

## TRANSITION INDEX

	<b>Page</b>
Explanation .....	2
• Transition – General .....	2
• Registered and Records Office Addresses .....	3
• Directors' Addresses .....	3
• Transition Application Containing Notice of Articles .....	4
• Identifying Name of Shares .....	4
• Central Securities Register .....	4
• Mandatory Changes to Articles .....	5
• Pre-1973 Companies .....	6
• Pre-Existing Reporting Company .....	7
• Translation of Name .....	7
• Optional Changes to Articles .....	8
• Pre-existing Company Provisions .....	10
• Post Restoration Transitions .....	10
• Extraprovincial Companies .....	11
• Timing .....	11
Procedure/Checklist .....	14
Letter to Client (Reporting on New Act – BC Companies) .....	24
Appendix to Letter Outlining Changes .....	29
Notice Regarding Pre-Existing Company Provisions .....	37
Letter to Client (Reporting on Changes – Extraprovincial Companies) .....	38
Transition Checklist.....	42
Ordinary Resolution (Authorizing Basic Transition) .....	52
Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a Pre-1973 Company) .....	54
Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a Post-1973 Company) .....	58
Directors Resolution (Adopting New Forms of Share Certificates) .....	62
Transition Application and Notice of Articles (Form 43) .....	64
Transmittal Letter (Forwarding Transition Documents) .....	68
Report to Client on Transition (Explaining Optional Changes to Articles).....	72
Transition Options Worksheet for Changes to Articles Under the New Act.....	77
Special Resolution (Authorizing Optional Changes to Articles) .....	82
Articles .....	86
Transmittal Letter (Forwarding Optional Change Documents) .....	88
Report to Client (Optional Changes) .....	90
Reminder Letter to Client .....	92

## EXPLANATION

### Transition – General

The *Business Corporations Act* (the “New Act”) came into force on March 29, 2004. At the same time, a new electronic filing system known as COLIN (Corporate Online Computer System) was implemented and may be accessed at the Corporate Registry’s Online filing centre, Corporate OnLine ([www.corporateonline.gov.bc.ca](http://www.corporateonline.gov.bc.ca)).

The New Act modernizes and replaces the *Company Act*<sup>(1)</sup> (the “Old Act”). The New Act is much more in line with the *Canada Business Corporations Act* but retains the contract model used in the Old Act.

All pre-existing companies must be transitioned into the New Act before **March 29, 2006** (two years after the New Act came into force), by filing a *Transition Application* containing a *Notice of Articles*. Any company that has not been transitioned within the two year period may be dissolved by the Registrar (s. 422(1)(f)).

Until such time as the *Transition Application* has been filed, the company will not be able to:

- change its name, alter its authorized share structure, or alter, add or delete any special rights and restrictions attached to any shares of the company;
- alter its *Articles*;
- amalgamate (except by Court Order);
- remove or alter the **Pre-Existing Company Provisions**; or
- take advantage of any of the features of the New Act such as removing the requirement that the company have officers or change the majority required to remove a director.

The effect of a transition into the New Act is that the existing *Memorandum* of the company is replaced with a *Notice of Articles* that sets out, among other things, the authorized share structure of the company. Once the *Notice of Articles* is filed, the existing *Memorandum* will cease to have any force or effect.

In order to comply with the transition provisions of the New Act, each pre-existing company must do the following within two years after the New Act comes into force (s. 436(1)):

- file with the Registrar a *Transition Application* containing a *Notice of Articles* (Form 43);
- alter its *Articles* to the extent necessary to comply with the New Act; and
- supplement the information registered in its *Central Securities Register* to contain all the information on the shares of the company held by shareholders at the date the New Act comes into force which information must comply with section 436 (c).

---

<sup>(1)</sup> Chapter 62 of the 1996 Revised Statutes of British Columbia enacted in 1973

The New Act provides that certain requirements contained in the Old Act, set out in Table 3 of the Regulations to the New Act as the “Pre-existing Company Provisions,”<sup>(1)</sup> will apply to all pre-existing companies. The **Transition Application** filed with the Registrar must include a **Notice of Articles** that indicates that the Pre-existing Company Provisions apply to the company (s. 437(2)(c)(vii)). Subsequent to the filing of the **Transition Application**, the shareholders may pass a special resolution removing the application of the Pre-existing Company Provisions (s. 442.1(3)), in which case the company must then file a **Notice of Alteration to a Notice of Articles** (Form 11).

If a pre-existing company is required to make mandatory changes to its Articles, it may make optional alterations to its **Articles** at the same time as the mandatory changes, as long as certain conditions are met (see page 8). However, a special resolution removing the Pre-existing Company Provisions cannot be passed until the **Transition Application** has been filed. The discussions in this chapter regarding “Optional” changes to the **Articles** is equally relevant to both companies that are eligible to make optional alterations to their **Articles** at the same time as the mandatory changes and companies that are required to file the **Transition Application** before making any such changes.

Although section 439(2) of the New Act provides that the filing of a **Transition Application** and alteration to the **Articles** to comply with the New Act will not constitute a breach, contravention or default under a security agreement or other record that contains a prohibition on the alteration of its charter documents, this provision does not extend to include optional changes that might be made to the **Articles** to take advantage of any of the features of the New Act. If a company intends to adopt new **Articles** containing changes other than the mandatory changes outlined below, care should be taken to obtain any consents required by professional associations, lenders, landlords or any other applicable parties.

Section 437(3) provides that no **Transition Application** will be invalid merely because requirements have not been met.

### **Registered and Records Office Addresses**

The New Act also provides that, upon transition, the delivery and mailing addresses of the registered and records offices of the company are deemed to be the addresses that were shown in the Registrar’s database immediately before March 29<sup>th</sup>, 2004 (s. 440). If the company wishes to change either the delivery or mailing address to another address (such as a box number in the case of a mailing address), a **Notice of Change of Address** (Form 2) (see the **Registered and Records Offices** chapter) can be filed before the filing of the **Transition Application** and the new addresses would then be shown in the **Transition Application**.

### **Directors’ Addresses**

Under the Regulations to the New Act, directors may select separate mailing and delivery addresses that do not need to be their residential addresses. A director may use a business address if he or she can usually be served with records during statutory business hours at

---

<sup>(1)</sup> Table 3 of the Regulations to the Act are referred to in this chapter as the “Pre-existing Company Provisions”.

that address (Regulation 2). If the individual does not wish to use a business address, the mailing address of the individual's residence should be shown.

The delivery and mailing addresses of the directors of the company are deemed to be the residential addresses that were shown in the Registrar's database immediately before the New Act came into force (s. 441). If the directors wish to change the delivery or mailing address to their business address, a *Notice of Change of Directors* (Form 10) (see the **Directors and Officers** chapter) may be filed before the filing of the *Transition Application* and the new addresses would then be shown on the *Transition Application*. If the *Notice of Change of Directors* is simply changing one or more addresses and no director will be appointed or deleted as part of the filing, there is no filing fee. It is anticipated that many lawyers who act as directors or officers of companies will wish to change the addresses shown for them in the Registrar's database from their residential addresses to their office addresses.

### **Transition Application containing Notice of Articles**

The information contained in the *Notice of Articles* which forms part of the *Transition Application* (Form 43) must be the same as the information contained in the *Memorandum* of the pre-existing company and any amendments thereto. For a detailed review of the information required for the *Notice of Articles* contained in the *Transition Application* see the **Incorporation** chapter.

### **Identifying Name of Shares**

Before preparing the *Transition Application* (Form 43) containing a *Notice of Articles*, any shares that do not have a unique identifying name (i.e. shares which are simply identified as "shares" and not as "Common" or "Preferred" or some such identifying name) must be given a unique identifying name and such name must be shown in the *Notice of Articles* that is contained within the *Transition Application* (Regulation 41.1). In most cases, shares without an identifying name will be deemed to be "common" shares. Where two classes of shares have the same name and are distinguished only by a difference in par value, each of the shares classes must be given a unique identifying name such as "Class A Preferred" and "Class B Preferred" shares.

### **Central Securities Register**

Every pre-existing company must keep a *Central Securities Register* which lists the name and address of each shareholder and the number and description of the shares held by each shareholder on the date the New Act comes into force (s. 436(1)). Section 111(1) of the New Act requires that, once the New Act comes into force, the *Central Securities Register* must show:

- the name and last known address of each person to whom shares have been issued or transferred after the New Act comes into force;
- the number and class, and any series, of those shares;
- the date and particulars of the issuance of any shares issued after the New Act comes into force; and

- the date and particulars of the transfer of any shares transferred after the New Act comes into force.

The Central Securities Register should have been created **when the New Act came into force**, not when the *Transition Application* is filed.

If the existing *Registers of Members, Allotments and Transfers* contain all the required information, it is sufficient to mark or stamp on them “*Central Securities Register*” and continue to use them. However, most firms, particularly those with document assembly programs that allow easy assembly of registers, will chose to prepare a new *Central Securities Register* for each company which will set out on one register all the required information regarding the current shareholders and contain sufficient columns to include all the information required by the New Act regarding share transactions.

It is unclear whether the use of separate registers for each shareholder is adequate to comply with the New Act. For more details about the information required in the Central Securities Register see the **Records** chapter.

### **Mandatory Changes to Articles**

Before filing a *Transition Application*, the company must pass a directors or ordinary resolution to authorize the filing of a *Transition Application* and make any mandatory changes to its *Articles* required in order to comply with section 438(3) of the New Act.

The directors or ordinary resolution must contain a provision that the alteration to the *Articles* does not take effect until the resolution is received at the records office of the company and until the *Transition Application* has been filed.

The New Act requires that, upon Transition, the *Articles* be altered by:

- including in the *Articles* of the company any provisions, other than prescribed provisions<sup>(1)</sup>, that were contained, or deemed to be contained, in the *Memorandum* of the company under a former *Companies Act* immediately prior to filing the *Transition Application* (s. 438(3)(b)) and that are not contained in the *Notice of Articles* (also see Pre-1973 Companies – page 6). For example: if a company’s *Memorandum* contains special rights and restrictions, it must alter its *Articles* to move the special rights and restrictions from the *Memorandum* into the *Articles*;
- deleting any information that is inconsistent with the information that is included in the *Notice of Articles* contained in the *Transition Application* (s. 438(3)(c)). For example, if the *Articles* contained errors regarding special rights and restrictions relating to a share class that no longer exists, the *Articles* would have to be altered to remove any reference to that share class; and
- if a company is a pre-existing reporting company, including the Statutory Reporting Company Provisions set out in Table 2 of the Regulations (see page 7, and ss. 433 and 434).

---

<sup>(1)</sup> Regulation 41 states that a pre-existing company need not include in its *Articles* under ss. 370(1)(a) or 436(1)(a) any provision of its memorandum respecting its subscribers, their names, addresses and occupations and the number and types of shares taken by those subscribers.

