

PART 3 – COMPLETING THE TRANSITION PROCESS

INTRODUCTION

The new *Business Corporations Act* replaced the previous *Company Act*. This new Act introduced significant changes and improvements to the corporate laws governing companies in B.C. At the same time, the Corporate Registry implemented a new computer system called Corporate Online that allows companies to file forms at the Corporate Registry over the Internet.

The *Business Corporations Act* and Corporate Online greatly reduce the amount of paperwork that is filed with and held by the Corporate Registry.

The Corporate Registry is responsible for maintaining the filed summary information about the company in its computer system, and the company is responsible for maintaining its corporate documents and records in the company's own designated records office.

NOTE: If you have not yet filed a Transition Application, read “Part 1 – Preparing to File a Transition Application” in the Transition Guide (Version 2). If you do not have a copy of it, refer to the *Contacts and Resources* section in this guide for information on how to get the guide.

The following sections provide specific instructions on how to complete the transition process:

- Revising Your Company's Articles
- Establishing a Central Securities Register

See the *Glossary of Terms* for a description of the term “articles” and some of the other terms used in this guide.

At the back of this guide there is additional information on *Contacts and Resources* and *Appendices* with examples.

REVISING YOUR COMPANY'S ARTICLES

There are two different types of changes that you may need to make to your company's existing articles.

Step 1 – Changes to Company's Existing Articles to Meet Format Requirements

The *Business Corporations Act* requires that your company's articles meet the following format requirements:

- i. The articles must be mechanically or electronically produced. This means that the articles cannot be handwritten. The articles must be written using paragraphs that are consecutively numbered or lettered. Most companies will already have their articles in this format.
- ii. You must add your company's name and incorporation number to the articles. This information can be found on the company's certificate of incorporation or on a copy of the company's annual report.

Step 2 – Moving Provisions from the Memorandum to the Company's Existing Articles

Once you have filed the Transition Application, your company's memorandum is no longer valid. (See the Glossary of Terms for a description of the term "memorandum".) Because of this change, the *Business Corporations Act* requires that all the provisions contained in the company's memorandum be included in either the company's notice of articles (which you have completed as part of the Transition Application) or in the company's articles.

The memorandum for most small companies only contained the authorized capital for the company. As the authorized capital is included in the Notice of Articles that you already filed as part of the Transition Application, it is not necessary to include it in the articles of the company.

However, if there are any provisions in the company's memorandum that are not included in the notice of articles that you filed as part of the Transition Application, then those provisions must be added to the company's articles.

For example, a very small number of companies' memorandum may include a provision that is not included in the notice of articles (such as the type of business a company is authorized to engage in). In this case, the articles must be amended to include this provision.

It is very unlikely that your company's memorandum will contain this type of provision. However, should you need to amend the company's articles to include other provisions from the memorandum, then a resolution must be passed to authorize the amendment to the articles. This may be done

with a directors' resolution or an ordinary resolution, which must then be included with the company records.

An example of a directors' resolution authorizing this type of amendment to the articles can be found in Appendix A in this guide.

Step 3 – Keep records in the company's records office.

You should be sure that the following records are kept with your company records:

- The resolution authorizing the filing of the Transition Application.
- If you were required to pass a resolution authorizing amendments to your company's articles, the resolution authorizing the amendment.
- The company's old memorandum.
- The company's articles.
- It is recommended that you photocopy and attach the pre-existing company provisions to your company's articles. A copy of the pre-existing company provisions is included in Appendix B in this guide.

ESTABLISHING A CENTRAL SECURITIES REGISTER

Under the old *Company Act*, a company was required to maintain three separate registers for the information that now will be contained in the central securities register. Those three registers were:

- 1) The register of members (or shareholders) for recording information about who owns shares in the company.
- 2) The register of allotments for recording information about the sale of shares by the company.
- 3) The register of transfers for recording information about any sale or transfer of shares by a shareholder in the company.

Under the new *Business Corporations Act* the record keeping requirements are simplified by replacing these three registers by a “central securities register”. The central securities register is a record of who owns shares in the company, and of the details of any new issue or transfer of shares in the company.

