

# ALLOTMENTS

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## EXPLANATION

An individual or a corporation may become a shareholder<sup>(1)</sup> in a company by either an allotment and issuance of shares by the directors of the company or by the transfer of shares from an existing shareholder (see the **Transfers and Transmissions** chapter).

The term “allotted and issued” with reference to shares means that:

- the directors of the company pass a resolution agreeing to **allot** (or allocate) a number of shares to be sold to a prospective shareholder or shareholders; and
- when the shares have been fully paid for by the prospective shareholder(s), the directors **issue** the shares to the shareholder(s). A certificate or acknowledgement of the requirement to issue a certificate on request evidencing the issued shares is then prepared and signed (see also “uncertificated” shares at the end of the explanation).

The usual reason that the directors of a company resolve to allot and issue shares in the company is to raise capital for the company. The company and the prospective shareholder (the “investor”) enter into an agreement to issue/purchase shares in the company and the investor applies in writing to the directors of the company agreeing to purchase a certain number of shares for a certain price.<sup>(2)</sup> The application by the investor is known as a **Subscription for Shares**. Sometimes the investor pays only a nominal (i.e. minimal) price for the shares and lends the company the bulk of the investment by way of a “shareholder’s loan”.<sup>(3)</sup> The investor usually pays the company directly for the shares and the law firm often does not follow up to ensure that the purchase price has been paid. However, it is important that the purchase price be paid (even if it is only \$1.00) because s. 64(2) of the Act states that a share must not be issued until it is fully paid.

The purchase price, or consideration, for the shares is usually cash, but the following are examples of non-cash consideration:

- the transfer of property to the company by a shareholder, such as the assets of an unincorporated business (s. 64(3)(a)(ii));
- past services performed for the company (s. 64(3)(a)(i)); and
- a dividend payable in shares (s. 65(1)(a)), sometimes called “a stock dividend” – see the **Dividends** chapter.

When the consideration for the shares is other than cash, the directors determine the fair market value of the consideration at the time of the issuance of the shares (ss. 64(4) and (5)).

When the company receives a **Subscription for Shares**, before proceeding with the allotment, the directors may be required to offer the shares pro rata (i.e. proportionately) to the existing shareholders who are holding shares of the class proposed to be allotted, if:

- the company is a pre-existing company that has not removed the Pre-Existing Company Provisions – see the **Transition** chapter and Table 3 of the Regulations – Pre-existing Company Provisions;

<sup>(1)</sup> In prior B.C. *Company Acts* a shareholder of a company was called a “member”.

<sup>(2)</sup> Note that investors in a private company must be known to the directors (i.e. the shares must not be offered for sale to the general public).

<sup>(3)</sup> The shareholder’s loan, if any, is often evidenced by a promissory note given by the company to the investor.

- the *Articles* of the company provide for pre-emptive rights; or
- a *Shareholders' Agreement* in effect between the shareholders contains a right of first refusal.

Essentially, the pro rata offer gives the existing shareholders a right of first refusal with respect to their proportionate share of any new shares being allotted and issued. This right of first refusal prevents the shareholdings of the existing shareholders from being diluted by the issuance of more shares. In other words, if shareholder A has 55% of a certain class of shares, an issuance of more shares of that class to shareholder B without the pro rata offer first going to shareholder A could reduce shareholder A's shareholding to much less than 55%.

In practice, if the existing shareholders are in agreement, no formal pro rata offer is made and the existing shareholders sign a form of *Waiver*.

The directors will generally authorize, by resolution in writing, the allotment and issuance of the shares, the preparation of *Share Certificates or Acknowledgements of Issuance* and the completion of the *Central Securities Registers* when:

- the *Subscription for Shares* has been received;
- the *Waivers*, if required, are signed; and
- the shares have been fully paid for.

It is possible to issue fractional shares (s. 69(1)).

The Act distinguishes between two kinds of shares: (s. Section 107):

- "**uncertificated shares**" are shares that are **not** represented by a certificate save and except in the case of an **unlimited liability company**:<sup>(1)</sup>

In the case of the issue or transfer of an **uncertificated** share, the company must send to the shareholder a written notice containing the information required to be stated on a Share Certificate under section 57 which is the information generally contained in a Share Certificate, in the form of a notice rather than a certificate.

