Ministry of Forests,
Lands, Natural Resource
Operations & Rural Development

BCTS
BC Timber Sales

DISPOSITION OF A

BC TIMBER SALES AGREEMENT

(includes Change of Control and Amalgamation)

Overview and Procedures

October 2020

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1.0 Purpose

The *Forest Amendment Act*, 2019 Bill 22, which came into force on May 30, 2019, included changes in requirements for dispositions of agreements as well as for corporate changes of control and amalgamations. This resulted in the need for an update to the BCTS procedures for handling these types of transactions as they pertain to BCTS agreements.

This paper provides BCTS staff, licensees and the general public with detailed procedures to be followed when either

1) Disposing of (transferring) a BCTS agreement, or
2) Changing control of the holder of a BCTS agreement.

It is not to be confused with 'disposition agreements' provided for under section 22.2 of the *Forest Act*.

A BCTS agreement is defined in section 1(1) of the *Forest Act* and includes those agreements that contribute revenue to the BC Timber Sales Account, as defined in section 109 of the *Forest Act.*

This paper also provides an overview of the policy and legislation pertaining to the disposal of BC timber sales agreements.

Various form letters, templates and address information are included in the appendices.

2.0 Overview

The Forest Act recognizes two distinct ways where the ownership of an agreement may change. These include a disposition of an agreement and a change of control of the holder of an agreement. A disposition of an agreement is where the holder of an agreement sells or otherwise disposes of the agreement itself. A change of control is where the ownership of an agreement changes either through a share purchase or amalgamation with another corporation.

Holders of agreements may dispose of an agreement to another individual or corporation after having obtained prior written approval from the Minister for that disposition. The parties must submit a joint application for approval to the Minister or the Minister's delegate, pay outstanding accounts, and ensure that the recipient of the licence is registered in the applicable category of BC Timber Sales enterprises.

The intended recipient of a BCTS agreement must be registered as a BCTS enterprise and in a category of BCTS enterprise that was eligible to apply for the agreement, must not have an outstanding account with the government, and must have replaced the security deposit.

The following dispositions are exempt, under the *Forest Act*, from the statutory disposition requirements:

1) The granting in good faith of a security interest in an agreement, or
2) The transmission of an interest in an agreement to a trustee in bankruptcy of the holder of the agreement, or from the estate of a deceased holder of an agreement to the deceased holder's personal representative.

The disposition of certain agreements is not permitted. An agreement with rights under suspension may not be disposed of. Similarly, a road permit may not be disposed of unless the intended recipient is a person who has the right to harvest timber under a Timber Sale Licence (TSL) or a Forestry Licence to Cut issued by the TSM.

Corporations complete a change of control without prior approval by the Minister, but are at risk of administrative action (e.g. suspension, cancellation of timber harvesting rights) if a subsequent BCTS review determines that the requirements of the *Forest Act* have not been met.

2.1 Definitions

The *Interpretations Act* includes the following definition of ***dispose***:

> **"Dispose"** means to transfer by any method and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things.

The Canadian Law Dictionary defines ***disposition:***

"The giving up or the relinquishment of anything; the satisfaction of debt."

For the purposes of this paper:

Disposition (transfer) of an agreement is where the holder of an agreement sells or otherwise disposes of the agreement of itself.

Change of Control is where the ownership of a corporation holding an agreement changes either through a share purchase or amalgamation with another corporation.

3.0 Legislation

3.1 *Forest Act*

Sections 54 through 54.69 of the *Forest Act* govern the disposition of agreements and change of control of corporations that hold an agreement.

3.2 Regulations

The *Forest Act* provides regulation-making powers with respect to certain aspects of agreement dispositions. This includes:

1) Records and Returns: Sections 136; 136.1; 136.2; 136.3; 151(2).
2) Regulation making power in relation to dispositions of agreements and corporate changes of control and amalgamation: sections 151.8; 151.9

Currently the Disposition and Change of Control Regulation (DCCR) does not include any provisions that would affect a Timber Sales Manager's (TSM) decision regarding a section 54(2)(a) approval of the disposition of a TSL or the TSM's review of a change of control or amalgamation affecting a TSL under section 54.64 of the Act.

4.0 Delegation of Responsibility

The Disposition of Agreements and Corporate Changes of Control and Amalgamations, which are found in Division 2 and 2.1 of Part 4 of the *Forest Act*, make a number of references to the Minister of Forests being responsible for certain decisions and actions. Section 1.1 of the *Forest Act* provides for the delegation of Minister's powers to an appropriate official.

Certain responsibilities with respect to BC timber sales agreement transfers have been delegated to the respective TSM in accordance with the following table:

Section	Action	Delegated Authority
54(2)(a)	The holder of an agreement may dispose of the agreement to another person if the minister, in writing, approves the disposition.	BCTS Timber Sales Manager
54(2)(f)(i)	In giving the approval, the minister specifies a period within which the disposition must be completed.	BCTS Timber Sales Manager
54(2.1)	For the purposes of considering whether to approve a disposition, the holder of the agreement or the intended recipient must provide any other information the minister considers necessary.	BCTS Timber Sales Manager
54.01(2)	The minister may attach conditions to an approval under section 54(2)(a).	BCTS Timber Sales Manager