In addition, section 438(4) the New Act requires that a company's *Articles* must comply with sections 12(1)(b), (c) and (2)(c) of the New Act, and therefore must:

- be mechanically or electronically produced;
- be divided into consecutively numbered or lettered paragraphs;
- set out the incorporation number; and
- set out the name (and any translation of the company's name which the company intends to use outside Canada).

However, section 438(4) provides that no resolution of any kind is required to make the changes to the *Articles* required in order to comply with Section 12 of the Act which means that any individual may make the necessary changes.

### Pre-1973 Companies

The requirement under s. 438(3)(b) to move information from the *Memorandum* into the *Articles* also means that any company incorporated prior to October 1st, 1973 (a "pre-1973 company") that has not rolled over its *Memorandum* and *Articles* to conform to the 1973 *Company Act* (the "1973 Act") format and which wishes to take advantage of the various new beneficial provisions of the New Act, must undertake a "double rollover."

Pre-1973 company memoranda were deemed by the 1973 Act to contain certain language relating to restrictions on the company's business and powers. Further, some other provisions contained in the *Memorandum* of pre-1973 companies not rolled over into the 1973 Act include statements that:

- set out the maximum price or consideration for which the shares without par value can be sold;
- none of the powers in s. 22 of the pre-1973 Act are excluded;
- the liability of the members is limited;
- the company is a private company; and
- set out the address of the registered office of the company.

The requirements under s. 438(3)(b) of the New Act mean that any company that did not roll over its *Memorandum* and *Articles* to remove such provisions (actual or deemed) from its *Memorandum*, is required to include these statements in its *Articles*.

Since the *Transition Application* containing the *Notice of Articles* must be filed before these mandatory changes are effective (s. 438(2)), if a pre-1973 company did not complete a rollover under the Old Act, the company must first complete an initial transition requiring an ordinary or directors resolution to move the various pre-1973 Act provisions to its *Articles*, and subsequently pass a special resolution under section 259 removing those pre-1973 Act provisions from the *Articles*. Provided that the changes made in the special resolution do not render the *Notice of Articles* incorrect, no additional filing with the Registrar will be required as a part of this rollover.

If the company wishes to remove the Pre-existing Company Provisions (see page 10), a *Notice of Alteration to a Notice of Articles* (Form 11) must be filed to alter the *Notice of Articles* filed with the original *Transition Application* (see page 8 (footnotes) and 10).

However, not all changes to pre-1973 companies' *Memoranda* will be even that simple: Section 264(3) states that if the *Articles* of a company that has filed a *Transition Application* includes a provision that was not capable of alteration under the Old Act, the company may only alter that provision by a Court Order or by a unanimous resolution of all shareholders (voting and non-voting). Since there was no authority under the old Act to alter certain statements contained, or deemed to be contained, in the *Memoranda* of pre-existing companies, this section may apply to these companies.

### **Pre-existing Reporting Company**

If a company is a "pre-existing reporting company", a *Directors* or an *Ordinary Resolution* must be passed altering its *Articles* to include the Statutory Reporting Company Provisions<sup>(1)</sup>. A "pre-existing reporting company" is a company that was a reporting company immediately before the New Act came into force, but not a "reporting issuer" (s. 1(1)). In other words, if for some reason the company was deemed to be a reporting company before the New Act came into force, but its shares are not publicly traded on any stock exchange, it would be classified as a "pre-existing reporting company" and it must alter its *Articles* to include the Statutory Reporting Company Provisions (s. 438(3)(d)). But if it is a "reporting issuer" (i.e. its shares are publicly traded), it would not be required to alter its *Articles* to include the Statutory Reporting Company Provisions.

### **Translation of Name**

Section 437(2)(b)(iv) provides that the *Notice of Articles* contained in the *Transition Application* must set out, in addition to the name that the company had immediately prior to the time of filing the *Notice of Articles*, "any translation of the name that the company intends to use outside of Canada". A translation of the name may be authorized by an ordinary or directors resolution (s. 263(2)), but the translation of the name shown on the *Notice of Articles* contained in the *Transition Application* must be an **existing** translation, not a new translation of the name.

---

<sup>(1)</sup> The Statutory Reporting Company Provisions are contained in Table 2 of the Regulations.

### Optional Changes to Articles

A pre-existing company may, in certain limited circumstances, make optional changes to its *Articles* simultaneously with its transition<sup>(1)</sup> The necessary conditions to allow such optional changes are that:

- the company is simultaneously required to make other mandatory changes to its *Articles* under sections 436(1)(b) and 438(3) (see page 5) (s. 436(2))<sup>(2)</sup>;
- the changes to the *Articles* do not render the *Articles* inconsistent with the information contained in the *Notice of Articles*; and
- the resolution authorizing the optional changes to the *Articles* provides that the alterations will not take effect until the *Notice of Articles* contained in the *Transition Application* takes effect, and is received at the company's records office prior to filing the *Transition Application*.

It will be relatively rare for this first necessary condition to be met, and therefore making optional changes to the *Articles* simultaneously with a transition application will also be relatively rare. However, pre-existing companies:

- whose shares' special rights and restrictions are contained in the *Memorandum* rather than the *Articles*;
- which have certain pre-1973 Act provisions still in place; or
- which have *Articles* with errors in them as a result of previous reorganizations which were imperfectly documented;

will be able to make such simultaneous changes.

Regardless of whether the conditions described above exist for a particular company, a company cannot remove the Pre-existing Company Provisions simultaneously with the transition (see page 10).

Note also that Section 436(2) which permits pre-existing companies that are required to make mandatory changes to comply with section 436(1)(b) to make optional changes to its *Articles*, does not include the changes that must be made under section 438(4) which requires that a company's *Articles* must comply with sections 12(1)(b), (c) and (2)(c) of the New Act (see page 6). So, if the *Articles* of a company are seriously deficient due to

<sup>(1)</sup> Section 436(2) of the New Act indicates that if (and only if) a pre-existing company is required to make mandatory changes to its *Articles* to comply with s. 436(1)(b), optional changes can be made at the same time in accordance with sections 259(1) to (3) so long as the information contained in those other alterations are not inconsistent with the information required under s. 437(2)(b) to be included in the *Notice of Articles* contained in the *Transition Application* (s. 436(2)). Note that the *Transition Application* contains a statement that the Pre-Existing Company Provisions apply to the company, so any change which would remove any Pre-Existing Company Provision would be inconsistent with the information required to be contained in the *Transition Application*.

<sup>(2)</sup> The ability of a company that must make mandatory changes to its *Articles* to make optional changes simultaneously with its transition does not exempt the company from filing a *Transition Application* containing a *Notice of Articles* indicating that the Pre-existing Company Provisions apply to the Company (s. 437 (2)(b)(vii)). All pre-existing companies that wish to remove the Pre-existing Company Provisions must subsequently file a *Notice of Alteration to a Notice of Articles* (Form 11) (s. 442.1(2)(b)).

missing pages, incorrectly numbered paragraphs or such other problems, there is no provision in the Act to replace such Articles with new Articles until after the *Transition Application* has been filed.

It is anticipated that many companies will choose to replace their *Articles* in their entirety after the *Transition Application* has been filed so that they can take advantage of the many business-oriented features of the New Act and replace the wording which is inconsistent with the New Act. If a company intends to replace its *Articles*, there are a number of considerations that must be addressed.

The optional changes (whether made simultaneously with filing of the *Transition Application* or otherwise) that should be considered for pre-existing companies can be divided into three main categories which can be summarized as follows:

- changes to provisions contained in the existing *Articles*, such as:
  - removal of the requirement to appoint a president and secretary (as officers are no longer required);
  - changing the majority required to remove a director; and
  - setting out the type of shareholders' resolution required to effect a change in the authorized share structure or to create, vary or delete special rights and restrictions.
- removal of the Pre-existing Company Provisions which automatically apply to pre-existing companies under the New Act unless they are removed by special resolution (s. 442.1) after the company files a *Transition Application*. These provisions include:
  - the majority required to pass a special resolution;
  - pre-emptive rights of existing shareholders to receive an offer to purchase shares on allotment (s. 41 of the Old Act); and
  - the requirement that repurchase and redemption of shares occur rateably (s. 237 of the Old Act); and
  - the provision that the issue price of shares without par value be set by a special resolution unless the *Articles* of the company provide that the directors of the company may determine the price or consideration.
- addition of provisions that reflect options under the New Act that were not contained in the old *Articles*, such as:
  - the period of notice required for exceptional resolutions;
  - powers of the directors to set the remuneration of the auditor; and
  - the option of holding shareholders meetings outside of British Columbia.

In addition, when replacing the pre-existing *Articles*, care should be taken to ensure that all special rights and restrictions and special terms contained in the pre-existing *Articles* are included in the new *Articles*. Special provisions of the old *Articles* such as the right of the chairman to have a casting vote, any restrictions on the transfer of shares, and the right of the directors to approve all transfers or a right of first refusal, should also be included in

the new *Articles* unless the client has specifically instructed that such provisions be removed or changed.

If the company is required to move special rights and restrictions from the *Memorandum*, or for a pre-1973 company, move statements contained in the *Memorandum* to its *Articles*, the company must first make the mandatory changes to its existing *Articles* and file a *Transition Application* before adopting a new set of *Articles* containing optional changes affecting any such provisions moved from the *Memorandum*.

### **Pre-Existing Company Provisions**

The Pre-Existing Company Provisions, contained in Table 3 of the Regulations and summarized on page 29 of this chapter, reflect certain requirements under the Old Act which protect minority shareholders, which will, for pre-existing companies, remain in place under the New Act unless such provisions are removed by passing a special resolution and filing a *Notice of Alteration to a Notice of Articles* (Form 11) after the Transition Rollover.

The *Notice of Articles* filed with a pre-existing company's *Transition Application* is required to state that these provisions apply to the company following transition (s. 437(2)(b)(vii)), and the New Act **does not make any exceptions to this requirement**. Further, s. 442.1(2) of the New Act indicates that these provisions apply to each pre-existing company unless and until:

- the shareholders of the company pass a special resolution (passed by the “three quarters” voting threshold set out in the Pre-existing Company Provisions) authorizing the removal of the application the Pre-existing Company Provisions;
- the company has filed a *Transition Application* in accordance with section 436(1)(a) (including, by implication, filing a *Notice of Articles* indicating that the Pre-existing Company Provisions apply (s. 437(2)(b)(vii))); and
- the company's *Notice of Articles* has been altered to remove the application of the Pre-existing Company Provisions by filing a *Notice of Alteration to a Notice of Articles* (Form 11) (see the **Authorized Share Structure** chapter).

### **Post-Restoration Transitions**

Companies that were dissolved within ten years before the New Act came into force may be restored under the New Act (see **Restoration** chapter) but such companies must file a *Transition Application* within twelve months of the restoration. The requirements for transitioning a restored company mirror the requirements for a non-dissolved pre-existing company (ss. 370 through 374) including the application of the Pre-Existing Company Provisions. These requirements apply only to full restoration. There are no transition requirements for a limited restoration. <sup>(1)</sup>

<sup>(1)</sup> Although the Act specifically restricts the post-restoration transition requirements to companies that have been restored by a full restoration (s. 369), companies that have applied for limited restoration may apply to extend that restoration or to convert the restoration to a full restoration. If the limited restoration is for a period longer than 12 months, check with the Registry to determine if the company is required to file a *Post-Restoration Transition Application*.

