEHOLD IMPROVEMENTS.....	69
INSURANCE.....	70
ENVIRONMENTAL INDEMNITY	70
CO-TENANCY	71
RELOCATION	71
DEMOLITION OR SALE.....	73
REMOVAL AND RESTORATION.....	75
DUE DILIGENCE.....	76
Title Search.....	76
Zoning Compliance.....	77
Condition of the Premises.....	78
 Acquiring a Franchise	79

PRELIMINARY QUESTIONS	80
LEGISLATIVE OVERVIEW	83
Duty of Disclosure	84
Duty of Fair Dealing	85
Right to Associate	85
Consequences of Non-compliance	86
FRANCHISE AGREEMENTS	87
Parties to the Franchise Agreement	89
Grant of Licence and Reservation of Rights	89
Term and Renewal	90
Territory	91
Site Selection and Development	92
Fees	94
Financial Reporting	95
Trademark Protection	96
Approved Suppliers and Volume Rebates	98
Security	98
Operations Manual and System Modification	99
Training and Operating Assistance	100
Insurance	101
Termination	101
Transfer and Assignment	103
Non-competition	104
Alternative Dispute Resolution	105
BUYING AN EXISTING FRANCHISE	106
Business Succession and Estate Freezes	111
PRELIMINARY QUESTIONS	112
ASSEMBLING THE TEAM	113
CREATING A BUSINESS SUCCESSION PLAN	114
IMPLEMENTING THE BUSINESS SUCCESSION PLAN	117
GIFT OF SHARES	118
SALE OF SHARES	119
ESTATE FREEZE	120
RETAINING CONTROL	122
ENSURING LIQUIDITY	122
FAMILY TRUSTS	124
DIFFERENT VS. EQUAL TREATMENT OF CHILDREN	127
ARM'S LENGTH TREATMENT	129
FAMILY LAW CONSIDERATIONS	130
Valuation	133
NORMALIZING ADJUSTMENTS	135
VALUATION METHODS	136
GOODWILL	138
VARIOUS DISCOUNTS AND PREMIUMS	138
LIMITATIONS OF VALUATION METHODS	140
INFLUENCE OF BUYER SYNERGIES ON PRICE	141
INFLUENCE OF PAYMENT TERMS ON PRICE	142

OTHER INFLUENCES ON PRICE	143
Debt Financing and Commitment Letters	147
COMMITMENT LETTERS GENERALLY	148
CREDIT FACILITIES	151
AVAILMENT	152
REPRESENTATIONS AND WARRANTIES	153
COVENANTS	154
PERMITTED ENCUMBRANCES	156
EVENTS OF DEFAULT	157
SECURITY	158
POSTPONEMENT	159
CONDITIONS PRECEDENT	160
ACQUISITION FINANCING	161
Credit and Loan Agreements	167
CALCULATION OF INTEREST	168
AVAILMENT RESTRICTIONS	169
QUALIFICATIONS TO REPRESENTATIONS AND WARRANTIES	171
QUALIFICATIONS TO FINANCIAL COVENANTS	173
PERMITTED ENCUMBRANCES	175
QUALIFICATIONS TO EVENTS OF DEFAULT	176
QUALIFICATIONS TO COST RECOVERY AND INDEMNIFICATION ...	177
RESTRICTIONS ON ASSIGNMENT	179
REMEDIES ON DEFAULT	179
BORROWER ACTIONS TO AVOID EXERCISE OF LENDER REMEDIES ON DEFAULT	182
Security Agreements and Guarantees	185
CONFLICTS WITH LOAN AGREEMENT	185
DESCRIBING THE OBLIGATIONS SECURED	186
GUARANTEES	187
POSTPONEMENT AND ASSIGNMENT	187
GENERAL SECURITY	188
SPECIFIC SECURITY	189
SPECIAL TREATMENT OF CERTAIN ASSETS	190
PRIORITY OF OTHER SECURITY	192
Equity Financing and Term Sheets	195
OWNERS AND MANAGERS VS. INVESTOR	197
VALUATION	199
USE OF PROCEEDS AND FUNDING	200
DIVIDEND RIGHTS	201
REDEMPTION RIGHTS	202
LIQUIDATION PREFERENCE	203
VOTING RIGHTS	204
CONVERSION RIGHTS	204
ANTI-DILUTION PROTECTION	205

