



Ministry of
Forests

Forest Act
Disposition of an Agreement
Administrative Guide

(Transfers, Corporate Changes of Control and
Amalgamations)

Forest Tenures Branch

December 8, 2021

Version 1.0

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Forest Act Disposition of an Agreement Administrative Guide

Questions and can be directed to district or regional Ministry of Forests staff with further guidance specific to this document available by emailing Forest Tenures Branch staff at ForestTenuresBranch@gov.bc.ca.

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Glossary

This is a list of defined terms commonly used by the Ministry when dealing with agreement dispositions. The definitions are provided for information only. Definitions provided in the legislation, such as the *Forest Act* (FA) and regulations take precedence.

“agreement” means any form of agreement, licences, or permits listed in section 12 of the FA and a pulpwood agreement.

“amalgamation” means when a corporation holding an agreement amalgamates with another corporation that holds an agreement.

“corporate change of control” is where the ownership of a corporate entity that holds an agreement change through a share purchase of the corporation.

“decision-maker” means the ministry official to whom decisions under Part 4 of the FA have been delegated by the Minister.

“disposition” means a transfer, corporate change of control or amalgamation.

“holder of an agreement” means a person that enters into an agreement, either singly or jointly with another person, and includes the transferee of an agreement and each partner of a partnership that has entered into the agreement.

“intended recipient” means the person or corporation to which an agreement is being transferred.

“the Ministry” means the Ministry of Forests Lands, Natural Resource Operations and Rural Development.

“transfer” means the transfer of an agreement whereby the holder of an agreement sells or otherwise disposes of legal ownership of the agreement or an interest in the agreement.

Abbreviations, Acronyms, and Initialisms

AAC	Allowable Annual Cut
CFA	Community Forest Agreement
DCCR	Disposition and Change of Control Regulation
FA	<i>Forest Act</i>
FL	Forest Licence
FLTC	Forestry Licence to Cut
FN	First Nation
FNWL	First Nation Woodland Licence
FSLTC	Fibre Supply Licence to Cut
LGC	Lieutenant Governor in Council
NCC	Notice of a Corporate Change
NOA	Notice of Approval
OLTC	Occupant Licence to Cut
OTBH	Opportunity to be heard
PA	Pulpwood Agreement
RAIT	Request for Approval of an Intended Transfer
RP	Road Permit
TFL	Tree Farm Licence
WL	Woodlot Licence

PART A: OVERVIEW

1.0 Purpose of this Guide

The purpose of the Disposition of an Agreement Administrative Guide (the Guide) is to provide detailed information, guidance, and procedures regarding the disposition of an agreement that has been entered into under current or previous versions of the FA.

The intended audience is Ministry staff, holders of agreements under the FA and other stakeholders who may be potentially affected by the disposition of an agreement.

This Guide includes the following information:

- Background.
- Steps and responsibilities for a disposition.
- The process to be followed; and
- Administrative action for non-compliance.

2.0 Background

Rights to harvest Crown timber in B.C. are granted through various forms of agreement issued under the FA. Different forms of agreement are entered into to meet different government objectives and may take the form of volume or area-based agreements, and range from small volume, short-term to large volume, long-term replaceable licences. The purposes range from a person who requires firewood for personal purposes, salvaging small blocks of dead timber, to providing harvesting opportunities to a First Nation (FN) and large-scale commercial forestry operations.

In general, the FA allows the disposition of most agreements to occur. In all cases, certain legal requirements must be met, however, some of these requirements vary depending upon the form of agreement being disposed.

3.0 Transfers, Corporate Changes of Control and Amalgamations

The FA includes provisions that govern the following:

1. The transfer of an agreement.
2. A change of control of a corporation that is the holder of an agreement.

3. Amalgamations of corporations that hold an agreement.

The FA defines and uses the term “disposition” to indicate the change in the holding of an interest in an agreement or the holding of the rights under an agreement. The term disposition is further specified to refer to a transfer, a corporate change of control, and amalgamations.

The overall objectives underlying the legal framework for transfers, corporate changes of control and amalgamations are similar. However, the FA distinguishes between the three types of dispositions in several ways including the timing of the review and the potential actions arising from a review.

While Part A of this Guide is a general overview of dispositions, Part B of this Guide deals with transfers and Part C deals with corporate changes of control and amalgamations.

Dispositions of timber sale licences entered into by BC Timber Sales are covered under a different guide called “Disposition of a Timber Sales Agreement – Overview and Procedures.” Contact the local BC Timber Sales Business Office for more information.

4.0 Exemptions from Statutory Requirements

The FA exempts the following dispositions from the statutory requirements for transfers, changes of control or amalgamations:

1. Granting of a security interest in an agreement.
2. Transmission of an interest in an agreement to a trustee in the case of bankruptcy proceedings of the holder of the agreement, or
3. Transmission of an interest in an agreement from the estate of a deceased holder of an agreement to the deceased holder's representative.