## Extrajurisdictional Companies

Extrajurisdictional companies are not required to file a *Transition Application*. Few changes in the New Act apply to extrajurisdictional companies, but the New Act makes it much simpler for extrajurisdictional companies to register, and stay registered, in British Columbia.

The most important changes are:

- extrajurisdictional companies are no longer required to list their directors and officers on either the *Registration Statement* (Form 33) or the *Annual Report* (Form 35);
- corporations will not be required by the Registrar to provide copies of charter documents from their home jurisdiction on registration in British Columbia<sup>(1)</sup>;
- extrajurisdictional companies are no longer required to have a head office in British Columbia or to maintain records in British Columbia (s. 386(1));
- the head office of pre-existing extrajurisdictional companies that have an attorney will be the head office outside the province listed in the database of the Registrar immediately prior to the New Act coming into force (s. 443(b));
- the head office of pre-existing extrajurisdictional companies without an attorney in British Columbia (federal companies) will be the head office in British Columbia listed in the database of the Registrar immediately prior to the New Act coming into force (s. 443(a));
- extrajurisdictional companies must have at least one, and may have more than one, attorney, but the attorney must be either a British Columbia company or an individual who is resident in British Columbia (s. 386(2));
- a federal company may appoint one or more attorneys (but is not required to if its head office is in British Columbia) (s. 386(1)(b));
- attorneys must list both a mailing address and a delivery address in British Columbia (which for pre-existing extrajurisdictional companies is the address shown by the Registrar for the existing attorney immediately prior to the New Act coming into force) (s. 444(1)(b));
- an attorney may resign after giving proper notice to the extrajurisdictional company (s. 395(1)) and/or the appointment of an attorney can be revoked by the extrajurisdictional company (s. 386(1)); and
- the inability of an unregistered extrajurisdictional company to maintain an action or to own land will no longer apply.

See the **Extrajurisdictional Companies** chapter for more information.

### Timing

Most firms forwarded a letter to their clients before, or soon after, the New Act came into force describing the most important changes and requesting instructions. It is anticipated that most firms will review the *Memorandum* and *Articles* and prepare the basic transition

---

<sup>(1)</sup> Foreign (i.e. non-Canadian) corporations are required to file a Certificate of Good Standing (or equivalent) from its home jurisdiction with its *Registration Application* as proof of existence.

documents as “stage one” of the transition process in the month of each company’s anniversary date so that the work will be staggered throughout the year following March 29<sup>th</sup>, 2004. There is no reason, however, that the transition documents cannot be prepared as time permits or immediately if the law firm only acts for a few companies or if any company requires the work to be undertaken sooner because of a corporate reorganization, financing or for some other reason.

Most firms are not dealing with the rollover of the company’s *Articles* into the New Act as part of the basic transition, but will conduct a further review of the business of the company and the nature of changes to the *Articles*, if any, that would be beneficial to the company on a company by company basis as “stage two” of the transition process if instructed to do so by the company, after filing the *Transition Application*.



## PROCEDURE/CHECKLIST

### 1. Corporate Department Requirements:

- (a) Review corporate records precedents and update for New Act  
**Note:** The precedents contained in this *Guide* are also available in electronic format
- (b) Order new sets of tabs for the *Records Books* of all British Columbia companies – see page 15 for a description of the new tabs
- (c) Order a stamp that will date and time stamp documents
- (d) If you have not already done so, prepare *Letter to Client (Reporting on Changes – BC Companies)* (page 24) and forward it to all British Columbia companies that your firm represents

### 2. Administrative Changes for Each Company:

- (a) Review the **Records Book** to confirm that it contains:
  - (i) the original or a Registrar-certified copy of the *Certificate of Incorporation*
  - (ii) Registrar-certified copy of the latest *Memorandum* and
  - (iii) Registrar-certified copy of the latest *Articles*
  - (iv) Registrar-certified copies of all *Special Resolutions, Certificates of Change of Name* and any other charter documents
- (b) Update the *Articles* by:
  - (i) inserting in the top right-hand corner of the first page of the *Articles* the company's incorporation (amalgamation/ continuation) number
  - (ii) insert the current name of the company on the first page of the *Articles*, if not already shown
  - (iii) insert any translation of the company's name on the first page of the *Articles*
- (c) If any charter documents are missing or are photocopies rather than originals, check with the supervising solicitor or corporate supervisor to determine whether certified copies should be ordered. Some firms are ordering certified copies of the company's charter documents for all pre-existing companies that they represent. Certified copies of the company's charter documents may be obtained from the Registrar at a cost of \$40.00 each by completing a *Transition Package Order Form* and forwarding it to the Registrar by mail or fax. The form is available from the Corporate Registry website at <http://www.fin.gov.bc.ca/registries/corppg/crforms.htm>

- (d) Insert a copy of the *Pre-Existing Company Provisions* or a *Notice Regarding the Pre-Existing Company Provisions* (page 37) at the front of the *Records Book* under the Charter Tab, if it is your firm policy to do so
- (e) Reorganize the *Records Book*. Replace the old tabs with a new set of tabs in the *Records Book*. Remove tabs that no longer apply

New Tab Name	Documents filed under the Tab	Old Tab Name
<b>Public Documents</b>		
<b>Charter (or: Recognition) Documents</b>	Certificate of Incorporation (Conversion, Amalgamation, Continuation, Restoration) Certificates of Change of Name Certified Copies of Notice of Articles Certified Copies of Notices of Alteration Articles Memorandum of Incorporation (if a pre-existing company)	<b>Incorporation Documents</b>
<b>Central Securities Registers</b>	Central Securities Registers – for each class of shares. Register of Members, Allotments and Transfers for historical records.	<b>Register of Members, Allotments and Transfers</b>
<b>Register of Directors</b>	Register of Directors	<b>Register of Directors</b>
<b>Documents filed with the Registrar</b>	Copies of all documents filed with the Registrar such as Notices of Change of Address, Notices of Directors, Annual Reports. Certified copies of any documents, other than Notices of Articles and Notices of Alteration, received from the Registrar	<b>Documents filed with Registrar</b>
<b>Consents/Resignations of Directors</b>	Consents to Act as Directors and Officers and Resignations of Directors and Officers	N/A
<b>Orders/Affidavits/ Reports</b>	Copies of all entered Court Orders made in respect of the company and Affidavits deposited at the company's records office.	N/A

New Tab Name	Documents filed under the Tab	Old Tab Name
<b>Shareholders' Documents</b>		
<b>Shareholders Minutes/Resolutions</b>	Minutes of Meetings of the Shareholders and Shareholders Resolutions as well as any documents signed in support of such Minutes and Resolutions (Waivers, Consents, etc.)	<b>Members Minutes</b>
<b>Financial Statements</b>	<b>Unaudited</b> Financial Statements for the most recently completed financial year.  <b>All audited</b> Financial Statements for the company and its subsidiaries	<b>Financial Statements</b>
<b>Directors Documents</b>		
<b>Directors Minutes/Resolutions</b>	Minutes of Meetings of the Directors and Directors Resolutions, as well as all documents signed in support of such minutes and resolutions (Subscriptions for Shares, Waivers, Applications for Transfer, etc.)	<b>Directors Minutes</b>
<b>Share Certificates</b>	Originals of all share certificates or stubs of certificates if the certificates are held elsewhere	<b>Share Certificates</b>
<b>Shareholders' Agreements</b>	Shareholders' Agreement and any amendments	N/A
<b>Financial Assistance/Directors' Disclosures</b>	Disclosure Statements	N/A
<b>Miscellaneous</b>	Miscellaneous documents which do not belong under the other tabs	<b>Miscellaneous</b>
<b>Documents Approved by the Directors</b>	Agreements and other documents approved by the directors	<b>Documents Approved by the Directors</b>
<b>Historical Records</b>	Records required to be kept under the former <i>Companies Acts</i> which are no longer required to be kept under the <i>Business Corporations Act</i> , including Register of Indebtedness, Register of Mortgages, Documents Approved by the Directors. Note: all records required to be kept in the Records Office prior to the New Act must be maintained in the Records Office after the New Act comes into force.	N/A

- (f) Prepare a *Central Securities Register* for the company listing:
  - (i) all current shareholders
  - (ii) their addresses and
  - (iii) the number and kind of shares held

See the **Records** chapter for a description of the *Central Securities Register*. You may stamp or insert “Central Securities Register” on the existing *Registers of Members, Allotments and Transfers* and continue to use them (see the explanation of the *Central Securities Register* on page 4)

- (g) Forward a reminder to the client requesting that they return *Notices of Directors* and any other documents that require filing with the Registrar prior to the filing of the *Transition Application*

Notes: All information contained in the *Transition Application and Notice of Articles* should be current

If a Notice that was forwarded for signature on an old form before March 29, 2004 is signed and returned by the client and has to be **paper**-filed, a new form prescribed by the New Act containing the information must be prepared. Most firms have the replacement form signed by the supervising solicitor, since the client has already approved the information on the form. If a notice is to be filed electronically (for example, a *Notice of Directors*), it may be filed without redoing the form using the information contained in the old form of Notice of Directors, unless the information contained in the form is no longer correct or your corporate supervisor or the supervising solicitor instructs you to create a new form

- (h) You should request that the company provide you with the date of the company’s financial year end if you do not have a record of it already (see **Annual Maintenance** chapter)
- (i) Determine the annual reference period and annual reference date and update your database if you have one. If you do not have a corporate database, bring forward the annual reference date in your manual system

Note: If your firm has been routinely dating all companies’ annual consent resolutions on the same date as their anniversary date, ensure that you have requested that the client provide you with the date of the company’s financial year end so that you can diarize the company’s **annual reference date** in accordance with the New Act based on the company’s financial year end and other variables (see the **Annual Maintenance** chapter)

- (j) Check if a password has been created. If not, create and register a password for the company electronically on Corporate Online – see the **Electronic Filing Appendix**

- (k) Prepare a *Notice of Change of Directors* (Form 10) if the company has requested that directors' addresses be changed from a residential address to a business address (see the **Directors and Officers** chapter)
- (l) If a lawyer in your firm acts as a director or officer of the company, determine:
  - (i) whether he or she wishes to change the address shown in the Registrar' database to his or her business address
  - (ii) if he or she was appointed solely to meet the residency requirements under the Old Act, whether or not he or she wishes to continue to act as a director or officer

If the lawyer wishes to change his or her address, or resign as a director, prepare a *Notice of Change of Directors* (Form 10)