Unless the company's Articles provide otherwise, the directors of a company may, by resolution, provide that:

- the shares of any or all of the classes and series of the company's shares must be **uncertificated** shares, or
- any specified shares must be **uncertificated** shares.
- "**certificated shares**" are shares represented by a *Share Certificate or an Acknowledgement of Issuance* (see the **Records** chapter for the explanation of the *Acknowledgement of Issuance*).

Note: When applicable, any reference in this chapter to a "*Share Certificate*" includes a reference to an "*Acknowledgement of Issuance*".

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<sup>(1)</sup> The precedents and procedures for issuing uncertificated shares will be included in a future update.

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### PROCEDURE/CHECKLIST

1. Read the instructions from the client carefully and ensure that they contain information as to:
  - (a) the number and description of shares to be allotted
  - (b) the full name, last known address and date of birth of each prospective allottee and
    - (i) copy of the allottee's ID (Driver's Licence or if not available, passport)
    - (ii) whether or not the individual is a Canadian citizen or permanent resident of Canada
    - (iii) if the individual is not a Canadian citizen or permanent resident of Canada, every country or state of which the individual is a citizen
    - (iv) whether or not the individual is resident in Canada for the purposes of the Income Tax Act (Canada)
    - (v) the date on which the individual became or ceased to be a significant individual in respect of the company
    - (vi) a description of how the individual is a significant individual
    - (vii) prescribed information, if any.
  - (c) whether the allotment is for cash or other consideration
  - (d) the price per share or value of the other consideration
  - (e) the effective date of the allotment
  - (f) if the allotment affects the information in the Transparency Register, determine who the Significant Individual(s) is/are as a result of this transaction (see the **Records** chapter)
2. Check the company's *Articles* and *Shareholders' Agreement*, if any, to determine whether:
  - (a) there are any restrictions on allotments
  - (b) there is any restriction on the number of shareholders
  - (c) the class of shares to be allotted exists. If a special resolution has been passed creating new classes of shares, an *Alteration Notice* (Form 11) must be filed and registered with the Registrar of Companies before the date of the allotment
  - (d) there are sufficient **unissued** shares of that class of shares to carry out the allotment
3. If the company is a pre-existing company, check that whether or not the company has filed an *Alteration Notice* (Form 11) removing the Pre-existing Company Provisions and that *Articles* do not contain a provision grant pre-emptive rights to the shareholders. If not, see step 4(b)

4. Prepare:
  - (a) *Subscription for Shares* (page 6)
  - (b) *Waivers* by all existing shareholders if required (page 8)
  - (c) *Directors Resolutions* authorizing the allotment (page 10) unless the directors intend to hold a meeting to approve the allotment
  - (d) *Receipt for Payment* (if required) (page 12)
  - (e) new *Share Certificate(s)/Acknowledgement(s) of Issuance* <sup>(1)</sup>
  - (f) *Transparency Register Questionnaire* <sup>(1)</sup>
  - (g) if applicable, *Notices to Individual who Becomes as Significant Individual* and/or *Notice to Individual who ceases to be a Significant Individual*
  - (h) *Transmittal Letter* (page 14) forwarding the documents for signature, unless the client(s) will be signing the documents at the law firm's office
5. Update *Central Securities Registers* <sup>(1)</sup>
6. Update the *Transparency Register*, if applicable <sup>(1)</sup>
7. Diarize the file for two to three weeks for the return of documents from the client

**When the documents have been signed and returned:**

8. Make copies of the *Acknowledgements of Issuance* and send the originals to the shareholder
9. File the signed documents in the *Records Book* as follows:

Tab in Records Book	Documents
Directors' Minutes/Resolutions	<i>Directors Resolutions</i>
	<i>Subscription(s) for Shares</i> <sup>(2)</sup>
	<i>Receipt for Payment</i> <sup>(2)</sup>
	<i>Waiver(s)</i> <sup>(2)</sup>
Share Certificates	<i>Share Certificate(s)/copies of the Acknowledgement(s) of Issuance</i> (originals should be sent to the shareholders)

10. Update your database if you have one

<sup>(1)</sup> See the **Records Chapter**.

<sup>(2)</sup> You may either attach these documents to the *Directors Resolution* or file under the "Miscellaneous" Tab in the *Records Book* depending on your office's policy.

