

TAX-DEFERRED TRANSACTIONS

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The descriptions, explanations, instructions and precedents contained in this chapter are provided only as a starting point for use in reorganization transactions. This chapter does not replace the advice and instruction of tax counsel, should not be considered tax advice and should not be used without the guidance and input of tax advisors engaged by your client. Such advisors must provide specific instructions in the implementation of an advanced tax transaction to result in a favourable outcome for the client and must review the prepared materials as you must rely on their having a thorough understanding of the client’s entire tax plan.



For consistency and clarity, we have used the words “share certificate(s)”. However, you should select the terms “share certificate” or “acknowledgement of issuance” to reflect the situation. For example: when cancelling an existing share certificate, use that term. When allotting new shares, especially when dealing with virtual records books, change the “share certificate” to “acknowledgement of issuance”.

TAX-DEFERRED TRANSACTIONS

GENERAL PROVISIONS

The term “rollover” or “exchange” is used here to describe a transfer of property between two parties which transfer does not give rise to immediate tax. The tax is not avoided but is simply delayed or deferred. Rollovers and exchanges are typically conducted pursuant to sections 85 or 86 of the *Income Tax Act* (“ITA”). There are less common rollovers or transfers (for example pursuant to sections 51 or 73 of ITA), but they are not covered in this chapter at this time.

The general rule for the taxation of capital gains or losses is that all dispositions of capital property result in an immediate recognition of a capital gain or loss. However, in some circumstances, there is no real change in economic interest in the property and, in specific circumstances, a “rollover” or “exchange” may provide a deferral of capital gains or losses.

Generally, although both section 85 rollovers and section 86 exchanges are used to freeze the value of the property at the time of its transfer, the following should be noted:

- Section 85 rollovers are transfers of eligible personal property to a company in consideration for shares in that company, or part shares and part boot.
- Section 86 exchanges are transfers of **all** outstanding shares in a class of shares of a company held by a shareholder in exchange for non-equity (usually, but not always preferred) shares of the same company and must occur in the course of a reorganization of the authorized share structure of the company. While section 86 is only a tax tool that can be used to implement an estate freeze, an estate freeze is a broader tax planning concept. Section 86 can also be used for purposes other than an estate freeze.

Basically, if section 86 does not apply then section 85 must apply. If neither section 86 or section 85 apply, then section 51 applies. The latter is not covered in this chapter.

In this chapter of the *Guide, Tax-Deferred Transactions*, we have separated the procedures for the section 85 rollover and the section 86 exchange. However, some of the terms are used for rollovers and exchanges pursuant to both sections. The definitions of the following terms are only given to assist the user with understanding the basic principles and procedures of tax rollovers, but a tax advisor must provide advice to the client and give specific instructions to the lawyer or law firm before effecting a tax rollover.

- **Adjusted Cost Base** – in reference to capital property (a type of classification of property discussed in further detail below) is the original cost the owner paid to acquire the capital property and is the “base” used to determine whether a capital gain or loss arises on a disposition of the property, whether by sale or by gift.
- **Boot** is the non-share consideration for the transfer. It may include cash paid by the transferee to the transferor or a new debt of the transferee to the transferor (often evidenced by a promissory note), it may also be the assumption or disposition of a debt or other obligation by the company or the shareholder.

- **Capital Property** – property which is of an enduring nature and includes any depreciable property of the taxpayer and any property (other than depreciable property) that, if disposed of, would result in a capital gain or capital loss.

Examples of types of capital property include real property, shares and goodwill. It is important to distinguish capital property from business income. Typically, capital property produces income. The classic analogy is the tree (i.e. the capital property) versus the fruit (i.e. the income). If the property you are disposing of is considered akin to the income (i.e. fruit) produced by another property, then such property will likely **not** be categorized as capital property. However, if you are disposing of the property that generates income (i.e. the tree itself), then such property may be categorized as capital property and disposition of such property will likely result in a capital gain or loss.

As such, the nature of the transaction should be examined. Take for example shares of a company. If a person holds preferred shares for investment purposes, the dividends received from the shares would be considered income and the shares themselves would be considered capital property. However, shares disposed of by a broker or trader in the course of their business of trading securities would **not** be considered capital property because the shares themselves would be more akin to inventory. A similar situation arises in the case of real property that is owned by a person versus a property developer.

- **Fair Market Value** – the monetary value at which willing, informed, prudent parties sell or buy property in an open and unrestricted market.
- **Price Adjustment Clause** – a section of the Articles of a company or paragraphs in an agreement between a purchaser and a vendor used to avoid the adverse tax consequences that may arise if a transaction does not occur at Fair Market Value or should Canada Revenue Agency or any other competent taxing authority issue an assessment or re-assessment of the company or any shareholder that would impose any liability for tax on the company. It deals with the mechanics of the adjustment.

SECTION 85 ROLLOVERS EXPLANATION

When a person sells or transfers property to a company and receives proceeds which exceed the cost of purchase of such property, the vendor (or seller) usually must include the amount of the profit realized from such sale in their Income Tax Return. The calculation of tax will depend on the nature of the property. For example, if the property transferred is inventory, it will be taxed on the full amount of the gain but if the vendor disposes of capital property, capital gains will apply and the vendor will only be taxed on half of the gain.

The ITA permits a taxpayer (section 85(1)) or a partnership (85(2)) to transfer certain types of property to a taxable Canadian company on a tax-deferred basis provided that the taxpayer or the partnership receive shares of the transferee company as part of the consideration for the transfer of the property.

Section 85 is often used when incorporating a business or for estate planning.

For a transaction to comply with section 85, the following criteria must be met:

- **Vendor or Transferor** may be any “taxpayer”, as defined in section 248(1) of the ITA, which includes an individual, trust or a corporation, whether or not resident in Canada. There are specific restrictions to the type of property a non-resident may transfer. A partnership may transfer property on a rollover basis as well but again there are different rules which should be outlined by the tax advisor overseeing the reorganization;
- **Purchaser or Transferee** must be a “taxable Canadian corporation” resident in Canada;
- **Elected amount, elected value or elected price** (sometimes called the “**transfer price**”) by the transferor and the transferee is deemed to be the transferor’s proceeds of disposition and the cost of the property to the transferee. The elected amount cannot be:
 - less than the fair market value of the boot (see page 2);
 - less than the adjusted cost basis of non-depreciable property; or
 - more than the fair market value.
- **Eligible Property** is the property that is the subject of a section 85 rollover and must be “a capital property” or “eligible capital property” (such as goodwill) or inventory other than real property, resource property or accounts receivable in respect of which no election has been made under section 22 of the ITA (for capital property, see explanation on page 2);
- **Consideration** – to be received by the transferor/vendor from the transferee/purchaser company must **include** shares of the transferee/purchaser company;
- **Joint Election** – a joint election must refer to each property separately and must be filed in a form prescribed by the regulations of the ITA (Form T2057). This form must be signed jointly by the vendor and the purchaser and filed by the transferor. Typically the onus for the preparation, execution and filing of the form is on the accountants. Form T2057 does not apply to a Section 86 exchange.

Here is a simple example of a section 85 scenario. Mr. X is carrying on business as a computer consultant and his assets consist of:

- equipment having an adjusted cost base of \$7,000.00; and
- goodwill having an adjusted cost base of \$13,000.00.

Mr. X wants to transfer his assets to a new company. At the time of the transfer, the fair market value of the equipment and goodwill (the “Subject Property”) is estimated at \$50,000.00.

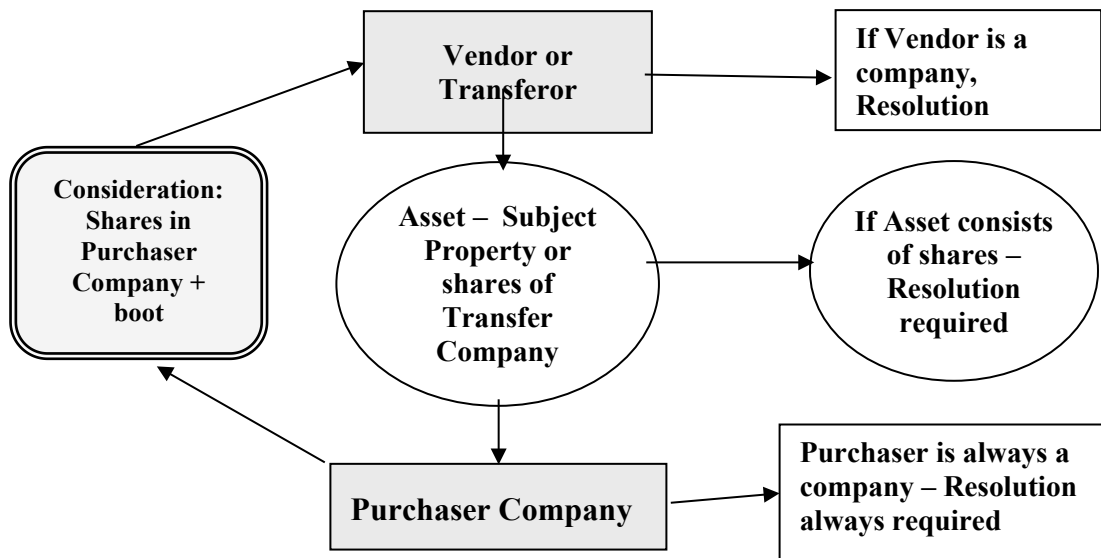
Mr. X sells the property to a new company (“ABC Co.”) for \$50,000.00 and as consideration, receives shares in ABC Co. with a fair market value of \$50,000.00.

Alternatively, he may receive as consideration for the Subject Property:

- shares in ABC Co. for a total fair market value of \$30,000.00
- a promissory note (or cash) for \$20,000.00 from ABC Co. No tax is payable on the non-share consideration so long as the amount of the boot is equal to or less than the adjusted cost basis.

The elected amount is the aggregate of the adjusted cost basis of the Subject Property, \$20,000.00.


By way of illustration:



The explanation and procedure in the following examples assume that the “Purchaser” or “Transferee” company is in existence at the time of the transfer, or that, if the purchaser company is being incorporated, its authorized share structure consists of the appropriate classes of shares and the special rights and restrictions attached to such shares comply with the accountant’s instructions.

SECTION 85
PROCEDURE – CHECKLIST

1. Receive and review instructions from accountants and ascertain that you have the following information which you will require to complete the blanks in the documents:
 - (a) the description of the property being transferred (shares, real property, professional practice, etc.) (“Subject Property”);
 - (b) the Fair Market Value of the Subject Property;
 - (c) the Redemption Amount of the shares of the purchaser being issued as consideration.
 Note: This amount may not be known at the outset but you will need later to complete the transaction;
 - (d) consideration:
 - (i) the number and class of shares in the purchaser company to be issued as consideration and whether the class of these shares conforms to the requirements of the accountants;
 - (ii) boot, if any.
2. Prepare *Closing Agenda/Index to Document Binder* (see Indexes to Corporate Reorganizations – Evin Ross website)

 A Rollover is often part of a much more complicated transaction that involved the incorporation of new companies, and changes to authorized share structure of the existing companies, as well as many other transactions such as dividends, allotments, transfers, amalgamations. In order to organize the documents in an efficient manner, a Closing Agenda should be prepared and if your office computer system allows it, create a new sub-directory for each tab or step, for example: Tab/Step 01 – Incorporation of X. If your system does not allow sub-directories, save the documents with a prefix, for example 001 – Articles of X and ensure that, in each case, the footer includes the document number. Alternatively, you can prepare a binder with numbered tabs, each tab corresponding to the Closing Agenda.