- (m) E-file the *Notice of Change of Directors* (Form 10)
- (n) Prepare *Notice of Change of Address* (Form 2) if the company wishes to show a different delivery or mailing address for its registered or records offices (see the **Registered and Records Offices** chapter)
- (o) Prepare a *Directors Resolution* and *Notice of Change of Address* (Form 2) changing the Registered and Records Offices' address to the company's place of business or residence of a director (see the **Registered and Records Offices** chapter) if the company does not wish to file a *Transition Application*. Forward these documents to the company for signature. See the **Dissolution** chapter for more information on the new stricter record keeping requirements for dissolved companies
- (p) E-file the *Notice of Change of Address* (Form 2)

### 3. Transition Part 1 – Basic Transition:

- (a) Check whether the client has contacted the supervising solicitor or corporate supervisor to discuss the changes or advised the law firm that the client does not wish to transition the company. If the client has advised that the company will not be filing a *Transition Application*, see 2(o)
- (b) Check whether the company carries on business outside of Canada under any other name. If so, obtain a translation of the name
- (c) Review the company's *Memorandum* and *Articles*, including any special rights and restrictions, and determine whether the company:
  - (i) was incorporated prior to 1973 and did not have its *Memorandum* and *Articles* rolled over after the 1973 Act came into force (see step 4 below)
  - (ii) has special rights and restrictions in its *Memorandum*
  - (iii) has restrictions on the business or powers of the company in its *Memorandum*

- (d) Check whether the company normally holds directors and/or shareholders meetings. If so, determine an appropriate date to hold the meeting and prepare a Notice – see the **Miscellaneous** chapter for the form of notice
- (e) The transition may be authorized either by an **Ordinary Resolution** or by a **Directors Resolution**. Check with the supervising solicitor or your corporate supervisor to determine your firm policy with respect to the type of resolution to use for the firms you represent. Also, check the directors and shareholders minutes to make sure that the transition has not already been authorized at a meeting of the directors or shareholders. If your firm routinely prepares shareholders resolutions authorizing the transition, prepare the **Ordinary Resolution (Authorizing Basic Transition)** (page 52), if the shareholders or directors will not be authorizing the transition at a meeting. Otherwise, if your firm routinely prepares a **Directors Resolution**, change the **Ordinary Resolution** to a **Directors Resolution**

**Notes:** The resolution authorizing the mandatory changes to the Articles may be contained in the **Ordinary Resolution (Authorizing Basic Transition)** (page 52) (s. 438(1)) but the resolution must contain a condition that the alteration to the **Articles** does not take effect until the resolution is received at the records office of the company and until the **Transition Application** is filed

If the company:

- is making mandatory changes to its **Articles** under section 436(1)(b); and
- wishes to make optional changes to its **Articles** (s. 436(2));

it may adopt new **Articles** concurrently with the adoption of the mandatory changes

However, if alterations to the **Articles** would render the information contained in the **Transition Application and Notice of Articles** incomplete or incorrect, such as removing the Pre-existing Company Provisions or creating or deleting special rights and restrictions:

- the **Transition Application** must be filed before the changes are made; and
- a subsequent **Special Resolution (Authorizing Optional Changes to Articles)** removing the Pre-existing Company Provisions (and making any other changes not permissible until after completion of transition) must be passed after the filing of the **Transition Application** and a **Notice of Alteration to a Notice of Articles** (Form 11) must be filed reflecting the changes

If the company either is **not** eligible for the simultaneous optional changes **or** wishes to remove the pre-existing company provisions, a second resolution will be necessary after the completion of the basic transition and it is therefore suggested that the **Ordinary Resolution**

*(Authorizing Basic Transition)* be kept very simple with only mandatory changes made at this time

Deficiencies in the old *Articles* such as missing pages are not amongst the mandatory changes that permit optional changes to made to the *Articles*, so, unless such deficiencies contain information that is inconsistent with the information that is contained in the *Transition Application* and *Notice of Articles*, or there are other mandatory changes required, the company will not be eligible to replace its *Articles* until after the *Transition Application* has been filed

- (f) Check whether the shares of the company have a unique identifying name. If not, consult the supervising solicitor to determine whether a resolution will be required or whether it will be sufficient to simply contact the client and obtain permission to name the shares as "common" (or as appropriate)
- (g) Prepare *Directors Resolution (Approving new forms of Share Certificates)* (page 62) (see also step 3(h) below), if it is your firm policy to approve new forms of share certificates. This resolution is optional and may be combined with the *Resolution (Authorizing Transition)* if your firm routinely prepares a *Directors Resolution* rather than an *Ordinary Resolution* to authorize the transition. If the company and/or the supervising solicitor has requested that the company's share certificates be replaced, use the optional paragraphs included with this resolution
- (h) Check the instructions from the client and if the client has requested that new *Share Certificates* be prepared, prepare new *Share Certificates* or if you will be attaching specimen certificates to the resolution, prepare specimen share certificates
- (i) If the company is technically a reporting company under the Old Act, but not a "reporting issuer" as defined under the New Act, the company must add a statement to its *Articles* stating that the "*The Statutory Reporting Company Provisions prescribed in Table 2 of the Regulations to the Business Corporations Act apply to this company.*"
- (j) Prepare new *Articles* (page 86), if applicable. Note that most firms are not preparing new *Articles* to reflect any mandatory changes to the *Articles*, but are attaching a copy of the changes, with a notice reflecting the date of the resolution authorizing such changes to the existing *Articles*
- (k) Prepare *Transition Application and Notice of Articles* (Form 43) (page 64)
- (l) Prepare *Transmittal Letter (Forwarding Transition Documents)* (page 68) with the transition and annual maintenance documents for signature, if applicable, unless the client(s) will be signing the documents at the law firm's office
- (m) Diarize the file for two to three weeks for the return of signed documents from the client

- (n) Upon receipt of signed documents:
  - (i) **Date and time stamp** the documents
  - (ii) if it is your firm policy to do so, you may conduct a “ledger search”<sup>(1)</sup> to determine if the documents listed on Corporate OnLine correspond to the documents filed with the Registrar contained in the Records Book of the company. Check particularly that copies of all special resolutions filed with the Registrar are contained in the Records Book of the company. If any special resolutions are missing, order certified copies
  - (iii) E-file the *Transition Application* (Form 43). Make all necessary corrections to the names and addresses of directors, and the mailing and delivery addresses of the registered and records offices. Note that you cannot make any changes of directors or registered and/or records office addresses when filing the *Transition Application*, but you can correct spelling and parsing (data entry) errors (see Appendix B – **Electronic Filing** for further information on filing the *Transition Application*). Ensure that the information on the *Transition Application* matches the Corporate OnLine records by checking the information contained in the Registrar’s database as you file the *Transition Application*
  - (iv) Diarize the file for receipt of the certified copy of the *Transition Application* from the Registrar
- (o) File the signed documents in the *Records Book* as follows:

Tab in Records Book	Documents
<b>Charter (or: Recognition) Documents</b>	Certified copy of Transition Application and Notice of Articles Articles
<b>Directors Minutes/Resolutions</b>	Directors Resolution
<b>Shareholders Minutes/ Resolutions</b>	Shareholders Resolutions
<b>Documents Filed with the Registrar</b>	Notice of Change of Directors Notice of Change of Offices

Note: A *Transition Application* can be filed if *Annual Reports* are in arrears, but the filing of *Notices of Directors* must be up to date

4. **Pre-1973 Companies**

For any companies incorporated prior to October, 1973 that have not rolled over their *Memorandum* and *Articles* into the 1973 Act format:

<sup>(1)</sup> This can be done by conducting a normal search of the company on Corporate OnLine and not paying to view the corporate summary or any of the documents. Simply print a list of the documents filed (which does not cost anything). For more information, see Appendix B – **Electronic Filing**.

- (a) have the supervising solicitor explain to the client that the company is required to roll the company into the New Act, referring in particular to the fact that if the company wishes to remove restrictions on the business of the company or the effect of the Pre-existing Company Provisions (see page 10), it must follow up with a special resolution removing the restrictions and Pre-existing Company Provisions and making any other changes to the *Articles* desired after filing the *Transition Application*.
- (b) prepare *Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of Pre-1973 Company)* (page 54)

5. **Transition Part 2 – Optional Changes to Articles:**

- (a) Prepare *Report to Client on Transition (Explaining Optional Changes to Articles)* (page 90) and account, if applicable
- (b) Check whether the client has contacted the supervising solicitor or corporate supervisor to discuss the changes or returned the checklist forwarded with the *Report to Client on Transition (Explaining Optional Changes to Articles)*. If not, follow up with the client to determine whether the client wishes to make an appointment with the supervising solicitor to discuss any optional changes to its *Articles* or remove the Pre-existing Company Provisions
- (c) If requested by the client or as determined by the responsible solicitor, the responsible solicitor should review the company's *Articles* to determine what changes, if any, will be required
- (d) If the company wishes to make optional changes to its *Articles* and/or remove the Pre-existing Company Provisions, check whether the company normally holds shareholders meetings. If so, determine an appropriate date to hold the meeting and prepare a Notice – see the **Miscellaneous** chapter for the form of notice
- (e) If the shareholders of the company normally sign consent resolutions, prepare:
  - (i) *Special Resolution (Authorizing Optional Changes to Articles)* (page 82) if the company will be adopting new *Articles*, removing the application of the Pre-Existing Company Provisions, and/or removing provisions moved from the Memorandum of the Company into the *Articles*.

**Note:** Check with the supervising solicitor whether the new *Articles* will affect the rights of any non-voting shareholders. If so, you should either:

- prepare a special separate class resolution of the holders of such non-voting shares; or
- include the consent of the non-voting shareholders in the special resolution

(see the **Authorized Share Structure** chapter)

- (ii) new *Articles* (page 86), if applicable

- (iii) *Notice of Alteration to a Notice of Articles* (Form 11), if the authorized share structure is being changed, special rights and restrictions are being created, changed or removed or the Pre-existing Company Provisions are being removed, or any other changes are being made to the *Notice of Articles* (see the *Authorized Share Structure* chapter)
- (iv) *Transmittal Letter (Forwarding Optional Change Documents)* (page 88) unless the client(s) will be signing the documents at the law firm’s office
- (f) Diarize the file for two to three weeks for the return of documents from the client
- (g) Upon receipt of signed documents:
  - (i) **Date and time stamp** the documents
  - (ii) E-file the *Notice of Alteration to a Notice of Articles* (Form 11). (see Appendix B – **Electronic Filing** for more information on filing the *Notice of Alteration*)
  - (iii) Diarize the file for receipt of the certified copy of the *Notice of Articles* from the Registrar
  - (iv) File the signed documents in the *Records Book* as follows:

Tab in Records Book	Documents
<b>Charter (Recognition) Documents</b>	Certified copy of Notice of Articles Articles
<b>Shareholders Minutes/Resolutions</b>	Shareholders Resolutions
<b>Documents Filed with the Registrar</b>	Notice of Alteration to a Notice of Articles

(h) Prepare *Report Letter* (page 90) and account, if applicable

6. **Follow Up Procedure**

A regular follow up procedure should be established to contact clients who have not returned the transition documents and annual maintenance or other documents. If it is your firm’s policy to prepare reminder letters to clients that have not returned annual maintenance documents, prepare the *Reminder Letter to Client* page 92.

