

## TRANSFERS AND TRANSMISSIONS

### INDEX

	<b>Page</b>
Explanation .....	3
• Transfer of Shares .....	3
• Transmission of Shares .....	5
Procedure/Checklist .....	8
<b><u>Transfers</u></b>	
Share Purchase Agreement .....	12
Application for Transfer .....	16
Waiver and Consent .....	18
Instrument of Transfer .....	20
Directors Resolution (Approving the Transfer) .....	22
Directors Resolution of Vendor Company (Authorizing the Sale of Shares) .....	24
Directors Resolution of Purchaser Company (Authorizing the Purchase of Shares) .....	26
<b><u>Transmissions</u></b>	
Declaration of Transmission .....	28
Directors Resolution (Transmission from the Deceased to the Personal Representative) ...	32
Directors Resolution (Transfer from the Personal Representative to the Beneficiaries/Heirs-at-Law) .....	34
Waiver (Right to Share Certificate) .....	36
Directors Resolution (Transfer from the deceased Directly to the Beneficiaries/Heirs-at-Law) .....	38
***	
Transmittal Letter (Forwarding Documents for Signature) .....	40
Report to Client .....	44



## EXPLANATION

The first part of this chapter deals with the **transfer** of issued shares in a company by a shareholder, or shareholders, to one or more existing shareholders or prospective shareholders. A **transfer** occurs when shares are sold or traded for consideration, but a **transfer** may also occur without consideration between related parties such as a husband and wife, or a parent and child. When a company is a reporting issuer, share transfers are regulated by the *Securities Act*. The restrictions on share transfers imposed by the *Securities Act* are beyond the scope of this *Guide* and only the **transfers** and **transmissions** of shares in private companies will be discussed in this chapter. The following terms are used throughout this chapter:

- “**transferor**” or “**vendor**” is the shareholder who is transferring or selling some or all of the shares of the company held by that shareholder; and
- “**transferee**” or “**purchaser**” is the prospective shareholder who will be receiving or purchasing such shares.

The second part of this chapter deals with the **transmission** of shares which occurs when a shareholder:

- has died;
- is a minor;
- is a bankrupt; or
- has had a committee appointed;

and the shares of such shareholder must be transmitted from the shareholder to the shareholder’s:

- personal representative (executor or administrator);
- guardian;
- trustee in bankruptcy; or
- committee.

Generally, a court must appoint the above representatives. The rules and mechanics for a **transmission** are the same as for a **transfer** with the exception that certain documents must be provided to the company to prove the legality of the **transmission**. As well, the person acting on behalf of the shareholder will sign the **transmission** documents instead of the shareholder.

### TRANSFER OF SHARES

The relative ease of transferring all or a portion of the shares owned by a shareholder to another person or entity is one of the advantages of an incorporated company over, for example, a partnership.

The transfer of shares is governed by the *Securities Transfer Act* (the “STA”) and is regulated by the company’s *Articles* and may be subject to **restrictions**. The STA refers to shares as “securities”, however, for the purposes of this Guide, “securities” are referred to as “shares”. The *Articles* of non-reporting companies generally provide that the shares may

not be traded publicly and that the directors of the company must approve each **transfer**. Different classes of shares may also have different **restrictions on transfer**. Most professional practice companies contain a **restriction** prohibiting persons who are not members of that profession, or relatives of the member, from holding shares of certain classes.

Sometimes before a **transfer** is approved, all the other shareholders of the class of shares being transferred have a right of first refusal to purchase the **transferor's** shares on a proportionate basis. If the other shareholders do not want to buy the offered shares, they will sign a form of **waiver** giving up their right to purchase the shares.

A **restriction on transfer** may also be contained in a *Shareholders' Agreement*. Although a detailed explanation of the benefits and uses of *Shareholders' Agreements* is beyond the scope of this *Guide*, a short explanation is necessary in order to understand its general concept. A *Shareholders' Agreement* is often entered into among the shareholders of a company in order to define, in advance, the relationship between the shareholders and to set out their respective rights and obligations. In particular, *Shareholders' Agreements* often set out rights and **restrictions** on the **transfer** of shares in order to avoid future disputes. A *Shareholders' Agreement* expands and supplements the Act, the company's *Memorandum* (under the previous *Company Act*) and the company's *Articles*.

The following steps must be taken to complete a **transfer**:

- an *Instrument of Transfer* (page 20) must be provided to the company;
- any **restrictions on transfer** in the *Articles* or in a *Shareholders' Agreement* must be complied with;
- the **transfer** must be approved by the directors or shareholders, as required by the *Articles* or *Shareholders' Agreement*; and
- the name of the **transferee** must be entered in the company's *Central Securities Register*.

The transfers set out in this chapter are simple transfers that assume :

- there is agreement between the vendor and the purchaser on the price and manner in which the shares are being sold; and
- there is no right of first refusal, or if there is a right of first refusal, the remaining shareholders will sign a *Waiver and Consent* (page 18) agreeing to the **transfer**.

If the shares being transferred are represented by more than one *Share Certificate*, all of the *Share Certificates* will have to be cancelled. Before a *Share Certificate* can be cancelled, the shareholder must endorse (i.e. sign) the back of the *Share Certificate* or must sign an *Instrument of Transfer* (page 20). Usually the signature on the *Instrument of Transfer* is witnessed.

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

Once the conditions on **transfer** have been satisfied, the old *Share Certificate* representing the shares is cancelled and a new *Share Certificate* in the name of the **transferee** is issued.

Except to the extent that the Act may provide otherwise, the **transferor** will be deemed to remain the holder of the shares until the name of the **transferee** is entered in the *Central Securities Register* or a branch securities register in respect thereof.

When shares are transferred in the course of tax driven estate or other planning, they are often transferred under the provisions of sections 85 or 86 of the *Income Tax Act (Canada)*. A discussion of such transfers is beyond the scope of this *Guide*.

### TRANSMISSION OF SHARES

When a shareholder dies (the “deceased”):

- if the shares were held by the deceased and another person as “joint tenants”, the shares are transferred to the other person by operation of law; however
- if the shares were held by the deceased and another person as “tenants in common”, or they were held solely by the deceased, they must be:
  - first transmitted to the deceased’s personal representative (this procedure is called a **transmission**); and
  - then transferred to the beneficiary (or beneficiaries) or heirs-at-law.

When two or more people are the registered owners of a share or shares, they do not necessarily hold the shares as “tenants in common”. Unless the share certificate specifically states that the co-owners are “tenants in common”, the common law deems them to be “joint tenants” and the interest in the shares held by the deceased joint tenant will automatically pass to the surviving joint tenant(s) (see *Robb v. Robb* (1993) 79 B.C.L.R. (2d) 7 (S.C.)). If the co-owners are “tenants in common”, the deceased’s interest will form part of the deceased’s estate. However, when a joint tenancy is “severed” the co-owners become tenants in common.

If the shares are held in joint tenancy, the directors may require that the surviving joint tenant(s) submit a copy of the death certificate of the deceased to the company and then apply to the company to transfer the shares. The directors would then pass a simple consent resolution transferring the shares, cancelling the old *Share Certificate* and issuing a new *Share Certificate* to the surviving joint tenant(s).

The examples listed below are the most common estate applications, but estates can be complex, and there are numerous other situations and applications<sup>(1)</sup>:

- If the deceased died **testate** (i.e. with a valid Will):
  - a **Grant of Probate** is applied for;
  - the executor or alternate executor named in the Will becomes the personal representative and is called the “**executor** (or **executrix**) of the Will of the deceased”; and
  - the Deceased’s **assets** are distributed in accordance with the terms of the Will to the **beneficiaries**.

