

K-Notes: Stockholder's Agreement

from Ultrasonic Medical Mapping

Consider the Context

The best way to draft a stockholder's agreement changes depending on who you are representing, and what your client's goals are. Communicate well with your client so you understand what they are trying to do.



"As much as lawyers hate numbers, you have to really do the math, think through the numbers, think through how future dilution may affect percentages. That's if you're representing the investors."

James Raanan

Partner, Parnes Raanan
Lawyers & Advisors

KEY TAKEAWAYS

- **Avoid Percentages When Requiring Approval**

If the agreement requires a 66% approval on something, keep in mind that this doesn't work when there are only 2 people on the board. Then you would be requiring 100% agreement.

- **Reconsider Lengthy Deadlock Procedures**

While having lengthy deadlock procedures may deter board members from triggering that clause in the first place, thus incentivizing getting along, it can really cripple operations if you make it take 3-4 months.

- **When to Include a Quantum**

When drafting Drag Along rights, consider including a quantum that lists a minimum price at which the majority stockholders can force the minority to sell their shares. However, in a private equity situation, your client may not want that if it takes away their option to sell their shares inexpensively and get out of their investment.

- **If You Are Representing The company**

Talk to the board and see the level of freedom and levy that the company may give in terms of shareholding and the importance of the rights vested in board members.

"In the stockholder's agreement, you're creating a coalition and you have to come up with the most sensible governance arrangement that works for the largest number of constituents."