3. Have the *Closing Agenda* reviewed by the supervising lawyer and the accountant. When you have their approval, prepare the documents below
4. Prepare a *Section 85 Agreement* between the vendor and the purchaser company. If there are several Vendors, prepare separate agreements for each Vendor unless they are joint owners of the property
5. For the **purchaser company**, prepare:
 - (a) Consent Resolutions of the Directors authorizing/approving:
 - (i) the purchase of the property
 - (ii) the execution of the agreement (and *Promissory Note*, if applicable)

- (iii) the issuance of the shares as consideration for the payment of the purchase price of the property and
 - (iv) if applicable, delivery of the Promissory Note
- Note: If there are several vendors (unless they are joint tenants of the property) , prepare a separate agreement for each vendor. You may prepare separate resolutions for each vendor, or you may combine the two transactions in one resolution. A precedent for a “combined” resolution is included digital precedents to the *Guide*
- (b) *Promissory Note* (if applicable)
 - (c) *Acknowledgement of Assumption of Debt Obligations* (if applicable)
 - (d) *Share Certificate(s)* or *Acknowledgements of Issuance of Shares* for the new shares being allotted as consideration for the purchase price (the “New Shares”)
6. For the **vendor company** – (applicable only if the vendor is a company) prepare consent resolutions of the directors authorizing:
 - (a) the sale of the property (transfer of shares) to the purchaser and
 - (b) the execution of the agreement
 7. For the **transfer (target) company** – applicable only if the property being sold consists of shares of that company – prepare:
 - (a) *Application for Transfer* (see **Chapter 9 – Transfers and Transmissions**)
 - (b) *Instrument of Transfer* (see **Chapter 9 – Transfers and Transmissions**)
 - (c) *Consent Resolutions of the Directors* authorizing the transfer of the shares from the vendor to the purchaser company (see **Chapter 9 – Transfers and Transmissions**)
 - (d) new *Share Certificate(s)* or *Acknowledgements of Issuance of Shares* in the name of the purchaser company
 8. If it is your office’s policy, send all the draft documents to the accountants (and if appropriate, the client) for approval
 9. When the documents have been approved, arrange for the client to sign all documents
Suggestion: If the documents are being sent to the client in paper format, keep the documents to be signed in the binder asking the clients to turn the pages when signing
 10. Date and time stamp documents that require to be stamped (see the **Chapter 5 - Records– Policies for Noting Date and Time on Corporate Records Received for Deposit at a Company’s Records Office**)
 11. If applicable, electronically file the appropriate documents (e.g. incorporate the new company or file the *Form 11*)

12. Cancel the appropriate *Share Certificates* by stamping the front of the certificate with a cancelled stamp or writing across the face of the certificate “**cancelled**” and staple the *Surrenders* or the *Instrument of Transfer* to the certificates that are being cancelled
13. Complete *Central Securities Registers* for the transfer and the purchaser companies
14. Unless all documents are electronically signed, make the appropriate number of photocopies (if requested, one set to be kept in the office binder, one set for the client and one set for the accountants)
15. File the originals of the documents under the appropriate tabs in the appropriate companies’ Records Book or upload them into the virtual Records Book
16. If it is your office policy to keep a binder with paper copies of all the documents, place one set of photocopies with the appropriate tabs dividing each step of this transaction in the binder to be kept by your office
17. Contact the accountant and the client to determine the manner in which they wish to receive copies of the documents: either in a binder containing hard copies of the documents, scanned copies or all the documents copied onto a USB flash drive
18. Prepare documents for reporting to the client and to the accountants:
 - if the client and the accountant have requested hard copies, and if you have paper copies originally signed, before disassembling the documents, and before inserting the signed originals in the Records Books, make the appropriate number of photocopies: one set to be kept in the office binder (if you have prepared one), one set for the client and one set for the accountants
 - if the client or the accountants request electronic versions, scan the originals in the order of the index to the document brief
 - if the documents are completely signed electronically (as that term is defined in the *Electronic Transactions Act*), the documents need not be scanned as they are already in digital form and may be uploaded into the virtual Records Book and sent to the client and the accountant
19. Prepare the *Report Letter* to the client (*Report Letter* – page 58) with a copy to the accountant and:
 - (a) Provide them with a copy of the electronic documents or a binder with paper copies
 - (b) request a copy of the *Form T2057* (Election on Disposition of Property by a Taxpayer to a Taxable Canadian Corporation) (if not already received)

Notes: *Form T2057* applies to elections made under section 85(1) of the Income Tax Act. The transferor must file this form separately from any Income Tax Return. The form must be signed by the transferor (or a person authorized in writing on the transferor's behalf) and by the authorized officer of the transferee.

The deadline to file **Form T2057** is the earliest date on which any of the parties to the election has to file an income tax return for the taxation year in which the transfer occurred

20. Make a note to receive the **Form T2057** from the accountants. When received, check the amounts and if the amounts were not included in the Consent Directors' Resolution (Purchaser Company) (page 23) prepare the **Consent Directors' Resolution (Determining the Redemption Amount** – page 60) and forward it to the company for signature

Do not attach the **Form T2057** to the Resolution as it contains confidential information about the parties. Check the office procedure for handling confidential documents

21. Review **Transparency Registers** and update accordingly if there has been a change to the significant individuals or how they are significant individuals.

SECTION 85 AGREEMENT

General Notes

This agreement sets out the terms of the sale of the property from the vendor (an individual, partnership or a company) to the purchaser company.

Preparation



Depending on your office policy and the supervising lawyer's instructions, do not refer to amounts numbers in the agreement but refer to the Election Form T2507. However, if the election is not available at the time you prepare this agreement, you will have to refer to numbers as shown in this precedent.

- ① Insert the date of the proposed transaction. This date is found in the instructions from the accountants. As it is a tax driven transaction, the date on which it happens is crucial. If the purchaser company is newly incorporated, this agreement can only be dated after the date of such incorporation.
- ② If there are two or more vendors selling an asset or a portion of the asset, a separate agreement must be prepared for each vendor unless they are joint owners of the asset.
- ③ Insert the name of the purchaser company.
- ④ If the Subject Property consists of shares of a company, insert the name of that company. We refer to this company as the “transfer company”. Some people call it the “target” company.
- ⑤ Copy the number and class of shares owned by the vendor from the *Central Securities Register(s)*. Double check against the Share Certificates.
- ⑥ If the Subject Property does not consist of shares, use this option and prepare a Schedule description of the Subject Property (for example: goodwill, real property or interest in real property and include the address and legal description for real property).
- ⑦ This information should be in the instructions from the accountants.
ITA requires that the fair market value of both the property being disposed and the share consideration be disclosed and a separate agreed amount for each property transferred. Reminder: only eligible property may be transferred.

Continued...

SECTION 85 AGREEMENT

THIS AGREEMENT MADE the ① _____ day of _____, 20__.

BETWEEN:

② **{NAME OF VENDOR}**

{Address of Shareholder}

(the "Vendor")

AND:

③ **{NAME OF COMPANY}**

a company duly incorporated under the laws of

{British Columbia}

{Incorporation Number of Company}

{Registered Office Address of Company}

(the "Purchaser")

BACKGROUND

A. The Vendor is the legal and beneficial owner of the following shares of ④ (the "Company"):

(a) ⑤ ***{number and class of shares}***; and

(b) ⑤ ***{number and class of shares}***

(collectively, the "Subject Property")

or ⑥

A. The Vendor is the legal and beneficial owner of certain capital property (the "Subject Property") as more particularly set forth in Schedule "A" to this Agreement.

B. The Vendor has agreed to sell the Subject Property and the Purchaser has agreed to purchase the Subject Property on the terms and conditions hereinafter contained.

C. The parties have determined that the fair market value of the Subject Property is \$⑦.

D. The parties have agreed to make an election pursuant to subsection 85(1) of the *Income Tax Act* (Canada) with respect to the purchase and sale of the Subject Property and the parties intend that no current income tax is to arise as a result of the transaction contemplated herein and to effect the purchase and sale of the Subject Property as hereinafter set forth.

WITNESS that in consideration of the premises and the mutual covenants and agreements herein contained the parties hereto agree with each other as follows:

Continued...

SECTION 85 AGREEMENT

Preparation (Continued)

- ① The paragraphs on the opposite page are standard clauses which are usually included in Section 85 agreements. Your law firm may use additional clauses or may have their own clauses. Consult with the supervising lawyer.
- ② Insert the jurisdiction of the purchaser company. Note that the purchaser company must be a taxable Canadian corporation.
- ③ Insert the total purchase price – you will find this information in the instructions from the accountants. This is the total dollar consideration for the transfer of the Subject Property, sometimes referred to as the “fair market value” – see ⑦ on the preceding page.
- ④ Use this paragraph if the payment is realized in full by the issuance of shares and copy the number and class of shares to be issued as consideration for the payment of the purchase price from the instructions received from the accountants.

If there are several classes of shares issued as consideration, change this paragraph to read:

“The Purchaser shall pay and satisfy the Vendor the Purchase Price for the Subject Property by allotting and issuing to the Vendor the following fully paid and non-assessable shares (collectively, the “**New Shares**”):

- (a) *{number and class}* shares with a redemption amount of \$___ each; and
- (b) *{number and class}* shares with a redemption amount of \$___ each;”

being an aggregate amount of *#{total redemption amount}* against delivery to the Purchaser of (a) *Share Certificate(s)* (or *Acknowledgement of Issuance*) which form(s) part of the Subject Property, duly endorsed for transfer to the Purchaser.

- ⑤ Use the following paragraph if the payment is realized partly by a boot (see definition on page 2) and partly by the issuance of shares

“The Purchaser shall pay and satisfy the Vendor the Purchase Price for the Subject Property by:

- (a) *{describe the boot}*; and
- (b) allotting and issuing to the Vendor *{number}* fully paid and non-assessable *{class}* shares (the “New Shares”). The redemption amount for the New Shares is \$___ per share being an aggregate redemption value of \$⑤.”

Continued...

Section 85 Agreement**Page 2****1. ① WARRANTIES AND REPRESENTATIONS****1.1 ① The Vendor warrants and represents that:**

- (a) the Vendor is the legal and beneficial owner of the Subject Property;
- (b) the Vendor has good and marketable title to the Subject Property free and clear of all mortgages, liens, charges, security interests, encumbrances, and all other claims; and
- (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 Subject Property to the Purchaser.

1.2 ① The Purchaser warrants and represents that:

- (a) the Purchaser is a Company duly incorporated, organized and subsisting under the laws of ② British Columbia; and
- (b) the Purchaser has good sufficient power, authority and right to enter into this Agreement and to complete the transactions to be completed by the Purchaser contemplated hereby.

2. PURCHASE AND SALE

2.1 On the basis of the warranties and representations of the Vendor set forth in Section 1 of this Agreement, and subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase and hereby purchases the Subject Property from the Vendor and the Vendor hereby agrees to sell and hereby sells the Subject Property to the Purchaser effective the date hereof.

