

**CORPORATION FORMATION QUESTIONNAIRE**  
**STANLEY, ESREY & BUCKLEY, LLP**

The following is a list of certain general questions to consider when discussing formation of corporation and or preparation of a shareholders' agreement for a corporation:

1) GENERAL

a) Corporation.

- i) Full name of the Corporation?
- ii) State of incorporation?
- iii) Address of principal office of the Corporation?
- iv) Name and address of registered agent in state of domicile?
- v) Business purpose of the Corporation? (Can be general purpose clause.)
- vi) Does the Corporation need to be qualified to do business in any other states?
- vii) Timing of formation (do filings need to be expedited?)

b) Shareholders.

- i) What are the names and addresses of the initial shareholders?
- ii) Description and value of shares authorized by the Corporation (e.g. common and/or preferred stock and par value per share)?
- iii) How many shares will be authorized? (*For Delaware corporations: franchise taxes are based on number of shares authorized*)
- iv) How many shares will be issued initially, to whom, and for what purchase price or other consideration?

c) Directors and Officers.

- i) Number of directors on the board?
- ii) Who will the initial directors be?
- iii) What are the voting rights of the shareholders with respect to designating a director nominee? Can shareholders nominate themselves?

- iv) Will directors have specified terms?
- v) Will the board be classified (staggered director terms)?
- vi) How will vacancies on the board be filled?
- vii) Will there be any committees of the Board (audit, compensation, governance, etc.)?
- viii) Will directors receive any compensation?
- ix) Which officer positions will there be? (generally a President, Secretary and Treasurer)
- x) Who will the initial officers be?
- xi) Will the officers have specific terms?
- xii) Will the officers receive compensation?

## 2) VOTING

### a) Shareholders.

- i) What constitutes a quorum at a meeting of the shareholders (2/3, majority, unanimous)?
- ii) Vote required for action of the shareholders (2/3, majority, unanimous)?
- iii) Vote required for written consent of shareholders (2/3, majority, unanimous)?
- iv) Who can call a meeting of the shareholders?
- v) Will there be an irrevocable proxy enabling the proxy-holder to vote in deadlocks?
- vi) Will the shareholders have heightened information rights (e.g., to periodic financial statements)?
- vii) Will shareholder voting for directors be cumulative?
- viii) Any other special shareholder rights?

### b) Directors.

- i) What constitutes a quorum at a meeting of the directors (2/3, majority, unanimous)?
- ii) Vote required for action of the directors (2/3, majority, unanimous)?

iii) Who can call a meeting of the directors?

### 3) SHAREHOLDERS' AGREEMENT

#### a) Restrictions on transfer.

i) Inter vivos transfers (including sales, gifts, pledges or other encumbrances or transfers).

- (1) Who determines if a transfer of shares can be made?
- (2) Does the Corporation have a right of first refusal regarding transferred shares (i.e., shareholder desiring to transfer shares must offer such shares to Corporation first and then other shareholders before transferring them to a third party)?
- (3) Will there be take-along or put rights for minority shareholders (i.e., majority shareholder desiring to sell his shares who has an offer to purchase his shares from an offeror must also obtain an offer from the offeror to purchase the shares of the other shareholders at the same price per share)?
- (4) Will there be come-along or call rights for shareholders holding a majority of the shares of the Corporation (i.e., minority shareholders must agree to sell their shares at the same price per share to an offeror that has offered to a majority shareholder to purchase all the shares of the Corporation)?
- (5) What percentage will constitute a majority of the shares (51%, 66 2/3%, etc.) for take-along/come-along purposes?
- (6) Do you want a compulsory buy-sell offer (i.e., after a certain time, a shareholder can offer to buy shares of other shareholders, and the other shareholders then can determine whether to sell their shares at the same price per share and on the same terms as offered or to instead buy the shares of the offering shareholder at the same price per share and on the same terms as the offering shareholder offered to buy their shares)?
- (7) Do you want a buy-out by the Corporation of the shares of any shareholder that ceases to be an employee of the Corporation? Mandatory or optional?
- (8) Upon the disability of a shareholder, do you want a buy-out of the shareholder's shares? Mandatory or optional?
- (9) Will the Corporation be required to purchase disability insurance policies on the shareholders?

(10) If disability insurance is purchased, how will the proceeds be used upon the disability of a shareholder? Mandatory or optional buy-out of the estate?

ii) Death of Shareholder.

(1) Upon the death of a shareholder, do you want a buy-out of the shareholder's shares? Mandatory or optional?

(2) Will the Corporation be required to purchase life insurance policies on the shareholders?

(3) If life insurance is purchased, how will the proceeds be used upon the death of the shareholder? Mandatory or optional buy-out of the estate?

(4) If a shareholder is uninsurable, do you want a buy-out of the shareholder's shares by the Corporation and other shareholders anyway? Mandatory or optional?

iii) Price.

(1) How should the value of the transferred shares be determined if they are not valued as part of a third-party offer (e.g. through death, disability, termination, unpermitted transfer, etc.)? Should they be valued by book value, stated value or appraised value?

(2) Will payment by the Corporation be in the form of cash or cash and a promissory note?

b) Subchapter S Provisions.

i) Will the Corporation elect to be an "S-corporation?" If so, would you like SEB to file the S-corporation election with the IRS?

ii) To complete the S-corporation election form, please provide the social security number for each shareholder.

iii) Vote required to suspend pro rata dividend distributions to the shareholders for estimated federal and state taxes (e.g., majority, 2/3, supermajority)?

iv) Vote required to revoke or terminate subchapter S election (e.g., majority, 2/3, supermajority)?

v) Vote required to make minimum pro rata dividend distributions to the shareholders for estimated federal and state taxes after Subchapter S election is revoked or terminated (e.g., majority, 2/3, supermajority)?

c) Other Considerations.

- i) Will the shareholders have pre-emptive rights regarding the issuance of new shares?
- ii) Vote required to amend the Shareholders' Agreement (majority, unanimous, supermajority)?
- iii) Do you want or have restrictive covenant agreements (non-compete, non-solicitation of employees, non-solicitation of customers, etc.)?
- iv) Do you want or have confidentiality agreements?

4) FEDERAL EMPLOYMENT IDENTIFICATION NUMBER (EIN)

- a) Would you like SEB to obtain an EIN for the Corporation?
- b) Principal business activity?
- c) Name and social security number of the principal officer?
- d) Number of employees, if any?
- e) If there will be employees, what is the first date wages will be paid?

The preceding is only a general outline of key issues. Please feel free to contact me at the address below with additional questions or to proceed with the formation and organization.

Thomas C. Buckley, Esq.  
Stanley, Esrey & Buckley, LLP  
1170 Peachtree Street, N.E.  
Suite 750  
Atlanta, Georgia 30309  
(404) 835-6200 – phone  
(404) 835-6203 – direct dial  
(404) 835-6221 – fax  
[tbuckley@seblaw.com](mailto:tbuckley@seblaw.com)