54.01(3)	Minister may attach a condition to an approval under section 54(2)(a) requiring specified agreements to be disposed of: a) to a person who is at arm's length from the intended recipient and from related persons of the intended recipient, and b) by a date specified by the minister.	BCTS Timber Sales Manager
54.02(1)	In considering whether to approve a disposition under section 54(2)(a), the minister must consider the effect of the disposition on : a) the marketing of fibre in British Columbia, and b) the public interest	BCTS Timber Sales Manager
54.02(2)	The minister must consider the public interest test in deciding whether to apply section 54.02(3)	BCTS Timber Sales Manager
54.02(3)	In the circumstances referred to in section 54.02(2)(b) the minister must: (a) not approve the disposition (b) may approve the disposition if the minister attaches conditions that will address the circumstances	BCTS Timber Sales Manager
54.02(4)	Nothing in this section is intended to limit the authority of the minister to refuse approval under section 54(2)	BCTS Timber Sales Manager
54.2(1)	Both the holder of the agreement and the person who acquired it must confirm completion of disposition to the minister within 7 days	BCTS Timber Sales Manager
54.3(3)	Where dispositions exempt from certain requirements, within 3 months the trustee or personal representative must provide to the minister written notice of disposition	BCTS Timber Sales Manager
54.63	A corporation that holds an agreement must give written notice to the minister of a change of control or amalgamation within 30 days after the event	BCTS Timber Sales Manager
54.64(1)	Minister must review the change of control or amalgamation considering effects on marketing of fibre and public interest	BCTS Timber Sales Manager

54.64(2)	Minister may request other information that minister considers necessary	BCTS Timber Sales Manager
54.65	Minister may take action against a corporation holding an agreement in certain circumstances (e.g. money owed, change of control results in no longer being registered, not in public interest)	BCTS Timber Sales Manager
54.66(1) to (3)	Actions the minister may take, and must take, in circumstances under section 54.65	BCTS Timber Sales Manager
54.67(2) to (4)	Proposals from a corporation that the minister must and may accept regarding the circumstances in section 54.65	BCTS Timber Sales Manager
54.68(2)	Exempt changes of control that the minister must be notified of within three months after change of control	BCTS Timber Sales Manager

5.0 Agreement Disposition Procedures (BC Timber Sales Agreements)

The following procedures apply to BC timber sales agreements as defined in statute and are to be used in conjunction with the business map for Agreement Dispositions (Appendix I).

5.1 Exemptions

Section 54.3 of the *Forest Act* explicitly exempts the following transactions from the statutory requirements:

1) Granting of a security interest in an agreement.
2) The transmission of an interest in an agreement to a Trustee in bankruptcy; or to a deceased person's personal representative.

Under (1) above, the legal holder of the agreement does not change and therefore there is no requirement to notify the ministry.

Under (2), the legal holder of the agreement has changed, and the *Forest Act* requires that the trustee or personal representative provide written notice within 3 months of the disposition. The notice must be sent to the appropriate TSM (For address information - see Appendix VI).

The notice must include the following information:

1. The type and number of each agreement involved;
2. A description of the disposition; and
3. The name and contact information for the trustee or personal representative.

Subsequent agreement transfers from the trustee in a bankruptcy to another party, or from the personal representative to a beneficiary are not exempt from the statutory requirements related to an agreement transfer.

5.2. Standard Procedures

Standard Procedures for the Disposition of a BC Timber Sales Agreement

	Step	**Responsible Party**
1	Draft and submit joint application for disposition approval	Current holder of agreement and intended recipient
2	Receive application for disposition approval	Timber Sales Manager
3	Ministry Review	Timber Sales Manager
4	First Nations Consultation	Timber Sales Manager
5	Statutory Decision regarding approval	Timber Sales Manager
6	Issuance of an approval letter to proceed or a letter not to proceed with the disposition of the agreement	Timber Sales Manager
7	Disposition transaction completion	Current holder of agreement and intended recipient
8	Notification to the TSM of the completion of the transaction	Current holder of agreement and intended recipient
9	Closure letter	Timber Sales Manager
10	Update systems and files	BCTS business area staff

5.3 Steps for the Disposition of Agreements

5.3.1 Draft and Submit Joint Disposition Application

An application for disposition approval must be received from both the current holder and intended recipient and the parties are encouraged to submit a single joint application.

An application for disposition approval must include the following information for both the current holder and intended recipient:

1) Individual or corporation name,
2) BCTS enterprise registration number and registration category,
3) If a corporation, jurisdiction of the incorporation, incorporation number, corporation directors' names, corporation voting shareholders and voting shares held,
4) Name, mailing address, email, and telephone number of contact person,
5) A description of the proposed transaction including a list of all tenures involved, as well as any associated road permits that are also being disposed of,
6) Other Forest Act agreements (licences) currently held by the intended recipient,
7) A description of how the security deposit currently held under the licence will be administered,
8) The intended completion date of the transaction,
9) A cheque (one cheque from either the current holder or intended recipient) payable to the Minister of Finance to cover the non-refundable administrative fee of $100.00 per agreement (licences and road permits).

5.3.2 Receive Application for Disposition Approval

Proponents should ensure that their application is sent to the appropriate TSM and BCTS Business Area Office. For Address information, see Appendix VI.

5.3.3 Review of Application for Disposition Approval

The appropriate BCTS Business Area Office is responsible for reviewing the proposed disposition including the following:

1) Resolve any outstanding issues that may exist with the agreement(s) that are intended to be disposed of,
2) Confirm that the intended recipient is registered in a category of BCTS enterprises that was eligible to apply for the agreement(s),
3) Confirm that the intended recipient is eligible to hold the agreement(s),
4) Confirm that all road permits associated with the intended agreement(s) to be disposed of have been identified in the application for approval, and that no road permits have been included that are not associated with the agreement(s) intended to be disposed of,
5) Confirm that all the financial requirements have been met (i.e. bills paid, fees paid, security deposits have been dealt with),
6) Conduct the appropriate level of First Nations consultation,
7) Prepare decision briefing note package for the TSM.