3. PURCHASE PRICE

3.1 The purchase price for the Subject Property shall be the aggregate amount of \$③ (the “**Purchase Price**”) and shall be payable immediately upon the execution of this Agreement.

3.2 ④ As further outlined in Schedule “A”, the Purchaser shall pay and satisfy the Vendor the Purchase Price for the Subject Property by: ④ allotting and issuing to the Vendor *{number}* fully paid and non-assessable *{class}* shares (the “New Shares”). The redemption amount for the New Shares is \$__ per share being an aggregate redemption value of \$③.

or ⑤

Continued...

SECTION 85 AGREEMENT

Preparation *(Continued)*

- ① The paragraphs on the opposite page are standard clauses which are usually included in Section 85 agreements. Your law firm may use additional clauses or may have their own clauses. Consult with the supervising lawyer.

② ADJUSTMENTS

Here you have several options of as to which “Adjustments” paragraph should be inserted in the event the Minister of National Revenue decides to issue an assessment which may give rise to a tax liability (for an explanation, see page 2 – **Price Adjustment Clause**).

- ③ Use this paragraph when the Articles of the purchaser company contain a price adjustment clause attached to the shares being issued as consideration for the purchase price and the client or accountants have no other instructions.
- ④ Insert the paragraph number of the Articles of the purchaser company which contains a “price adjustment clause” (see **Chapter 13 – Authorized Share Structure**).

Note: Sometimes, the paragraphs in the Articles of a company are referred to as “articles”. Check this and adjust accordingly.

Continued...

Section 85 Agreement**Page 3****4. ①COVENANTS**

4.1 ①The Purchaser covenants with the Vendor that forthwith upon the execution of this Agreement the Purchaser shall deliver to the Vendor a duly issued Acknowledgement(s) of Issuance/Share Certificates representing the New Shares, registered in the name of the Vendor.

4.2 ①The Vendor covenants with the Purchaser that forthwith upon the execution of this Agreement, the Vendor shall deliver to the Purchaser all documents necessary to effect a transfer of the Subject Property to the Purchaser. The Vendor agrees that s/he shall execute and do all such further deeds, acts, things and assurances as may be necessary to more perfectly and absolutely assign and transfer the Subject Property to the Purchaser free of all encumbrances.

5. ②ADJUSTMENTS

5.1 ③ If the Minister of National Revenue or any other competent taxing authority at any time proposes to issue or issues any assessment or reassessment with respect to the Purchaser or the Vendor regarding the fair market value of the consideration for the New Shares, the parties covenant and agree to comply with the price adjustment clause set out in paragraph ④ of the Special Rights and Restrictions in the Articles of the Purchaser.

or

See next page for other Price Adjustment Clause

Continued...

SECTION 85 AGREEMENT**Preparation** *(Continued)*

- ① Use this paragraph when:
- the Articles of the purchaser company do not contain a price adjustment clause for the class of shares being issued as consideration for the purchase price or if the client provides specific instructions;
 - the mechanics for the adjustment must be set out in the agreement; or
 - the preferred shares issued as consideration for the sale have a fixed redemption amount.

Continued...

Section 85 Agreement**Page 4****ADJUSTMENTS*****Continued***

- 5.2 ① It is the intention of the parties that the Purchase Price of the Subject Property be equal to its fair market value and it is expressly agreed that if the Minister of National Revenue or its authorized representatives or any similar authority should assess or reassess any of the parties to any income, estate or gift tax or propose such an assessment or reassessment on the basis of a determination or assumption that the Purchase Price does not represent the fair market value of the Subject Property, then the Purchase Price shall be deemed to be an amount determined as follows:
- (a) such amount as may be agreed upon by the parties and the Minister of National Revenue or its authorized representatives; or
 - (b) in the absence of any agreement pursuant to paragraph (a), and in the event of an actual reassessment, such amount as will be determined by a Court having jurisdiction in the matter (after all appeal rights have been exhausted or all times for appeal have expired without appeals having been filed) to be the fair market value.
- 5.3 The amount determined pursuant to subparagraphs 5.2(a) or 5.2(b), as the case may be, will be the adjusted fair market value (the “Adjusted Value”) of the Subject Property.
- 5.4 If, after any determination made pursuant to subparagraphs 5.2(a) or 5.2(b) hereof, the Adjusted Value of the Subject Property is not equal to the Purchase Price the Purchaser covenants and agrees to adjust the consideration paid to the Vendor for the Subject Property retroactive to the date of this Agreement by adjusting the paid up capital of the New Shares, to the effect and intent that the revised Purchase Price shall be equal to the Adjusted Value of the Subject Property.
6. **②SECTION 85(1) ELECTION**
- 6.1 The parties covenant and agree to make a joint election pursuant to subsection 85(1) of the Income Tax Act (Canada) with respect to the purchase and sale of the Subject Property and in this regard the parties covenant and agree to execute a Canada Revenue Agency Form T2057 in such form as is appropriate to carry out the purchase and sale of the Subject Property pursuant to the terms of this Agreement using an elected amount as agreed to by the parties.
- 6.2 The Form T2057 shall indicate that the Subject Property constitutes capital property.
- 6.3 The parties covenant and agree that upon the execution of this Agreement they will make all appropriate filings with Canada Revenue Agency with respect to the Form T2057 as soon as reasonably possible.

Continued...

SECTION 85 AGREEMENT

Preparation (Continued)

- ① The paragraphs on this page are the “boilerplate” clauses which are usually included in all commercial agreements prepared by a law firm. Your law firm may use additional clauses, or may have their own form of “boilerplate” clauses. Consult with the supervising lawyer before inserting the ones on the opposing page.
- ② Insert the appropriate execution blocks:

For an individual:

SIGNED BY THE VENDOR in the)
 presence of:)
)
)
 _____)
 Name)
)
 _____)
 Address)
)
 _____)
)
 _____)
 Occupation)

{NAME OF VENDOR}

For a company:

{NAME OF COMPANY}

By: _____
Its authorized signatory

Section 85 Agreement**Page 5****7. ①GENERAL**

- 7.1 The parties covenant and agree to execute and deliver all such further documents and instruments and do all acts and things as may be necessary or convenient to carry out the full intent and meaning of this Agreement.
- 7.2 A notice required or permitted to be given pursuant to this Agreement may be given by registered mail or personal delivery to the party to receive the same at the address of such party hereinbefore set out or at such other address as that party may designate by notice under this Agreement.
- 7.3 This Agreement shall be construed in accordance with the laws of the Province of British Columbia.
- 7.4 Time shall be of the essence of this Agreement.
- 7.5 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, administrators, personal and legal representatives, successors and permitted assigns.
- 7.6 This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered (by facsimile, electronic transmission, or otherwise) in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the day and year first above written.


② Execution

CONSENT DIRECTORS' RESOLUTION (PURCHASER COMPANY)

General Notes

Once the agreement pursuant to section 85 of the *Income Tax Act* has been approved, the actions in the agreement must be consented to and carried out by the purchaser company directors.

In general, you must refer to the instructions from the accountants to complete the blanks, such as the information regarding the number and class of shares being sold or allotted, the Purchase Price and the Redemption Amount. Ensure that the amounts match those in the Agreement or in the Election Form T2057 if available.

 When several sales and purchases are transacted together, it is recommended that you prepare separate agreements for each vendor. However, you can approve all the transactions in one resolution. The resolution shown opposite only approves one transaction if there is only one vendor. The wording for a resolution where several vendors are combined must be adapted to the circumstances. The digital precedents to the Guide include a precedent for such a situation.

Preparation

- ① Insert the name of the purchaser company in the agreement (that is the company referred to in the agreement as the “Purchaser”)
- ② Insert the date of the Agreement.
- ③ If it is your office’s policy to attach a copy of the Agreement to the Resolution that approves it, replace the words between the two ③ with:

“... a true copy of which is attached as Schedule “A” hereto”.
- ④ Insert the number and description of shares that are being sold. The company is the transfer company. If property other than shares is being sold, replace the description of the shares between the two ④ with the description of the asset.
- ⑤ Insert the purchase price (see section 85 Agreement and the accountant’s instructions).
- ⑥ Insert the number and description of shares to be issued as consideration for the purchase of the Subject Property. The Class “X” shares referred to throughout are the shares issued as consideration for the purchase of the Subject Property.
- ⑦ Use this paragraph if the boot (see definition on page 2) is a Promissory Note.
- ⑧ Use this paragraph if the payment is partly a boot (see definition on page 2) and partly the issuance of shares.

Continued...

DIRECTORS RESOLUTIONS
OF
① {NAME OF PURCHASER COMPANY}
(the “Company”)

WHEREAS:**Use the first A and B if there is no Promissory Note or other boot**

- A. By a share purchase agreement dated as of ② between *{NAME OF VENDOR}* (the “Vendor”), and the Company (the “Agreement”), ③ in substantially the form previously presented to and reviewed by the Directors, ③ the Company agreed to purchase from the Vendor ④ shares more particularly described in the Agreement (the “Subject Property”) of ④ *{NAME OF COMPANY}* for the amount of \$⑤ and, in payment therefor, to issue ⑥ *{number and class of new shares being allotted}* (the “Class “⑥X” shares”) of the Company to the Vendor on the terms and conditions set out in the Agreement.
- B. It is expedient that, at this date, the Company issue the Class “X” shares to the Vendor.

Use the paragraphs A and B below if there is a Promissory Note or other boot

- A. By a share purchase agreement dated as of ② (the “Agreement”) between *{NAME OF VENDOR}* (the “Vendor”), and the Company, ③ in substantially the form previously presented to and reviewed by the Directors, ③ the Company agreed to purchase from the Vendor the following ④ shares of *{NAME OF COMPANY}* for the aggregate amount of \$⑤:
- (a) ④ *{number}* Class ④ shares; and
- (b) ④ *{number}* Class ④ shares;
- (collectively, the “Subject Property”) and, in payment therefor:
- (a) to issue and deliver to the Vendor *{number and class of new shares being allotted}* (the “Class “⑥X” shares”) of the Company on the terms and conditions set out in the Agreement; ⑦ and
- (b) ⑦ to execute and deliver to the Vendor a Promissory Note (the “Promissory Note”) in the amount of \$*{amount of Promissory Note}*, in the form attached as Schedule “A/B” hereto, being the balance of the Purchase Price as referred to in the Agreement.
- ⑧ *{if the boot is other than a Promissory Note, delete paragraph (b) above describe the boot (see page 2 for a description of boot)}*.
- B. It is expedient that, at this date, the Company issue the Class “X” shares and execute and deliver the Promissory Note to the Vendor.

Continued...

**CONSENT DIRECTORS' RESOLUTION
(PURCHASER COMPANY)**

Preparation (Continued)

- ① Insert the purchase price (see section 85 agreement and the accountant's instructions).
- ② The Class "X" shares referred to throughout are the shares issued as consideration for the purchase of the Subject Property.
- ③ For share certificate numbering, see **Chapter 8 - Allotment of Shares** .
- ④ Check the special rights and restrictions in the Articles of the transfer company and insert the paragraph (or article) number that refers to the determination of the Redemption Amount of the Class "X" shares.

Note: Sometimes, the paragraphs of the Articles of a company are referred to as "articles". Check this and adjust accordingly.