These types of dispositions may proceed without ministerial approval or FN consultation. However, under (2) and (3), the legal holder of the agreement has changed, and the Ministry requires written notice within three months of the disposition.

Dispositions from a trustee in a bankruptcy to a purchaser or from the personal representative to a beneficiary are not exempt from the statutory requirements.

5.0 Legislation

5.1 *Forest Act*

Divisions 1, 2 and 2.1 of Part 4 of the FA (General Tenures Provisions) deal with dispositions of an agreement. More specifically, sections 53 through 54.69 of the FA address transfers, corporate changes of control and amalgamations.

These sections of the FA cover but are not limited to the following:

- Interpretation and application.
- Holders of agreements and corporate relations.
- Transfer of agreements that are permitted and not permitted.
- Attaching conditions to the approval of a disposition.
- Mandatory refusal of dispositions (marketing of fibre and public interest).
- Required confirmation of a disposition.
- Transactions that are exempt from the statutory requirements.
- The effect of a disposition on outstanding liabilities and obligations under an agreement.
- Considerations for decision-makers when deciding to approve a disposition.
- Required notifications upon completion of a disposition.
- Required notification of a change of control of a corporation or amalgamation.
- Required ministry review of a change of control of a corporation or amalgamation.
- Administrative actions that may be taken as a result of the review of a disposition.

5.2 Disposition and Change of Control Regulation

The Disposition and Change of Control Regulation (DCCR) list the requirements and circumstances where specific forms of agreements are permitted to be transferred.

The DCCR deals more specifically with the following:

1. Dispositions of a certain form of agreements entered with a FN or representative under section 47.3(1)(a) of the FA.
2. Disposition of other forms of agreements entered with FNs.
3. Disposition of CFAs entered under section 43.2 or 43.51(1)(b) of the FA.
4. Disposition of restricted FLs.

The DCCR also specifies the calculations that are necessary for the determination of whether the transfer of an FL, TFL or PA is detrimental to competition in the marketing of fibre in B.C., which is discussed later in this Guide.

5.3 Delegation of Minister's Authority Under the *Forest Act*

There are sections within the FA and its regulations that provide the Minister with various powers and authorities for decisions and actions. The legislation allows for the transfer of these powers and authorities to other ministry officials through delegations, designations, appointments or deputizations.

The delegation of various powers to other ministry officials for the FA is outlined in the ministry's [Transfer of Authority for Natural Resource Management](#). The decision-making power remains with the Minister for certain agreements, and for other agreements, the authorities have been delegated to the Regional Executive Directors (RED).

Sub Delegation

Sub delegation can be allowed for certain powers and duties under section 1.1 (3) of the FA. A sub-delegation should be in writing so there is a record should the decision be challenged.

Delegation of authority through Special Enactments

The authority to issue and administer certain forms of agreements, including dispositions, has been delegated to other agencies through special enactments.

These include:

1. Master Licence to Cut for oil and gas operations.

Authority has been delegated to the Oil and Gas Commission. Any questions regarding the Transfer of MLTCs for oil and gas purposes should be referred to the Oil and Gas Commission.

[See OGC website.](#)

2. OLTC and FLTC issued within Controlled Recreation Areas.

Authority has been delegated to the Mountain Resort Branch. Any questions regarding the Transfer of OLTCs and FLTCs issued within a Controlled Recreation Area should be referred to the Mountain Resorts Branch.

[See Mountain Resorts Branch website.](#)

5.4 Liabilities and Obligations

Various obligations (e.g., stumpage, free growing, road deactivation, and hazard abatement) accrue to the current holder of an agreement during its lifetime. The cost of these obligations can be significant and an important principle under the FA is that these obligations continue to the new holder of the agreement through a transfer.

In addition, the FA also establishes that the entity that transfers an agreement is jointly and severally liable for any outstanding obligations that existed at the time of the transfer.

PART B: TRANSFERS

6.0 Responsibilities

Table 1 outlines the various steps involved to complete a transfer as well as identifying who is responsible for completing the step.

Section 6.0 of this Guide includes more detailed procedures for each step.

Table 1 – Steps and Responsibilities for Transfers.

	STEP	Responsibility for TFLs; FLs; PA	Responsibility for Other Agreements
1	Request for Approval	Current holder; Intended Recipient.	Current holder; Intended Recipient.
2	Ministry Review	FTB; Region; District	Region
3	FN Consultation	Region; District	Region; District
5	Statutory Decision	Minister Director FTB if AAC is 100,000 m ³ or less	RED
6	Notice to Proceed	Minister; Director; FTB	RED
7	Transfer Completion	Current holder; Intended Recipient	Current holder; Intended Recipient.
8	Systems, Files and Deposits	FTB; Region; District	Region; District

7.0 Transfer Procedures

7.1 Request for Approval of an Intended Transfer (RAIT)

All transfers are initiated by the holder of the agreement and the intended recipient by submitting a “request for approval of an intended transfer” (RAIT). Although a RAIT is initiated by the holder of the agreement, it must provide information regarding, and be signed by, both parties involved in the transfer.