5.3.4 First Nations Consultation

The Province of B.C. has a duty to consult and where required, accommodate First Nations whenever it proposes a decision or activity that could impact treaty rights or aboriginal rights (including title) – claimed or proven. This duty stems from court decisions and is consistent with the Province's commitment to building a new relationship with First Nations.

The TSM is responsible for ensuring appropriate and sufficient consultation and accommodation regarding TSLs.

There may be situations where the province has entered into an agreement with a First Nation that triggers the requirement and process for consultation with respect to a disposition (e.g. Forest Consultation and Revenue Sharing Agreements (FCRSA)). In these situations, it will be important for staff to fulfil the process and requirements as set out in the agreement. Prior to providing any communication to First Nations, staff should research any existing agreements in good standing that the Crown has entered into with First Nations that are relevant and capture such a transaction.

BCTS Business Areas have First Nations relations specialists on staff and most have well-established protocols for conducting First Nations consultation. It is recommended that business area staff engage with First Nations relations specialists early in the review of an application for the disposition of a BCTS agreement. The current holder of the TSL and intended recipient should be encouraged to participate in the process by providing appropriate contacts that can discuss any questions or concerns that the First Nation may have.

Detailed guidance for First Nations consultation in B.C. can be found on the Ministry of Indigenous Relations and Reconciliation (MIRR) Consultation Guide (C-Guide) Website: http://cguide.nrs.gov.bc.ca/docs/html_files/index.html?pl=mb-initiatives-c_guide.

5.3.5 Statutory Decision Regarding Approval

The TSM is responsible for reviewing the details of the proposed disposition contained in the briefing note package. The TSM must approve the proposed disposition if the TSM is satisfied that it meets the various requirements specified in the *Forest Act*, including:

1) The intended recipient is eligible to hold the agreement(s),
2) There are no outstanding accounts payable under section 130 of the *Forest Act*,
3) The disposition would not be detrimental to competition in the marketing of fibre in all or part of B.C.,
4) The disposition would be in the public interest,
5) Conditions are attached, if required by the *Forest Act,* to further government objectives.

BCTS staff should draft a decision note package for the TSM documenting the results of the BCTS review. The decision should be supported by a clear rationale either included in the briefing note or separately.

5.3.6 Issuing a Disposition Approval

If the TSM decides to approve the disposition of an agreement(s), an approval letter must be sent to both the current holder and intended recipient that informs them that the proposed agreement(s) disposition has been approved. The approval letter must also:

1) Specify the latest date by which the disposition must be completed or otherwise the disposition will be without effect,

2) Advise the proponents of the requirement to confirm the completion of the disposition in writing to the TSM within 7 days after the completion, and
3) Remind the proponents of the requirement to deal with the security deposit(s).

If the TSM determines that the disposition requirements have not been met, then the TSM must issue a notice to both the current holder of the agreement(s) and intended recipient advising that the intended disposition has not been approved and may not proceed to completion. The notice must include a rationale stating the factors that the TSM considered in making the determination.

5.3.7 Completing the Disposition

The transactional aspects of the agreement disposition are completed by the current holder and intended recipient and do not involve BCTS staff. The disposition must be completed within the period specified in the TSM's approval notice or the disposition is without effect. The minister may extend the completion date upon written request from both the current holder and intended recipient in accordance with section 141 of the *Forest Act*. However, section 141 has not been delegated to the TSM.

Section 54(2)(b) of the *Forest Act* requires that, as of the end of the day of the completion of the disposition, all money required to be paid to the government under the circumstances set out in section 130 of the *Forest Act*, and due and payable under that section, in respect of the agreement has been paid or is the subject of an arrangement for payment approved by the minister responsible for collecting the money.

The Ministry of Finance is responsible for collecting money owed to the Crown. When payment is made, the credit will be applied to the account and the subsequent statement will show the payment. Upon request, a receipt may be issued.

5.3.8 Notification of Completion of Disposition

Once the parties have completed the transactional aspects of the disposition, they are required to notify the TSM within 7 days of the completion.

5.3.9 Closure Letter from BCTS Confirming Disposition Completed

Following the notice of completion from the proponents, the TSM should send a closure letter to both parties advising that the TSM is satisfied that the process has now been successfully completed.

5.3.10 Update Files and Systems

Upon receipt of the Notification of Completion of Disposition, BCTS staff are responsible for completing the various licence administration requirements including the updating of files and systems.

It is not a legal requirement to amend the agreement(s) to reflect the completed disposition. However, the Notification of Completion of Disposition must be placed on appropriate files. The various systems (e.g. FTA, BCTS Admin, CLIENT) must be updated.

5.3.11 Deposits

Any security deposits held by the Ministry of Finance may be released to the previous holder of the agreement(s) upon the appropriate deposits being received from the new holder of the agreement(s). The amount of the deposit required from the new holder of the agreement(s) is determined in accordance with section 16.5 of the BC Timber Sales Regulation.

5.4 Compliance and Administrative Action

5.4.1 Compliance

BCTS Business Area staff will monitor compliance with the statutory obligations associated with the disposition of the agreement(s) and investigate any disposition that may have occurred without complying with these obligations.

Obligations include:

1) Payment of accounts in accordance with the *Forest Act*,
2) The intended recipient is registered as a BCTS enterprise that under section 20(2)(b)(i) of the *Forest Act* was eligible to apply for the agreement,
3) The disposition was completed in the time period specified by the minister,
4) The holder and intended recipient provided all of the information requested by the minister,
5) The holder and intended recipient have complied with any condition attached to the approval,
6) The holder and intended recipient confirmed the completion of the disposition in writing to the minister within 7 days of the completion,
7) A person has not purported to dispose of an agreement(s) in respect of which rights are under suspension under section 78 of the *Forest Act*.