7. **Extrajurisdictional Companies:**

At the anniversary date of each Extrajurisdictional company’s registration in British Columbia, prepare *Letter to Client (Reporting on Changes – Extrajurisdictional Companies)* (page 38) and forward it to each extrajurisdictional company enclosing the Annual Report

**LETTER TO CLIENT**  
**(Reporting on New Act – BC Companies)**

**General Notes**

This letter is a sample only. The lawyers at your firm should draft a letter to the British Columbia companies that your firm represents setting out clearly the changes that will affect these companies.

**Preparation**

**Note:** The instructions for the preparation and processing of this letter are set out on this page. Only the text of the letter is contained on the following pages.

**Page 3**

- ① Insert the amount that your firm will charge for a standard transition rollover if your firm will be charging a set fee and you wish to advise the client of the set fee at this time.
- ② Delete if your firm will not be reporting to the client on the transition
- ③ Determine what will be included in your firm's standard transition rollover. Adapt this paragraph to suit your firm's billing policy. The items shown are examples only.

**Page 4**

- ④ Adapt to describe your office policy.

**Processing**

Make sufficient copies of the letter and enclosures to have:

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

Ensure that all enclosures are attached to the letter.

Diarize the file for two to three weeks and follow-up by letter, email or telephone if you have not heard from the client.

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

*{date}*

*{name and address of company}*

Attention: *{name of contact person}*

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

**Re: *{Name of Company}* (the “Company”)  
and the New British Columbia *Business Corporations Act* (the “New Act”)**

### **New Act**

As you may be aware the New Act came into force in British Columbia on March 29<sup>th</sup>, 2004. The New Act significantly affects all companies carrying on business in this Province. We are forwarding this letter to all of the companies that we represent so that their directors are made aware of the more important changes in the law relating to companies.

The New Act modernizes and streamlines company law in British Columbia. It is an improvement over the old Act but requires that every company in British Columbia file a Transition Application containing a Notice of Articles **before March 29<sup>th</sup>, 2006**. If the Transition Application is not filed, the Registrar of Companies will dissolve the company.

### **Changes**

We are attaching a schedule that lists some of the most important changes. Please contact us if you would like more information in this regard.

One of the most important changes resulting from the New Act is that the Memorandum of pre-existing companies will be replaced with a “Notice of Articles”. The Notice of Articles will set out, among other things, the authorized share structure and the names and addresses of the directors of the company.

Articles are no longer filed with the Registrar of Companies but the Articles of existing companies may require alteration. The mandatory changes to the Articles of the company include the addition to the Articles of any provisions contained in the Memorandum of the company, or deemed to be contained in the Memorandum, that are not contained in the Notice of Articles. In other words, if the Memorandum contains any special rights and restrictions affecting the shares of the Company, the Articles of the Company must be altered to include such provisions.

In addition to the mandatory changes to the Articles required by the New Act, there are a number of optional changes that may be made if the Company wishes to take advantage of the provisions of the New Act.

*Continued...*

*Letter to Client*  
*(Reporting on New Act – BC Companies)*  
Page 2

### **Pre-existing Company Provisions**

Please note that the Company is subject to the Pre-existing Company Provisions set out in Table 3 of the Regulations to the *Business Corporations Act* unless and until the shareholders of the Company pass a special resolution authorizing the removal of the Pre-existing Company provisions after the Company has filed its Transition Application. See the attached schedule that contains a summary of the Pre-existing Company Provisions.

The Pre-existing Company Provisions and most changes to the Articles of the Company cannot be made until after the Transition Application has been filed. We will therefore advise you of the optional changes that may be made to the Company's Articles and the procedures required to remove the Pre-existing Company Provisions when we report to you on the filing of the Transition Application.

### **No Transition**

If the Company is inactive and you wish to allow the Company to be dissolved by not filing the Transition Application, please notify us immediately and we will advise you further with respect to provisions under the New Act regarding liabilities of directors and shareholders after dissolution and the maintenance of records of dissolved companies.

### **Directors' Addresses**

Directors of companies are no longer required to disclose their residential addresses. Under the New Act, directors may have separate mailing and delivery addresses that do not need to be residential. A director may use a business address if he or she can usually be served with records during statutory business hours at that address. Please advise us whether any directors of the Company would like to change the address shown in the records of the Registrar of Companies from a residential address to a business address and we will prepare and file a notice reflecting the change before the Transition Application is filed.

### **Central Securities Register**

The Company will now be required to keep a Central Securities Register containing a list of the Company's shareholders, their addresses and details of their shareholdings. We will prepare a Central Securities Register for the Company which will be filed in the Company's Records Book. Because of many changes in the Records Book necessitated by the New Act, we will be reorganizing the Records Book and replacing the tabs with a new set of tabs.

*Continued...*

*Letter to Client*  
*(Reporting on New Act – BC Companies)*  
Page 3

**Standard Transition**

① We anticipate that our fees for a standard transition into the New Act will be \$①, plus disbursements and appropriate taxes. The matters included in a standard transition will be:

- reviewing the Company's current Memorandum and Articles;
- preparing the Central Securities Register;
- reorganizing the Records Book;
- preparing an ordinary (or directors) resolution authorizing the Transition Application containing a Notice of Articles;
- preparing the Transition Application containing a Notice of Articles;
- electronically filing the Transition Application, including entering all necessary information regarding the authorized share structure of the company;
- receiving the certified copy of the Notice of Articles from the Registrar of Companies and updating your corporate records;
- ② reporting to you.

**Additional Transition Matters**

③ The matters that will not be covered in our standard fee and that we would bill you for at our standard rates on a time cost basis include:

- drafting an ordinary resolution authorizing mandatory amendments to the Articles of the Company;
- a detailed review of your Articles;
- a detailed review of any special rights and restrictions contained in your Articles;
- a review of any Shareholders Agreement and recommendations regarding any suggested amendments;
- drafting a special resolution adopting new Articles and removing the Pre-existing Company Provisions (if applicable);
- preparing a standard set of Articles to replace the Company's existing Articles;
- preparing and electronically filing a Notice of Alteration to a Notice of Articles (Form 11) if required;

*Continued...*

*Letter to Client*  
*(Reporting on New Act – BC Companies)*  
Page 4

- if you choose to replace your present Articles, entering special rights and restrictions into electronic format to be incorporated into new Articles if the special rights and restrictions are unavailable in electronic format;
- discussions with you and the drafting of any additional clauses for the Company's Articles not contained in our standard Articles;
- a review of the compliance requirements of any security documents that the Company is a party to;
- a review of the tax implications of any changes to the Company's Articles; and
- changes to the directors and officers of the company or to their addresses.

Please let us know if you would like us to prepare an estimate of the cost of making any of the above changes.

### **Timing**

④ We anticipate that we will prepare and forward to you the documents necessary to transition the Company into the New Act at the time that we prepare the Company's next Annual Report.

However, the Company is required to file the Transition Application before certain corporate changes can be effected. If the Company intends to make any of the following changes before its next anniversary date, please advise us and we will prepare the Transition Application immediately:

- a change of name;
- a corporate reorganization;
- a change in its special rights and restrictions;
- a change in its authorized share structure.

If you have any questions or would like to meet to discuss any of the provisions of the New Act and how they might benefit the Company, please contact us.

Yours truly,

***{NAME OF LAW FIRM}***

**APPENDIX**  
**IMPORTANT CHANGES UNDER *BUSINESS CORPORATIONS ACT***  
**(the “New Act”)**

1. **PRE-EXISTING COMPANY PROVISIONS**

**Voting Thresholds**

- (a) The majority of votes required to pass a special resolution, by all shareholders or any class of shareholders, is three-quarters, unless the Memorandum or Articles of the company specify a different majority required to pass a special separate resolution for a particular class or series of shares.

**Shares of Pre-existing Company to be Purchased Rateably**

- (b) Before the company purchases any of its shares, it must offer to purchase them rateably from every shareholder holding shares of the class or series of shares to be purchased, unless:
- (i) the purchase is made through a securities exchange;
  - (ii) the shares are being purchased from an employee, former employee or affiliate of the company;
  - (iii) a special separate resolution relieving the company from its obligation to comply with this requirement is passed by the shareholders of the class or series of shares being purchased;
  - (iv) there is reason to believe that the purchase price of the shares is not more than the fair market value of those shares;
  - (v) the purchase is made under the Court procedures set out in the dissent procedures under the New Act; or
  - (vi) the purchase is of fractional shares.
- (c) A shareholder may, in writing, waive the right to receive an offer to purchase shares being repurchased by the company before the offer expires, either before or after the purchase by the company.

**Issue Price for Shares**

- (d) The price of shares without par value must be set by a special resolution unless the Articles of the company authorize its directors to determine the price or consideration.

*Continued...*

*Appendix**Page 2***Restrictions on Power to Allot and Issue Shares**

- (e) Unless the company was, immediately before the coming into force of the New Act, a reporting company within the meaning of the Old Act, or a public company, the directors must, before allotting shares, offer the shares to be allotted to each shareholder holding shares of the class to be allotted in the proportion that the number of shares held by that shareholder bears to the total number of shares of that class.
- (f) If there is more than one class of shares, any shares remaining after the expiration of the offer made to the shareholders holding shares of the same class must be offered to shareholders holding shares of any other class on substantially the same terms and at a price per share not less than the price per share offered to shareholders holding shares of the same class.
- (g) This set of provisions does not apply to:
  - (i) an allotment of shares for consideration other than money;
  - (ii) an allotment of shares under rights of conversion or exchange, an amalgamation, an arrangement, a stock dividend, a registered employee share ownership plan or a registered employee venture capital plan.
- (h) The offer under this section must be made by notice that includes the time period within which the offer must be accepted, and must be at least seven days after receipt of the offer unless the company authorizes the inspection.
- (i) For a period of three months after the offer expires or has been declined, the directors may offer the shares to the persons and in the manner the directors may decide, as long as there are no other existing shareholders who are entitled to receive an offer and the price per share in the offer is not less than the price per share in the offer made to the existing shareholders.
- (j) A shareholder may not waive generally the right to be offered shares under this section.
- (k) Shareholders may waive, in writing, the right to be offered a specific allotment of shares, which waiver is effective whether given before or after the allotment of the shares.

**Shares of Pre-existing Company to be Redeemed Rateably**

- (l) If the company proposes to redeem some but not all of the shares of a particular class or series of shares, it must ensure that the redemption is made rateably among every shareholder who holds shares of the class or series of shares to be redeemed. However, the above requirement is inapplicable if the Memorandum or Articles provide that the company may redeem some but not all of the shares of a class without doing so rateably.

*Continued...*

*Appendix*Page 32. **INCORPORATION:**

- (a) There is no longer a Memorandum. New companies now adopt an Incorporation Agreement instead of a Memorandum and the information formerly contained in the Memorandum is set out in the Notice of Articles.
- (b) An unlimited number of authorized shares is now allowed.
- (c) Par value shares are retained.
- (d) Articles are no longer filed with the Registrar of Companies – they are kept in the Records Book at the Records Office.
- (e) Pre-Incorporation contracts are now allowed.
- (f) Incorporators may be corporations.
- (g) Incorporators are not deemed first directors of a company.