- ⑤ Insert the Redemption Amount for each Class "X" share from the Agreement and the accountant's instructions and then multiply it by the number of Class "X" shares to obtain the aggregate amount.

If the redemption amount is a fixed amount in the special rights and restrictions attached to the shares that are being issued, delete the entire paragraph.

Depending on the instructions from the lawyer and the accountants, and if the information as to the amounts is not available at this time, you can either leave the amounts blank and complete the information at a later date or, when the information is available, prepare another Directors' resolution dated within 120 days from the date of this allotment setting out the redemption amount (see *Consent Directors' Resolution (Determining the Redemption Amount)* page 60).

- ⑥ Check the special rights and restrictions in the Articles and the instructions from the accountant to determine if the dividend rate must be set at the time of the issuance of the shares. If it is the case, insert the rate. If not, delete from ⑥ to the end of the paragraph.

Continued...

**Consent Directors Resolution –
(Purchaser Company)**

Page 2

RESOLVED THAT:

1. The purchase of the Subject Property by the Company from *{Name of Vendor}* and the Agreement are hereby approved, ratified and confirmed.
2. The Purchase Price, being \$①, which is equal to the fair market value of the Subject Property, be paid by the issuance of the Class “②X” Shares as set forth in the Agreement.
3. The Company having received the Subject Property, allot and issue the shares as set out in paragraph below, and that such shares be hereby declared fully paid and non-assessable.
4. The allotment and issuance of the following fully paid and non-assessable shares of the Company be approved, and (a) new Share Certificate(s) be issued as follows:

Cert. No.	NAME OF ALLOTTEE	Number of Class “② X” Preferred shares being allotted
③	<i>{NAME OF VENDOR}</i>	<i>{Number of shares}</i>

5. The names of the allottee(s) and other necessary particulars be entered in the Central Securities Registers of the Company.
6. Pursuant to paragraph ④ of the Articles of the Company, the Redemption Amount of each Class “X” share issued hereunder is hereby determined and declared to be \$⑤, being \$⑤ in the aggregate ⑥ and the dividend rate to be payable on the Class “X” Redemption Amount is ⑥ per cent per annum.

Or: if the information with respect to the redemption amount is not available and the Articles allow for later determination:

7. The redemption amount, pursuant to the paragraph ④ of the Articles of the Company in respect of the Class “X” Preferred shares, shall be determined by the Directors at a later date.

Continued...

**CONSENT DIRECTORS' RESOLUTION
(PURCHASER COMPANY)**

Preparation (*Continued*)

- ① Omit this paragraph if there is no *Promissory Note* and in paragraph 10, delete the words “and the Promissory Note”.
- ② Insert the first paragraph 10 if only the *Agreement* and the *Promissory Note* are being approved.
Insert the second paragraph 10 if additional documents are being approved.
- ③ Delete any reference to a *Promissory Note* if there is none.
- ④ Insert the consecutive letter for each schedule (e.g. “A”, “B”), depending on the number of schedules attached to the Resolution.
- ⑤ Check the register of directors of the company and insert the names of all directors.

Processing

Arrange to have this document signed with the other documents of this transaction.

When Form T2057 election is received from the accountants, prepare the *Consent Directors' Resolution (Determining the Redemption Amount)*.

***Consent Directors Resolution –
(Purchaser Company)***

Page 3

8. The execution and delivery of the Agreement on behalf of the Company by any Director or Officer of the Company be approved and ratified.
9. ①The Company execute and deliver to *{Name of Vendor}* the Promissory Note.
10. ②Any one Director or Officer of the Company be authorized to do all such other acts, deeds and things as may be necessary to carry out the agreement of the Company with the Vendor of the Subject Property, including the execution of the Agreement, ③ and the Promissory Note and where necessary, other and further deeds, transfers, assurances and things as may be reasonably required by the Vendor, or his/her/its solicitors to carry out the terms of the Agreement to give effect to the foregoing including, without limitation, the filing of an election in the prescribed Form T2057 pursuant Section 85 of the *Income Tax Act*.

If additional documents:

10. ②Any one Director or Officer of the Company be authorized and directed, for and on behalf of the Company, to execute and deliver the Promissory Note, and all such other documents, instruments and agreements, and to do all such acts or things as may be necessary or desirable to give effect to the foregoing including, without limitation:
 - (a) the filing of an election in the prescribed Form T2057 pursuant Section 85(1) of the *Income Tax Act*;
 - (b) Bill of Sale;
 - (c) Transfer of Beneficial Interest, a copy of which is attached as Schedule “④” hereto; and
 - (d) Declaration of Bare Trust and Agency Agreement, a copy of which is attached as Schedule “④” hereto.

⑤ *{NAME OF DIRECTOR}*

⑤ *{NAME OF DIRECTOR}*

CONSENT DIRECTORS' RESOLUTION (VENDOR COMPANY)

General Notes

This Resolution is only required if the Vendor of the Subject Property is a company. In this example, it is assumed that the Subject Property consists of shares in another company (the “transfer company”). If the asset (described in the Resolution as “Subject Property”) does not consist of shares, you should include the description of the Subject Property (see ① below).

Preparation

- ① Check Recital A of the *Section 85 Agreement* and insert the **number** and **class** of shares of the transfer company which constitute the Subject Property being transferred. If the asset does not consist of shares of the transfer company, insert the description of the asset and delete the reference to the “shares of the transfer company”.

If there is one class of shares, select the first recital A, if there are several classes of shares, select the second recital A.

- ② Insert the date of the *Section 85 Agreement*.
- ③ If it is your office’s policy to attach a copy of the agreement to the resolution that approves it, replace the words between the two ③ with:

“... a true copy of which is attached as Schedule “A” hereto”.

- ④ Check with the supervising lawyer of the aggregate price is to be included in this resolution.
- ⑤ Check paragraph No. 3 of the *Section 85 Agreement* and insert the **number** and **class** of shares issued as consideration for the Subject Property.
- ⑥ If the consideration is only shares and there is no *Promissory Note* or other boot (see definition on page 2), delete the subparagraph (b) and any reference to the *Promissory Note*.

If the boot is other than a *Promissory Note*, delete any reference to the Promissory Note and describe the boot.

- ⑦ Determine who is to sign the agreement and all other documents and insert his or her office. For example, if the Secretary of the company is to sign all the documents, change “President” to “Secretary”.
- ⑧ Check the Register of Directors of the vendor company and insert the names of all the Directors.

Processing

Arrange to have this document signed with the other documents of this transaction.

When Form T2057 election is received from the accountants, prepare the *Consent Directors' Resolution (Determining the Redemption Amount)*.

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

WHEREAS:

- A. ①The Company is the registered and beneficial owner of ① Class ① shares of **{NAME OF THE TRANSFER COMPANY}**.
- or*
- A. ①The Company is the registered and beneficial owner of the following shares of **{NAME OF THE TRANSFER COMPANY}**:
- (a) ① Class ① shares /without par value / with a par value of \$___ each;
and
- (b) ① Class ① shares with a par value of \$___ each.
(the “Subject Property”)
- B. By a share purchase agreement dated as of ② (the “Agreement”) between the Company, as Vendor, and **{NAME OF PURCHASER COMPANY}** (the “Purchaser”), as Purchaser, ③in substantially the form previously presented to and reviewed by the Directors, ③ the Company agreed to sell to the Purchaser all of its right, title and interest in and to the Subject Property more particularly described in the Agreement ④ for the aggregate purchase price of \$④ and in payment therefor to accept from the Purchaser ⑤ shares of the Purchaser on the terms and conditions set out in the Agreement.
- ⑤ (a) ⑤ shares each of the Purchaser; ⑥and
- (b) ⑥Demand Promissory Note in the amount of \$_____, being the balance of the Purchase Price referred to in the Agreement.

RESOLVED THAT:

1. The sale by the Company to the Purchaser of the Subject Property and the Agreement are hereby approved, ratified and confirmed.
2. Any one ⑦Director or Officer of the Company be authorized to do all such other acts, deeds and things as may be necessary to carry out the agreement of the Company with the Purchaser, including the execution of the Agreement, and such other and further deeds, transfers, assurances and things as may be reasonably required by the Purchaser, or its solicitors to carry out the terms of the Agreement including, without limitation, the filing of an election in the prescribed Form T2057 pursuant Section 85 of the *Income Tax Act*.

⑧ **{NAME OF DIRECTOR}**

⑧ **{NAME OF DIRECTOR}**

CONSENT DIRECTORS' RESOLUTION (TRANSFER COMPANY)

General Notes

This resolution is only required if the Subject Property being transferred consists of shares in a company (the “transfer company”). The directors of the transfer company must authorize such transfer in a Consent Directors’ Resolution, which enables the cancellation of the *Share Certificate(s)*⁽¹⁾ and the issuance of the new *Share Certificate(s)*⁽¹⁾ to the Purchaser.

As this is basically a resolution authorizing a transfer, it is similar to the *Directors Resolution (Approving the Transfer)* in **Chapter 9 - Transfers and Transmissions**.

Preparation

- ① Insert the name of the vendor company from the Section 85 agreement.
- ② Check Recital A of the section 85 agreement and insert either the **number** and the **designation** of the class of shares or the description of the asset that constitute the “Subject Property” being transferred.
- ③ If the Vendor is the only shareholder of the transfer company, omit this paragraph. Otherwise, refer to the explanation (①) opposite the *Directors Resolution (Approving the Transfer)* in the **Chapter 9 - Transfer and Transmissions**.
- ④ Check the Articles and insert the paragraph number which restricts the transfer on shares of that company.
- ⑤ For a general discussion with respect to the transfer, and more particularly, numbering of share certificates, see **Chapter 9 - Transfers and Transmissions**.
- ⑥ Check paragraph 4 – **Satisfaction of Purchase Price** – of the section 85 agreement and insert the **number** and the **designation** for the class of shares which are issued as consideration for the purchase of the Subject Property being transferred.
- ⑦ Check the *Register of Directors* of the company and insert all the names of directors.

Processing

Prepare: *Instrument of Transfer*

New *Share Certificate(s)*⁽¹⁾ for the transferred shares.

Arrange to have these documents signed with the other documents of this transaction.

⁽¹⁾ Or an *Acknowledgement of Issuance*

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

WHEREAS:

A. ①{NAME OF VENDOR} (the “Vendor”) has applied to the Directors to transfer his/her/its {number}② of Class “②” shares with a par value of \$____ each (or: without par value) (Class “②” shares”) to {NAME OF PURCHASER} (the “Purchaser”) pursuant to an agreement dated {date} between the Vendor and the Purchaser.

B. ③The existing shareholders have consented to the transfer and have waived their rights pursuant to Article ④ of the Articles of the Company.