<sup>(1)</sup> Estate applications are very complex. For a detailed explanation of the various applications, refer to the *Guide to Wills & Estates* published by **Evin Ross Publications Ltd.**

- If the deceased died **testate** but the Will fails to name an executor, or all executors named in the Will predeceased the Deceased or all executors named in the Will have renounced their right to act as executors:
  - a **Grant of Administration with Will Annexed** is applied for;
  - the personal representative is appointed by the Court and is called the “**administrator** of the Estate of the deceased”; and
  - the Deceased’s **assets** are distributed in accordance with the terms of the Will to the **beneficiaries**.
- If the deceased died **intestate** (i.e. **without** a Will):
  - a **Grant of Administration without Will Annexed** is applied for;
  - the personal representative is appointed by the Court and is called the “**administrator** (or **administratrix**) of the Estate of the deceased”; and
  - the estate assets are distributed pursuant to Part 3 of the *Wills, Estates and Succession Act*.

The various grants in this chapter are referred to as “representation grants” or “estate grants”.

Section 118 of the Act sets out the documents that a person applying for a **transmission** of shares must provide to the company:

- in the case of a **death**:
  - the original estate grant or a court certified copy of thereof; **or**
  - the original or a court certified or authenticated copy of the Will, grant of representation, order or other instrument or other evidence of the death under which title to the shares or securities is claimed to vest;

Notes: In order to transmit shares to the personal representative, an estate grant may not required (subject to the decision of the supervising lawyer) even if the documents in the second sub-paragraph above can be produced.

Check the *Articles* of the Company as they may require another instrument or other evidence of death.

- in the case of **bankruptcy**:
  - a copy of the court order or of the assignment in bankruptcy; and
  - a copy of the instrument appointing the trustee in bankruptcy;
- in any **other case**:
  - if the person making the *Declaration of Transmission* (page 28) was appointed by a court, a court certified copy of the court order; and
  - if that person was not appointed by a court, a copy of the record evidencing that person's appointment and other evidence of the appointment required by the company;
- **in all cases**:
  - a *Declaration of Transmission* (page 28) made by a personal or other legal representative or trustee in bankruptcy stating the particulars of the **transmission**; and

- original Share or Security Certificate, or Acknowledgement of Issuance, if any.

Simply providing the documents required by section 118 is, despite any **restrictions** on **transfer** contained in the company's *Articles*, sufficient authority to enable a company or its transfer agent, on application by the personal or other legal representative or trustee in bankruptcy, to register that person (in that person's representative capacity) as the registered holder of the shares or other securities (s. 119).

However, it is up to the supervising lawyer to decide whether or not a will (if there is one) is sufficient to transmit the shares to the personal representative(s) and in certain cases, the supervising lawyer will instruct that a grant be applied for.

Often the shareholders provide a mechanism in a *Shareholders' Agreement* for the purchase of shares upon the death of a shareholder. Such *Shareholders' Agreement* may:

- provide that the company (or the remaining shareholders) will have the right to purchase the deceased's shares from the deceased's personal representative.
- give the deceased's personal representative the option of deciding whether or not to sell the deceased's shares;
- make provision for the manner in which such a purchase will be funded;
- require the company to carry life insurance on the individual shareholders, so that if one of the shareholders dies, there will be sufficient proceeds from the insurance policy to purchase the deceased's shares. This prevents a cash drain on the company at the exact time that it may be suffering from financial loss and damage as a result of the death of that shareholder;
- if the company does not wish to pay the cost of life insurance on the lives of its shareholders, state that the purchase price for the deceased's shares can be paid by the company (or the remaining shareholders) over a period of time in order to reduce the strain of a cash purchase.

The subsequent **transfer** to the beneficiary of the deceased's share is a different step from the transmission and should be dealt with the usual fashion, that is: the legal representative should request that the directors transfer the shares to the beneficiary and provide such documents as may be required by the directors in order to approve the transfer.

---

---

**PROCEDURE/CHECKLIST****Transfers**

1. Read the instructions from the client carefully and ensure that they contain the following information:
  - (a) number and description of the class of shares to be transferred
  - (b) full names and addresses of the **transferee(s)**
  - (c) the full name, last known address and date of birth of each **transferee(s)**; and
    - (i) copy of the transferee's ID (Driver's Licence and 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
  - (d) if the transfer 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)
  - (e) the price per share or other consideration, if applicable
  - (f) terms of payment of the purchase price, if applicable
  - (g) whether a *Share Purchase Agreement* (page 12) will be required
  - (h) effective date of the **transfer**
2. Check that:
  - (a) the **transferor** is the registered owner of the shares being transferred (verify the *Share Certificates* and the *Central Securities Register* and
  - (b) the *Share Certificates* are in the *Records Book* or held in escrow with the law firm. If the *Share Certificates* have been taken out by the shareholder, determine their location and if they are available for cancellation
3. If the shares are held in escrow or pledged to a financial institution or other lender, advise the supervising solicitor and determine what requirements, if any, will be necessary to obtain their release
4. Check the number of shareholders of the company and whether the *Articles* and/or any *Shareholders' Agreement* limit the number of shareholders
5. Check the company's *Articles* and/or any *Shareholders' Agreement* to determine whether or not they contain any **restrictions** on the **transfer** of shares. The restrictions are usually found in the Special Rights and Restrictions or in the last section of the *Articles* (before the Special Rights and Restrictions if there are Special Rights and Restrictions)

6. If instructed by the client or the supervising solicitor, prepare a *Share Purchase Agreement* (page 12) between the owner of the shares (the vendor/**transferor**) and the purchaser (the **transferee**)
7. Prepare an *Application for Transfer* (page 16) if your firm usually prepares this document. This form is optional but many firms include this form as part of the paper trail
8. Prepare an Instrument of Transfer (page 20) or, alternatively, complete the back of the Share Certificate for transfer (see the Records chapter)
9. Prepare a *Waiver(s) and Consent(s)* (page 18) by the shareholders who have a right of first refusal to the shares being transferred under the company's *Articles* or *Shareholders' Agreement* (if any)
10. Prepare a *Directors Resolution (Approving the Transfer)* (page 22). Alternatively, the directors may hold a meeting instead of signing consent resolutions to approve the transfer. Occasionally, the *Articles* of the company provide that a Special Resolution of the Shareholders is required to approve a transfer. Such provisions are rare and an example has not been included in this *Guide*. If the *Articles* do not provide for **restrictions** on **transfer** or require the approval of the directors, the directors may delegate the **transfer** of shares to an officer of the company, a transfer agent or an Executive Committee
11. If the vendor is a company, prepare a *Directors Resolution of Vendor Company* (page 24) authorizing the sale
12. If the purchaser is a company, prepare a *Directors Resolution of Purchaser Company* (page 26) authorizing the purchase

### Transmissions

If the deceased was the sole shareholder and director of the Company, the personal representative(s) should be appointed as the new director(s) as of the date of death (see **Directors and Officers** chapter – *Special Resolution (when the Sole Shareholders and Director Dies)*)

13. Obtain from the personal representative:
  - (a) instructions on **transfer**:
    - (i) whether from the deceased to the personal representative and
    - (ii) from the personal representative to the beneficiary or heir-at-law or
    - (iii) from the deceased **directly** to the beneficiary or heir-at-law
  - (b) original or court certified copy of the estate grant **or** if no estate grant is available, the original or certified copy of the Will, representation order or other instrument evidencing the death, and any other document required by the company's *Articles*
  - (c) *Death Certificate* if the shares were held by the deceased and another person as joint tenants
  - (d) original *Share Certificate*
- A. **If the shares are transmitted to the personal representative, prepare:**
  - (a) a *Declaration of Transmission* (page 28)

- (b) *Directors Resolution (Transmission from the Deceased to the Personal Representative)* (page 32)
- B. If the shares are then transferred from the personal representative to the beneficiary or heir-at-law, prepare:**
- (a) *Instrument of Transfer* (page 20)
- (b) *Application for Transfer* (page 16)
- (c) *Directors Resolution (Transfer from the Personal Representative to the Beneficiaries/Heirs-at-Law)* (page 34)
- C. If the shares are transferred directly to the beneficiary or heir-at-law, prepare**
- (a) *Declaration of Transmission* (page 28)
- (b) *Waiver (Right to Share Certificate)* (page 36)
- (c) *Instrument of Transfer* (page 20)
- (d) *Application for Transfer* (page 16)
- (e) *Directors Resolution (Transfer from the Deceased Directly to the Beneficiaries/Heirs-at-Law)* (page 38)
- D. If the shares are transferred to a surviving joint tenant, prepare:**
- (a) *Directors Resolution (Approving the Transfer)* (page 22)