## SUBSCRIPTION FOR SHARES

### General Notes

A *Subscription for Shares*, sometimes called an *Application for Allotment*, is signed by each person applying to purchase shares in the company.

The Act does not require that a form of subscription or application to purchase shares be entered into in writing. In practice, a subscription is prepared for each allotment and issuance of shares as an essential part of the paper trail to ensure that there is no misunderstanding about the number and price of the shares being allotted and issued.

**Note:** Shares must not be issued until they have been fully paid for (s. 64(2)). For this reason, sometimes, the date on which shares are subscribed for is different from the date that the shares are actually issued.

### Preparation

- ① Insert the number of shares being purchased.
- ② Copy the description of shares from the company's *Notice of Articles*.
- ③ Copy the price per share from the instructions.
- ④ Calculate the aggregate subscription price by multiplying the number of shares being issued by the price per share.

Insert the date if the subscription is to be effective on a certain date. Usually it is the same date as the *Directors Resolutions*.

### Processing

This document is signed concurrently with the other documents relating to the allotment. Once it is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 14).

Make one copy for the file.

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**SUBSCRIPTION FOR SHARES**

To: The Board of Directors  
*{NAME OF COMPANY}*

(the “Company”)

The undersigned subscribes for and agrees to take up *{number}* ① *{class of shares}* ② shares of the Company for the price of \$③ per share.

Payment of \$④ is tendered with this application, being full payment of the aggregate subscription price for the shares applied for.

Dated as of *{Date}* ⑤.

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*{NAME OF PROPOSED ALLOTTEE}*  
*{address of allottee}*

## WAIVER

### General Notes

This document is only required for **non-reporting** companies where:

- in the case of a pre-existing company, the application of Table 3 of the Regulations – Pre-existing Company Provisions have not been removed;
- pre-emptive rights are provided for in the *Articles* of the company; or
- a *Shareholders' Agreement* in effect between the shareholders provides that, before allotting shares, the directors of the company must offer those shares proportionately to the other shareholders.

In practice, a formal offer is rarely prepared. A *Waiver* provides that the existing shareholders abandon or give up their rights to be offered a specified allotment of shares.

Not all allotments are subject to the requirement of a “right of first refusal”. Table 3 of the Regulations – Pre-existing Company Provisions lists the following exceptions:

- shares issued for consideration all or substantially all of which is other than money
- when allotments are issued as a result of:
  - rights of exchange or conversion attached to shares of the company;
  - an amalgamation agreement;
  - a dividend payable in shares; or
  - an employee stock option plan.

This waiver may be prepared in several ways:

- a separate *Waiver* for each shareholder;
- one *Waiver* for all of the shareholders;
- one *Waiver* for all shareholders holding a particular class of shares.

### Preparation

- ① Copy the full name and description of the shares from the *Notice of Articles* of the company or the company's most recent *Alteration Notice*, for example:
  - common shares; or
  - Class “A” preferred non-voting redeemable shares.
- ② Insert the price per share. This information should have been included in the instructions from the client or its accountant and should match the price in the *Directors Resolutions*.
- ③ Insert the effective date of the allotment, or leave it blank to be dated when signed.
- ④ Insert sufficient execution lines for all shareholders who have a pre-emptive right with respect to this allotment – check the company's *Articles* or the *Shareholders' Agreement* (if one exists) and, in any event, consult with the supervising solicitor.

### Processing

This document is signed concurrently with the other documents relating to the allotment. Once it is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 14).

**WAIVER**

TO: The Board of Directors  
 {*NAME OF COMPANY*}  
 (the “Company”)

We, the undersigned, being all of the shareholders of the Company, hereby irrevocably waive our right to receive an offer to purchase shares of the Company which are proposed for allotment by the directors of the Company as follows:

Name of Allottee	Number and Class of shares	Price Per Share
{ <i>NAME OF PROSPECTIVE SHAREHOLDER</i> }	{ <i>number and class</i> } <sup>①</sup>	{ <i>price</i> } <sup>②</sup>
{ <i>NAME OF PROSPECTIVE SHAREHOLDER</i> }	{ <i>number and class</i> } <sup>①</sup>	{ <i>price</i> } <sup>②</sup>

Dated the {*date*}<sup>③</sup>

\_\_\_\_\_  
 ④{*NAME OF EXISTING SHAREHOLDER*}

\_\_\_\_\_  
 ④{*NAME OF EXISTING SHAREHOLDER*}

## DIRECTORS RESOLUTIONS (Authorizing the Allotment)

### General Notes

The directors of a company have the authority to allot and issue shares and the directors exercise such authority by a resolution in writing or, if the company prefers, at a meeting of the directors.