In a typical small company, there is little or no issue or transfer of shares after the company was created. This means that preparing a central securities register should be relatively simple and straightforward for most small companies. The easiest way for a typical small company to establish and maintain a central securities register may be to combine and continue to use its existing company registers. For many companies, these registers will already be contained in the same book or binder.

By combining and maintaining these existing registers, your company will meet the following requirements in the *Business Corporations Act* for:

- Registering information about shares and shareholders.
- Keeping the existing registers that were required under the old *Company Act*.

The following steps outline the process for establishing a central securities register using the existing registers of members, allotments, and transfers.

Step 1 – Review And Update The Registers As Necessary

Review the information contained in the three registers to ensure that it is accurate and up-to-date. In particular, you should ensure that the following information in the register of members is correct as of March 29, 2004:

- The name and last known address of each shareholder.
- The number, class, and any series of the shares owned by each shareholder.

Make any necessary changes to the registers.

Step 2 – Combine and mark the existing registries as the company’s “Central Securities Register”

If your registers are not already combined in one book or binder, combine the three registers within a single cover. There are no specific requirements about how this must be done, so you are free to do this in the way that works best for you.

When combined, mark the cover as the “Central Securities Register”.

MAINTAINING YOUR CENTRAL SECURITIES REGISTER

Once you have combined the three registers, then you must maintain them by recording information about any shares issued or transferred by a shareholder. The central securities register must be kept at the company’s records office or another location in British Columbia designated by the directors.

The company must record in its central securities register the following information about any shares issued by the company or transferred by a shareholder after March 29, 2004:

- The name and last known address of the person to whom the shares have been issued or transferred.
- The number, class and any series of the shares that are issued or transferred.
- The date and particulars of the issue or transfer of the shares.

CONTACTS AND RESOURCES

To obtain more information about electronically filing the Transition Application, a Notice of Change of Directors or a Notice of Change of Address, go to the Corporate Online website at www.corporateonline.gov.bc.ca. On the Main screen of Corporate Online click on the “Download the Transition Guide” link and download Part 1, 2 or 3 of the Transition Guide (Version 2).

BC OnLine customers should go to www.bconline.com.

TRANSITION HELP LINE

**For further assistance call the Transition Help Line toll free at
1-877-526-1526**

GLOSSARY OF TERMS

Articles	<p>A company's articles are prepared at the time a company is incorporated and contain details about how the company is to be run. The articles will usually include information about the rights of shareholders, procedures for issuing and allotting shares in the company, procedures for company meetings, voting, and the election of directors and officers, and the powers of the company's directors.</p>
Authorized Share Structure	<p>The authorized share structure of a pre-existing company refers to the information in the company's most recent memorandum about the number and the kind of shares that a company is authorized to issue. In the memorandum, this is called the "authorized capital" of the company.</p> <p>A small company may typically have shares named 10,000 Class A Common without par value or 10,000 Common Shares without par value.</p>
Memorandum	<p>Under the old <i>Company Act</i>, the company's memorandum was prepared at the time a company was incorporated. It contains a limited amount of basic information about the company, including the name of the company, the authorized capital of the company, and the number and kind of shares taken by the original shareholders of the company.</p>
Notice of Articles	<p>The notice of articles is a form containing summary information about a company that must be electronically filed with the Corporate Registry. For pre-existing companies, the notice of articles is included within the Transition Application form.</p>
Pre-existing Company	<p>A pre-existing company is a company that was incorporated in British Columbia before the <i>Business Corporations Act</i> came into force on March 29, 2004.</p>
Pre-existing Company Provisions	<p>The pre-existing company provisions are a set of provisions prescribed in the Regulation under the <i>Business Corporations Act</i> that apply to all pre-existing companies. These provisions contain voting thresholds for special resolutions, and restrictions on the company's right to issue, allot, and redeem shares.</p>

- Records Office** The records office of a company is the place where the company maintains its corporate records. It is often the same place as the registered office.
- Registered Office** The registered office of a company is the place where all official or legal documents relating to the company are received. It is often the same place as the records office.
- Simple Majority** A simple majority is 51% of those eligible to vote. In the case of a company with 2 directors/shareholders, both directors/shareholders must consent. In the case of 3 directors/shareholders, 2 of 3 must consent.