It is important that the information included in the RAIT is accurate and complete to avoid delays in the processing of requests. Proponents are encouraged to communicate with the approving office before submitting the RAIT.

A RAIT should include the following information:

- 1) Name of the current holder of the agreement(s) and the intended recipient.
- 2) List of the agreements and associated road permits (RPs) requested to be transferred. *Road permits are a form of agreement under s. 12 of the FA and are issued in support of harvesting operations. They are associated with specific agreements and can only be transferred in conjunction with the disposition of the agreement to which the road permit pertains. All road permits being transferred must be included in the list of agreements proposed to be transferred.*
- 3) Business and contact information for the current holder and the intended recipient.
- 4) A list of all the timber harvesting rights currently held by the current holder and the intended recipient. This includes a list of all agreements held by the current holder, the intended recipient, their affiliates and subsidiaries and the allowable annual cut associated with each licence.
- 5) List of timber processing facilities owned by the current holder, intended recipient and any of their affiliated companies.
- 6) Indication on how to deal with existing security deposits (applying the current security deposit or a new security deposit being provided by the intended recipient).
- 7) Indication on how any existing silviculture deposits are to be dealt with for each agreement.
- 8) Information regarding any fibre supply agreements or fibre supply arrangements the parties have with other entities.
- 9) If the licence is a TFL or WL, the parties should confirm that any private land forming part of the agreement will remain subject to the agreement.
- 10) A proposed date for the completion of the transaction.

Note: Proponents need to account for the time required for the ministry to complete the review and decision.

- 11) A check payable to the Minister of Finance to cover the non-refundable administrative fee of \$100 per agreement proposed to be transferred including all associated RPs.

A template to be used for a RAIT can be found on the ministry's [Timber Tenure Transfers and Disposition website](#).

Note: Cutting permits that are issued under an agreement are integral parts of the agreement. When an agreement is transferred, the cutting permits follow automatically. This includes all active cutting permits that are partially harvested or where no harvesting has yet occurred. The transfer of agreement does not affect the conditions or timelines of a cutting permit.

The responsibility for the transfers of agreements has been delegated to the different ministry representatives depending upon the form of agreement. Parties should submit the RAIT to the appropriate ministry office. Electronic mail is encouraged to expedite the process.

1. For TFLs, FLs and PAs: The Director of Forest Tenures Branch
[Forest Tenures Branch](#)
2. For all other forms of agreement: The Regional Executive Director for the appropriate Region.
[Regions](#)

7.2 First Nations Consultation

The province has a duty to consult with and, when required, accommodate FNs whenever it proposes a decision or activity that could potentially impact treaty rights or aboriginal rights (including title) - claimed or proven. The duty stems from court decisions and is consistent with the province's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples.

Provincial decision-makers with authority to make decisions about provincial land or resources are responsible for ensuring adequate consultation with potentially affected FNs is carried out and accommodations provided when warranted.

Proponents seeking decisions from the province such as a transfer are encouraged to engage with the appropriate FNs as early as possible in the process. In some cases, the province may request that the proponents engage in information sharing with FNs, as they are often in an advantageous position to use existing relationships and can directly respond to requests for additional detail and to modify their arrangements to mitigate concerns.

The Ministry of Indigenous Relations and Reconciliation has provided guidance to government agencies and proponents on how to approach consultations with FNs. In many cases, the province has established agreements and protocols that must be followed that include the requirements and process for consultation associated with a transfer.

7.3 Ministry Review

After receiving a RAIT, with the cooperation of other offices, the designated office is responsible for conducting a review of the proposed transfer described in the RAIT. A review should include the following:

- 1. Resolve any outstanding issues that may exist with the licences that are intended to be transferred.***

Before accepting a request for a transfer, staff must confirm that the agreement(s) in question are in good standing and that no unresolved issues exist for the agreement. A transfer should not be requested if performance issues or infractions exist that would be grounds for administrative action with the current holder or suspension under the terms of the licence agreement.

- 2. CLIENT system***

Confirm that the intended recipient is registered in the CLIENT system.

- 3. Confirm the proposed transfer is permitted under FA and regulation.***

The intended recipient must be eligible under the FA, to hold the agreement.

Most agreements can be transferred. However, the FA and the DCCR identify that the following agreements:

- cannot be transferred,
- can only be transferred under certain conditions, or,
- can only be transferred in accordance with the DCCR.