**For A, B C and D, prepare:**

14. (a) *Transparency Register Questionnaire* <sup>(1)</sup>
- (b) if applicable, *Notice to Individual who Becomes a Significant Individual* and/or *Notice to Individual who ceases to be a Significant Individual*
- (c) new **Share Certificate(s)** or **Acknowledgement(s) of Issuance** if the shares are certificated (see the Records chapter)

Note: The *Acknowledgement* is not used for uncertificated shares. Uncertificated shares are determined by the directors for a whole class or part of a class and the shareholders have no right to receive a share certificate (see the **Records chapter**)

15. If required, the *Transmittal Letter (Forwarding Documents for Signature)* (page 40)

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

16. Date and time stamp any documents required to be date/time stamped when received by the law firm – see the **Records chapter**

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

17. File the signed documents in the *Records Book* as follows:

Tab in Records Book	Documents
<b>Directors' Minutes/Resolutions</b>	<p><i>Directors Resolutions</i> (with copies of the appropriate documents attached to them)</p> <p><i>Application for Transfer</i></p> <p><i>Waiver and Consent</i></p> <p><i>Share Purchase Agreement</i><sup>(1)</sup></p> <p><i>Declaration of Transmission</i><sup>(1)</sup></p>
<b>Share Certificates</b>	<p>Cancelled <i>Share Certificate</i> marked or stamped "Cancelled" with <i>Instrument of Transfer attached</i></p> <p>New <i>Share Certificate(s)</i>/copies of the <i>Acknowledgement(s) of Issuance</i> (originals should be sent to the shareholders)</p>

**Note:** <sup>(1)</sup> If it is not your firm's policy to file such documents in the Records Book with their enabling resolutions, file the *Share Purchase Agreement* or the *Declaration of Transmission* in the company's corporate file

If one, or both of the parties are companies, an additional originally signed copy of the *Share Purchase Agreement* should be prepared for each companies' corporate file or Records Book

18. If the new *Share Certificate* is not kept in the *Records Book*, make a photocopy of the *Share Certificate* and a notation as to where the *Share Certificate* is being held
19. Complete or update the *Central Securities Registers*
20. Complete and update the *Transparency Register*
21. Update database (if applicable)
22. Make copies of the *Acknowledgements of Issuance* and send the originals to the shareholder with the *Report to Client* (page 44)

---

---

## SHARE PURCHASE AGREEMENT

### General Notes

Generally when shares in a private company are bought and sold, the vendor and the purchaser enter into a contract, whether verbal or written. The law firm is sometimes instructed to document such a transaction by drafting an agreement.

The agreement set out on the pages opposite is a simple contract to be used only if one shareholder is selling a portion of the shares of the company, such as one shareholder selling his or her shares to an existing shareholder in the company. If all of the shares of the company are being sold, or the terms of the agreement are more complex, the responsible solicitor should draft the agreement.

### Preparation

- ① Insert the full name and address of the vendor (the transferor) of the shares.
- ② Insert the full name and address of the purchaser (transferee) of the shares.
- ③ Insert the total number of shares of the company **owned** by the Vendor.

**Note:** It may not be the number of shares being sold.

- ④ Copy the description of the class of shares from the *Notice of Articles* of the company, for example:
  - common shares without par value *or* common shares with a par value of \$\_\_\_\_ each; or
  - Class A/B/C Preferred shares without par value/with a par value of \$1.00 each.

Insert the total number of shares of the company being purchased. If all of the Vendor's shares are being purchased, you may add (the "Shares") after the description of the class of shares in paragraph A and substitute the following for paragraph B:

*"The Vendor has agreed to sell and the Purchaser has agreed to purchase the Shares, on the terms and conditions contained herein."*

- ⑥ Insert total purchase price.
- ⑦ Insert the *Share Certificate* or *Acknowledgement of Issuance* number(s) of the shares being transferred. Check the *Central Securities Register*.

*Continued...*

**THIS AGREEMENT** made effective the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

**BETWEEN:**

***{NAME OF VENDOR}***, ①  
of ***{address of party}***  
(the “Vendor”)

**AND:**

***{NAME OF PURCHASER}***, ②  
of ***{address of party}***  
(the “Purchaser”)

**WHEREAS**

- A. The Vendor is the registered and beneficial owner of ③ ④ of ***{NAME OF COMPANY}*** (the “Company”); and
- B. The Vendor has agreed to sell and the Purchaser has agreed to buy ⑤ ④ shares (the “Shares”) from the Vendor on the terms and conditions contained herein.

**NOW THEREFORE THIS AGREEMENT WITNESSES** that for good and valuable consideration the parties agree as follows:

1. The Vendor sells the Shares to the Purchaser and the Purchaser buys the Shares from the Vendor on the date of this Agreement for the aggregate purchase price of \$⑥ (the “Purchase Price”).
2. Concurrently with the execution and delivery of this Agreement:
  - (a) the Purchaser will deliver to the Vendor a cheque payable to the Vendor for the Purchase Price; and
  - (b) if Share Certificates are issued, the Vendor will deliver to the Purchaser Share Certificate(s) number ⑦ representing the Shares, duly endorsed for transfer. Alternatively, the Vendor will deliver a written endorsement and instruction to the Company.
3. The Vendor covenants with the Purchaser that:
  - (a) the Vendor is a resident of Canada within the meaning of the *Income Tax Act*;
  - (b) the Vendor is the legal and beneficial owner of the Shares which are free and clear of any charge, equity or claim of any kind or nature whatsoever, and no person, firm or corporation has any agreement or option or right capable of becoming an agreement for the purchase of any of the Shares;
  - (c) the Vendor has good and sufficient right and authority to enter into this Agreement on the terms and conditions herein set forth and to transfer the legal and beneficial title and ownership of the Shares to the Purchaser.

*Continued...*

**SHARE PURCHASE AGREEMENT**

**Preparation (Continued)**

- ① Prepare and complete this form of execution clause for each **individual**, whether purchaser or vendor.

If several individuals sign before the same witness, insert additional lines under the **{NAME OF THE PARTY}** and type under the name and address of the witness “**AS TO BOTH SIGNATURES**” or “**AS TO ALL SIGNATURES**” depending on the number of individuals.

- ② Prepare and complete this form of execution clause for each **company**, whether purchaser or vendor, if the **company** has **no seal**. If the company **has a seal**, type instead:

<b>THE SEAL</b> of <b>{NAME OF COMPANY}</b>	)	
was hereunto affixed in the presence of:	)	
	)	
_____	)	c/s
Authorized signatory	)	
	)	
_____	)	
Authorized signatory	)	

**Processing**

If the clients will not be signing the documents at the law firm’s offices, once this Agreement is prepared, checked and approved by the supervising solicitor, it may be sent to the company for signature – see the **Transmittal Letter (Forwarding Documents for Signature)** (page 40). Obtain instructions from the supervising solicitor as to the arrangements for signing the agreement. It may be necessary to advise the vendor or the purchaser, or both, to seek independent legal advice.

**NOTE:** If both the vendor and the purchaser are companies, arrange to have at least two originally signed copies of the agreement, one for the vendor company and one for the purchaser company to be provided to each company or placed in the corporate records books or files of each company.

**Share Purchase Agreement**  
**Page 2**

4. In this Agreement, words importing the singular number include the plural and vice versa and words importing the masculine, feminine or neuter genders include the masculine, feminine and neuter genders.

5. At the request of either party to this Agreement, the other party will do, sign and execute all deeds, documents, transfers, assignments, agreements for sale, assurances, acts, matters and things required to be done, signed and executed by such party for the purpose of more effectually carrying out the provisions of this Agreement.