### Preparation

- ① If **no Waiver** is required, delete the rest of this sentence.
- ② Insert the number of shares being allotted to each allottee and copy the description of the class of shares from the *Notice of Articles*.
- ③ Insert the price per share. This information should have been included in the instructions from the client or its accountant and should match the price in the *Subscription for Shares* and *Waiver*.
- ④ If you do not have a corporate database, check the numbers of certificates already allotted and continue with the next number (see the **Records** chapter – *Central Securities Register*).

Note If the shares are to be uncertificated, delete all reference share certificates – see the **Records** Chapter for an explanation of uncertificated shares.

Insert the effective date of the allotment or if you have not received instructions, leave the day blank.

- ⑥ Check the *Register of Directors* of the company and insert the names of all of the directors.

### Processing

This document is signed concurrently with the other documents relating to the allotment. Once it is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 14).

**DIRECTORS RESOLUTIONS**  
**OF**  
*{NAME OF COMPANY}*  
 (the “Company”)

**WHEREAS** applications have been received for the allotment of shares in the Company<sup>①</sup> and any rights of other shareholders of the Company to acquire such shares have been waived.

**RESOLVED THAT:**

1. Payment in full having been received, the following shares of the Company be allotted and issued for the price set opposite each shareholder’s name:

Name of Shareholder	Number and Class of shares	Price per share
<i>{NAME OF SHAREHOLDER}</i>	②	\$③
<i>{NAME OF SHAREHOLDER}</i>	②	\$③

2. The following Share Certificate(s)/Acknowledgement(s) of Issuance } be issued: <sup>(1)</sup>

Cert.	Name of Shareholder	Number and Class of Shares
④	<i>{NAME OF FIRST ALLOTTEE}</i>	<i>{number and class}</i> ②
④	<i>{NAME OF SECOND ALLOTTEE}</i>	<i>{number and class}</i> ②

3. Any director of the Company be authorized to execute and deliver the Share Certificate(s)/Acknowledgement(s) of Issuance on behalf of the Company.

Effective date: *{Date}*

\_\_\_\_\_  
 ⑥*{NAME OF DIRECTOR}*

\_\_\_\_\_  
 ⑥*{NAME OF DIRECTOR}*

<sup>(1)</sup> Instead of issuing Share Certificates, the shares may be declared by the directors to be uncertificated (s. 107 of the Act). The precedents and procedures for issuing uncertificated shares will be included in a future update.

## RECEIPT FOR PAYMENT

### General Notes

Since the shares being allotted must be fully paid for before issuance (s. 64(2) of the Act), it is often advisable to deliver a receipt for the monies paid by the subscriber (the allottee) which confirms such payment.

In addition, the subscriber may make a shareholder's loan to the company at the time of the allotment and it is prudent for both the company and the subscriber to differentiate between monies paid for the shares and monies paid by way of shareholder's loan.

### Preparation

- ① Insert the name of the firm, individual or trust that is subscribing for the shares.
- ② Delete the whole paragraph (including (a) and (b)) if the shareholder does not make a shareholder's loan to the company.
- ③ If you do not know the actual date that the shares were paid for, leave this date blank, to be completed by the company.
- ④ Insert the number of shares being allotted to each subscriber and copy the description of the class of shares from the *Notice of Articles*.

Insert the price per share. This information should have been included in the instructions from the client or its accountant and should match the price in the *Subscription for Shares* and *Waiver*.

- ⑥ Insert the aggregate purchase price by multiplying the number of shares by the price per share shown in ⑤.
- ⑦ Delete this paragraph if not applicable. If the Subscriber is making a shareholder's loan, insert the amount being paid on this date. Delete the words "*in the total amount of \$*" if the whole amount of the loan is being paid on this date.
- ⑧ Delete all references that are not applicable.