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1. **Free Use Permit (FUP)** - The only agreement that simply cannot be transferred is the FUP. The FUP is mainly issued to the public for collecting firewood, cutting Christmas trees for personal use and other purposes.
2. **Any agreement if the rights under the agreement are under suspension**, in whole or in part under Section 76 or 78 of the FA.
3. **Occupant Licence to Cut** – unless a disposition is made in conjunction with the disposition of the land or right to occupy the land under which the rights to harvest timber were granted under the agreement.
4. **A directly awarded non-replaceable FL for bioenergy purposes** (S. 13.1 (5)) unless approved by the LGC.
To date, few of these forms of agreement have been entered into. The Forest Tenures Branch should be contacted for further information on a proposed transfer of this form of agreement.
5. Any of the following agreements unless the disposition is permitted by the DCCR:
 - (a) Agreements directly awarded to a FN under S. 47.3 (1) (a) of the FA.
 - See section 5 of the DCCR
 - (b) Directly awarded CFAs and FNWLs
 - See section 6 of the DCCR
 - (c) CFA
 - See section 7 of the DCCR
 - (d) Restricted FL
 - See section 8 of the DCCR

Despite these restrictions, the agreements listed in this section may be transferred with the approval of the LGC. Contact Forest Tenures Branch for more information regarding this option.

*Note: **Special Use Permits (SUP)** are issued under the Forest Practices Code Act and the Provincial Forest Use Regulation. A SUP is a permit that allows the holder to use Crown land for a specified purpose (i.e., campsite; log dump). SUPs are not agreements under the FA, but they are often issued in support of and are often necessary to conduct timber harvesting operations under an agreement.*

In most cases, SUPs should be transferred when the agreement to which it is associated is being transferred. However, the disposition of a SUP follows a different process. See the

Provincial Forest Use Administrative Guide that is located on FTB's internal website or contact the Forest Tenures Branch for more information.

4. *If a Woodlot Licence is involved, confirm that the intended recipient may enter into a WL.*

For the transfer of a WL, the FA requires that the intended recipient be a person or FN that under Section 44 of the FA, may enter into a WL.

- *See section 44 of the FA*

5. *Identify all road permits to be transferred.*

The RAIT must identify all road permits intended to be transferred and must identify all tenure agreements associated with each road permit.

In the disposition of a tenure agreement (other than a road permit) the RAIT must identify all road permits associated with the tenure agreement, even those road permits which are not to be transferred.

6. *Payment of Administrative Fee.*

There is an administrative fee of \$100 for each agreement (licences and road permits) being transferred. Staff should confirm the correct payment was submitted with the RAIT.

7. *Private tenure subject to a TFL or WL.*

In many cases, a TFL will include private tenure (private land or timber licence) owned or held by the holder of the agreement. In addition, a WL usually will include private land that is also subject to the agreement.

The inclusion of private land was taken into consideration when the original agreement was awarded and is to be managed along with the Crown land under the agreement.

The FA requires that any private tenure or private land remains subject to the agreement.

For WL, if the transfer of the agreement does not include the sale or lease of the associated private land to the intended recipient, it must be removed from the agreement under a different process before initiating the transfer process.

Confirmation of the sale or lease agreements will need to be provided as the transfer process proceeds.

8. Assumption of Replaceable Timber Harvesting Contracts

The Timber Harvesting Contract and Subcontract Regulation under the FA includes obligations for certain agreement holders to conduct timber harvesting under the agreement through timber harvesting contracts. A key component of a transfer is that where they exist, these obligations must be assumed by the intended recipient when a transfer occurs.

This provision is explicit in the FA and does not require any approval or review by ministry staff. Ministry templates may include a reference to this requirement as information for the parties involved to ensure the intended recipient is aware that all replaceable contracts associated with the agreement proposed for transfer must be assumed.

9. Consideration of the Marketing of Fibre in the Province

The legislation requires the decision-maker to consider the effect of the transfer on the marketing of fibre in B.C. This requirement intends to address the provincial objectives of maintaining a healthy, competitive forest sector and protecting the market-based pricing system by ensuring that ownership of the timber rights is not overly concentrated in any specific area of the province.

For all proposed transfers, the decision-maker must consider the effect of the transfer on the marketing of fibre in B.C.

TFLs, FLs and PAs are agreements that usually include significant rights to harvest timber and have the greatest potential to impact the marketing of fibre. Therefore, the FA and DCCR require specific assessments for these agreements. The DCCR establishes fibre distribution zones and two indices to assess the market concentration of timber harvesting rights and the potential impact on the local log market. The assessments lead to a determination of whether or not the proposed transfer will be detrimental to the marketing of fibre in B.C.

The Director of the Compensation and Business Analysis Branch is responsible for completing the analysis of the intended disposition concerning market concentration.

10. Consideration of the Public Interest

The decision-maker must also consider the effect of the transfer on the public interest, and specifically if it would not be in the public interest.

Agreements entered into under the FA have a public value and the use of our public forests is expected to provide a benefit to the citizens of British Columbia.

