

CUSTOMIZING SHAREHOLDER AGREEMENTS TO MAXIMIZE YOUR PROTECTION

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**Presentation to
The Canadian Institute
Essential Elements and Critical Updates of Key Business Agreements**

Toronto, February 24 – 25, 2010

PRECEDENTS

- ❖ Many models, including from commercial publishers
- ❖ These are complicated agreements and precedents are to be used only as a starting point
- ❖ The key is to understand the business deal and the governance in its entirety

▪ WHERE TO GET PRECEDENTS

■ CONTENTS OF THE AGREEMENT

EXPERT INPUT NEEDED

- Failure to determine treatment of life insurance proceeds
- Failure to properly consider funding obligations
- No level of value specified
- Failure to define whether minority interests will be discounted
- Improper selection of buy-out structure
- Failure to create workable Right of First refusals re 3rd party Offers
- Standard of value not specified
- Failure to revisit agreement periodically (fixed price?)
- Different triggering events require different treatment
- Failure to define triggering events clearly
- Failure to consider exceptions to triggering events
- Appraiser qualifications poorly specified
- Failure to identify date of valuation
- Failure to create a conflict breaking valuation process
- Entity Governance may not mesh with buy-sell clauses

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