RESOLVED THAT:

1. The following transfer of shares be authorized, ratified and approved:

Name of Transferor	Name of Transferee	Number and Class of Shares
{NAME OF VENDOR}	{NAME OF PURCHASER}	{number}② Class “②”

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

Cert. No.	Name of Transferor	Number and Class of Shares
②	{NAME OF VENDOR}	②{number} Class “②”

3. The allotment and issuance of the following fully paid and non-assessable shares of the Company be approved, and (a) new Share Certificate(s) be issued as follows:

Cert. No.	Name of Transferee	Number and Class of Shares
⑤	{NAME OF PURCHASER COMPANY}	⑥

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

Dated effective: {Date}

⑦{NAME OF DIRECTOR}

⑦{NAME OF DIRECTOR}

SECTION 86**EXPLANATION**

An estate freeze or a “exchange” pursuant section 86 of the *Income Tax Act* (“ITA”) is generally used as part of estate planning. It is one the simplest estate freezes and, allows a shareholder to exchange one class of shares in a company for another class and at the time of the exchange, fix or “freeze” their value. The exchange is designed to defer the recognition of capital gains and losses that would otherwise be triggered on the disposition of shares of a company. Accordingly, there are no tax consequences at the time the exchange takes place as long as it meets the following criteria:

- the shareholder must dispose of **all** shares of a particular class of shares of a company to trigger the operation of section 86. In certain cases, a company may alter the rights and restrictions attaching to the shares without triggering a disposition of such shares. In such cases, section 86 does not apply.
- the shares disposed of must be **capital** property to the shareholder at the time of disposition.
- the shares must be disposed of in the course of a reorganization of the authorized share structure of a company. As the term “reorganization” is not defined in the ITA, a reorganization for the purposes of section 86 generally refers to a “fundamental change” of the company (for example, the creation and issuance of a new class of preferred shares).

Section 86 automatically applies, meaning that no election is required; however, the shareholder will have a reportable disposition for tax purposes.

The following is an example of an estate freeze used in tax planning: An individual (“Mrs. X”) is running a business which is a company incorporated in British Columbia (“ABC Co.”). Mrs. X is the registered owner of 1,000 common shares being all of the issued and outstanding shares of ABC Co. She originally invested \$10,000.00 in ABC Co. and the shares are now worth \$400,000.00. She expects that, in a few years, they will be worth well over \$1,000,000.00. Mrs. X has a daughter (“Miss X”) who works in the business and Mrs. X would like Miss X to inherit the business.

Mrs. X could leave the shares to Miss X in her Will but this would trigger income tax on deemed disposition on her death (see below). This brings Mrs. X to do some estate planning, the main purpose of which is tax planning.

By way of explanation, at present, Canada has no estate or inheritance taxes but two main tax considerations have to be addressed:

- each province has some form of estate administration tax. In British Columbia, such tax is called probate fee⁽¹⁾, which is currently approximately \$14.00 per \$1,000.00 of the deceased’s assets.
- more importantly, on a person’s death, there is a **deemed disposition of all capital property** at fair market value. In this example, all of Mrs. X’s

(1) See *Probate Fee Act* – Definitions.

property (except inventory in a business) will be treated as though she had sold it immediately before her death at its then fair market value. This will trigger substantial capital gains which will be included and taxed in Mrs. X's final tax return filed by her executor.

With the help of her accountants (who will instruct the solicitors to prepare the appropriate legal documents), Mrs. X decides to take advantage of the section 86 estate freeze which will allow her to exchange the 1,000 common shares in ABC Co. for 1,000 preferred shares in ABC Co. with a fixed value of \$400,000.00, which is the current fair market value of the common shares. The \$390,000.00 capital gain accrued on her common shares will not be taxed at the time of the exchange. Miss X will then invest \$100.00 by purchasing 100 newly create non-voting common shares in ABC Co. at \$1.00 each. The final result would be Miss X being the owner of 100 non-voting common shares in ABC Co. at \$1.00 each and Mrs. X being the owner of 1,000 preferred shares in ABC Co. The value of the preferred shares will be fixed at exactly \$400,000.00 which is the present worth of the shares and which worth will not increase in the future (i.e. the value is "frozen").

There are several purposes to this exercise:

- with the proper structuring and by tailoring the special rights and restrictions of ABC Co., Mrs. X can retain control of ABC Co. The special rights and restrictions, in ABC Co. provide that each share of a company, regardless of the class, is entitled to have one vote. Accordingly, Mrs. X, being the owner of 1,000 preferred shares, has the majority of votes compared with Miss X's 100, who is only the owner of common shares. Of course, it may be recommended to prepare a shareholders' agreement, but this is beyond the scope of this Guide.
- Mrs. X wants to have some income from her shares in ABC Co. – she may cause the company to declare dividends on the preferred shares.
- when the value of ABC Co. as a whole, increases, the growth will be allocated to the common (equity) shares and any increase in value above the \$400,000.00 will accrue to the common shares owned by Miss X and not the preferred shares owned by Mrs. X.

Generally, a company with a simple authorized share structure has only one class of shares – the common shares. In order to carry out the above transaction, the authorized share structure of the company will have to be altered by the creation of new preferred shares (which will be issued as consideration for the common (equity) shares). At this point, the accountant will "design" the special rights and restrictions to be attached to the shares of the company which may include the following:

- the common and the preferred shares should be **voting shares**, that is each share will carry the right to one vote.
- the preferred shares should be **retractable** at the option of the holder (Mrs. X) for \$400.00 each, or the aggregate for all of the 1,000 preferred shares issued of \$400,000.00 which is the amount set for the shares at their issuance. In

other words, Mrs. X can cash in the preferred shares at any time and has a legal right to force the company to pay her \$400.00 per share at any time.

- the preferred shares may pay a **dividend which may be** in preference to the common shares at the discretion of the directors of ABC Co., or a dividend could be fixed at a certain percentage per share per year. It is customary to make the dividends non-cumulative.

The above example story is just one example. Many other elements may be involved, such as family trusts holding shares.

In the following example, the equity common shares (i.e. the Class “A” shares below) are redesignated as a new Class of shares (i.e. the Class “Z” shares below) and then the Class “Z” shares are exchanged for the Preferred shares (i.e. the Class “X” shares below). The reason for this extra step is that, at the end of the exchange, new equity shares (generally, Class “A”) are issued to someone else and in this fashion, there will be no confusion between the original common or Class “A” shares being exchanged and the new equity shares being issued to another person.


However, often, if there is only one class of shares (“common”) and new classes of shares are created, the designation of the existing common shares will remain and new classes of equity shares created. Once the common shares have been exchanged for another class, the common shares will not be used.

As before, this depends on the instructions from the accountants and the law office policy for such transactions.

SECTION 86

PROCEDURE – CHECKLIST

1. Receive and review instructions from accountants and ascertain that you have the following information which you will require to complete the blanks in the documents:
 - (a) the number and class of shares being exchanged;
 - (b) the Adjusted Cost Base and the Fair Market Value of the shares being exchanged;
 - (c) the number and description of class of shares to be issued as consideration for the exchange;
 - (d) the Redemption Amount of the newly issued shares.Note: This amount may not be known at outset but you will need later to complete the transaction.
2. Review the Records Book and ascertain:
 - (a) whether the company is in good standing;
 - (b) that the authorized share structure of the company is as described in the accountant's instructions, and;
 - (c) that the number of issued shares match the accountant's instructions. Check both the Central Securities Registers and the share certificates and note that all share certificates for shares to be exchanged must be produced for cancellation
3. Prepare ***Closing Agenda/Index to Document Binder*** setting out all the steps of the transaction (see **Indexes to Corporate Re-organizations** in the Supplement to GCR – and select the appropriate index)



If this transaction is part of a bigger corporate reorganization that includes many more steps (e.g. incorporation of a new company, dividends, redemptions, amalgamations, allotments, etc.), in order to organize the documents in an efficient way, we would suggest that you prepare a binder with numbered tabs, each tab corresponding to a step in the Index. If your office computer system allows it, create a new sub-directory for each tab/step, for example: Tab/Step 01 – Incorporation of X. If your system does not allow sub-directories, save the documents with a prefix, for example 001 – Articles of X and ensure that, in each case, the footer includes the full path of the document.

The preparation of the documents is listed in chronological order. But often, it is more practical to prepare all documents together, leaving the dates blank, and insert the dates when an event has happened, for example, the Form 11 has been filed with the Registrar of Companies.

4. Have the ***Closing Agenda/Index to Document Binder*** reviewed by the supervising lawyer and the accountant. When approved, prepare the documents below
5. Prepare ***Section 86 Agreement*** between the Shareholder (as Vendor) and the company

Notes: If there are several shareholders, prepare separate agreements for each shareholder unless the shares are held jointly. You may combine all the transactions in one resolution, depending on the instructions.

The Agreement must be dated **before** the *Special Resolution*

6. Prepare *Special Resolution* (see **Chapter 13 - Authorized Share Structure**):

Refer to the shares being exchanged as “Old Shares”

Notes: In the following instructions:

- the shares which are the subject of the section 86 exchange are referred to as the “Original Shares”;
- if the Original Shares are redesignated, the new shares issued after the redesignation of the Original Shares (as Class “Z” shares) are referred to as the Old Shares and have the same attributes if any (special rights and restrictions) as the Original Shares. This redesignation is optional (see step 8 below);
- the new Preferred shares issued in exchange for the Original Shares (now called the Old Shares) are referred to as “Class “X” Preferred shares).

7. Prepare *Form 11 – Notice of Alteration* pursuant to Section 257 (4) of the *Business Corporations Act*

8. Prepare *Consent Directors’ Resolution (Option 1 – Redesignation of Shares)* which must be dated after the *Notice of Alteration* has been filed with the Registrar of Companies and which ratified and approved:

- (a) the share redesignation (if applicable);
- (b) the section 86 agreement;
- (c) the exchange of the Old Shares for the Class “X” Preferred shares; and

Notes: If the Original Shares are **not** being redesignated as Old Shares, use the *Consent Directors Resolution (Option 2 – No Redesignation)* on page 55.

If new equity shares are being allotted at this time, follow the instructions in Chapter 8 = **Allotments** and prepare the *Directors Resolutions (Authorizing the Allotment)*

9. Prepare:

- (a) *Surrenders* for the original shares;
- (b) *Share Certificate(s)*⁽¹⁾ for the Class “X” Preferred shares.

10. If it’s your office’s policy, send all the draft documents to the accountants (and if appropriate, the client) for approval

⁽¹⁾ Or *Acknowledgements of Issuance*

11. When the documents have been approved, arrange with the client to sign all documents (inserting the dates in the *Special Resolution* and the section 86 Agreement only)

Suggestion: If the documents are being sent to the client in paper format, keep the documents to be signed in the binder asking the clients to turn the pages when signing

12. Date and time stamp the signed *Special Resolution* and any other documents that require to be stamped (see **Chapter 5 – Records – Policies for Noting Date and Time on Corporate Records Received for Deposit at a Company’s Records Office.**)
13. Electronically file *Form 11 – Notice of Alteration*
14. When the *Form 11 – Notice of Alteration* has been filed, complete the dates in all the remaining documents.
15. Cancel the appropriate Share Certificates by and stamping the front of the certificate with a cancelled stamp or writing across the face of the certificate “**cancelled**” and staple the *Surrenders* or the *Instrument of Transfer* to the certificates that are being cancelled

For the share certificates for original shares that were redesignated, you may type the following on the face of such certificates:

“By Special Resolution dated {Date} and Notice of Alteration filed with the Registrar of Companies on {Date}, these shares were redesignated as Class “__” shares.”