While “public interest” is not defined by legislation, it has limitations. The relevant factors to be considered are confined to those regarding the intended recipient acquiring and holding the agreement.

The decision-maker should determine if the intended recipient is appropriate if the rights available under the agreement will be managed in the best interests of British Columbians, and if the economic return through the agreement will continue to benefit local communities and industry.

The FA does not include specific actions for engaging the public regarding a transfer. However, the ministry has undertaken various methods seeking information related to the public interest based on the size and location of the agreement and the extent to which other important community and social values may be affected.

Transfer requests for smaller agreements may not justify an extensive public process.

Common sources of information that inform an understanding of the public interest in a transfer include:

- Letters and email correspondence to ministry offices/staff
- Media articles (digital, print, audio/video, etc.)
- Interests brought forward by Indigenous communities during the consultation
- Information provided by local government representatives
- Website campaigns by organized labour groups, special interest community groups and ENGOS
- The use of a web form for anonymous comment submissions

11. Requesting Additional Information

The proponents of a transfer are asked to include specific information in the RAIT such as which agreement(s) are proposed for transfer, the volume of the licences, other timber harvesting rights and timber processing facilities held by the parties, etc.

However, when considering the approval of a disposition, the decision-maker may request any additional information from the parties that are considered necessary for making the decision.

7.4 Statutory Decision

1. Approval

All transfers require approval by the appropriate decision-maker before the parties completing the transfer.

A decision package is prepared by the appropriate ministry staff for the office responsible for the decision. The package should include a briefing note for the decision that details the proposed transfer, including a summary of any issues and analysis that have been completed as part of the review.

The briefing note should include all the supporting information (i.e., market concentration analysis; summary of information reflecting the public interest, and a summary of FN consultations).

The materials in a decision package are considered confidential to the decision-maker.

After reviewing the details of the proposed transfer, including the results of the ministry review, the decision-maker may approve the request for the transfer if satisfied that it meets the specified requirements of the FA and regulation, as discussed in this Guide.

Mandatory Refusal

If it is determined that the transfer of an agreement would not be in the public interest, then it is mandatory for the decision maker to not approve the proposed transfer.

In addition, for a TFL; FL or PA, if it is determined that the transfer would be detrimental to the competition in the marketing of fibre in the province then it is mandatory for the decision maker to not approve the proposed transfer.

2. *Attaching a Condition to an Approval*

The FA allows the decision-maker to attach conditions to an approval of a transfer. Attaching a condition should not alter the terms of the agreement beyond what is legally permitted to be included in the content of the agreement. An exception is where the proponents have included a condition as part of their RAIT or made the commitment during the processing of the transfer.

It is not appropriate for the decision-maker to make the approval of a transfer subject to a condition. That is, conditions should not be attached to prevent a transfer from occurring – once approved, a transfer is free to be completed.

A condition will usually require an intended recipient to do something after the transfer is complete and are not to be used as a means for the enforcement of existing powers under the FA or the agreement.

Without limiting the ability to impose conditions, the FA specifies that to address market concentration concerns, an approval may include the condition that one or more agreements must be disposed of to a person that is at arms-length from the intended recipient.

Any condition must be reasonable, measurable, verifiable, and time-bound and will address or mitigate an issue or outcome that results from the proposed transfer for which the transfer would otherwise be refused.

To assist with tracking, it should be made clear to the intended recipient that they are accountable for notifying the ministry when a condition has been met.

Process of setting conditions

If a decision-maker decides to attach a condition(s) to the approval of a disposition, the principles of administrative law and procedural fairness will apply.

Where a person's rights, privileges or interests will be affected by a decision, the person may have a right to a notice of the decision and an opportunity to respond before the decision is made.

It should be made clear to the intended recipient that the failure to meet a condition within the timeframe identified for that condition may result in the decision-maker finding the holder of the agreement in breach of the condition and that could result in the suspension of rights under the agreement.

Legal advice should be sought for any exercise of the authority to attach conditions to an approval.

3. Notice of Approval (NOA)

If the statutory decision-maker determines that all the requirements are met, a NOA is sent to both the current holder and intended recipient indicating that transfer may proceed. The NOA should also include the following:

1. The date, by which the transfer must be completed, after which the approval is no longer in effect.
2. Any conditions that are to be attached to the approval.
3. A requirement that the proponents notify the appropriate office within 7 days after the completion of the transfer.
4. Requirement for the proponents to deal with security deposits.

If the determination is not to approve the transfer, then a rejection letter with rationale in support of the decision must be sent to the parties that submitted the RAIT.

7.5 Transfer Completion

1. Completion of transaction

The business transaction between parties for the disposition of the licences is completed by the current holder and intended recipient usually through the resolution of a purchase agreement. Ministry staff are not involved in this step. The completion of the business arrangement must be completed by the date included in the NOA, which can be extended by the decision-maker upon written request from both parties.