3. **DIRECTORS AND OFFICERS:**

- (a) There are no residency requirements for directors, that is, there is no longer a requirement for the majority of directors to be ordinarily resident in Canada and for at least one director be ordinarily resident in British Columbia.
- (b) A company is not required to have officers unless specified in its Articles – there is no need for a president and a secretary. The president is no longer required to be a director.
- (c) Residential addresses are not required for directors (the address shown may be a business address).
- (d) Consents to Act can be signed after a director's appointment, and resignations can be received other than at the registered office.
- (e) In some circumstances, a person who is incorrectly shown on a public record as a director or officer may apply to Court to have the record corrected.
- (f) Conflicts of interest provisions are altered and strengthened and now apply to senior officers.
- (g) There is a two pronged materiality test for disclosable interests (the transaction must be directly or indirectly material to the director or officer and the transaction must be material to the company).

*Continued...*

*Appendix*Page 4

- (h) There are no time constraints on when the disclosure must be made. As long as a special resolution is passed approving the interest disclosed, the director or senior officer will not have to account for profits and the Court will not set aside the transaction.
- (i) The signature of the director disclosing the interest may be omitted from a consent resolution approving the contract or transaction and the resolution will be effective if it is signed by the remaining directors.
- (j) There are a number of exceptions to the disclosure requirements, including contracts with wholly owned subsidiaries, the remuneration of directors and officers and certain contracts that are for the benefit of the company.
- (k) With respect to their liability, directors are provided with the defence of reliance on professional reports (such as accountants, lawyers, or other professionals).
- (l) There is no need for Court approval before obtaining directors' and officers' indemnities (with some exceptions).
- (m) The Articles may provide for the transfer of powers to manage the company from the directors to the shareholders (similar to a Unanimous Shareholders Agreement).

**4. FINANCE:**

- (a) There are no restrictions on a company giving financial assistance, nor will there be a solvency requirement.
- (b) A company is required to disclose any financial assistance that is material to the company and that the company gives to the company's shareholders, directors, officers or employees (or their associates), or to any person for the purpose of a purchase of shares in the company. The disclosure requirements are extended to include affiliated companies.
- (c) The definition of "insolvent" is narrowed to only apply to a company's inability to pay its debts as they become due in the ordinary course of its business.
- (d) Privately held companies can waive annual financial statements.
- (e) Copies of the current unaudited financial statements of the company are now required to be kept in the Records Book.
- (f) There is no longer a requirement to keep documents approved by the directors in the Records Book.

*Continued...*

*Appendix*Page 5

- (g) The right of shareholders of private companies to waive the appointment of an auditor by unanimous resolution extends to subsidiaries whose parent company has not waived the appointment of an auditor.
- (h) The par value of shares that have a par value may be stated in any currency.
- (i) It is possible to reduce the capital of the company by a special resolution, rather than by a Court Order, unless the capital is reduced to an amount that is equal to or less than the realizable value of the company's assets less its liabilities.

**5. SHARE TRANSACTIONS:**

- (a) Except for pre-existing companies, pre-emptive rights or right of first refusal on share allotments are not required under the New Act. Pre-existing companies may remove the Pre-existing Company Provisions and thus remove the pre-emptive rights.
- (b) If the Pre-existing Company Provisions containing the pre-emptive right on share allotment apply to the company, there are a number of exceptions, for example: where the consideration for the shares being issued is all or substantially all non-cash, for reporting companies and for stock dividends.
- (c) Except for pre-existing companies to which the Pre-existing Company Provisions apply, there is no pro-rata right to receive an offer to purchase on repurchase or redemption of shares by the company.
- (d) There are a number of exceptions to the pro-rata right on repurchases, including by a special separate resolution of the relevant class or series of shares, or where the purchase price of the shares is not more than their fair market value.
- (e) Shares without par value may be allotted for an amount less than the consideration received for them in certain circumstances.
- (f) The New Act specifies that dividends may be paid out of profits, capital or otherwise, except when the company is insolvent or would be rendered insolvent by such payment (there is no restriction on stock dividends).
- (g) A subsidiary may purchase shares of its parent, unless it is insolvent or the purchase would render it insolvent.

*Continued...*

*Appendix**Page 6*

- (h) **The insider trading provisions have been expanded and will be limited to private companies.** The provisions of the *Securities Act* and regulations apply to public companies.

6. **SHAREHOLDERS' MEETINGS:**

- (a) **Annual** general meeting time limits have been brought into line with the *Canada Business Corporations Act* – 18 months for first annual general meeting, 15 months thereafter, but there must still be one annual general meeting in each calendar year.
- (b) **Electronic** and telephone meetings of shareholders and directors are made easier.
- (c) **It is easier** to hold shareholders' meetings outside British Columbia.
- (d) **Annual** general meetings may be postponed or waived by unanimous resolution.
- (e) **The notice period** for general meetings is prescribed by regulation and may be shortened in the Articles.
- (f) **Notice** of shareholders meetings must be given to all directors of the company.
- (g) **Unless** the Pre-existing Company Provisions apply to the company, a special resolution may be passed by a "Special Majority" which can be defined in the Articles as at least a **2/3 majority** and no more than a **3/4 majority**.
- (h) A "special separate resolution" may be passed by a particular class or series and will have similar majority requirements to a Special Majority.
- (i) "Exceptional Resolutions" may be defined in Articles to require a specified majority of votes greater than a "Special Majority".

7. **REGISTERED AND RECORDS OFFICE:**

- (a) **It is easier** to transfer the Registered and Records Offices to the residence of a director or an officer.
- (b) **Both** a delivery address and a mailing address (which may be different) are now required for both the registered and records offices.
- (c) **The Act** requires that the date and time must be noted on all documents received for deposit at the company's Records Office if the document is one that is required to be kept at the Records Office.

*Continued...*

*Appendix**Page 7*

- (d) In certain circumstances, the company's Registered Office may be eliminated.
- (e) Companies' records may be maintained either at the company's Records Office or at another location in electronic format, rather than in paper format, as long as the records are available for inspection and copying during statutory business hours by means of a computer terminal or other electronic technology.
- (f) There are increased responsibilities on the person maintaining the Records Office. Articles and other charter documents are no longer filed with the Registrar of Companies and the onus is on the person maintaining the Records Office to keep proper copies.
- (g) The Act requires that records be made available for inspection for two years after dissolution.
- (h) A Central Securities Register will replace the Registers of Members, Allotments and Transfers.
- (i) An affidavit stating the purpose of the inspection is required to inspect the Central Securities Register or obtain a shareholders' list.
- (j) If a company refuses to give access to corporate records, the Registrar of Companies may order the company to give access to someone seeking access.
- (k) There are new requirements to keep current unaudited financial statements, consents to act as directors and resignations of directors, dissents of directors, and disclosures of interest and of financial assistance in the company's Records Book. There is no longer any requirement to keep copies of documents approved by the directors, contracts issuing shares for non-cash consideration, mortgages, prospectuses and takeover bid circulars. The registers of debentures and indebtedness are eliminated.

**8. EXTRAPROVINCIAL COMPANIES:**

- (a) Extraprovincial companies are no longer required to maintain records in British Columbia.
- (b) Extraprovincial companies are no longer required to list directors and officers.
- (c) The inability of an unregistered extraprovincial company to maintain an action or to own land will no longer apply.
- (d) An extraprovincial company may register under an assumed name and carry on business under that name if the name of the extraprovincial company seeking to register in British Columbia is not approved by the Registrar of Companies because of a conflict with the name of another company or for some other reason.

*Continued...*

*Appendix**Page 8*

- (e) Extraprovincial companies must have at least one, and may have more than one, attorney, but the attorney must be either a British Columbia company or an individual resident in British Columbia.
- (f) A federal company may appoint one or more attorneys (but is not required to).
- (g) Attorneys must list both a mailing address and a delivery address in British Columbia (which for pre-existing extraprovincial companies is the address shown by the Registrar for the existing attorney immediately prior to the New Act coming into force).
- (h) An attorney may resign after giving proper notice to the extraprovincial company and the appointment of an attorney can be revoked by the extraprovincial company.

9. **MISCELLANEOUS:**

- (a) Short form **amalgamations** without Court approval are allowed.
- (b) Amalgamations between a British Columbia company and a corporation of another jurisdiction will be permitted in certain circumstances.
- (c) Three-cornered amalgamations (where shareholders receive shares of another corporation rather than shares of the amalgamated company) will be permitted.
- (d) Short form **restorations** without Court approval are allowed.
- (e) Changes in designations:
  - (i) “member” becomes “shareholder”;
  - (ii) “authorized capital” becomes “authorized share structure”;
  - (iii) “Minute Book” becomes “Records Book”;
  - (iv) “pro rata” becomes “rateable”.
- (f) Fractional shares are permitted.
- (g) Changes of name, most capital alterations and changes to the Articles may be approved by the type of resolution specified in the Articles of the company, unless the New Act specifically requires another type of resolution. Consequently, some of these alterations could be approved by directors resolutions if the Articles so provide. If no provision is made in the Articles, such alterations must be made by special resolution.
- (h) The dissent provisions specifically relating to changes in the special rights and restrictions on the shares of the company have been removed.

*Continued...*

*Appendix*Page 9

- (i) In certain cases, it is possible to validate the issue of shares by unanimous resolution rather than by Court Order.
- (j) There are more complex dissent proceedings.
- (k) It is possible to carry out a short-form dissolution (with a liquidator) when adequate provision has been made for the payment of liabilities.
- (l) After dissolution, under certain circumstances, shareholders may be liable for the debts of the company to the extent of the assets they received in connection with the dissolution.
- (m) Certain records must be filed with the Registrar of Companies electronically (incorporation, change of directors, change of offices, Annual Report, notice of alteration, amalgamation application, continuation application, and transition application).
- (n) Certain records (incorporation, change of name, etc.) filed with the Registrar of Companies may specify a future effective date (not more than 10 days from the filing date).
- (o) The Registrar may furnish records by fax or email.
- (p) The translation of the company's name for use outside of Canada, or a change in the translation of the name, may be authorized by an ordinary or directors resolution.

**LETTER TO CLIENT**  
**(Reporting on New Act – Extraprovincial Companies)**

**General Notes**

This letter is a sample only to assist the lawyers at your firm in drafting a letter to the extraprovincial companies your firm represents setting out the changes that will affect extraprovincial companies.

**Note:** Your firm may wish to identify any companies that have continued out to the Yukon or were incorporated in the Yukon or another jurisdiction (and then extraprovincially registered in British Columbia) solely because of the residency requirements for directors in British Columbia under the Old Act and ask them if it would be beneficial for them to consider continuing back into British Columbia.