16. Complete *Central Securities Registers*
17. Unless all documents are electronically signed, make the appropriate number of photocopies (if requested, one set to be kept in the office binder, one set for the client and one set for the accountants)
18. File the originals of the documents under the appropriate tabs in the appropriate companies’ Records Book or upload them into the virtual Records Book
19. If it is your office policy to keep a binder with paper copies of all the documents, place one set of photocopies with the appropriate tabs dividing each step of this transaction in the binder to be kept by your office
20. Contact the accountant and the client to determine the manner in which they wish to receive copies of the documents: either in a binder containing hard copies of the documents, scanned copies or all the documents burned on an USB flash drive
21. Prepare documents for reporting to the client and to the accountants:
 - if the client and the accountant have requested hard copies, and if you have paper copies originally signed, before disassembling the documents, and before inserting the signed originals in the records book, make the appropriate

-
- number of photocopies: one set to be kept in the office binder (if you have prepared one), one set for the client and one set for the accountants);
- if the client or the accountants request electronic versions, scan the originals in the order of the index to the document brief;
 - if the documents are completely signed electronically (as that term is considered under the *Electronic Transactions Act*), the documents need not be scanned as they are already in digital form and may be uploaded into the virtual *Records Book* and sent to the client and the accountant
22. Prepare the *Report Letter* to the client (*Report Letter* – page 58) with a copy to the accountant and:
- (a) provide them with a copy of the electronic documents or a binder with paper copies
 - (b) if the redemption amounts were not included in the Consent Directors' Resolution (Options 1 and 2), prepare the *Consent Directors' Resolution (Determining the Redemption Amount)* (page 60) and forward it to the company for signature
23. Review *Transparency Registers* and update accordingly if there has been a change to the significant individuals or how they are significant individuals.

SECTION 86 AGREEMENT

General Notes

This agreement sets out the terms of the exchange of the common (equity) shares for the preferred shares. If several shareholders are contemplating a section 86 exchange, each person's application should be treated separately, and a separate agreement must be prepared for each person save and except if the shares are held jointly.

For clarity purposes, and to simplify the explanation, in this example, it is assumed that, before the exchange, there are only common shares being exchanged which are referred here to as "Original Shares". These shares are first converted to a class of shares, in this instance, Class "Z", and then referred to as "Old Shares" to make it a clean transaction. Basically, the Original Shares and the Old Shares have the same attributes, only the name is changed.

On the other hand, if the common shares that are being exchanged are not redesignated, they are referred to as "Old Shares".

The shares for which the Old Shares are exchanged for are referred to as the "New Shares".

If several classes of shares are created, the alphabetical order of the classes of the designation of the shares should be respected. For example, Class "A" Common, Class "B" Common, Class "C" Preferred (which latter class will be the equivalent of the Class "X" shares in this example).

Preparation

- ① This date is found in the instructions from the accountants. As it is a tax driven transaction, the date on which it happens is important.
- ② If several people are exchanging their shares, only one name should be inserted here and a separate agreement must be prepared for each shareholder unless the shares are held jointly.
- ③ Copy the authorized share structure from the most recent Notice of Articles of the company. For example:

"The authorized share structure of the Company is:

 - (a) *10,000 Common shares without par value; and*
 - (b) *an unlimited number of Preferred shares with a par value of \$10.00 shares each."*
- ④ Depending on whether or not the shares currently held by the Shareholder have been redesignated:
 - if they have been redesignated, show the number and class of "old" shares after the redesignation;
 - if they have not been redesignated as Old Shares, in other words, are the original shares, show the number and class currently held by the Shareholder. Those are the "original" shares.

Continued...

SECTION 86 AGREEMENT

THIS AGREEMENT MADE the ① _____ day of _____, 20__.

BETWEEN:

② **{NAME OF SHAREHOLDER}**

{Address of Shareholder}

(the “Shareholder”)

AND:

{NAME OF COMPANY}

{Incorporation Number of Company}

with its Registered and Records office at

{Registered and Records Office Address of Company}

(the “Company”)

BACKGROUND:

A. The Company is in the course of a reorganization (the “**Reorganization**”) of its authorized share structure whereby it will create additional classes of shares.

B. The authorized share structure of the Company following the Reorganization will be as follows: ③

- (a) *{number}* Common shares with a par value of \$_____ each (*or* without par value); *etc.* and
- (b) *{number}* Common/Preferred shares without par value.

C. The Shareholder presently holds the following shares of the Company (the “**Old Shares**”). ④.

Class of shares	Number of shares
④ <i>{Description of Class}</i>	④ <i>{number}</i>

D. The Shareholder has agreed with the Company to exchange all of his/her Old Shares for New Shares of the Company in the course of the Reorganization, and for no other consideration, as follows:

Old Shares	New Shares
④ <i>{number and class}</i>	④ <i>{number and class}</i>

Continued...

SECTION 86 AGREEMENT**Preparation** *(Continued)*

- ① Insert the total Fair Market Value of the value of all the Old Shares.
- ② Insert the earliest date of filing the Form 11 or a later effective date as instructed by the accountants.
- ③ Insert the total (aggregate) Redemption Amount of the New Shares and divide the amount by the number of New Shares being issued. This information should be in the accountants' instructions.
- ④ Insert here the fair market value of the Old Shares which is the same as the aggregate consideration paid for the New Shares in ⑤.

Continued...

Section 86 Agreement**Page 2**

E. The Company and the Shareholder have agreed that the exchange contemplated herein shall take place pursuant to the provisions of section 86 of the *Income Tax Act* (Canada) (“ITA”) and that no current income tax is to arise as a result of the transaction contemplated herein.

F. The parties’ best estimate of the fair market value of the Old Shares is \$①

NOW THEREFORE THIS AGREEMENT WITNESSES THAT in consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto covenant and agree as follows:

1. EXCHANGE

1.1 Forthwith ② on the day after the date ② (the “**Date of Exchange**”) of the alteration of the authorized share structure of the Company by way of the filing of a Notice of Alteration with the Registrar of Companies for British Columbia, the Shareholder will exchange their Old Shares for the New Shares with an aggregate redemption value of \$③ being \$③ per share.

1.2 The Old Shares exchanged pursuant to section 1.1 shall be cancelled and returned to treasury.

1.3 On the Date of Exchange, the Shareholder shall deliver or cause to be delivered to the Company the Share Certificate or Acknowledgement of Issuance representing the Old Shares so held by them, free and clear of all liens, charges and encumbrances whatsoever, duly endorsed in favour of the Company for cancellation.

1.4 On the Date of Exchange, the Company shall issue or cause to be issued to the Shareholder as the registered and beneficial owner thereof, an Acknowledgement of Issuance/a Share Certificate representing the New Shares.

1.5 The Company shall pass or procure to be passed resolutions of the directors of the Company authorizing the exchange of the Old Shares for the New Shares, the cancellation of the Old Shares and the issuance of new Share Certificates/ Acknowledgements of Issuance representing the New Shares in the name of the Shareholder as the registered and beneficial owner thereof.

2. FAIR MARKET VALUE OF SHARES

2.1 After due investigation the parties hereto acknowledge and agree that their best estimate of the aggregate fair market value of the Old Shares is \$④ and consequently, the aggregate consideration paid to the Company for the issuance of the New Shares is \$⑤.

Continued...

SECTION 86 AGREEMENT

Preparation *(Continued)*

- ① This paragraph deals with the event that the Minister of National Revenue (or any other taxing authority) decides to issue an assessment which may give rise to a tax liability (for an explanation, see page 2 – **Price Adjustment Clause**).

The Special Rights and Restrictions attached to the new shares (which will be issued in exchange for the Old Shares) should contain a price adjustment clause.

If they do not, refer to the adjustment clause on page 17.

- ② Insert the paragraph number of the Articles of the purchaser company which contains the “price adjustment clause” (see **Chapter 13 – Authorized Share Structure**).

Note: Sometimes, the paragraphs of the Articles of a company are referred to as “articles”. Check this and adjust accordingly.

- ③ Insert the jurisdiction of the company. Note that the company must be a taxable Canadian corporation.

Continued...

Section 86 Agreement**Page 3****3. ① ADJUSTMENTS**

3.1 If the Minister of National Revenue or any other competent taxing authority at any time proposes to issue or issues any assessment or reassessment with respect to the Company or Shareholder regarding the fair market value of the consideration for the New Shares, the parties covenant and agree to comply with the price adjustment clause set out in article ② of the Special Rights and Restrictions in the Articles of the Company.

4. NO OTHER CONSIDERATION

4.1 The Shareholder and the Company agree with each other that no other consideration shall be payable by the Company or the Shareholder in respect of the exchange of shares provided for in this Agreement.

5. WARRANTIES AND REPRESENTATIONS

5.1 The Shareholder warrants and represents to and covenants with the Company that the Shareholder is the registered legal and beneficial owner of the Old Shares free and clear of all liens, charges, options and encumbrances.

5.2 The Company warrants and represents that:

- (a) It is a Company duly incorporated, organized and subsisting under the laws of ③British Columbia; and
- (b) It has good sufficient power, authority and right to enter into this Agreement and to complete the transactions to be completed by the Company contemplated hereby.

6. CLOSING AND EFFECTIVE DATES

6.1 The closing and effective date of the exchange of shares hereby contemplated shall be the Date of Exchange.

Continued...

SECTION 86 AGREEMENT

Preparation *(Continued)*

- ① The paragraphs on this page are the “essential” paragraphs which are usually included in all commercial agreements prepared by a law firm. Your law firm may use additional clauses, or may have their own “essential” clauses. Consult with the supervising solicitor before inserting the ones on the opposing page.
- ② Insert the execution provisos:

For an individual:

SIGNED BY THE SHAREHOLDER in)
 the presence of:)
)
)
 _____)
 Name)
)
 _____)
 Address)
)
 _____)
)
 _____)
 Occupation)

{NAME OF SHAREHOLDER}

For a company:

{NAME OF COMPANY}

By: _____
Its authorized signatory

Processing

Follow the procedure in “***Procedure and Checklist***” of this Section.

Section 86 Agreement**Page 4****7. ①GENERAL**

- 7.1 The parties covenant and agree to execute and deliver all such further documents and instruments and to do all acts and things as may be necessary and convenient to carry out the full intent and meaning of this Agreement.
- 7.2 A notice required or permitted to be given pursuant to this Agreement may be given by registered mail or personal delivery to the party to receive the same at the address of such party hereinbefore set out or at such other address as that party may designate by notice under this Agreement.
- 7.3 This Agreement shall be construed in accordance with the laws of the Province of British Columbia.
- 7.4 Time shall be of the essence of this Agreement.
- 7.5 This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective heirs, successors, administrators and permitted assigns.
- 7.6 This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts with the same effect as if all parties had all signed and delivered the same document and all counterparts will be construed together to be an original and will constitute one and the same agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

②

SPECIAL RESOLUTION

General Notes

Section 54 (3)(c) of the *Business Corporations Act* specifies that a company that wishes to effect a change in its authorized share structure cannot do so until the company has been authorized to effect such change either by the type of shareholders' resolution specified in its Articles, or, if the Articles do not specify the type of resolution, by a special resolution.

This Resolution only enables the changes in authorized share structure of the company contemplated in the Section 86 Agreement. The actual conversion of the share certificates, their cancellation and the issuance and allotment of new *Share Certificates* or *Acknowledgement of Issuance* is addressed later in a Consent Resolution of the company's directors.

For a general discussion on Special Resolutions as well as the precedents for the Special Resolution and the individual paragraphs that effect the alterations, see **Chapter 13 - Authorized Share Structure**.