5.4.2 Administrative Action

1) A disposition that does not meet all the conditions of approval under section 54(2) of the *Forest Act* is without effect,
2) The disposition of an agreement that is not permitted to be transferred (e.g. road permit, an agreement under suspension) is without effect under section 54.4(2) of the *Forest Act*, and
3) The TSM may take action under section 78(1) of the *Forest Act* to suspend an agreement, cancel an agreement, disqualify a person from being registered, or disqualify a person from making an application for an agreement if:
    - A condition set out in section 54(2) of the Forest Act was not met,
    - A condition the TSM attached to the approval of a disposition (section 54.01 *Forest Act*) was not met,
    - The holder purported to dispose of an agreement in respect of which rights are under suspension under section 78 of the *Forest Act*,
    - Any obligation or condition of the *Forest Act* associated with the disposition of an agreement has not been met.

6.0 Corporate Change of Control and Amalgamations

6.1 General

In addition to the disposition of agreements, another transaction that may affect the status of an agreement is what the Forest Act refers to as:

1) A change of control of a corporation that is a holder of an agreement; or
2) An amalgamation of a corporation with another corporation.

For a change of control or amalgamation, the current holder and intended recipient may proceed with the changes at their own discretion without prior review or approval by BCTS. However, if a change of control or amalgamation occurred and, upon BCTS review, it is determined that certain requirements and/or conditions were not met, the TSM may take administrative action including suspension, disqualification, and cancellation of rights under the agreement(s).

6.2 Exemptions

Similar to dispositions of agreements, the following situations are exempted from the sections relating to changes of control and amalgamations:

1) The transmission of shares in a corporation to a Trustee in bankruptcy,
2) The transmission of the shares of a deceased person to the personal representative.

6.3 Standard Procedures

Many of the considerations regarding a change of control and amalgamations are the same as those considerations that are made for a disposition of an agreement under Part 5 of this overview and procedures.

When it becomes known through notification or other means that a change of control has occurred, the TSM should undertake the following steps:

Standard Procedures for Change of Control and Amalgamation of a BC Timber Sales Agreement

	Step	**Responsible Party**
1	Change of control or amalgamation occurs	Corporations involved
2	Written notice provided to Timber Sales Manager	Corporations involved
3	Ministry review of transactions resulting in change of control	Timber Sales Manager
4	First Nations Consultation	Timber Sales Manager
5	Administrative action	Timber Sales Manager

6	Proposal by corporations to address concerns (where appropriate)	Corporations involved
7	Decision to accept proposal (where applicable)	Timber Sales Manager
8	Subsequent suspension of rights or cancellation of agreement	Timber Sales Manager
9	Update systems and files	BCTS business area staff

6.3.1 Written Notification to the TSM

A corporation that holds a TSL is required to provide written notification to the TSM within 30 days after either a change of control of the corporation, or an amalgamation of the corporation with another corporation that holds an agreement.

6.3.2 Review of Change of Control or Amalgamation

Once notice has been received that a change of control of a corporation or an amalgamation has occurred, the TSM is responsible for conducting a review of the transactions that resulted in the change of control. For the purposes of this review, on the request of the TSM, the corporation must provide to the TSM any information the TSM considers necessary.

The review must also consider the effect of the change of control or amalgamation on:

1) The marketing of fibre in British Columbia, and
2) The public interest.

The TSM may take administrative action if the review determines that any of the circumstances identified in section 54.65 of the *Forest Act* apply including:

1) All money due and payable to government under the circumstances set out in section 130 of the *Forest Act* has not been paid and is not the subject of an arrangement for payment approved by the revenue minister,
2) If the change in control or amalgamation results in the corporation
    a. no longer being registered as a BCTS enterprise, or
    b. no longer registered in a category of BCTS enterprises that under section 20(2)(b)(i) of the *Forest Act*, was eligible to apply for the agreement,
3) If the TSM considers that, as a result of the change of control or amalgamation, it is not in the public interest for the corporation to continue to hold the agreement or to exercise the rights under the agreement.

BCTS staff should draft a decision note package for the TSM documenting the results of the BCTS review and recommending administrative action as appropriate. The decision should be supported by a clear rationale either included in the briefing note or separately.

6.3.3 First Nations Consultation

Please see 5.3.4 under Agreement Disposition Procedures

6.3.3 Administrative Actions Following Change of Control

If any of the circumstances in 6.3.2 apply (section 54.65 *Forest Act*), the TSM may take administrative action under section 54.66 of the Forest Act including:

1) Immediately, without notice, suspend the rights under the applicable agreement, in whole or in part, and
2) After giving the corporation an opportunity to be heard, do one or more of the following:
    a. Suspend the rights under the agreement, in whole or in part, or confirm or vary rights already under suspension,
    b. Require the corporation to dispose of the agreement by a date specified by the TSM to a person who is at arm's length from the corporation,
    c. Accept a proposal by the corporation,
    d. Impose other requirements on the corporation.

The TSM must reinstate any rights suspended under 1) if the TSM does not confirm or vary the suspension after providing an opportunity to be heard.

6.3.4 Proposal by Corporation Following Administrative Action

A corporation that has had an opportunity to be heard, regarding administrative action, may propose that one or more specified agreements be disposed of. If the TSM accepts a proposal, it is a condition of the TSM's acceptance that each specified agreement be disposed of:

1) In accordance with section 54 of the Forest Act, to a person who is at arm's length from the corporation, and
2) By a date specified by the TSM.

The TSM must accept a proposal, if the TSM intends to impose administrative action requirements under 6.33 (section 54.66 *Forest Act*) to address circumstances under 6.3.2 (section 54.65 of the *Forest Act)*, and the proposed disposition will address the circumstances to the satisfaction of the TSM. The TSM must not impose administrative action requirements if the TSM accepts a proposal from the corporation.