Appendix A - Directors' Resolution Authorizing Amended Articles

_____ [*name of Company*]
 (the "Company")

We the undersigned, being all the directors of the Company, consent * to the following resolutions:

WHEREAS the *Business Corporations Act* requires that every pre-existing company alter its articles to the extent necessary to comply with the provisions of the Act

RESOLVED:

1. That the articles of the Company be altered by adopting the attached provisions.

[Attach a copy of the revised provisions of the articles]

2. That this alteration to the articles of the Company will not take effect until the notice of articles for the Company filed pursuant to the *Business Corporations Act* takes effect.

DATED this ____ day of _____, 20__

Signature _____

Name of Director

Signature _____

Name of Director

* If the directors are holding a meeting to pass the resolution then the resolution can be passed with a simple majority (see Glossary of Terms). If the directors are unable to meet, then written consent is required from all the directors to pass the resolution.

Appendix B - BUSINESS CORPORATIONS REGULATION

Table 3

Pre-existing Company Provisions

TABLE 3**PRE-EXISTING COMPANY PROVISIONS****PART 1 – VOTING THRESHOLDS****Special majority**

- P1 The majority of votes required for the company to pass a special resolution at a general meeting is 3/4 of the votes cast on the resolution.

Special separate resolution

- P2 The majority of votes required for shareholders holding shares of a class or series of shares to pass a special separate resolution is 3/4 of the votes cast on the resolution.

Exception

- P3 Section P2 does not apply in respect of any class or series of shares for which the memorandum or articles of the company, immediately before the coming into force of the *Business Corporations Act*, set out the majority of votes required for shareholders holding shares of that class or series of shares to pass a separate resolution.

PART 2 – ISSUE PRICE FOR SHARES**Application**

- P4 Section P5 does not apply if the memorandum or articles of the company, immediately before the coming into force of the *Business Corporations Act*, authorize the directors of the company to determine the price or consideration for shares without par value issued by the company.

Issue price for shares without par value

- P5 The issue price for a share without par value must be set by a special resolution.

PART 3 – RESTRICTIONS ON POWER TO ALLOT AND ISSUE SHARES**Application**

- P6 Sections P7 to P15 do not apply if
- (a) the company was, immediately before the coming into force of the *Business Corporations Act*, a reporting company within the meaning of the *Company Act*, 1996, or
 - (b) the company is a public company.

Directors must offer shares to other shareholders

- P7 The directors must, before allotting shares,
- (a) if the company has only one class of issued shares, offer to each shareholder the proportion of the shares to be allotted that the number of shares held by that shareholder bears to the total number of issued shares of the company, or
 - (b) if the company has more than one class of issued shares,
 - (i) offer to each shareholder who holds shares of the class of shares to be allotted the proportion of the shares to be allotted that the number of shares of that class of shares held by that shareholder bears to the total number of issued shares of that class of shares, and
 - (ii) subject to section P8, if any shares remain after the expiry of the offer referred to in subparagraph (i) of this paragraph, offer to each shareholder who holds shares of any class of shares other than the class of shares referred to in subparagraph (i), the proportion of the remaining shares to be allotted that the number of shares held by that shareholder that are not of the class of shares referred to in subparagraph (i) bears to the total number of issued shares of the company that are not of the class of shares referred to in subparagraph (i).

Terms of offer

- P8 An offer under section P7 (b) (ii) must be at a price per share that is not less than the price per share contained in the offer made under section P7 (b) (i), and the other terms of the offer under section P7 (b) (ii) must be substantially the same as the terms contained in the offer made under section P7 (b) (i).

Allotments and issues to which section P7 does not apply

- P9 Section P7 does not apply to
- (a) an allotment of shares to be issued for a consideration all or substantially all of which is other than money, or
 - (b) an allotment of shares under
 - (i) rights of conversion or exchange attached to securities of the company,
 - (ii) an amalgamation under Division 3 of Part 9 of the *Business Corporations Act*,
 - (iii) an arrangement under Division 5 of Part 9 of the *Business Corporations Act*,
 - (iv) a dividend payable in shares,
 - (v) an employee share ownership plan registered under Part 1 of the *Employee Investment Act*, or
 - (vi) an employee venture capital plan registered under Part 2 of the *Employee Investment Act*.