BOARD OF DIRECTORS	206
MANAGEMENT AND CONTROL	207
EMPLOYEES	208
INFORMATION RIGHTS	209
PRE-EMPTIVE RIGHTS	209
RIGHTS OF FIRST REFUSAL	210
PIGGYBACK RIGHTS	211
DRAG-ALONG RIGHTS	212
REGISTRATION RIGHTS	212
LOSS OF RIGHTS	213
REPRESENTATIONS AND WARRANTIES	214
PERSONAL LIABILITY	214
DUE DILIGENCE PERIOD	215
LOCK-UP	216
TIME OF CLOSING	217
EXPENSES	218
Subscription Agreements	219
SUBSCRIPTION PRICE	221
REPRESENTATIONS AND WARRANTIES	223
Financial Statements	225
Dividends and Distributions	225
Compliance with Laws	226
Accounts Receivable	226
Customers and Suppliers	226
Leased Premises	226
Environmental Matters	227
Representations of the Investor	227
COVENANTS	228
Prohibited Actions	229
Regulatory and Contractual Consents	229
Access to Information	230
SURVIVAL OF COVENANTS AND REPRESENTATIONS	230
CONDITIONS OF CLOSING	231
No Material Adverse Change	231
No Adverse Law or Actions to Restrain	232
Third Party Consents	232
Certain Agreements	232
Satisfactory Due Diligence Results	233
Conditions for the Benefit of the Company	233
INDEMNIFICATION	234
Indemnification by the Company	235
Indemnification by the Investor	235
Maximum and Minimum Amounts	236
Limitation on Remedies	236
Closing the Deal	237
PUTTING THE COMPANY IN CLOSING CONDITION	238
Limiting or Removing Liabilities	238

Upgrading or Replacing Assets.....	239
Correcting or Updating Records and Filings.....	239
Reviewing Employee Relationships.....	240
Reviewing Supplier Relationships.....	241
Reviewing Landlord Relationships.....	241
Reviewing Customer Relationships.....	241
Protecting Intellectual Property.....	242
Amending Shareholder Agreements.....	242
CLOSING AGENDA.....	243
DISCHARGING MORTGAGES AND LIENS.....	243
ASSIGNING CONTRACTS AND OBTAINING CONSENTS.....	245
OBTAINING GOVERNMENT APPROVALS.....	246
ORGANIZING THE CLOSING.....	246
Shareholder Agreements.....	249
UNANIMOUS SHAREHOLDER AGREEMENTS.....	251
BOARD AND MANAGEMENT REPRESENTATION.....	253
INFORMATION RIGHTS.....	256
MAJOR DECISIONS.....	256
USE OF PROFITS.....	257
BANK FINANCING AND GUARANTEES.....	258
PRE-EMPTIVE RIGHTS.....	259
MANDATORY SHAREHOLDER FUNDING.....	260
FIRST REFUSAL RIGHTS.....	261
PIGGYBACK RIGHTS.....	263
DRAG-ALONG RIGHTS.....	264
TRANSFER RIGHTS UPON CERTAIN EVENTS.....	264
VALUATION OF TRANSFERRED SHARES.....	266
SHOTGUN RIGHTS.....	267
AUCTION RIGHTS.....	269
NEGATIVE COVENANTS.....	269
Non-disclosure Covenant.....	270
Non-solicitation Covenant.....	270
Non-competition Covenant.....	271
Enforcement of Negative Covenants.....	271
FAMILY LAW COVENANTS.....	272
MISCELLANEOUS MATTERS.....	274
Shareholder Statutory Rights - Part I.....	275
CORPORATE RECORDS.....	278
Right to Examine Corporate Records.....	278
Right to Copies of Certain Corporate Records.....	279
Right to Examine Shareholder List.....	279
Right to Receive Shareholder List.....	279
DISSENT AND APPRAISAL.....	279
FINANCIAL STATEMENTS.....	280
Right to Examine Financial Statements.....	280
Right to Receive Financial Statements.....	280
RECEIPT OF COMPANY DIVIDENDS.....	281