6.3.5 Exempt Changes of Control

The requirements for a corporation to notify of a change of control within 30 days (for the TSM to review a change of control), and the provisions for administrative action, do not apply to a change of control of a corporation caused by a transmission of shares in its capital:

1) To A trustee in bankruptcy of the holder of the shares, or
2) From the estate of a deceased person to the deceased person's personal representative.

However, within 3 months of such a change of control, the corporation must provide the TSM with written notice of the change of control.

6.3.6 Subsequent Suspension or Cancellation of Rights

The TSM may take action under section 78(1) of the Forest Act in relation to a BCTS agreement if satisfied that:

1) The holder of the agreement did not dispose of the agreement as required by the TSM under 6.3.3(2)(b) (section 54.69(1)(a) of the *Forest Act*),
2) A condition of the TSM's acceptance of a proposal (6.3.4) (section 54.69(1)(b) of the *Forest Act*) was not met, or
3) The holder of the agreement failed to comply with a requirement imposed by the TSM under 6.3.3(2)(d) (section 54.69(1)(c) of the *Forest Act*).

7.0 Other Considerations

7.1 Marketing of Fibre and the Public Interest

7.1.1 Disposition

If the minister considers it is not in the public interest for the intended recipient to acquire the agreement, then it is mandatory that the minister must not approve the disposition, or may approve it with conditions that will address, to the satisfaction of the minister, the public interest concerns.

7.2.2 Change of Control/Amalgamation

If the minister considers it is not in the public interest for a corporation to continue to hold an agreement or to exercise rights under the agreement, the minister may:

1) Suspend rights under the agreement,
2) Require the corporation to dispose of the agreement to a person at arm's length from the corporation and from related persons of the corporation,
3) Accept a proposal made by the corporation to address the public interest circumstances to the satisfaction of the minister,
4) Impose other requirements on the corporation.

7.3.3 Considering the Public Interest

Public interest tests are an integral and ongoing part of the TSL planning process, the BCTS enterprise registration process, as well as the TSL application process and therefore have, for the most part, already been fulfilled at the time of a TSL disposition.

The public interest regarding the location of harvesting is considered during the TSL planning process (FSP development, publication of sales schedules etc). TSL auctions are only open to persons who have satisfied public interest tests to become registered as a BCTS enterprise, and any one of them can become the licence holder upon being the successful bidder in an auction.

Public interest tests in the BCTS enterprise registration process include:

1. Under sections 3 or 4 and 7 of the BCTSR, registration may be refused if a person does not meet certain public interest tests such as:
    - Not being a shareholder in a corporation that is already registered as a BC Timber Sales Enterprise,
    - Not being a BC Timber Sales Enterprise that has been disqualified under section 78 of the Forest Act
    - Not being an officer, shareholder in, director of, or person not at arm's length from a BC Timber Sales Enterprise that has been disqualified under section 78 of the Forest Act,
    - Not being a person that has not or is not at arm's length from a person that has not paid money required to be paid under section 130(1.1) of the Forest Act or made arrangements satisfactory to the revenue minister to pay the money
2. If a person ceases to meet the requirements of registration (after registration) or if they hold 3 or more TSLs at one time, or if they owe money beyond a specified threshold, under section 9 of the BCTSR they are deemed not registered until the respective condition no longer exists
3. Under section 10 of the BCTSR the TSM may cancel a person's registration if
    - they have not paid money to government required to be paid under section 130 of the Forest Act by the date specified or made arrangements with the Revenue Minister for repayment, or
    - a person has not submitted accurate information to the Timber Sales Manager as required under section 8 of the BCTSR.
4. If a person has not submitted an application for registration within a 5-year period after registration or from the date they most recently applied for a TSL, they are deemed not registered until such time as they register again – re-initiating the registration process public interest tests.

After registration, during the TSL advertising period, public interest tests continue in that the TSM may refuse a TSL bid from a person who owes money to government (or a person not at arm's length from the applicant) by the due date under section 130 of the Forest Act regardless of whether that person has a repayment plan in place or not.

At the time of a disposition application, the TSM may consider additional factors such as, but not limited to:

1. Whether the intended recipient, or a person not at arm's length from the intended recipient, has not paid stumpage or other money payable to government by the due date under section 130 of the *Forest Act* (see *2019-10-03 Advisory Bulletin – Non-Current Accounts & Refusal of an Application and Tender for a Timber Sale Licence* for guidance in considering this factor),
2. The BCTS objective to generate direct net revenue and indirect revenue (i.e. is the TSL at risk of expiring unharvested if disposition is not allowed?), and
3. The results of First Nations consultation undertaken prior to the auction of the agreement as well as that undertaken for the disposition application.