Preparation

- ① If there is only one class of shares authorizing the resolution, or you will be preparing **separate** resolutions of the other class or classes of shares entitled to vote on the resolution (see *Separate Class Resolution* – page 18, **Chapter 13 - Authorized Share Structure**), delete this paragraph and delete the reference to “and a Special Separate Resolution”.
- ② Review the Articles of the company to determine whether they prescribe the type of shareholders' resolution required to authorize the change. If there is no provision in the Articles, use a special resolution.
- ③ Follow the steps regarding the alterations to the authorized share structure in the Section 86 agreement, although the wording in the agreement and the resolution are slightly different. In the agreement, the company and the shareholder **agree** to alter the Articles of the company, while here, the shareholders pass a resolution to actually do so.
- ④ If there is no effective date, delete to the end of the paragraph (see **Explanation** of “effective date” on page 9 of **Chapter 13 – Authorized Share Structure**).
- ⑤ Insert either this paragraph or the notice shown in ⑤ below.
- ⑥ Check the central securities register of the company and insert the names of all the **voting** shareholders.
- ⑦ If you are **not** preparing a separate resolution for the holders of other classes of shares, insert this separate authorization paragraph for the holders of each such class of shares and insert the names of the shareholders for each such class (replace Class **W** shares) with the appropriate names of the non-voting shareholders.
- ⑧ Insert the names of the holders of all the shareholders of the Class **W** shares.

Continued...

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

① Pursuant to the *Business Corporations Act*, the undersigned, being all of the shareholders of the Company, by signing these resolutions, in our capacity as the holders of shares of each Class entitled to vote on the matters herein, adopt the following resolutions and by so doing render the same as valid and effectual as if passed at a meeting of shareholders duly called and constituted.

RESOLVED AS ② A SPECIAL RESOLUTION ① AND A SPECIAL SEPARATE RESOLUTION THAT:

1. ③
2. The Articles and Notice of Articles of the Company be altered accordingly, and the directors of the Company instruct its agents to file a Notice of Alteration reflecting the above changes ④ effective *{date and time}*.
3. Any Director or Officer of the Company, signing alone, be authorized to execute and deliver all such documents and instruments, and to do such further acts, as may be necessary to give full effect to these resolutions or as may be required to carry out the full intent and meaning thereof.
4. The Company hereby appoints *{Name of Law Firm}* to act as its agent for filing the Notice of Alteration as set out in paragraph 2 above.
- ⑤5. The alteration to the Articles of the Company referred to above does not take effect until the Notice of Alteration has been filed with the Registrar of Companies and takes effect.

Dated effective: *{Date}*

⑥ *{NAME OF VOTING SHAREHOLDER}*

⑥ *{NAME OF VOTING SHAREHOLDER}*

⑦ The foregoing ⑦ Special Resolutions are hereby consented to by every shareholder of the Company holding Class **W** shares of the Company who would have been entitled to vote in person or by proxy at a meeting of the holders of such class of shares of the Company.

⑧ *{NAME OF CLASS W SHAREHOLDER}*

⑧ *{NAME OF CLASS W SHAREHOLDER}*

⑤ NOTICE

The alteration to the Articles of the Company referred to above does not take effect until the Notice of Alteration has been filed with the Registrar of Companies and takes effect.

CONSENT DIRECTORS' RESOLUTIONS (Option 1 – Redesignation of Shares)

General Notes

This Resolution carries out the provisions of the Section 86 Agreement:

- if applicable, the share redesignation of the original class of shares (the “Original Shares”) for the new class(s) of shares (the “Old Shares”);
- the section 86 share exchange – equity shares (now redesignated as Old Shares) for Preferred shares (in this example, we always refer to the new preferred shares as “Class “X” Preferred shares”).

For a general discussion and precedents for the share allotments, *Share Certificates* and completing the *Central Securities Register*, see **Chapter 8 – Allotments**.



When there are several exchanges, it is recommended that you prepare separate agreements for each shareholder and depending on the circumstances, separate resolutions. However, you can approve all the transactions in one resolution. The resolution shown opposite only approves one transaction. The wording for a resolution where several exchanges are combined must be adapted to the circumstances. The digital precedents to the Guide include a precedent for such a situation.

Preparation

- ① In this table, you recite the actual share situation before the redesignation which you should copy from the *Central Securities Register* and double-check against the *Share Certificates* in the *Records Book*. This should match recitals in the Section 86 Agreement.
- ② Insert the date of filing of the *Notice of Alteration* with the Registrar of Companies.
- ③ In this table, you should show the redesignation taking place. All the shares of a class are redesignated. Reminder: the “Old” class is the name of the newly redesignated class which is subsequently exchanged.
- ④ Match the number of shares in the first column of ① to the last column in this table. If there are several classes being exchanged, adjust the table to the classes of Original Shares being exchanged for the Old Shares – add or delete rows.
- ⑤ If there are several classes of shares being redesignated, endorse each certificate with a similar notation but change the class designation to the appropriate class.

Continued...

DIRECTORS' RESOLUTIONS
OF
{NAME OF COMPANY}
 (the "Company")

WHEREAS:

A. The *{Name of Shareholder}* (the "Shareholder") is the registered owner of the following shares of the Company:

Certificate No.	③ Number and Class of Shares
① <i>{number}</i>	<i>{number} common/Class "A"</i>

(hereinafter referred to as the "Original Shares").

B. Pursuant to a Special Resolution dated *{date}* and Notice of Alteration filed with the Registrar of Companies on ② *{Date}*, the Original Shares were redesignated as set out in the table below: and are thereafter collectively referred herein as the "Old Shares". ③

Original Shares	Old Shares (after Redesignation)
③ <i>common (or Class "A")</i>	<i>Class "Z"</i>

C. By an agreement pursuant to section 86 of the *Income Tax Act* dated as of *{date}* between the Shareholder and the Company (the "Agreement") in substantially the form previously presented to and reviewed by the Directors, the Shareholder and the Company agreed to exchange the Old Shares held by the Shareholder as set out in the table below:

Number of Shares	Old Shares	New Shares
④ <i>"{number of shares}"</i>	<i>Class "Z"</i>	<i>Class "X" Preferred</i>

RESOLVED THAT:

1. The redesignation referred to in Recital B, the Agreement and the share exchange referred to in Recital C, are hereby approved, ratified and confirmed.
2. The following Share Certificate(s) for the Original Shares be cancelled and endorsed with the notation below:

Certificate No.	Name of Shareholder	Number of Original Shares
④ <i>{number}</i>	<i>{NAME OF SHAREHOLDER}</i>	④ <i>{number} common/Class "A"</i>

⑤ *"By Special Resolution dated {Date} and Notice of Alteration filed with the Registrar of Companies on {Date}, these shares were redesignated as Class "_ " shares."*

Continued...

CONSENT DIRECTORS' RESOLUTION
(Option 1 – Redesignation of Shares)

Preparation *(Continued)*

- ① By Special Resolution (see Recital B of this Consent Directors' Resolution), the Original Shares were redesignated as a new class of shares (the "Old Shares") but no new *Share Certificates* for the Old Shares were issued.

For example, if there were 100 common shares – they were redesignated as Class "Z" shares and then the Class "Z" shares were exchanged for 100 Class "X" Preferred shares.

If there were two classes of shares being exchanged (say 100 Class "A" and 150 Class "B" Common shares), they would be redesignated as follows:

- the 100 Class "A" common shares would become 100 Class "Y" shares; and
- the 150 Class "B" common shares would become 150 Class "Z" shares.

and the Class "Y" and "Z" shares would be collectively called the "Old Shares" and subsequently, exchanged for 250 Class "X" Preferred shares. On the other hand, in some cases, each class of shares is exchanged for a separate class of shares, for example:

- the 100 Class "Y" shares would be exchanged for 100 Class "X" Preferred Shares; and
- the 150 Class "Z" shares would be exchanged for 150 Class "W" Preferred Shares.

- ② The manner in which you complete this table depends on the instructions received from the accountants. The usual way is to exchange all the equity shares (the Original Shares which have been redesignated as Old Shares) for one class of Preferred shares. In the event the Old Shares are exchanged for several classes of shares, insert the number and designation of each class of Preferred shares being received.

Continued...

Consent Directors' Resolution
(Option 1 – Redesignation of Shares)
Page 2

3. The acquisition by the Company of the Old Shares as set out above pursuant to the Agreement be approved, ratified and confirmed.
4. The allotment and issuance of the following fully paid and non-assessable shares of the Company be approved, and (a) new Share Certificate(s) be issued as follows:

Cert. No.	NAME OF SHAREHOLDER	Number and Class of shares being allotted
<i>{Number}</i>	<i>{NAME OF SHAREHOLDER}</i>	<i>{number of shares}</i> <i>Class "X" Preferred</i>
<i>{Number}</i>	<i>{NAME OF SHAREHOLDER}</i>	<i>{number of shares}</i> <i>Class "Y" Preferred</i>

5. The names of the allottee(s) and other necessary particulars be entered in the Central Securities Registers of the Company.

Continued...

CONSENT DIRECTORS' RESOLUTION
(Option 1 - Redesignation of Shares)

Preparation *(Continued)*

- ① Check the special rights and restrictions in the Articles of the company and insert the paragraph (or article) number that refers to the determination of the Redemption Amount of the Class “X” shares.

Note: Sometimes, the paragraphs of the Articles of a company are referred to as “articles”. Check this and adjust accordingly.

- ② Insert the redemption amount of each share (copy amount from the instructions received from the accountants). This should be the total Fair Market Value divided by the number of the Class “X” Preferred shares (for example, if the Fair Market Value of the Original Shares is \$500,000.00 and there are 1,000 Class “X” Preferred, you would divide \$500,000.00 by 1,000 and the resulting in the redemption amount of \$500.00 per Class “X” Preferred share.

Depending on the instructions from the lawyer and the accountants, and the special rights and restrictions in the Articles of the Company, and if the information as to the redemption amounts is not available at this time, you can either leave the amounts blank and complete it at a later date or, when the information is available, prepare the *Consent Directors' Resolution (Determining the Redemption Amount)* – page 60). dated within 120 days from the date of this allotment setting out the redemption amount.

If the redemption amount is a fixed amount in the special rights and restrictions attached to the shares that are being issued, delete this paragraph.

- ③ Check the special rights and restrictions in the Articles and the instructions from the accountant to determine if the dividend rate must be set at the time of the issuance of the shares. If it is the case, insert the rate. If not, delete from ③ to the end of the sentence.

- ④ Insert the total Fair Market Value of the value of all the Preferred shares.
 If several classes of Preferred shares are issued in exchange for the Original Shares, change the wording as follows:

“...the fair market value in respect of:

- the Class “X” Preferred shares shall be \$100 each, for the aggregate amount of \$___;
- the Class “W” Preferred shares shall be \$___ each for the aggregate amount of \$___;

being \$___ in the aggregate (*this would be the total of aggregate amounts of Class “X” and Class “W” shares*).

Processing

Follow the procedure in “*Procedure and Checklist*” of this Section.

***Consent Directors' Resolution
(Option 1 – Redesignation of Shares)
Page 3***

6. Pursuant to paragraph ① of the Articles of the Company, the Redemption Amount of each Class “X” share issued hereunder is hereby determined and declared to be \$②, being \$② in the aggregate ③ and the dividend rate to be payable on the Class “X” Redemption Amount is ③ per cent per annum.