RECEIPT OF COMPANY PROPERTY ON DISSOLUTION	282
SHARE CERTIFICATES	282
Right to Receive Share Certificate	282
Right to Receive Replacement Share Certificate.....	283
SHAREHOLDER MEETINGS.....	283
Right to Require Auditor Attendance.....	283
Right to Requisition Meeting	284
Right to Solicit Proxies	284
Right to Submit Proposals	284
Right to Vote.....	285
Shareholder Statutory Rights – Part II	287
AMALGAMATION	288
AMENDING ARTICLES	290
AUDITORS	291
Right to Appoint Auditor	291
Right to Remove Auditor	291
BY-LAWS.....	291
CONTINUANCE	293
DIRECTORS.....	294
Right to Elect Directors	294
Right to Remove Directors	294
Right to Restrict Directors’ Powers	294
LIQUIDATION AND DISSOLUTION.....	295
SHAREHOLDER SQUEEZE-OUT.....	295
STATED CAPITAL	296
Right to Increase Stated Capital.....	297
Right to Reduce Stated Capital	297
TRANSFER OF ALL OF THE ASSETS	297
Shareholder Meetings	299
ANNUAL MEETINGS.....	300
SPECIAL MEETINGS	300
PLACE OF MEETINGS	300
NOTICE OF MEETING	300
ADJOURNMENT OF MEETING	301
PREPARATION FOR A MEETING.....	302
CONDUCT OF THE MEETING	302
Director Duties and Liabilities	305
FIDUCIARY DUTY	307
Disclosing Conflicts of Interest	308
Avoiding Misuse of Corporate Opportunity	309
DUTY OF CARE.....	310
Business Judgment Rule	310
OTHER DIRECTOR DUTIES	311
Acquisition and Redemption of Shares.....	311
Approval of Financial Statements.....	312
Appointment of Officers.....	312

Authorizing Payment of Commissions	312
Borrowing	312
Compliance with CBCA and Company Charter	312
Declaration of Dividends	313
Filling Director and Auditor Vacancies	314
Fixing Remuneration	314
Issuance of Shares	315
Passing By-laws	315
DIRECTOR MEETINGS	315
Notice of Meetings	315
Attendance at Meetings	316
Conduct of Meetings	317
Minutes of Meetings	318
PROTECTION OF DIRECTORS	319
Reviewing the Company's By-laws	320
Obtaining an Indemnification Agreement	321
Obtaining insurance	321
Claiming Due Diligence Defense	323
Recording Dissents	323
Relying on Experts	324
Implementing a Unanimous Shareholder Agreement	324
Resigning	325
Governance	327
BENEFITS OF GOOD GOVERNANCE	328
RESISTANCE TO GOOD GOVERNANCE	329
PRESSURES TO IMPLEMENT GOOD GOVERNANCE	329
RECOMMENDED GOVERNANCE STRUCTURES AND PRACTICES	330
The Board and Independent Directors	331
Audit Committee	331
Nominating Committee	332
Compensation Committee	332
Code of Business Conduct and Ethics	332
Director Orientation and Continuing Education	333
Regular Board Assessments	333
IMPLEMENTING GOOD GOVERNANCE	333
Dispute Resolution and Shareholder Remedies	335
MEDIATION AND ARBITRATION	337
DERIVATIVE ACTION	338
OPPRESSION REMEDY	339
Family Businesses	341
OTHER COURT APPLICATIONS	342
Appointment of Auditor	342
Calling of Meeting	342
Compliance with CBCA	342
Fix Fair Value of Shares	343
Investigation of Company	343
Liquidation and Dissolution of Company	343

Rectification of Records	344
Removal of Auditor	344
Restrain Holding of Meeting	344
Set Aside Contract	344
Settle Controversy over Elections	344
Conclusion	347
Endnotes	353
Index	385