**Preparation**

- ① Many firms are disassembling the Records Books of extraprovincial companies to save space. Some firms are returning the Head Office records to the client. If this is the policy of your firm, you may add:

*“In this regard, we enclose the Head Office records that we previously maintained for the Corporation, which you may want to either recycle or file with the Corporation’s main records, as you determine appropriate.”*

- ② Delete this paragraph if the corporation is a federal company with a registered office in British Columbia.
- ③ Insert the address of the head office outside of British Columbia, either from the *Form 13 – Statement on Registration* or from the latest *Change of Head Office Outside the Province*
- ④ This paragraph may be inserted for extraprovincial corporations incorporated or continued in the Yukon, if appropriate.

*“A number of corporations which are now extraprovincially registered in British Columbia were either transferred out of British Columbia, or were incorporated in another Province to avoid the residency requirements of the British Columbia Company Act. Under the New Act, there is no longer any residency requirement for directors of British Columbia companies. If your corporation fits into this category, you may wish to consider whether it would be worthwhile continuing the corporation to British Columbia. Please contact us if you would like to discuss this possibility.”*

**Continued...**

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

*{date}*

*{name and address of company}*

Attention: *{name of contact person}*

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

**Re: New *British Columbia Business Corporations Act* (the “New Act”)**

As you may be aware, on March 29, 2004 the new *Business Corporations Act* came into force in British Columbia. The New Act will have a significant impact on all companies carrying on business in this Province. While most changes brought by the New Act relate to British Columbia companies, there are some significant changes to extraprovincially-registered corporations as well. Specifically:

- extraprovincial corporations are no longer required to maintain “Head Office records” (such as copies of a corporation’s home jurisdiction charter, a register of directors, etc.)<sup>①</sup>;
- extraprovincial corporations are no longer required to include director and officer information on B.C. Extraprovincial Annual Reports (the form has been changed to remove that section completely);
- extraprovincial corporations are no longer required to file a *Notice of Directors* with the British Columbia Registrar of Companies (the “Registrar”) reporting changes in directors;
- if necessary, corporations can now carry on business in British Columbia under an assumed name.

The “head office” of the extraprovincial corporation is now used only to refer to the place where documents can be delivered (usually the registered office).

② Since the “head office outside British Columbia” shown on the register of the Registrar for all pre-existing extraprovincial corporations before the New Act came into force is deemed to be the “head office” for purposes of delivery of documents, please confirm that the following address is correct:

*{Address of Head Office Outside BC}* ③

The Attorney for the Corporation before the New Act came into force continues as the Attorney under the New Act. The Corporation may appoint more than one Attorney and the Attorney is now permitted to have both a delivery address and a mailing address. The mailing and delivery address of the Attorney for pre-existing extraprovincial companies is deemed to be the address shown for that Attorney in the corporate register immediately before the New Act came into force.

④

*Continued...*

**LETTER TO CLIENT**  
**(Reporting On New Act – Extraprovincial Companies)**

**Preparation (Continued)**

- ① If you did not previously send a letter to the extraprovincial corporation advising about the changes under the new Act, you may wish to send this letter out with the Annual Report. If you are not enclosing the Annual Report, delete this paragraph and the following paragraphs regarding the Annual Report.
- ② Insert the year of the Annual Report.
- ③ Delete this paragraph if there are no outstanding documents. If there are, insert a description of the outstanding documents.
- ④ Delete this paragraph if you will not be enclosing an account at this time.

**Processing**

Make one copy of the letter for the file.

Ensure that all enclosures are attached and that you have copies of all enclosures for the file.

Diarize the file for one month.

*Letter to Client*  
*(Reporting on New Act – Extraprovincial Companies)*  
Page 2

① Each extraprovincial company is still required to file an Annual Report with the Registrar, within two months of the anniversary of its registration date in British Columbia. If this requirement is not met, the British Columbia registration of the extraprovincial company will not be in good standing with the Registrar and, eventually, its registration in British Columbia may be cancelled. Annual Reports are now filed electronically via the internet.

For your convenience, we enclose a completed *{Year}*② Annual Report generated from the information we have on record. Please confirm that all information contained in it is correct. If there have been any changes, please make the necessary corrections and have them initialled. If the information contained in the Annual Report is accurate, please arrange for its signature by a director, officer or solicitor of the Corporation and return it to our office as soon as possible, so that we may proceed with the filing within the required time.

Please advise if there have been any changes as described in **Item F** of the Annual Report, and provide us with the information to enable us to prepare the necessary forms:

1. if there is a change in the extraprovincial company's jurisdiction, by way of continuation, amalgamation or similar process;
2. if there is a change in the identifying number or name of the extraprovincial company; or
3. if there has been a change in the mailing or delivery address of the head office or any attorney.

③ On reviewing the corporate records of the Corporation, we note that the ③ have not been returned to us. We enclose replacement copies and ask that you arrange to have them signed and returned with the enclosed documents.

④ We also enclose our statement of account for annual corporate services.

Please contact us if you would like more information about any of these changes.

Yours truly,

*{NAME OF LAW FIRM}*

## **TRANSITION CHECKLIST**

### **General Notes**

You should record each stage of the transition process on the *Transition Checklist*. The use of the checklist ensures that all steps are completed in an organized and comprehensive manner, that important information is not forgotten and, that anyone reviewing the file can see what stage of the transition process has been completed.

The form shown on the following pages is a sample only, and contains the most essential information. You should check with the supervising solicitor or your corporate supervisor to find out if your firm has a standard form. If not, you may wish to adapt this form. Checklists of various kinds are always evolving and periodically change for various reasons so they need to be reviewed, expanded and updated from time to time. Once the form is developed, the legal assistant should ensure that a form is completed for each transition and a copy kept in the file.

### **Preparation**

Before you begin transitioning the company, you may complete any information that is already known (such as the name of the company, the incorporation number, etc.).

If several different legal assistants will be working on different stages of the transition, you may wish to prepare separate checklists for:

- the Administrative Tasks;
- Procedures and Tasks for Transition Application; and
- Optional Changes.

The *Summary Status on Transition* at the end of the checklist may be prepared separately from the main checklist and placed in the Company's *Records Book* for quick reference as to the status of each step.

*{Name of Law Firm}* **TRANSITION – CHECKLIST**

Name of Company:	<i>{Name of Company}</i>		File No. <i>{File No}</i>
Incorporation date	<i>{Incorporation Date}</i>	Incorporation No.	<i>{Incorporation No.}</i>
Your Initials	<i>{Your Initials}</i>	Date Started	<i>{Date Started}</i>

**ADMINISTRATIVE TASKS**

**CHARTER DOCUMENTS**

Are original Certificate of Incorporation/Amalgamation/Continuation, Memorandum, Articles and any Special Resolution altering Memorandum or Articles contained in the Records Book?	Yes <sup>(1)</sup>	No	If No – Order Transition Package <sup>(2)</sup> from Registrar of Companies
---	--------------------	----	---

**ARTICLES**

Update first page of current Articles to show:

- the incorporation number of the company
- the current name of the company (if not already shown)
- translation(s) of the company's name, if any

**PRE-EXISTING COMPANY PROVISIONS**

Insert Notice regarding application of Pre-existing Company Provisions - behind charter tab

**RECORDS BOOK**

**TABS**

- Insert new tabs and reorganize corporate records
- follow "Filing Guide" contained on page 15
- move into 8.5x11 binder, if necessary
- ensure tabs are in correct order

**CENTRAL SECURITIES REGISTER**

Generate Central Securities Register if you have a database for current shareholders and insert into records book - if necessary, update database to include historical transactions and to correct "allowances" to "allotments" so that information appears correctly on Central Securities Register

Stamp "Central Securities Register" on former registers of members, allotments and transfers - if all transactions appear on new Central Securities Register, move old registers to "historical", otherwise leave under "Central Securities Register" tab to form a part of current register

(1) Must be either the original or a copy certified by the Registrar

(2) Transition package – price \$40.00 – consisting of a certified copy of the company’s memorandum, a certified copy of the company’s articles and all amendments thereto

<b>DOCUMENTS FILED WITH THE REGISTRAR</b>			
Does the company carry on business outside of Canada under any other name?	Yes	No	If yes, obtain translations of company name
Do any directors wish to change their addresses to an office address?	Yes	No	If yes, obtain new address and prepare a Form 10 and e-file it after it has been signed. Print new Register of Directors
Does any lawyer in the firm who acts as a director or officer of the company wish to resign or change his/her address to an office address?	Yes	No	If yes, and prepare a Form 10 and e-file it after it has been signed. Print new Register of Directors
Are all Annual Reports and other filings up-to-date. Note: the company is not required to be in good standing with respect to annual report filings, but all Notices of Directors and Notices of Changes of Offices must be filed?	Yes	No	If no, e-file or paper file, as applicable
<b>ANNUAL REFERENCE PERIOD</b>			
Is there a record of the company's financial year end in order to determine the annual reference period and annual reference date?	Yes	No	If yes, adjust date in database or bring forward system, if necessary. If no, attempt to obtain the date of the financial year end from the supervising solicitor or client
<b>CORPORATE ONLINE PASSWORD</b>			
Has a Corporate OnLine password been created?	Yes	No	If no, access company on Corporate OnLine, assign a password, print the page and record the password in the file and in your database if you have one

<b>PROCEDURE AND TASKS FOR TRANSITION</b>			
<b>BASIC TRANSITION – MANDATORY CHANGES</b>			
<b>Review Memorandum</b>			
Does the company have special rights and restrictions in the Memorandum?	Yes	No	If yes, prepare <i>Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a <u>Post-1973</u> Company)</i>
Does the company have restrictions on the business or powers in the Memorandum and was rolled over into the 1973 Company Act or was incorporated after 1973?	Yes	No	If yes, prepare <i>Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a <u>Post-1973</u> Company)</i>
Was the company incorporated before November, 1973 and was not “rolled over” into the 1973 Company Act?	Yes	No	If yes, prepare <i>Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a <u>Pre-1973</u> Company)</i>
Is the company deemed to be a “reporting company” but is a non-reporting issuer:	Yes	No	If yes, prepare <i>Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a <u>Post-1973</u> Company)</i>
Are new forms of share certificates being approved?	Yes	No	If yes, prepare: <ul style="list-style-type: none"> <li>• <i>Directors Resolutions (Adopting New Forms of Share Certificates)</i></li> <li>• specimen share certificates and/or new share certificates if required</li> </ul>
Does each class of shares have an identifying name (such as "Common" or "Preferred")?	Yes	No	If no, advise supervising solicitor. Determine whether a resolution will be required or if a simple consent from the client can be obtained
<b>Review Articles</b>			
Are <b>no mandatory changes</b> to the Articles required?	Yes	No	If no mandatory changes are required, prepare <b>Ordinary Resolution (Authorizing Basic Transition)</b>
Are Articles mechanically or electronically reproduced, divided into consecutively numbered or lettered paragraphs and otherwise comply with section 12 of the New Act?	Yes	No	If no, the Articles must be replaced. Unless there are other mandatory changes required, the Articles cannot be replaced with New Act Articles before filing the Transition Application. Prepare <i>Special Resolution (Authorizing Optional Changes to Articles)</i> . This resolution cannot be dated before the filing of the Transition Application
Do Special Rights and Restrictions contain errors such as making reference to a share class that no longer exists?	Yes	No	If yes, replace Special Rights and Restrictions. Prepare <i>Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a <u>Post-1973</u> Company)</i>