6. This Agreement will enure to the benefit of and will be binding upon the parties to this Agreement and their respective heirs, personal representatives, successors and assigns.

7. Time will be of the essence of this Agreement.

8. All references to money in this Agreement are references to Canadian currency, unless otherwise specified.

**IN WITNESS WHEREOF** the Vendor and Purchaser have duly executed this agreement as of the day and year first above written.

①**SIGNED** in the presence of: )  
 )  
 )  
\_\_\_\_\_)  
Name )  
\_\_\_\_\_)  
Address )  
 )  
\_\_\_\_\_)  
 )  
\_\_\_\_\_)  
Occupation )

\_\_\_\_\_  
***{NAME OF PARTY}***

②***{NAME OF COMPANY}***

Per: \_\_\_\_\_  
Authorized Signatory(ies)

---

---

## APPLICATION FOR TRANSFER

### General Notes

The Act does not require that an *Application for Transfer* be entered into in writing. In practice, many firms prepare an application to the directors for each transfer of shares if the *Articles* of the company provide that the directors must approve the transfer.

If it is your firm's policy to prepare an *Application for Transfer* and the *Articles* of the company provide that the directors of the company must approve the transfer, prepare this application for signature by each shareholder applying to transfer shares in the company.

Before preparing this application, ensure that the transferor owns the shares and that the shares shown on the *Share Certificates* or *Acknowledgement of Issuance* to be cancelled total, at a minimum, the number of shares being sold.

### Preparation

- ① Add lines to the table to reflect any extra transfers.
- ② Type the number of shares being transferred and the class (copy the description of the class of shares from the latest *Notice of Articles* of the company).
- ③ Insert the effective date of the transfer.
- ④ Insert the name of the vendor.

### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 40).

**APPLICATION FOR TRANSFER**

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

The undersigned hereby applies for the consent of the directors to the following transfer(s):

①

<b>Name of Transferor</b>	<b>Name of Transferee</b>	<b>Number and Class of Shares</b>
<i>{NAME OF TRANSFEROR}</i>	<i>{NAME OF TRANSFEREE}</i>	②

Dated effective: *{date}* ③

\_\_\_\_\_  
④ *{NAME OF TRANSFEROR}*

## WAIVER AND CONSENT

### General Notes

This document is only required when:

- the company's *Articles*; and/or
- *Shareholders' Agreement* (if any);

provide(s) for a right of first refusal of the other shareholders of the company to purchase any shares being sold.

In practice, a formal offer is rarely required. A *Waiver* provides that the existing shareholders of the same class of shares as the ones being transferred abandon or give up their rights to be offered shares on a transfer.

Technically, the *Waiver and Consent* should be prepared and signed before the directors approve a transfer, but in practice, all documents with respect to the transfer are usually prepared and signed concurrently.

### Preparation

This *Waiver and Consent* may be prepared in several ways:

- a separate waiver for each shareholder;
  - one waiver for all of the shareholders; or
  - one waiver for all shareholders holding a particular class of shares.
- ① If there are several classes of shares of the company, insert the words:
 

*"...holding Class {description of class} shares"*.
  - ② Insert the part or section number in the company's *Articles* that describes the restriction on share transfer or if the waiver is required pursuant to a *Shareholders' Agreement* change to "*paragraph {number} of the Shareholders' Agreement,...*".
  - ③ Add rows to the table to reflect any additional transfers.
  - ④ Insert the number of shares being transferred and copy the description of the class of shares from the company's latest *Notice of Articles*.
 

Insert the effective date of the transfer.
  - ⑥ Insert sufficient execution lines for all shareholders, other than the transferor, who have a right of first refusal with respect to this transfer.

### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 38).

**WAIVER AND CONSENT**

We, the undersigned, being all of the shareholders ① of *{NAME OF COMPANY}* (the “Company”) hereby:

- (a) Waive the right to receive an offer under Part ② of the Articles of the Company, with respect to the following transfer(s) of shares of the Company:

③

Name of Transferor	Name of Transferee	Number and Class of Shares
<i>{NAME OF TRANSFEROR}</i>	<i>{NAME OF TRANSFEREE}</i>	④

- (b) Consent to the above transfer.

Dated effective: *{date}*

\_\_\_\_\_  
⑥*{NAME OF SHAREHOLDER}*

\_\_\_\_\_  
⑥*{NAME OF SHAREHOLDER}*

## INSTRUMENT OF TRANSFER

### General Notes

Before shares can be transferred, a form of transfer must be signed on the back of the *Share Certificate*. The act of signing the back of the certificate is sometimes referred to as “signing off” or “endorsing” the certificate. When reference is made to a certificate being “in street form” or “in bearer form”, it means that the instrument of transfer on the back of the *Share Certificate* has been signed by the holder with the name of the transferee deliberately omitted. Whoever has possession of the certificate may then simply fill in his or her own name as the transferee and apply to have the shares registered in his or her name. Generally this practice is not permissible in British Columbia since the directors or shareholders of private companies usually must approve all transfers, but sometimes share certificates are in bearer form for escrow or share pledge purposes.

When completing the *Instrument of Transfer* on the back of the *Share Certificate*, the original certificate must be removed from the *Records Book*, the details of the transfer printed or typed on the *Instrument of Transfer* on the back of the certificate and the signature of the shareholder obtained.

Many law firms choose to avoid the possibility of the certificate being lost when it is forwarded to the shareholder for signature by preparing a separate word processing generated *Instrument of Transfer*. This form replaces the endorsement on the back of the share certificate and can also be used for uncertificated shares or when the Company has chosen to issue *Acknowledgements of Issuance* instead of *Share Certificates*. The *Instrument of Transfer* is forwarded for signature instead of the original *Share Certificate* and when it has been signed and returned to the law firm, the *Instrument of Transfer* is then attached to the original certificate or otherwise inserted in the Records Book with the Directors Resolution.

### Preparation

- ① If the transferor is a company, change the paragraph to read:

*{NAME OF TRANSFEROR} hereby assigns and transfers...*”
- ② Insert the effective date of the transfer.
- ③ Insert the appropriate execution clause – the first one is for an individual transferor and the second is for when a company is the transferor.

### Processing:

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 40).

**Note:** After the *Instrument of Transfer* has been signed and the directors or shareholders, as the case may be, have approved the transfer, if the shares are certificated, it should be attached to the appropriate *Share Certificate* and the face of the *Share Certificate* marked or stamped “**CANCELLED**”.



## DIRECTORS RESOLUTION (Approving the Transfer)

### General Notes

The directors of a company are usually required by the *Articles* to approve a transfer of shares. Unless the directors hold a meeting to approve the transfer, a *Directors Resolution* must be prepared for their signature.

In a situation where a shareholder only transfers a portion of his or her shares (for example, if a shareholder owns 150 shares and only transfers 100 shares), the *Share Certificate* for 150 shares will be cancelled, and two new *Share Certificates* will be issued:

- one to the **transferee** for 100 shares; and
- one to the **transferor** for the 50 remaining shares.

Sometimes resolutions allotting shares are combined with resolutions transferring shares. For examples of resolutions allotting shares, see the **Allotments** chapter.

### Preparation

- ① Insert the part or section number in the company's *Articles* that contains the restrictions on share transfer. If the company's *Articles* do not contain a restriction on transfer, substitute "...*paragraph {number} of the Shareholders' Agreement*,".  
If the Articles do not contain a restriction on shares and there is no Shareholders' Agreement in place, delete the whole paragraph, and edit paragraph A to read:  
*"WHEREAS the Company has received applications for the transfer of certain shares together with Share Certificates endorsed for transfer."*
- ② Copy the description of the class or classes of shares from the company's latest *Articles* and/or *Notice of Articles*, or any alterations thereof.
- ③ Complete the number of shares for each transfer.
- ④ List the *Certificates* or *Acknowledgements* to be cancelled if the shares are certificated. Delete this paragraph if the shares to be cancelled are uncertificated.  
Insert the number and class of shares on the *Share Certificate* or *Acknowledgement* being cancelled (this may **not** be the number of shares being transferred if a shareholder only transfers a portion of the shares on the certificate).
- ⑥ Check the number of the last *Share Certificate* or *Acknowledgement* issued in this class in the *Central Securities Register* and insert the next number (e.g. if the last number was 2A, insert 3A).
- ⑦ Insert the number and class of shares on the new *Share Certificate(s)* or *Acknowledgement(s)*.  
**Note:** If only a portion of the shares on the certificate are transferred, a new *Share Certificate* or *Acknowledgement* must be issued to the Vendor for the balance of the shares on the certificate that are not transferred.
- ⑧ Insert the effective date of the transfer (from the instructions).
- ⑨ Check the *Register of Directors* of the company and insert the names of all the directors.

### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 40).

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

**WHEREAS:**

- A. The Company has received applications for the transfer of certain shares together with Share Certificates endorsed for transfer.
- B. The Company has received from the holders of shares of the Company, waivers of their rights to receive an offer under Part ① of the Articles of the Company with respect to the transfer of ② shares of the Company.

**RESOLVED THAT:**

1. The following share transfer(s) be approved:

Name of Transferor	Name of Transferee	Number and Class of Shares
<i>{NAME OF TRANSFEROR}</i>	<i>{NAME OF TRANSFEE}</i>	③ ②

2. ④ The following Share Certificate(s)/Acknowledgement(s) be cancelled:

Cert. No.	Name of Transferor	Number and Class of Shares
④	<i>{NAME OF SHAREHOLDER}</i>	

3. The following Share Certificate(s)/Acknowledgement(s) of Issuance be issued and signed by any director or officer of the Company: <sup>(1)</sup>

Cert. No.	Name of Transferee	Number and Class of Shares
⑥	<i>{NAME OF SHAREHOLDER}</i>	⑦

4. The names of the transferee(s) and other necessary particulars be entered in the Central Securities Register of the Company.

Dated effective: *{Dated}* ⑧

⑨ *{NAME OF DIRECTOR}*

⑩ *{NAME OF DIRECTOR}*

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

---

---

**DIRECTORS RESOLUTION OF VENDOR COMPANY**  
**(Authorizing the Sale of Shares)**

**General Notes**

This enabling resolution is prepared when the vendor of the shares is a **company**. The directors of the vendor company must approve the sale in order to authorize the company to sell its shares.

If the shares being sold by a company constitute the whole or substantially the whole of the company's undertaking or assets, the sale must be approved by a special resolution of the shareholders (s. 301) (see the **Miscellaneous** chapter – *Sale of Specific Asset – Shareholders Resolution Approving Sale (S. 301)*), unless:

- the vendor company is a wholly owned subsidiary of the purchaser company;
- the purchaser company is a wholly owned subsidiary of the vendor company;
- both the vendor company and the purchaser company are wholly owned subsidiaries of the same holding company; or
- the same person owns all the shares of both the vendor company and the purchaser company.

**Preparation**

- ① Insert the name of the purchaser to whom the shares are sold.
- ② Insert the number of the shares being sold, and the description of the class.
- ③ Insert the name of the company from whose stock the shares being sold are issued.
- ④ Insert the aggregate price of the shares being sold.

Determine which officer, director, or other representative of the company will sign the agreement and supporting documents on behalf of the company. For example, if the secretary of the company is to sign all the documents, substitute “secretary”.

- ⑥ Insert the effective date of the transfer.
- ⑦ Check the *Register of Directors* of the company and insert the names of all directors.

**Processing**

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the vendor company for signature.

If the law firm does not act for this company, obtain instructions from the supervising solicitor with respect to the arrangements for the execution of this resolution.

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

The Company proposes to sell to *{NAME OF PURCHASER}* ① *{number and class of shares}* ② of *{NAME OF COMPANY}* ③ for the amount of \$④ as described in a share purchase agreement (the “Share Purchase Agreement”) presented to the directors of the Company.

**RESOLVED THAT:**

The Company enter into the Share Purchase Agreement and the president ⑤ of the Company be authorized on behalf of the Company to:

- (a) execute and deliver the Share Purchase Agreement;
- (b) make all amendments to the Share Purchase Agreement as the president in the president’s sole discretion considers appropriate and the approval of the Company to any amendments will be conclusively evidenced by the president’s ⑤ signature thereto; and
- (c) deliver all further documents and to take all further action that may be required to give effect to these resolutions and the Share Purchase Agreement.

Dated effective: *{Dated}* ⑥

---

⑦*{NAME OF DIRECTOR}*

---

⑦*{NAME OF DIRECTOR}*

## DIRECTORS RESOLUTION OF PURCHASER COMPANY (Authorizing the Purchase of Shares)

### General Notes

This enabling resolution is prepared when the purchaser of the shares is a **company**. The directors of the purchaser company must approve the purchase in order to authorize it to acquire the shares from the vendor.

### Preparation

- ① Insert the name of the vendor from whom the shares are purchased.
- ② Insert the number of the shares being purchased and the description of the class of their class.
- ③ Insert the name of the company from whose stock the shares being purchased are issued.
- ④ Insert the aggregate price of the shares being purchased.

Determine which officer or other representative of the company will sign the agreement and supporting documents on behalf of the company. For example, if the secretary of the company is to sign all the documents, substitute “secretary”.

- ⑥ Inset the effective date of the transfer.
- ⑦ Check the *Register of Directors* of the company and insert the names of all directors.

### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the purchaser company for signature.

If the law firm does not act for the purchaser company, obtain instructions from the supervising solicitor with respect to the arrangements for the execution of this resolution.

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

**WHEREAS:**

It is expedient for the Company to purchase from *{NAME OF VENDOR}* ① *{number and class of shares}* ② of *{NAME OF COMPANY}* ③ for the amount of \$④ as described in a share purchase agreement (the “Share Purchase Agreement”) presented to the directors of the Company.

**RESOLVED THAT:**

The Company enter into the Share Purchase Agreement and the president ⑤ of the Company be authorized on behalf of the Company to:

- (a) execute and deliver the Share Purchase Agreement;
- (b) make all amendments to the Share Purchase Agreement as the president ⑤ in the president’s sole discretion considers appropriate and the approval of the Company to any amendments will be conclusively evidenced by the president’s ⑤ signature thereto; and
- (c) deliver all further documents and to take all further action that may be required to give effect to these resolutions and the Share Purchase Agreement.

Dated effective: *{Dated}* ⑥

\_\_\_\_\_  
⑦*{NAME OF DIRECTOR}*

\_\_\_\_\_  
⑦*{NAME OF DIRECTOR}*

## DECLARATION OF TRANSMISSION

### General Notes

A *Declaration of Transmission* is required by the company under section 118 of the Act to transfer shares to:

- the personal representative; and/or
- a beneficiary or heir at law.

Section 118 of the Act provides that a person applying for a **transmission** of shares must provide to the company:

- the original estate grant or a court certified copy thereof; **or**
- the original or a court certified or authenticated copy of the Will, grant of representation, order or other instrument or other evidence of the death under which title to the shares or securities is claimed to vest; and
- if the *Articles* of the Company so require, another instrument or other evidence of death.

An exception is when the shares are held in joint tenancy.

### Preparation

- ① If there is more than one personal representative, change to “We” and add the additional Executor/Administrator’s name and address.

*“We, {NAME OF PERSONAL REPRESENTATIVE}, {Occupation}, of {address}, and {NAME OF PERSONAL REPRESENTATIVE}, {Occupation}, of {address}, DO JOINTLY AND SEVERALLY DECLARE THAT:”*

- ② Insert:
- testate if the Deceased died with a Will – **Grant of Probate** or **Grant of Administration with Will annexed** is obtained; or
  - intestate if the Deceased died without a Will – **Grant of Administration without Will Annexed** is obtained.

- ③ Probate or Administration with Will Annexed (if there was a Will) or Grant of Administration without Will Annexed (if there was no Will).