7.2 Effect of Disposition on Obligations

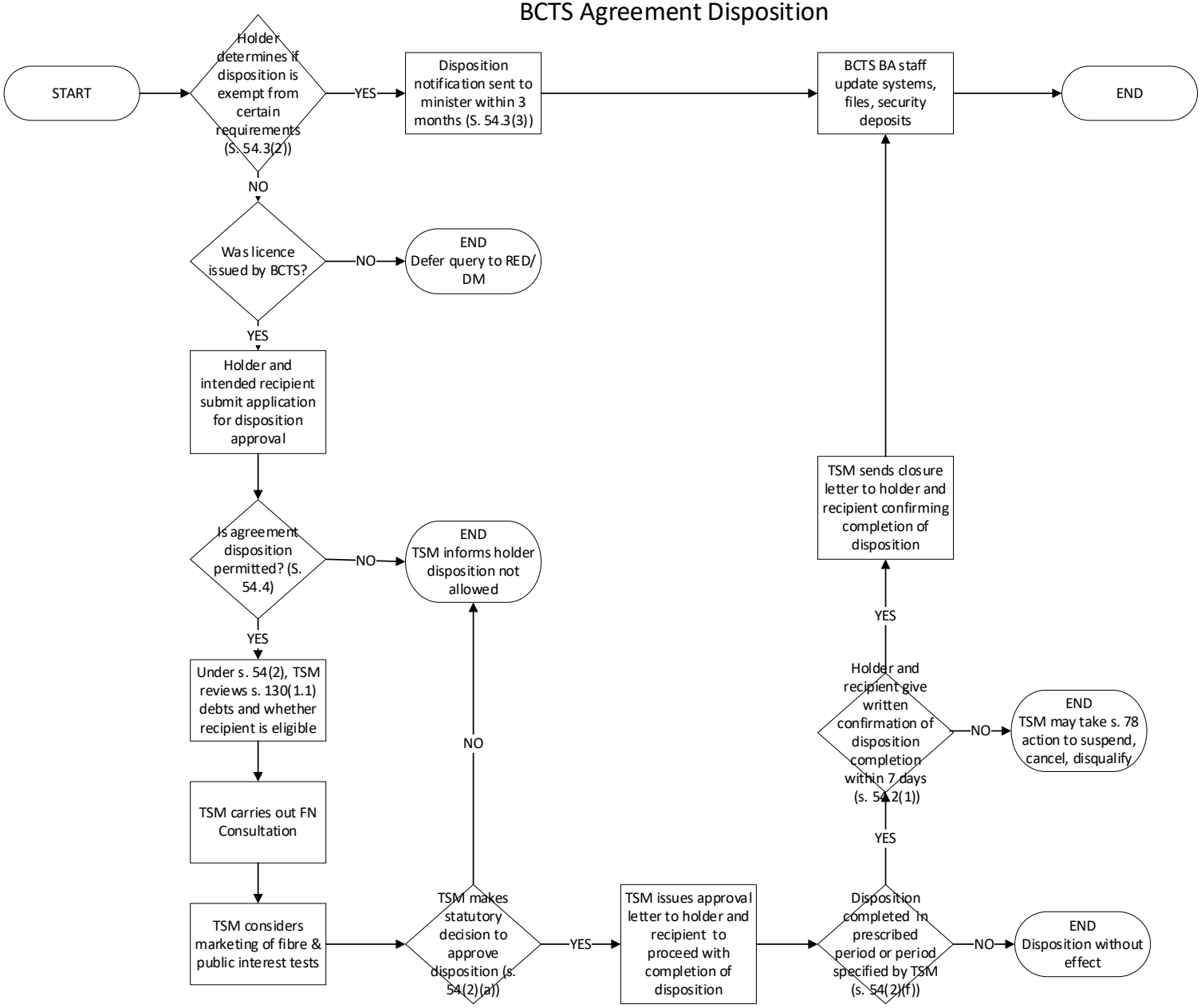
Various obligations (i.e. stumpage, free growing, road deactivation, hazard abatement) accrue to the holder of an agreement during the lifetime of an agreement. The cost of these obligations can be significant and an important principle under section 79 of the *Forest Act* is that these obligations continue despite a change in status of the licence such as cancellation, suspension, expiry or surrender.

Section 54.6 of the *Forest Act* includes the provision that obligations are carried forward with a licence when it is disposed of. In addition, this part of the *Forest Act* also establishes that the person disposing of an agreement remains jointly and severally liable along with the current holder for those obligations.

APPENDIX I

Business Map
BCTS Agreement Disposition

BCTS Agreement Disposition



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APPENDIX II

First Nations Consultation Template Letter

File: 18046-40/ BCTS FILE # «FIRST_NATIONS»
19620-25/A (TSL number)

DATE

This letter emailed to «FIRST_NATIONS»

Dear: «FIRST_NATIONS»

The NAME Business Area, BC Timber Sales (BCTS), has received a request from CURRENT TSL HOLDER NAME to dispose of their Timber Sale License (TSL) A# to PROPOSED NEW TENURE HOLDER NAME

The minister may approve the disposition of a BCTS agreement if the requirements of Part 4, Division 2 of the *Forest Act* are met.

A BCTS TSL is a short term, non-replaceable harvesting agreement that is competitively auctioned and issued to a qualified pre-screened applicant. A holder of a TSL is restricted to carrying out harvesting activities within a defined area in accordance with the terms and conditions of the TSL. BCTS has the responsibility and obligation to carry out planning activities for the defined area and to carry out silviculture on the defined area.

In 201X, the area covered under TSL A# was referred to Name of first nation for comments and input on the potential impacts of forest management and associated activities on rights and title. Comments that were received were taken into consideration in the development of this licence before the advertisement of the licence.

TSL A# was issued on date with an expiry date of date. The maximum term to harvest this TSL is X years.

Before a statutory decision is made concerning the proposed disposition of this TSL, I would like to know any comments you may have regarding this proposed disposition. If you have any concerns or comments, please address them to me prior to DATE (In accordance with consultation agreement in place: usually notification level 21 to 30 calendar days).

Yours truly,

Timber Sales Manager

APPENDIX III

Intended Disposition Approval Application
Section 54 of the Forest Act

Form FS1208 is available at the Forms Index or contact BCTS HQ

APPENDIX IV

Form Letter

Approval to Proceed with Completion of Disposition

File: (Licence number)

Date

Name of holder of the agreement
Mailing address

Name of intended recipient
Mailing address

Dear (name of holder) and (name of intended recipient):

Re: Intended disposition of Timber Sale Licence _____ (the TSL)

I have received the application dated _____ for approval of the intended disposition of TSL _____ from (name of holder of agreement) to (name of intended recipient).