2. Confirmation of Transfer Completion

Upon completing a transfer, both the holder of the agreement and the person who acquired the agreement must confirm the completion of their transaction in writing to the appropriate office within 7 days of the completion.

The parties are required to notify the appropriate office within 7 days after the completion of a transfer. A template for a NOC can be found on the FTB transfer website.

3. Payment of Accounts

By the end of the day of the completion of the transaction, all monies required to be paid to the government under the circumstances set out in Section 130 of the *FA*, must have been paid or is the subject of an arrangement for payment approved by the Minister Finance. If any amounts are owed, despite the completion of the transaction the disposition will continue to be without effect.

Monies owed are generally, but not limited to, stumpage fees and annual rent. This amount may be specified in the NOA and can also be made available on request from the office coordinating the review of the RAIT or Ministry of Finance.

As monies owed may be significant it is suggested the current holder be made aware of any amounts owed by the ministry, or the current holder may contact the Ministry of Finance directly to inquire as to amounts owed. A payment schedule may need to be arranged as early as possible. The office coordinating the review of the RAIT should be advised if a payment agreement is in place.

Details on making a payment can be found at the following website:

<https://www2.gov.bc.ca/gov/content/taxes/natural-resource-taxes/forestry/stumpage/pay>

7.6 Administrative Actions

Systems and files

Upon completion of a transfer, the appropriate office is responsible for updating the various licence administration requirements including systems and files.

The various systems (FTA; Apportionment; CLIENT - Gentax) must be updated.

Security Deposits

Most agreements require security deposits to be held by the Ministry of Finance that are usually held in the name of the current holder of the agreement. When a transfer is completed the deposit must be in the name of the new holder of the agreement.

This can be achieved by the new holder submitting a new deposit and the existing deposit returned to the entity that transferred the agreement, or the existing deposit applied on behalf of the new holder (**applies to cash deposits only**). The preferred manner for dealing with the security deposits should be stipulated in the RAIT.

Any deposits currently held by the ministry may be released to the previous holder upon the appropriate deposits being received by the new holder of the agreement.

For more details, please contact the Collection and Loan Management Team section of the Receivables Management Office of the Ministry of Finance.

Email:

FIN REV G RMO CLMG Senior Collection Officer Team FIN:EX <CLMGSCO@gov.bc.ca>

Silviculture Deposits

If there are any silviculture deposits associated with any of the agreements being transferred, it must be confirmed that these deposits have been dealt with per the option indicated in the RAIT (i.e., apply the existing deposit or new deposit submitted).

7.7 Closure Letter from FLNRORD To Parties Confirming Transaction Completed.

Once the notice of completion has been received, the accounts have been paid and there are no other issues with the transfer, then the administering office is to send a letter to the parties confirming the transfer is in effect, and adjustments made to Provincial systems and recognized by the Ministry.

Any amendments to the agreement as a result of the transfer should also be completed at this time.

8.0 Administrative Action

The FA includes various options for taking administrative action when certain legal requirements associated with a transfer are not met.

8.1 Transfer is without effect

A transfer will be without effect and will not be recognized by the ministry unless all the following has been met:

- (a) The Minister, in writing, approves the disposition.
- (b) 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(1.1) of the FA, and due and payable to the government under that section in respect of the agreement has been paid or is the subject of an arrangement for payment approved by the revenue minister.

- (c) Private tenure within a TFL or WL remained subject to the agreement.
- (d) The recipient is eligible to hold the agreement.
- (e) All obligations of the holder of an agreement replaceable timber harvesting contracts to which the holder of the agreement was assumed by the recipient of the agreement (See the Timber Harvesting Contract and Sub-Contract Regulation).
- (f) The transfer was completed within the time period specified in the NOA or, if provided, an extension to a time period.

8.2 Suspension of Rights if Condition Not Met

The office responsible for dealing with a transfer is responsible for the monitoring of the status of any conditions attached to the approval of a transfer. Rights under an agreement may be suspended under section 76(1) of the FA if any of the following apply:

- (a) the holder purported to dispose of the agreement when a condition set out in section 54(2) of the FA was not met.
- (b) the holder purported to dispose of the agreement contrary to section 54.4 of the FA.
- (c) a condition attached under section 54.01 or 54.4 (1.1) to an approval of a disposition of the agreement was not met.

Any action taken regarding a breach of a condition is decided by the original decision-maker who attached the condition.

Administrative Law

The process would be based on administrative law principles. Where a person's rights, privileges or interests will be affected by an impending decision, such as a suspension of an agreement, the person has the right, under administrative law, to an impartial hearing before the decision is made. In this case, the decision-maker would be obligated by administrative fairness to conduct a documented meeting to discuss (i.e., OTBH).

A good summary of the obligations of administrative fairness is in Appendix 5 in the FSP Admin Guide Volume 1.

Further, rights under an agreement that have been suspended under section 76 of the FA can be cancelled in accordance with section 77 of the FA.