- ④ Insert the date on which the grant was issued.

Insert the name of the deceased as shown on the *Share Certificate* or *Acknowledgement of Issuance* or the *Central Securities Register*. The name shown on the *Certificate* or *Acknowledgement* may be different from the name as shown in the grant.

- ⑥ Delete the column regarding Certificate or Acknowledgement numbers and replace paragraph 5 with the following wording if the shares were uncertificated:

*“The said shares were uncertificated.”*

- p If the name of the Deceased is the same on the *Share Certificate*, the *Acknowledgement of Issuance* or in the *Central Securities Register*, if uncertificated, and on the representation grant, delete this paragraph.

*Continued...*

**DECLARATION OF TRANSMISSION**

CANADA ) IN THE MATTER OF THE ESTATE OF  
 PROVINCE OF BRITISH COLUMBIA ) *{FULL NAME OF THE DECEASED}*,  
 TO WIT ) DECEASED  
 ) AND IN THE MATTER OF  
 ) *{NAME OF COMPANY}*

①I, *{NAME OF PERSONAL REPRESENTATIVE}*, *{Occupation}*, of *{address}*, DO SOLEMNLY DECLARE THAT:

1. *{FULL NAME OF THE DECEASED}* (“the Deceased”) died testate/intestate② on *{Date}*, and at the date of death was domiciled at *{City/Province/State/country}*.
2. A Grant of ③ was issued to *{Name of Personal Representative}* on *{Date}*④, by the *{name of Court}*.
3. Recorded in the name of ⑤ on the books of *{NAME OF COMPANY}* (the “Company”) are the following shares:

⑥Share Certificate	Number of Shares	Class of Shares
<i>{number}</i>	<i>{number}</i>	<i>{describe class in full}</i>

4. ⑦The Deceased, *{NAME OF DECEASED}* and *{NAME OF SHAREHOLDER}* was one and the same person, namely, *{NAME OF DECEASED}*.
5. ⑧The said certificates were physically held at the Registered and Records Offices of the Company at the date of death of the Deceased.

*Continued...*

## DECLARATION OF TRANSMISSION

### **Preparation (Continued)**

- ① Insert the word:
  - Executor – if there is Grant of Probate; or
  - Administrator – if there is a Grant of Administration with or without Will Annexed.
- ② Delete to the end of this paragraph if the shares are transferred to the personal representative and will not be transferred to the beneficiary or heir-at-law.
- ③ If several persons are signing this Declaration, insert the word “Severally”.
- ④ If the Declaration will be used outside British Columbia, replace the words “Commissioner ...” with “A Notary Public in and for the Province of...”.

Add another signature line, if there is more than one Executor/Administrator signing the *Declaration of Transmission*.

### **Processing**

The personal representative must sign this Declaration before a Commissioner for taking Affidavits (lawyer or notary public) and the commissioner must sign and date the attestation on the left. If the Declaration is sworn in a Province of Canada other than British Columbia, the Declaration must be sworn before a Notary Public for that Province, and the Notary’s seal must be affixed.

If the Declaration is sworn outside Canada, refer to the *Canada Evidence Act*.

See Step 13 of the Procedure/Checklist for a list of documents that need to be provided to the company when applying to transfer the shares.

**Declaration of Transmission**

**Page 2**

6. By virtue of the foregoing, the said shares have devolved upon and become vested in us/me as the (Co)Executor/Administrator<sup>①</sup> and I/we wish to have the same recorded in my/our names on the books of the Company<sup>②</sup> and immediately thereafter transferred to the beneficiaries/heirs-at-law properly entitled by law to receive the said shares, namely:

***{NAME OF BENEFICIARY/HEIR-AT-LAW}***  
***{address of beneficiary/heir-at-law}***

**AND I/WE MAKE THIS SOLEMN DECLARATION** conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

**③DECLARED before me at {City},** )  
Province of British Columbia, this \_\_\_\_ )  
day of \_\_\_\_\_, 200\_\_ )

**{NAME OF PERSONAL REPRESENTATIVE}**

\_\_\_\_\_)  
**④A Commissioner for taking** )  
Affidavits )  
in British Columbia )

## DIRECTORS RESOLUTION (Transmission from the Deceased to the Personal Representative)

### General Notes

When shares are transferred from the deceased into the name of the personal representative (executor or administrator) it is called a “**transmission**”. Subsequently, the personal representative may **transfer** the shares to the beneficiaries or heirs-at-law (referred to here as the “beneficiaries”) or the personal representative may sell the shares, either to an outside party, to other shareholders or to the company.

If the shares are transferred from the personal representative to the beneficiaries, you will need to prepare the *Directors Resolution (Transfer from the Personal Representative to the Beneficiaries/ Heirs-at-Law)* (page 34) in addition to this resolution.

If the shares are transferred immediately to the beneficiaries and the personal representative is prepared to waive the issuance of a share certificate to the personal representative, instead of preparing the above two resolutions, you can prepare a *Waiver (Right to Share Certificate)* (page 36) and the *Directors Resolution (Transfer from the Deceased Directly to the Beneficiaries/Heirs-at-Law)* (page 38).

If the shares are transferred to an outside party or to other shareholders, see **Transfers** in the first part of this chapter. If the company will be repurchasing the shares, see the **Repurchases and Redemptions** chapter.

**If the deceased was the sole shareholder and director of the Company, the personal representative(s) should be appointed as the new director(s) as of the date of death (see *Directors and Officers* chapter – *Special Resolution (when the Sole Shareholder and Director Dies)*).**

### Preparation

- ① Copy the information required from the *Declaration of Transmission*.
- ② Check the *Central Securities Register* and the *Share Certificate(s)* in the name of the deceased and insert the total number of shares held and the description of the class. Delete this paragraph and paragraph D(b) from the preamble if the shares to be cancelled are uncertificated.
- ③ Describe the personal representative as follows:
  - If a Grant of Probate was obtained: “*{Name of Personal Representative}*, Executor of the Will of *{Name of Deceased}*, Deceased”; or
  - if a Grant of Administration (with or without Will Annexed) was obtained: “*{Name of Personal Representative}*, Administrator of the Estate of *{Name of Deceased}*, Deceased”.
- ④ Check the number of the last share certificate issued in this class in the *Central Securities Register* and insert the next number (e.g. if the last was 2A insert 3A).  
Insert the date of the Resolution.
- ⑥ Check the *Register of Directors* of the company and insert the names of all the directors.

### Processing

Attach to this Resolution:

- *Declaration of Transmission*;
- Court-certified copy of the representation grant (or documents described on page 6); and
- *Application for Transfer*.

Once this resolution is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 40).

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

**WHEREAS:**

- A. {Name of the Deceased}① (the “Deceased”) died on {date}①;
- B. On {date}①, a Grant of Probate of the Will of the Deceased (*or*: Grant of Administration (with or without Will Annexed) of the Estate of the Deceased) (the “Grant”) was issued to {Name of Personal Representative}①, the personal representative of the Deceased;  
*Or – if no estate grant has been applied for or issued but there is a Will:*
- B. The Deceased left a Will dated {date} in which he appointed {Name of Personal Representative}①, as his/her personal representative;
- C. At the time of his/her death, the Deceased was the registered holder of {number and class of shares}② shares of the Company (the “Shares”);
- D. The Company has received:
  - (a) a Declaration of Transmission in respect of the Shares from the personal representative;
  - (b) ②Share Certificate /Acknowledgement of Issuance No. {number} for {number and class} shares in the name of the Deceased;
  - (c) a Court-certified copy of the Grant / a notarially-certified copy of the Will; and
  - (d) an Application to transfer the Shares to the personal representative.