I am satisfied that the requirements of Part 4 Division 2 of the *Forest Act* with respect to this intended disposition have been met.

I hereby serve you notice that the disposition of TSL _____ is approved, may proceed to completion, and that the disposition must be completed by _____ or the disposition of the agreement is without effect.

I draw your attention to the requirements of section 54(2)(b) of the *Forest Act* with respect to money payable to the government, and to section 54(2)(f) of that Act which requires the disposition of the TSL to be completed by the aforementioned date.

On completion of the disposition of the agreement, subject to set-off, any security deposits held by the Ministry of Finance may be released to the previous holder of the agreement upon the appropriate deposit being received from the new holder of the agreement. The amount of the deposit required from the new holder of the agreement is determined in accordance with section 16.5 of the BC Timber Sales Regulation and is in the amount of _____.

In accordance with the requirement of section 54.2 of the *Forest Act*, after the completion of the disposition of the TSL, both the current holder of the agreement and the person who acquired the agreement must confirm completion of the disposition in writing to the Timber Sales Manager, BC Timber Sales (Business Area), within 7 days after the completion of the disposition.

Yours truly,

Timber Sales Manager

Attachment(s): Intended Disposition Approval Application dated _____

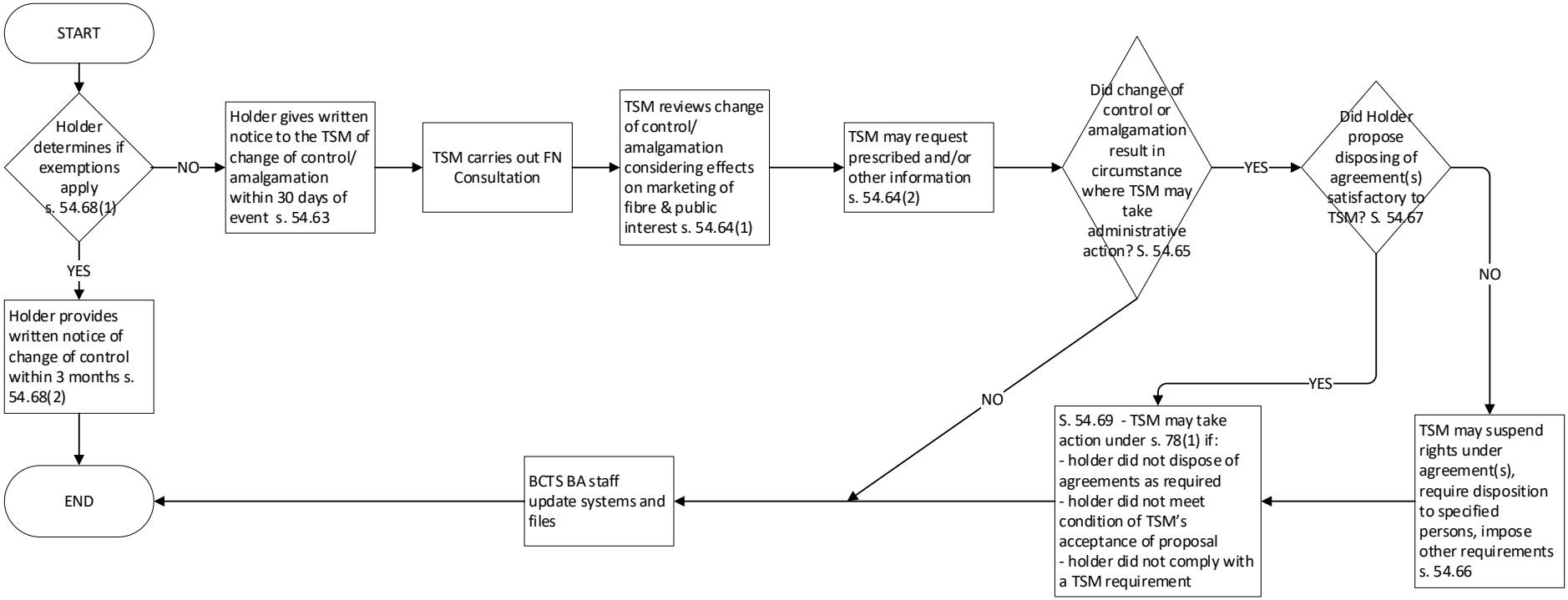
pc: (Name), Regional Executive Director, (appropriate Forest Region)
(Name), District Manager, (appropriate Natural Resource District)

APPENDIX V

Business Map

Corporate Change of Control or Amalgamation

Corporate Change of Control and Amalgamation



APPENDIX VI

Corporate Change of Control or Amalgamation

Form Letter

Acknowledgement of Change of Control

File: (Agreement number)

Date

(Representative Name)
(Corporation, if applicable)
Mailing Address

Dear (Name):

Re: Change of control of (Name of holder of BCTS agreement)

I acknowledge receipt of your letter dated _____ 20__ in which you notified the Ministry of Forests, Lands, Natural Resource Operations and Rural Development of the change of control of (agreement holder).

We understand from your letter that (Name of new corporation) has (purchased the shares, assets) of (Name of agreement holder), which in turn holds (Agreement number). We further understand that you intend that (Name of agreement holder) will continue to exist and operate as a corporation under the same name.