### Processing

This document is signed concurrently with the other documents relating to the allotment. Once it is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 14).

**RECEIPT FOR PAYMENT**

To:           ①{*NAME OF ALLOTTEE*} (the “Subscriber”)  
 From:        {*NAME OF COMPANY*} (the “Company”)  
 Re:           **Subscription for Shares / ②Shareholder’s Loan**  
 Date:         ③{*Date*}

The Company acknowledges receipt on the above date from or on behalf of the Subscriber of the following payment(s):

Subscriber	Number and Class of Shares	Issue Price per Share	Total Paid
①{ <i>NAME OF ALLOTTEE</i> }	{ <i>number and Class of shares</i> } ④	\$	\$⑥

②The amount of \$⑦ represents a shareholder’s loan made to the Company by the Subscriber in the total amount of \$⑦, ⑧ in accordance with the provisions of:

- (a) Subscription Agreement dated for reference {*Date*} executed by the Subscriber as of that date and accepted by the Company; and
- (b) a Shareholders’ Agreement among the Subscriber, the Company and others made as of {*Date*}.

{*NAME OF COMPANY*}

Per: \_\_\_\_\_

## **TRANSMITTAL LETTER** **(Forwarding Documents for Signature)**

### **General Notes**

When all documents have been prepared, checked and approved by the supervising solicitor, arrangements should be made to have them signed. Since it is generally impractical to have all of the parties attend at the law firm's office to sign the documents, in most cases the documents are forwarded to the company for signature and return.

### **Preparation**

- ① Insert the description of the class of shares from the *Notice of Articles*.
- ② If not required, delete the waiver.
- ③ If not required, delete this paragraph.
- ④ If the allotment results in a change to the *Transparency Register*, insert this paragraph adapting it to the situation.

For example: Shareholders A and B who are not related are each the registered holder of 25 voting shares out of 100 shares issued and outstanding (being 25 per cent of the issued and outstanding shares of the company). This makes each of them a Significant Individual. The new allottee (X) has acquired by allotment 50 shares of the company. After the allotment:

- X is the only Significant Individual holding 50 out of 150 shares which is 33.3 per cent of the total issued and outstanding shares of the company; and
- A and B are no longer Significant Individuals as each of them now holds 16.66 per cent of the shares of the company.

Of course, there are many different scenarios of transactions that will trigger a change to the Transparency Register.

### **Processing**

Make sufficient copies of the letter and enclosures to have:

- one set for the file; and
- if applicable, one set for the accountant which you should stamp "copy".

Ensure that all enclosures are attached to the letter.

Diarize the file for two to three weeks and follow-up by letter, email or telephone if you have not received the signed documents.

File No \_\_\_\_\_

*{date}*

*{name and address of client}*

Dear \_\_\_\_\_:

**Re: *{Name of the Company}* (the “Company”) – Allotment of shares**

Further to instructions we received with respect to the allotment of *{description of shares}* ① shares in the Company, we have prepared and enclose the following documents:

1. ② Waiver of Right to Receive Offer for each shareholder who is not receiving an allotment of shares;
2. Subscription for Shares; Directors Resolution;
3. ③ Receipt for Payment; and

the following Share Certificate(s) / Acknowledgement(s) of Issuance:

- (a) No. *{number}* for *{number and class of shares }* shares in the name of *{name of allottee}*.
- (b) No. *{number}* for *{number and class of shares}* shares in the name of *{name of allottee}*.

Please arrange to have these documents signed and returned to us for insertion in the Company's Records Book.

④ As a result of this transaction, *{name}* and *{name}* has/have become (a) significant individual(s) *and/or* *{name}* has ceased to be a significant individual. Accordingly, we also enclose:

1. Transparency Register Questionnaire which must be completed and signed by each new Significant Individual and returned to us;
2. Notice to Individual who Becomes as Significant Individual which, if applicable should be signed by a Director of the Company and forwarded to *{name}*;
3. Notice to Individual who ceases to be a Significant Individual which, if applicable, should be signed by a Director of the Company and forwarded to *{name}*.

If you have any questions in this regard, please refer to the Memorandum on Transparency Register of Significant Individuals previously forwarded to you or contact us.

Yours truly,

*{NAME OF LAW FIRM}*

cc: *{name of accountant}*