**RESOLVED THAT:**

- 1. The transmission of the Shares from the Deceased to ③ be approved.
- 2. ②The following Share Certificate(s)/Acknowledgement(s) of Issuance be cancelled:

Cert. No.	Name of Transferor	Number and Class of Shares
{number}	{NAME OF THE DECEASED}	②

- 3. The following Share Certificate(s)/Acknowledgement(s) of Issuance be issued and signed by any director or officer of the Company:<sup>(1)</sup>

Cert. No.	Name of Transferee	Number and Class of Shares
④	{NAME OF PERSONAL REPRESENTATIVE} ③	②

- 4. The name(s) of the transferee(s) and other necessary particulars be entered in the Central Securities Register of the Company.

Dated effective: {Dated}

\_\_\_\_\_  
⑥{NAME OF DIRECTOR}

\_\_\_\_\_  
⑥{NAME OF DIRECTOR}

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

## DIRECTORS RESOLUTION

### (Transfer from the Personal Representative to the Beneficiaries/Heirs-at-Law)

#### General Notes

After the deceased's shares have been transferred to the personal representative, the personal representative may transfer the shares to:

- the beneficiary (or beneficiaries) under the Will of the deceased; or
- the heirs-at-law (if there is no Will).

#### Preparation

- ① Check the *Central Securities Register* and the *Share Certificate(s)* or **Acknowledgement(s) of Issuance** in the name of the personal representative and insert the total shares held and the description of the class.
- ② Copy the information from the *Central Securities Register* or the *Share Certificate(s)/Acknowledgement(s) of Issuance*.
- ③ Insert the name of the person entitled to the shares as shown on the *Declaration of Transmission* and the name of the deceased.
- ④ Copy the number from the *Share Certificate/Acknowledgement(s) of Issuance* and the name and capacity of the personal representative from the *Share Certificate/Acknowledgement(s) of Issuance*. For example:

“{Name of Personal Representative}, the Executor of the Will of {name of Deceased}, Deceased”

or:

“{Name of Personal Representative}, the Administrator of the Estate of {name of Deceased}, Deceased”

Delete the reference to the cancellation of *Share Certificate(s)* or *Acknowledgement(s) of Issuance* if the shares to be cancelled are uncertificated.

Check the last number of the last *Share Certificate* issued in this class in the *Central Securities Register* and insert the next number (e.g. if the last was 2A insert 3A).

- ⑥ Insert the date of the Resolution.
- ⑦ Check the *Register of Directors* of the company and insert the names of all directors.

#### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 40).

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

**RESOLVED THAT:**

1. The transfer of ① shares from ②*{NAME OF PERSONAL REPRESENTATIVE}* to *{NAME OF BENEFICIARY/HEIR-AT-LAW}*, ③ beneficiary/heir-at-law of the Estate of *{NAME OF DECEASED}* ③, Deceased, be approved.

2. ④The following Share Certificate(s)/Acknowledgement(s) of Issuance be cancelled:

Cert. No.	Name of Transferor	Number and Class of Shares
④	<i>{NAME OF PERSONAL REPRESENTATIVE}</i> ④, Executor/ Administrator of the Estate of <i>{NAME OF DECEASED}</i> ③, Deceased	①

3. The following Share Certificate(s)/Acknowledgement(s) of Issuance be issued and signed by any director or officer of the Company:<sup>(1)</sup>

Cert. No.	Name of Transferee	Number and Class of Shares
	<i>{NAME OF BENEFICIARY/HEIR-AT-LAW}</i> ③	①

4. The name(s) of the transferee(s) and other necessary particulars be entered in the Central Securities Register of the Company.

Dated effective: *{Dated}* ⑥.

\_\_\_\_\_  
 ⑦*{NAME OF DIRECTOR}*

\_\_\_\_\_  
 ⑦*{NAME OF DIRECTOR}*

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

## WAIVER (Right to share certificate)

### General Notes

This *Waiver* is prepared after an estate grant has been obtained and the shares are transferred directly from the deceased shareholder to the beneficiary or heir-at-law. Unless the shares of which the shareholder is the registered owner are uncertificated, section 107(3) provides that a shareholder is entitled, on request and at the shareholder's option, to receive either a share certificate or a non-transferable written acknowledgement of the shareholder's right to obtain a *Share Certificate* or *Acknowledgement of Issuance*.

Normally, the shares registered in the name of a deceased are:

- first **transmitted** into the name of the personal representative to whom a *Share Certificate* or an *Acknowledgement(s) of Issuance* is issued in his capacity as personal representative of the deceased; and then
- **transferred** to the person entitled to them (either the beneficiary under the Will of the deceased or heirs-at-law).

However, in order to save on paper work and legal costs, particularly when the executor and the beneficiary are one and the same person, it is often preferable to simply transfer the shares directly from the name of the deceased into the name of the person who is entitled to the shares.

When the shares are transferred directly to the beneficiary, **no *Share Certificate* or *Acknowledgement of Issuance*** is issued to the personal representative and a *Waiver* may be prepared in which the personal representative renounces his or her right to such *Share Certificate* or *Acknowledgement of Issuance*. Check with the supervising solicitor or your corporate supervisor to determine whether it is your firm policy to prepare a *Waiver* of the personal representative's right to receive a share certificate.

### Preparation

- ① Insert the name of the deceased as shown in the company's records. It may not be the same as the name of the deceased as shown in the estate grant, but this discrepancy is dealt with in the *Declaration of Transmission*.
- ② Insert the date of the *Declaration of Transmission*.

### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see the *Transmittal Letter to Client (Forwarding Documents for Execution)* with the appropriate consent directors' resolution.

---

---

**WAIVER**

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

The undersigned, as personal representative of *{NAME OF DECEASED}*① (the “Deceased”), a shareholder of the Company, hereby waives the right of the undersigned as the personal representative of the Deceased to request a Share Certificate/an Acknowledgement of Issuance pursuant to Section 107(3) of the *Business Corporations Act* with respect to the transmission of *{number and class of shares}* shares of the company from the Deceased to the undersigned and consents to the shares being transferred directly to *{NAME OF BENEFICIARY/HEIR-AT-LAW}*.

Dated: ②

---

*{NAME OF PERSONAL REPRESENTATIVE}*

## DIRECTORS RESOLUTION (Transfer from the Deceased Directly to the Beneficiaries/Heirs-at-Law)

### General Notes

It is quite common, if the deceased's shares are being transferred immediately to the beneficiaries after obtaining the grant, to transfer the deceased's shares directly to the person entitled to them, rather than transmitting them first to the personal representative and then transferring them to the beneficiary or heir-at-law.

When transferring the shares directly from the deceased to the beneficiary or heir-at-law (that is, eliminating the transmission to the personal representative), a *Waiver* (page 36) may also be prepared.

If the deceased was the sole shareholders and director of the company, refer to the Resolution *When the Sole Shareholder and Director Dies* in chapter 7, **Directors and Officers**.

### Preparation

- ① Insert the information from the *Declaration of Transmission*.
- ② Copy the number of shares and the description of the class (if there is any) from the *Central Security Register*.
- ③ If a Grant of Administration (with or without Will Annexed) was obtained instead of a Grant of Probate, replace with the words:

*“On {Date}, a Grant of Administration (with or without Will Annexed) of the Estate of the Deceased was granted to...”*

- ④ Insert the name and capacity of the personal representative(s) (i.e. *Executor(s) of the Will of the Deceased*, or *Administrator(s) of the Estate of the Deceased*).

Insert the name of the person entitled to the shares as shown on the *Declaration of Transmission*.

If a Grant of Administration (with or without Will Annexed) was obtained, change the wording to:

*“...{NAME}, the {relationship e.g. son/daughter, etc.} of the Deceased and the person entitled to the shares, ...”*

- ⑥ List all the *Share Certificates/Acknowledgements of Issuance* to be cancelled. Delete this paragraph and paragraph D(b) of the preamble if the shares to be cancelled are uncertificated.
- ⑦ List all the *Share Certificates/Acknowledgement of Issuance* to be issued.
- ⑧ Insert the effective date of the resolution.
- ⑨ Check the *Register of Directors* of the company and insert the names of all directors.

### Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see the *Transmittal Letter (Forwarding Documents for Signature)* (page 40).