Please be advised that no approval is required from the Ministry of Forests, Lands, Natural Resource Operations and Rural Development for a change of control of a holder of a forest agreement. However, I draw your attention to sections 54.65 and 54.66 of the *Forest Act* which provides that the minister may take administrative action regarding an agreement under the *Forest Act* held by a corporation that has experienced a change of control if:

- Immediately after the change of control or amalgamation, all money required to be paid by the corporation to the government, and due and payable, has not been paid and is not the subject of an arrangement for payment by the revenue minister;

- In the case of a change in control or amalgamation of a corporation that holds a BC timber sales agreement, the change in control or amalgamation results in the corporation no longer being registered as a BC timber sales enterprise or no longer in a category of BC timber sales enterprises that was eligible to apply for the agreement, or

- The minister considers that, as a result of a change of control or amalgamation, it is not in the public interest for the corporation to continue to hold the agreement or to exercise rights under the agreement.

By means of a copy of this letter, I am informing the appropriate ministry offices of this change of control of (Name of agreement holder). Please continue to advise (Name), Timber Sales Manager, BC Timber Sales _____ Business Area of any further developments relating to this transaction.

Yours truly,

(Name)
Timber Sales Manager, BC Timber Sales _____ Business Area

Enclosure(s): Letter dated _____

pc: (Name), (officer title), (Name of holder of agreement)
(Name), (officer title), (name of corporation taking control) (if necessary)
(Name), Timber Sales Manager, BC Timber Sales _____ Business Area (if Holder of agreement holds agreements in other Business Areas)
(Name), District Manager, (Name of appropriate Natural Resource District)
(Name), Regional Executive Director, (Name of appropriate Forest Region)

APPENDIX VII

BC Timber Sales Business Areas

Addresses

Timber Sales Office *Previous district in italics– for reference purposes only)*	**Timber Sales Office Location**	**Address**
Babine: Nadina, Skeena Stikine (*Burns Lake, Houston, Smithers*)	Burns Lake	Box 999 183 HIGHWAY 16 WEST BURNS LAKE, BC V0J 1E0
Cariboo-Chilcotin: Central Cariboo (*Williams Lake*), Quesnel, Chilcotin	Williams Lake	200 – 640 BORLAND STREET WILLIAMS LAKE BC V2G 4T1
Chinook: Chilliwack), Queen Charlotte Islands, (*Squamish*)	Chilliwack	46360 AIRPORT ROAD CHILLIWACK, BC V2P 1A5
Kamloops: Kamloops. Headwaters, (*Clearwater*), Cascades, (*Merritt*) 100 Mile House	Kamloops	1265 DALHOUSIE DRIVE KAMLOOPS BC V2C 5Z5
Kootenay: Kootenay Lake, Arrow Boundary, (*Grand Forks*), Rocky Mountain (*Cranbrook*)	Nelson	1907 RIDGEWOOD ROAD NELSON BC V1L 6K1
Okanagan-Columbia: Okanagan Shuswap, Columbia (*Salmon Arm, Penticton, Revelstoke*)	Vernon	2501 14TH AVENUE VERNON BC V1T 8Z1
Peace-Liard: Peace Forest District, (*Ft. St. John and Dawson Creek*) Fort Nelson	Dawson Creek	9000 17TH STREET DAWSON CREEK BC V1G 4A4
Prince George: Prince George, (*Robson Valley*), Mackenzie, Headwaters	Prince George	2000 SOUTH OSPIKA BOULEVARD PRINCE GEORGE BC V2N 4W5
Seaward/Tlasta: North Island – Central Coast, (*Port McNeill*) North Coast (Prince Rupert)	Port McNeill	Box 7000 2217 MINE RD PORT MCNEILL BC V0N 2R0
Skeena: Kalum, (*Terrace*), Skeena Stikine (*Hazelton*)	Terrace	Room 200 5220 KEITH AVE TERRACE BC V8G 1L1
Strait of Georgia: Campbell River, South Island, (*Port Alberni*) Sunshine Coast (*Powell River*)	Campbell River	370 S DOGWOOD STREET CAMPBELL RIVER BC V9W 6Y7
Stuart-Nechako: Vanderhoof, Fort St. James	Vanderhoof	Box 190 1522 HWY 16 VANDERHOOF, BC V0J 3A0

APPENDIX VIII

Review Checklist

Ministry of Forests,
Lands, Natural Resource
Operations & Rural Development

TSL _____ Checklist for BCTS Review of Application for Part 4 TSL Disposition Approval

	✓	Consideration	Comments
1		Has the FS1208 Application for Approval of Intended Disposition of a TSL been completed in full?	
2		Have all outstanding issues with the TSL being disposed of been resolved?	
3		Confirm that the intended recipient is registered in a category of BCTS enterprises that was eligible to apply for the agreement.	
4		Confirm that the intended recipient is eligible to hold the agreement (section 3 or 4 BCTSR)	
5		Confirm that all road permits associated with the intended TSL to be disposed of have been identified in the application for approval.	
6		Confirm that all financial requirements have been met (i.e. bills paid, fees paid, application indicated how the security deposit will be administered)	
7		Appropriate level of First Nations Consultation has been completed.	
8		Decision Note has been prepared for the TSM	

Checklist for TSM Statutory Decision

	✓	Consideration	Comments
1		Is the intended recipient eligible to hold the agreement? (section 3 or 4 BCTSR)	
2		Has appropriate level of First Nations Consultation has been completed?	
3		Would the disposition be detrimental to competition in the marketing of fibre in all or part of BC? (section 54.02(1)(a) *Forest Act*)	
4		Would the Disposition be in the public interest? (section 54.02(1)(b) *Forest Act*)	
5		Are there any outstanding accounts payable under section 130 of the *Forest Act*?	
6		Are any conditions necessary to be attached to the approval under section 54.01(2) & 54(2)(a) or 54.02(3)(b) of the *Forest Act*?	