Offer must be made by notice

- P10 An offer under section P7 must be made by notice that includes the time period within which the offer may be accepted, which time period must extend for at least 7 days after the offer is received.

If offer expires or is declined

P11 Subject to section P12, if an offer for shares under section P7 (a) or (b) (ii) has expired without having been accepted by, or has been declined in writing by, the shareholder to whom the offer was made, the directors may, for a period starting on the earlier of the expiry date for the offer and the date on which the offer is declined in writing and ending on the date that is 3 months after the expiry date for the offer, offer those shares to the persons and in the manner the directors may decide.

Further offers

P12 The directors may make an offer under section P11 if

- (a) there are no other shareholders who should first receive an offer for those shares, and
- (b) the price per share in the offer made under section P11 is not less than the price per share contained in the offer made to the shareholder under section P7, and the other terms of the offer made under section P11 are substantially the same as the terms contained in the offer made to the shareholder under section P7.

No right to waive generally

P13 A shareholder may not waive generally the right to be offered shares referred to in section P7.

Specified waivers permitted

P14 Nothing in section P13 prevents a shareholder from waiving, in writing, the right to be offered a specified allotment of shares.

When waiver effective

P15 A waiver referred to in section P14 is effective whether given before or after the allotment of the shares.

PART 4 – SHARES OF PRE-EXISTING COMPANY TO BE PURCHASED RATEABLY**Offer to purchase shares must be made to shareholders**

P16 Subject to sections P17 and P18, before the company purchases any of its shares, it must make an offer, to every shareholder who holds shares of the class or series of shares to be purchased, to purchase rateably from those shareholders the number of shares of that class or series of shares that the company wishes to purchase.

Exceptions

P17 Section P16 does not apply

- (a) if the purchase is made through a securities exchange or a quotation and trade reporting system,
- (b) if the shares are being purchased
 - (i) from an employee or former employee of the company or of an affiliate of the company, or
 - (ii) in the case of shares beneficially owned by an employee or former employee of the company or of an affiliate of the company, from the registered owner of the shares,

- (c) if, in respect of a specific share purchase, the company is, for that purchase, relieved of its obligation to comply with this section by a special separate resolution of the shareholders holding shares of the class or series of shares from which the shares are to be purchased,
- (d) if there are reasonable grounds for believing that the purchase price for the shares being purchased is not more than the fair market value of those shares,
- (e) if the purchase is one made under section 227 (3) (g), Division 2 of Part 8 or Division 5 of Part 9 of the *Business Corporations Act*, or
- (f) to a purchase of fractional shares.

Shareholder may waive

P18 A shareholder may, in writing, waive the right to receive an offer to purchase the shareholder's shares under section P16 and that waiver is effective whether given before or after the purchase by the company of any of its shares.

PART 5 – SHARES OF PRE-EXISTING COMPANY TO BE REDEEMED RATEABLY

Application

P19 Section P20 does not apply if the memorandum or articles of the company, immediately before the coming into force of the *Business Corporations Act*, provide that if the company redeems some but not all of the shares of a class or series of shares, that redemption need not be made rateably among every shareholder who holds shares of the class or series to be redeemed.

Shares to be redeemed rateably

P20 If the company proposes to redeem some but not all of the shares of a particular class or series of shares, it must ensure that the redemption is made rateably among every shareholder who holds shares of the class or series of shares to be redeemed.

This is an unofficial excerpt from the *Business Corporations Act* and is enclosed for ease of reference only. For complete information, refer to the *Business Corporations Act*. Acts and regulations are available for purchase through King's Printer for B.C. You may contact them at 250 387-6409 or 1 800 663-6105, or fax 250 387-1120, or website www.crownpub.bc.ca or email crownpub@gov.bc.ca or go to 563 Superior Street, Victoria, B.C. or write to PO Box 9452 Stn Prov Govt, Victoria, BC V8S 9V7.