PART C: CORPORATE CHANGES OF CONTROL AND AMALGAMATIONS

As discussed in Section 3.0, in addition to transfers, the FA includes provisions dealing with dispositions of an agreement that can occur through:

1. A purchase of shares that result in a corporate change of control; or
2. An amalgamation of a corporation holding an agreement with another corporation holding an agreement.

The province recognizes that for business purposes, it is important for corporations to keep transactions such as a corporate change of control of a corporation or an amalgamation confidential until their completion. Therefore, the FA does not require the preapproval of these transactions. However, the FA establishes that these transactions require a review by the Minister once the transactions are complete. The review focuses on the disposition of the agreement and not the transaction of the entity itself.

This review includes the same considerations as required for a proposed transfer, but the timing and the tools available to the Minister to resolve concerns differ.

9.0 Responsibilities

Table 2 outlines the steps to follow when a corporate change of control or an amalgamation has occurred, as well as identifying who is responsible for completing the steps.

Table 2 – Responsibilities for Corporate Changes of Control or Amalgamation

	STEP	TFLs; FLs; PA; FNWL; and CFA	ALL OTHER AGREEMENTS
1	Notification	Corporations Involved	Corporations Involved
2	Ministry Review	FTB with assistance from Regions and Districts	Region with help from District
3	FNs Consultation	Region; District	Region; District
4	Statutory Decision	Minister - Director FTB if AAC is 100,000 m ³ or less	Regional Executive Director

5	Decision Notification	Minister - Director, FTB	Regional Executive Director
6	Administrative updates	FTB; Region; District	Region; District

10.0 Procedures

10.1 Notice of a Corporate Change of Control or Amalgamation

A corporation is required to provide written notification to the Minister within 30 days after a change of control or an amalgamation has occurred.

A notification should include the following information:

- 1) Details regarding the corporate change of control or amalgamation.
- 2) A list of all the agreements held by the corporations involved.
- 3) A description of the resulting corporation’s milling and processing operations.
- 4) A list of any fibre supply agreements held by the corporation.
- 5) The completion date of the change of control of the corporation.
- 6) The name, position, phone number and email address of the contact for the corporations.

Templates to be used for a notice of a corporate change of control or an amalgamation can be found on the ministry’s [Timber Tenure Transfers and Disposition website](#).

10.2 First Nations Consultation

The ministry’s legal obligations for FNs consultation are like those for transfers as discussed in section 7.3 of the Guide. However, it is recognized that decisions associated with corporate changes of control of a corporation or amalgamations are “after the fact” which requires a different summary of possible actions by the decision-maker to be created for consultation.

10.3 Ministry Review

On receiving a notice of a corporate change of control or an amalgamation, the Minister or the delegated decision-maker is required to conduct a review. The appropriate office is responsible for conducting the review and should cover the following:

1. Confirm that a change of control or an amalgamation has occurred.

Details included in the NCC are to be reviewed to confirm that corporate change of control or an amalgamation has occurred.

It is important that when reviewing a corporate change of control or an amalgamation that the definitions included in the FA are applied to ensure that a transaction requiring a decision has occurred.

2. Confirm the corporation is permitted to hold the agreement

The FA identifies two forms of agreement whereby conditions are imposed with respect to the corporations being eligible to hold the agreement.

These include:

1. FNs Wood Land Licence
2. Woodlot Licence

For either of these forms of agreement, the ministry may take administrative action if the resulting corporate does not meet the specified criteria.

3. Confirm monies owed have been paid.

Like the transfer of an agreement, immediately after a corporate change of control or amalgamation has occurred all money due and payable must have been paid or subject to an agreement to pay approved by the revenue minister.

See Section 6.6(2) of this Guide for details regarding the payment of accounts.

4. Consideration of the marketing of fibre in the B.C.

Decisions associated with a corporate change of control, or an amalgamation must consider the effect on the marketing of fibre in B.C.

See section 6.4(8) of this Guide for details on considering the effect of a disposition on the marketing of fibre in B.C.

Similar to what is conducted for an agreement transfer, the Director of the Compensation and Business Analysis Branch is responsible for completing the analysis with respect to market competition.

5. Consideration of the public interest

Decisions associated with a change of control, or an amalgamation must consider the effect on the public interest.

See section 6.4(9) of this Guide for details on considering the effect of a disposition on the public interest.

6. Ability to Request Additional Information

At the request of the decision-maker to complete a ministry review of the change of control, the corporation must provide to the decision-maker any information the Minister or delegated decision-maker considers necessary to complete the review.

10.3 Administrative Action

1. Decision

Staff will draft a decision briefing note package for the decision-maker documenting the results of the Ministry review and FN consultation and make recommendations on a course of action.

Section 11.0 of this Guide outlines the circumstances where administrative action may be taken and what those actions may be. The decision is discretionary, therefore, even if one or more of the circumstances have been identified, a decision-maker may still choose to not take any administrative action.