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

**WHEREAS:**

- A. *{Name of deceased}*<sup>①</sup> (the “Deceased”) died on *{Date}*<sup>①</sup>.
- B. At the time of his/her death, the Deceased was the registered holder of *{number and class of shares}*<sup>②</sup> shares (the “Shares”) of the Company.
- C. On *{Date}*<sup>①</sup>, a Grant of Probate of the Will of the Deceased <sup>③</sup> (the “Grant”) was granted to *{name of the personal representative}*, <sup>④</sup>.

*Or – if no estate grant has been applied for or issued and there is a Will:*

- C. The Deceased left a Will dated *{date}* in which he appointed *{Name of Personal Representative}*<sup>①</sup>, as his/her personal representative;
- D. The Company has received:
- (a) a Declaration of Transmission in respect of the Shares;
  - (b) <sup>⑥</sup>Share Certificate/Acknowledgement of Issuance No. *{number}* for *{number and class}* shares in the name of the Deceased;
  - (c) a Court-certified copy of the Grant/a notarially-certified copy of the Will; and
  - (d) a Waiver of the personal representative’s right to receive a share certificate/Acknowledgement of Issuance.

**RESOLVED THAT:**

1. The transmission of the Shares from the Deceased, to <sup>④</sup> be approved.
2. The transfer from <sup>④</sup> to *{name of beneficiary}*<sup>⑤</sup> be approved.
3. <sup>⑥</sup>The following Share Certificate(s)/Acknowledgement(s) of Issuance be cancelled:

Cert. No.	Name of Transferor	Number and Class of Shares
⑥	<i>{NAME OF THE DECEASED}</i>	②

4. No Share Certificate/Acknowledgement of Issuance be issued in the name of <sup>④</sup> for the Shares.
5. The following Share Certificate(s)/Acknowledgement(s) of Issuance be issued and signed by any director or officer of the Company: <sup>(1)</sup>

Cert. No.	Name of Transferee	Number and Class of Shares
⑦	<i>{NAME OF BENEFICIARY}</i>	②

4. The name(s) of the transferee(s) and other necessary particulars be entered in the Central Securities Register of the Company.

Dated effective: *{Date}*<sup>⑧</sup>

\_\_\_\_\_  
<sup>⑨</sup>*{NAME OF DIRECTOR}*

\_\_\_\_\_  
<sup>⑨</sup>*{NAME OF DIRECTOR}*

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

**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. Unless the documents are being signed at the law firm's offices, they are forwarded to the company for signature and return.

**Preparation**

- ① If there are several transfers or if it is a transmission, amend the reference to suit.
- ② Omit if not required.
- ③ If you will be enclosing the physical *Share Certificate* or *Acknowledgement*, change to read:

*“Share Certificate/Acknowledgement of Issuance No. \_\_\_ for {number} {description of the class of shares} in the name of {name of transferor} to be endorsed for transfer and cancellation/to be cancelled;”*

If there are several transfers, change to read:

“The following Share Certificates to be endorsed for transfer and cancellation.” *or* “The following Acknowledgements of Issuance to be cancelled”:

Cert. No.	Name of Transferor	Number and Class of Shares
<i>{ Certificate Number }</i>	<i>{NAME OF THE TRANSFEROR}</i>	<i>{Number and Class of Shares}</i>

- ④ If there are several transfers, change to read:

“The following Share Certificates//Acknowledgement(s) of Issuance:

Cert. No.	Name of Transferee	Number and Class of Shares
<i>{Certificate Number}</i>	<i>{NAME OF THE TRANSFEREE}</i>	<i>{Number and Class of Shares}</i>

List any other enclosures not included above.

*Continued...*

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

*{date}*

*{name and address of the company client}*

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

Re: *{name of the Company}* (the “Company”)

**Transfer of shares from *{Name of Transferor}* to *{Name of Transferee}***①

Further to your instructions with respect to the above noted transfer of shares, we enclose for signature the following documents:

*Use the following for a transfer of shares (i.e. non-estate):*

1. Application(s) for Transfer(s);
2. ②Waiver(s) and Consent(s);
3. Directors Resolution;
4. ③Instrument of Transfer;
5. ④Share Certificate/Acknowledgement of Issuance No. *{number}* for *{number}* *{description of the class of shares}* in the name of *{name of transferee}*; and
6. ⑤.

*Use the following for a transmission of shares (i.e. an estate):*

1. Declaration of Transmission;
2. ②Waiver;
3. Directors Resolution(s);
4. ③Instrument of Transfer;
5. ④Share Certificate/Acknowledgement of Issuance No. *{number}* for *{number}* *{description of the class shares}* in the name of *{name of transferee}*; and
6. ⑤.

*Continued...*

---

---

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

**Preparation (Continued)**

- ① Delete this paragraph if all the *Share Certificates* to be cancelled are contained in the *Records Book*.
- ② Insert the name of the shareholder or firm to whom the *Share Certificate* was delivered.
- ③ Insert the date that the *Share Certificate* was delivered to the shareholder or as directed by shareholder.
- ④ If the transfer or transmission results in a change in the *Transparency Register*, insert this paragraph adapting it to the situation.

For example: Shareholder A is the registered owner of 50 shares out of 100 issued and outstanding (being 50 per cent of the issued and outstanding shares of the company) which makes him a Significant Individual. Shareholder A transfers 30 shares to the transferee (B) who has no shares in the company. After the transfer:

- B is a significant Individual holding 30 out of 100 shares which is 30 per cent of the total issued and outstanding shares of the company; and
- A is no longer a Significant Individual as he now holds 20 per cent of the shares of the company.

Of course, there are many different scenarios resulting in changes 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 on 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 or telephone call if you have not received the signed documents.

**Transmittal Letter**  
**(Forwarding Documents for Signature)**  
**Page 2**

**In all cases:**

① Our records indicate that Share Certificate No. *{number}* for *{number}* *{description of the class of shares}* registered in the name of *{name of transferor}* was delivered to ② on ③. We would appreciate your returning this Certificate to us for cancellation.

Please return the signed documents to us so that we may file them with the corporate records of the Company.

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;
2. Notice to Individual who Becomes as Significant Individual which, if applicable should be signed by a Director of the Company and forwarded *{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

Please call the writer if you have any questions or concerns regarding these documents or any other matter regarding the Company.

Yours truly,

*{NAME OF LAW FIRM}*

cc: *{name of accountant}*

**REPORT TO CLIENT****General Notes**

When the documents have been signed, returned to the law firm and filed in the *Records Book* and the *Central Securities Register* has been updated, you should report the transaction to the company.

**Preparation**

- ① Omit if no copy is sent to the accountant.
- ② Omit if the account is not being forwarded at this time.

**Processing**

Make an extra copy of the letter (and, if instructed to do so, of all the documents evidencing the transfer) for the accountant.

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

*{date}*

*{name and address of the company/accountant or client}*

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

Re: *{name of the Company}* (the “Company”)  
**Transfer of shares from *{name of transferor}* to *{name of transferee}***

Thank you for returning the signed documents with respect to the above transfer(s).

We have filed the documents with the corporate records of the Company and have updated the Central Securities Register and the Transparency Register to reflect this transaction.

*If Acknowledgements of Issuance were prepared instead of Share Certificates, insert:*

We enclose

*If one Acknowledgement:*

1. Acknowledgement of Issuance No. *{number}* in the name of *{Name of Shareholder}* for *{number and class of shares}*

*If several Acknowledgements*

2. The following Acknowledgements of Issuance:

<b>Cert. No.</b>	<b>Name of Shareholder</b>	<b>Number and Class of Shares</b>
<i>{number}</i>	<i>{NAME OF SHAREHOLDER}</i>	<i>{Number and Class of Shares}</i>

① As requested, we have provided *{name of accountant}* with copies of all documents.

② As this matter has now been completed, we enclose our statement of account for acting on your behalf in this matter.

We trust that you will find the above to be in order, but should you have any questions, please do not hesitate to contact us.

Yours truly,

*{NAME OF LAW FIRM}*

cc: *{name of accountants}*①