Or: if the information with respect to the redemption amount is not available and the Articles allow for later determination:

7. Pursuant to the paragraph ① of the Articles of the Company, the redemption amount of each Class “X” share shall be determined by the Directors at a later date.
8. The fair market value of the Class “X” Shares be determined at \$④.
9. The execution and delivery of the Agreement on behalf of the Company by any one Director or Officer of the Company be approved and ratified.
10. Any one Director or Officer of the Company be authorized and directed, for and on behalf of the Company, to execute and deliver all such other documents, instruments and agreements, and to do all such acts or things as may be necessary or desirable to give effect to the Agreement.

Dated effective: *{Date}*

⑥*{NAME OF DIRECTOR}*

⑥*{NAME OF DIRECTOR}*

CONSENT DIRECTORS' RESOLUTION (Option 2 – No redesignation)

General Notes

This Resolution is the alternate option for the Consent Directors' Resolution on page 48 which carries out the provisions of the Section 86 Agreement:

- here the shares are exchanged without being redesignated and are still referred to as the “Old Shares”;
- the Section 86 share exchange – equity shares (now referred to herein as Old Shares) for Preferred shares (in this example, we always refer to the new Preferred shares as “Class “X” Preferred shares),

For a general discussion and precedents for the share allotments, *Applications for Allotments*, *Share Certificates* and completing the *Central Securities Register*, see section “*Allotment of Shares*” in this Guide.



When there are several exchanges, it is recommended that you prepare separate Agreements for each Shareholder and depending on the circumstances, separate Resolutions. However, you can approve all the transactions in one Resolution. The Resolution shown opposite only approves one transaction. The wording for a Resolution where several exchanges are combined must be adapted to the circumstances. The digital precedents to the Guide include a precedent for such a situation.

Preparation

Follow the procedure in “*Procedure and Checklist*” of this Section.

CONSENT DIRECTORS' RESOLUTIONS
OF
NAME OF THE COMPANY
 (the "Company")

WHEREAS:

By an agreement pursuant to section 86 of the *Income Tax Act* dated as of *{date}* between *{NAME OF SHAREHOLDER}* (the "Shareholder") and the Company (the "Agreement"), in substantially the form previously presented to and reviewed by the Directors, the Company agreed to accept from the Shareholder the following shares for cancellation (the "Old Shares"):

Certificate No.	NAME OF SHAREHOLDER	Number of Old Shares being surrendered
<i>{Number}</i>	<i>{NAME OF SHAREHOLDER}</i>	<i>{number and Class of shares}</i>

and in exchange therefor allot and issue *{number}* Class "X" Preferred shares (the "Class "X" Preferred shares") of the Company for each Old Share as set out above for an aggregate of *{number}* "X" Preferred shares.

RESOLVED THAT:

1. The share exchange pursuant to the Agreement and the Agreement in substantially the form presented to, and reviewed by, the directors of the Company be approved, ratified and confirmed.
2. The Share Certificate(s) representing the Old Shares as hereinbefore set out be cancelled.
3. The allotment and issuance of the following fully paid and non-assessable shares of the Company be approved, and (a) new Share Certificate(s) be issued as follows:

Cert. No.	NAME OF SHAREHOLDER	Number and Class of shares being allotted
<i>{Number}</i>	<i>{NAME OF SHAREHOLDER}</i>	<i>{number of shares}</i> <i>Class "X" Preferred</i>
<i>{Number}</i>	<i>{NAME OF SHAREHOLDER}</i>	<i>{number of shares}</i> <i>Class "Y" Preferred</i>

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

Continued...

CONSENT DIRECTORS' RESOLUTION
(Option 2 – No redesignation)

Preparation *(Continued)*

- ① Check the special rights and restrictions in the Articles of the company and insert the paragraph (or article) number that refers to the determination of the Redemption Amount of the Class “X” shares.

Note: Sometimes, the paragraphs of the Articles of a company are referred to as “articles”. Check this and adjust accordingly.

- ② Insert the Redemption Amount of each share (copy amount from the instructions received from the accountants). This should be the total Fair Market Value divided by the number of the Class “X” Preferred shares (for example, if the Fair Market Value of the original shares is \$500,000.00 and there are 1,000 Class “X” Preferred, you would divide \$500,000.00 by 1,000 and the resulting in the Redemption Amount of \$500.00 per Class “X” Preferred share.

Depending on the instructions from the lawyer and the accountants, and the special rights and restrictions in the Articles of the Company, and if the information as to the amounts is not available at this time, you can either leave the amounts blank and complete it at a later date or, when the information is available, prepare the ***Consent Directors' Resolution (Determining the Redemption Amount)*** (page 60) dated within 120 days from the date of this allotment setting out the redemption amount.

If the Redemption Amount is a fixed amount in the special rights and restrictions attached to the shares that are being issued, delete this entire paragraph.

- ③ Check the special rights and restrictions in the Articles and the instructions from the accountant to determine if the dividend rate must be set at the time of the issuance of the shares. If it is the case, insert the rate. If not, delete from ③ to the end of the sentence.

- ④ Insert the total Fair Market Value of the value of all the Preferred shares.

If several classes of Preferred shares are issued in exchange for the Old Shares, change the wording as follows:

“...the fair market value in respect of:

- the Class “X” Preferred shares shall be \$100 each, for the aggregate amount of \$____;
- the Class “Y” Preferred shares shall be \$____ each for the aggregate amount of \$____;

being \$____ in the aggregate (*this would be the total of aggregate amounts of Class “X” and Class “W” shares*).

Processing

Follow the procedure in “***Procedure and Checklist***” of this Section.

***Consent Directors' Resolution
(Option 2 – No Resignation)
Page 2***

5. Pursuant to paragraph ① of the Articles of the Company, the Redemption Amount of each Class “X” share issued hereunder is hereby determined and declared to be \$②, being \$② in the aggregate ③ and the dividend rate to be payable on the Class “X” Redemption Amount is ③ per cent per annum.

Or: if the information with respect to the redemption amount is not available and the Articles allow for later determination:

6. Pursuant to the paragraph ① of the Articles of the Company, the redemption amount of each Class “X” share shall be determined by the Directors at a later date.
7. The fair market value of the Old Shares be determined at \$④.
8. The execution and delivery of the Agreement on behalf of the Company by any one Director or Officer of the Company be approved and ratified.
9. Any one Director or Officer of the Company be authorized and directed, for and on behalf of the Company, to execute and deliver all such other documents, instruments and agreements, and to do all such acts or things as may be necessary or desirable to give effect to the Agreement.

Dated effective: *{Date}*

{NAME OF DIRECTOR}

{NAME OF DIRECTOR}

REPORT LETTER

General Notes

When the transaction is completed, a report with copies of all documents (whether paper or electronic) should be send to the client with a copy to the accountant.

Preparation

- ① List all the companies involved in the transaction.
- ② Delete this item if you have not prepared the *Index*.
- ③ Describe what you are attaching: binder, USB flash drive or if emailing letter, describe the format.
- ④ Insert these three paragraphs for a Section 85 Rollover.
- ⑤ Insert this paragraph for a Section 86 Exchange and complete the Step /Tab number that sets out the allotment of the Class “X” Preferred shares.

Processing

Depending on how you are sending this report, ensure that:

- one copy is sent to the accountants who provided you with the instructions;
- both the letter to the client and the copy to the accountants have attachments, whether electronic or physical.

Following your office procedure, diarize this matter and follow up.

File No _____

{date}

{name and address of client}

Dear _____:

Re: ①{Name of the Company/ies} – Corporate Reorganization

As all matters pertaining to the above corporate reorganization are now completed, we enclose:

1. ②Index to the Document Brief;
2. ③Binder with all executed documents and other relevant document/The electronic Document Brief in PDF format with bookmarks for all the documents.

④Please note that the accounts should prepare a **Form T2057** that applies to elections made under section 85(1) of ITA. The Transferor must file this form separately from any income tax return. The Form must be signed by the Transferor (or a person authorized in writing on the transferor's behalf) and by the authorized officer of the Transferee.

④The deadline to file **Form T2057** is the earliest date on which any of the parties to the election has to file an income tax return for the taxation year in which the transfer occurred.

④Please instruct your accountants to provide us with a copy of this Form when it has been prepared and signed.

⑤Please instruct your accountant to provide us with the Redemption Amounts for the Class "X" Preferred shares issued in ⑤ Step / Tab No. of the attached Document Brief.

If you have any questions regarding the enclosed, please do not hesitate to contact the writer.

Yours truly,

{NAME OF LAW FIRM}

cc: *{name of accountant}*

DIRECTORS RESOLUTION
(Determining the Redemption Amount)

General Notes

This Resolution is prepared in situations (which are very common) when the redemption amount of the shares being issued as consideration in a Section 85 Rollover or a Section 86 Exchange were not known at the time of their issuance.

In due course, the accountants will provide you with the information, and in the case of a Section 85 Rollover with a copy of Form T2057.

If you have prepared the documents leaving the information with respect to the redemption amount blank or prepared a resolution stating that the redemption amount will be determined at a later date, you should prepare this Resolution for each party where the redemption amount is shown.

Preparation

- ① Use this paragraph for a Section 85 Transaction.
- ② Complete all of the information regarding the Agreement from the executed copy of same.
- ③ Use this paragraph for a Section 86 Exchange.
- ④ Complete all of the information regarding the Agreement from the executed copy of same.
- ⑤ Copy amount from the instructions received from the accountants.

Processing

Prepare separate Resolutions for each company where the redemption amount was missing and forward them to the client for execution.

Note: As the Form T2057 contains confidential information regarding the individuals, do not file it in the **Records Book**. Check the office procedure for handling confidential documents.

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

WHEREAS

A. ①By a share purchase agreement dated as of ② (the “Agreement”) between ***{NAME OF VENDOR}*** (the “Vendor”), and the Company, the Company purchased from the Vendor ② shares of ②***{NAME OF COMPANY}*** and, in payment therefor, issued to the Vendor “②***{number and class of new shares being allotted}*** (the “Class “②X” shares”) of the Company on the terms and conditions set out in the Agreement.

or

A. ③By an Agreement dated as of date ④ (the “Agreement”) between ④***{NAME OF SHAREHOLDER}*** (the “Shareholder”) and the Company, the Company accepted the following shares for cancellation (the “Old Shares”):

Certificate No.	NAME OF SHAREHOLDER	Number of Old Shares being surrendered
④		

and in exchange therefor allotted and issued to the Shareholder ***{number}*** Class “X” Preferred shares (the “Class “X” Preferred shares”) of the Company for each Old Share as set out above for an aggregate of ***{number}*** Class “X” Preferred shares.

B. The Articles of the Company require that the redemption amount with respect to the issued shares be determined at the time of the issuance, but this information was not available when the shares were issued.

C. The accountants for the Company have now provided this information.

RESOLVED THAT:

The redemption amount of the Class “X” Preferred/Class “X” shares be determined at \$ _____ each for an aggregate redemption amount of \$⑤ pursuant to the Agreement.

Dated effective: ***{Date}***⑤

 ⑥***{NAME OF DIRECTOR}***

 ⑥***{NAME OF DIRECTOR}***