2. Decision Notification

The appropriate office is to notify the corporation that the Ministry has completed its review and the appropriate level of FN consultation.

If the determination is to not take administrative action, then a notice to that effect is to be sent to the corporation.

If the decision is made to take administrative action, then a notice must be sent detailing those actions and the next steps.

Copies of the decision letter are to be sent to other ministry offices of interest (FTB, Region, and District).

10.4 Update Systems and Files.

Like the completion of a transfer of an agreement, the various systems and files must be updated to reflect the transaction (See section 7.6 of this Guide).

11.0 Administrative Action

11.1 Circumstances for Administrative Action

The FA details a number of circumstances where the decision-maker may take administrative action. These circumstances include:

1. Monies have not been paid (See section 7.5(3) of this Guide).
2. If a FNWL is involved and the corporate change of control of a corporation result in an ineligible person or entity holding the agreement.
3. If a WL is involved and the corporate change of control of a corporation or amalgamation results in an ineligible person or entity holding the agreement.
4. If a TFL, FL or PA is involved and the corporate change of control or amalgamation results in the corporations controlling rights to harvest timber in an amount that is detrimental to competition to the marketing of fibre in B.C. (see Section 7.3(8) of this Guide).
5. A determination that it is not in the public interest for the corporation to continue to hold the agreement or to exercise the rights under the agreement. (See Section 7.3(9) of this Guide).

See Section 54.65 of the FA for the current wording of these circumstances.

11.2 Administrative Action

1. *Suspension of Rights*

If it is determined that any of the circumstances listed in section 11.1 apply, then the decision-maker may take the following administrative action:

- (a) Immediately suspend the holder's rights under the applicable agreement, or
- (b) After allowing the corporation to be heard (OTBH) do one or more of the following:
 - i. Suspend rights or confirm or vary rights already under suspension.
 - ii. Require the corporation to dispose of an agreement by a specified date to a person at arm's length.

- iii. Accept a proposal by the corporation.
- iv. Impose other requirements on the corporation.

Any rights that were suspended under (a) must be reinstated if the suspension is not confirmed or varied under (b). If a proposal is accepted under (b) (iii) then no further requirements can be imposed under (b)(iv).

2. Proposal by a Corporation Following Administrative Action

Where an OTBH has been provided to the holder of the agreement, the holder has the option to propose that one or more agreements be disposed of by a specified date to address a concern listed under Section 11.1 of this Guide.

If the decision-maker determines that the proposal addresses the concern(s) then the decision-maker must accept the proposal and may not impose any other requirements on the holder to dispose of an agreement.

3. Subsequent Suspension

Suspension

In addition to the administrative action identified in section 11.2 (1) of this Guide, the Decision-maker has the authority to suspend the rights under an agreement under Section 76(1) of the FA if any of the following conditions apply:

- (a) The holder did not dispose of an agreement as required.
- (b) A condition of the minister's acceptance of a proposal was not met.
- (c) The holder failed to comply with an imposed requirement.

Suspension Process under Section 76

1. Before any rights can be suspended, notice must be served on the holder of the agreement specifying the reason for the suspension of rights and a date, at least 5 days after the date of service, on which the suspension takes effect.
2. A suspension of rights takes effect on the date specified in the notice and continues until the rights are reinstated by the minister or cancelled.
3. The minister, on request of the holder, must allow the holder an opportunity to be heard and must rescind the notice if he or she considers that the holder is not subject to subsection (1).

4. The minister, on the application of the holder, must reinstate rights suspended if the holder is performing the holder's obligations and is complying with the FA and the regulations.

4. Cancellation

If rights under an agreement have been suspended and the suspension remains in effect as per the above, the Minister may cancel the agreement under Section 77 of the FA.

Cancellation Process under Section 77

1. At least 3 months before cancelling an agreement the minister must serve on its holder a written notice of cancellation specifying the grounds of cancellation and the day on which cancellation takes effect.
2. If within 30 days after a notice of cancellation has been served the holder so requests, the minister must allow the holder to be heard.
3. Notice of cancellation may be rescinded or the day on which cancellation takes effect may be postponed.
4. Notice of cancellation must be published in the Gazette.

Appendix A

Important Website Links

1. [Forest Act](#)
2. [Disposition and Change of Control Regulation](#)
3. [Forest Tenures Branch Website](#)
4. [Delegation Matrix](#)
5. [Oil and Gas Commission](#)
6. [Mountain Resorts Branch](#)
7. [B.C. Timber Sales](#)
8. [Consulting with FNs](#)

Appendix B

Ministry Templates

1. Request for Approval of a Transfer (RAIT)
2. Notice of Change of Control of a Corporation
3. Notice of Amalgamation of Corporations holding an Agreement
4. Notice to Proceed
5. Notice of Completion