<b>PROCEDURE AND TASKS FOR TRANSITION</b>			
<b>Transition Application</b>			
<p>When preparing Form 43 – Transition Application, have you double-checked:</p> <ul style="list-style-type: none"> <li>• that the authorized share structure of the company is shown correctly on Form 43? Check for any special resolution passed amending the authorized share structure (changing the number of authorized shares to unlimited, for example) which has not been filed because the Transition Application must be filed first.</li> <li>• the Articles to ensure that the special rights and restrictions are correctly shown and that Form 43 shows whether there are special rights and restrictions?</li> <li>• that the par value is correctly shown on Form 43 and, if there is a par value, that the currency is correctly shown?</li> </ul>	Yes	Yes	<p>Make an extra copy to attach as Schedule A to the resolution</p>
	Yes	Yes	
	Yes	Yes	
Has <i>Transmittal Letter (Forwarding Transition Documents)</i> been prepared?	Yes	No	Yes: Date: _____. If you are also enclosing annual documents, make sure that all enclosures have been prepared
Has an invoice been prepared?	Yes	No	Fee: Set Fee: _____ Time Basis: _____
Has the file been diarized for follow-up?	Yes	No	Date: _____
Have all the signed documents been received from the client?	Yes	No	Ensure that all documents have been received and that they are properly signed. Check for special instructions – see Post-Transition Optional Changes below
Before filing Form 43 electronically has the Corporate OnLine database been updated to correct any errors or inconsistencies on the register?	Yes	No	<input type="checkbox"/> conduct ledger search to confirm any <b>special resolution</b> filings in records book match Corporate OnLine records <input type="checkbox"/> ensure information in corporate database matches information in Records Book and Corporate OnLine database
When filling Form 43 electronically, ensure that the “City” is in the correct field and that if the director has a middle name or initial, it is shown in a separate field.	Yes	No	
Has Form 43 been Electronically filed?	Yes	No	Print filed form and place copy in Records Book under tab “Documents Filed with the Registrar”
Are there Mandatory alterations to the Articles?	Yes	No	If yes, attach a copy of the signed Resolution to the Articles and mark the date of the amendment on the 1 <sup>st</sup> page
Has the certified copy of Form 43 been received from the Registrar?	Yes	No	File in Records Book under tab “Charter Documents”

PROCEDURE AND TASKS FOR TRANSITION			
Has Report to Client on Transition been prepared?	Yes Date: _____	No	Check whether there are other matters to report on, such as the filing of annual documents, a change of directors or filing a Form 11 (after the Transition Application)

POST-TRANSITION OPTIONAL CHANGES REQUESTED BY COMPANY			
Review Articles, Shareholders' Agreement, security documents and other material contracts. Are there any provisions restricting the amendment to the Articles?	Yes	No	If yes, consult supervising solicitor
Will the Pre-existing Company Provisions be removed?	Yes	No	If yes, prepare <b>Special Resolution (Authorizing Optional Changes to Articles)</b>
Will the Articles be replaced?	Yes	No	If yes, will the new Articles be: <input type="checkbox"/> standard Articles with Pre-Existing Company Provisions <u>removed</u> ? <input type="checkbox"/> standard Articles with pre-existing company provisions <u>remaining</u> ? <input type="checkbox"/> customized Articles as set out in attached Options Worksheet? Prepare <b>Special Resolution (Authorizing Optional Changes to Articles)</b>
Will existing Special Rights and Restrictions be added to the Articles or be changed?	Yes	No	If yes, will the special rights and restrictions be: <input type="checkbox"/> accessible in electronic format <input type="checkbox"/> scanned and OCR'd <input type="checkbox"/> entered by word processor If Special Rights and Restrictions will be changed, prepare <b>Special Resolution (Authorizing Optional Changes to Articles)</b>
Will the authorized share structure be changed?	Yes	No	prepare <b>Special Resolution</b> (see <b>Authorized Share Structure</b> chapter)
Has the Form 11 – Notice of Alteration of Notice of Articles been prepared?	Yes	No	If no, prepare Form 11. Check all applicable changes
Have new Articles been prepared?	Yes	No	If yes, make sure that special rights are restrictions are attached, if applicable, that the table of contents has been updated and that all the numbering is correct
Has Transmittal Letter (Forwarding Optional Change Documents) been prepared?	Yes	No	Ensure all enclosures have been prepared and are enclosed. Make copies.
Has the file been diarized for follow-up?	Yes	No	Date:
Have signed documents been received from client?	Yes	No	If yes, ensure that all documents are properly signed and dated. Date stamp on the date the documents are received

<b>POST-TRANSITION OPTIONAL CHANGES REQUESTED BY COMPANY</b>			
Has the Form 11 – Notice of Alteration of Articles been electronically filed?	Yes	No	Print filed form and place copy in Records Book under tab “Documents filed with the Registrar”
Has an Invoice been prepared?	Yes	No	Fee: _____
Has certified copy of Form 11 been received from Registrar?	Yes	No	File in Records Book under tab “Charter Documents”
Has a Report to Client been prepared?	Yes	No	Check whether there are any other matters to report on, such as changing the authorized share structure

*Name of Law  
firm*

**SUMMARY – STATUS OF TRANSITION**

<b>Name of Company:</b>	<i>{Name of Company}</i>		<b>File No. <i>{File No.}</i></b>
<b>Incorporation date</b>	<i>{Incorporation date}</i>	<b>Incorporation No.</b>	<i>{Incorporation No.}</i>

<b>Task</b>	<b>Completed/OK</b>	<b>Remarks</b>
<b>BASIC TRANSITION WITH MANDATORY CHANGES</b>		
Charter documents – in Records Book		
Records Book reorganized and new tabs inserted		
Central Securities Registers – New registers prepared or existing Registers stamped as “Central Securities Registers”		
Transition Documents prepared and mailed to company – Date _____		
Signed documents received and Form 43 electronically filed		
Transition reported to client		
Invoice prepared and processed		
Company requested post-transition optional changes	Yes _____ No _____	If yes, see Post-Transition Optional Changes
<b>POST TRANSITION OPTIONAL CHANGES</b>		
Documents prepared and mailed to company		
Signed documents received and Form 11 electronically filed		
Optional changes reported to client		

## **NOTICE REGARDING PRE-EXISTING COMPANY PROVISIONS**

### **General Notes**

A Notice Regarding Pre-Existing Company Provisions should be inserted in the front of the Records Books of all companies under “Charter Tabs” so that anyone opening the Records Book will be aware that the pre-existing company provisions apply or do not apply to that particular company.

### **Preparation**

- ① Check with your corporate supervisor or supervising solicitor to determine whether it is your firm policy to include the whole text of the Pre-existing Company Provisions, or simply a reference to it.
- ② Insert the date of the incorporation of the company.

### **Processing**

The *Notice Regarding Pre-Existing Company Provisions* should be prepared when the administrative changes are made to each company your firm represents, or when organizing a Records Book.

## NOTICE REGARDING PRE-EXISTING COMPANY PROVISIONS

<b>Company Name</b>	<i>{Company Name}</i>
---------------------	-----------------------

<b>File No:</b>	<i>{File No.}</i>
-----------------	-------------------

The Pre-existing Company Provisions ("PCPs") apply to every British Columbia company incorporated before March 29, 2004 until the PCP's are removed. ① See Table 3 of Business Corporations Regulation made under the *Business Corporations Act* for the text of the PCPs.

The Company was incorporated on: *{Incorporation Date}*②

The Pre-existing Company Provisions:

- DO APPLY** because they have not been removed
- DO NOT APPLY** because:
- the Company was incorporated on or after March 29, 2004
  - they were removed entirely by way of Notice of Alteration filed on \_\_\_\_\_

**REVIEW THE COMPANY'S ARTICLES AND AMENDMENTS THERETO FOR PROVISIONS GOVERNING THE CONDUCT OF BUSINESS OF THE COMPANY**

## **ORDINARY RESOLUTION (Authorizing Basic Transition)**

### **General Notes**

Before a *Transition Application* is filed, it must be authorized by a directors or ordinary resolution (s. 437(1)(a)). The decision as to whether to use an ordinary resolution or a directors resolution is arbitrary and should be decided by the supervising solicitor.

This resolution approves **only** the preparation and filing of the *Transition Application*. If **mandatory** changes to the *Articles* of the company are required, use either:

- *Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a pre-1973 Company)* – page 54; or
- *Ordinary Resolution (Authorizing Transition and Mandatory Changes to Articles of a post-1973 Company)* – page 58.

### **Preparation**

- ① Change to “Directors” if the directors will be passing the resolution.
- ② Insert the name of the law firm.
- ③ Insert the effective date of the resolution or leave the day blank.
- ④ Check the *Central Securities Register* of the company and insert the names of all the voting shareholders. If the directors will pass the resolution, check the company’s *Register of Directors* and insert the names of all the directors.

### **Processing**

This document is signed concurrently with the other documents relating to the transition. Once it is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see *Transmittal Letter (Forwarding Transition Documents)* (page 68).

**SHAREHOLDERS<sup>①</sup> RESOLUTIONS**  
**OF**  
**{NAME OF COMPANY}**  
**(the “Company”)**

**RESOLVED THAT:**

1. The Company file a Transition Application containing a Notice of Articles with the Registrar of Companies in the form attached hereto as Schedule “A”.
2. *{Name of Law Firm}*<sup>②</sup> be appointed as the Company’s agent to electronically file the Transition Application containing a Notice of Articles with the Registrar of Companies.
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.

Dated: *{Date}*<sup>③</sup>

---

④ *{NAME OF SHAREHOLDER/DIRECTOR}*

---

④ *{NAME OF SHAREHOLDER/DIRECTOR}*

**ORDINARY RESOLUTION**  
**(Authorizing the Transition and Mandatory Changes to**  
**Articles of a pre-1973 Company)**

**General Notes**

This resolution<sup>(1)</sup> should be used to approve the transition instead of the *Ordinary Resolution (Authorizing Basic Transition)* (page 52) if **mandatory** changes to the *Articles* of the company are required because the company is a pre-1973 company that has **not** been rolled over into the 1973 *Company Act* (see **Pre-1973 Companies in Explanation** - page 5 and Procedure/Checklist - step 4).

If mandatory changes are required, certain **optional** changes (s. 436(2)) (see the **Explanation** on page 8) may be made in the same resolution concurrently with the mandatory changes unless the company's existing *Articles* require another form of resolution to make such alterations.

However, a *Special Resolution* to approve such optional changes must be passed **after** the filing of the *Transition Application* and such optional changes cannot be made concurrently with the mandatory changes if any of the following conditions apply:

- the alterations remove all or any of the Pre-existing Company Provisions;
- special rights and restrictions attached to the shares of the company are added, changed or deleted except as necessitated by the mandatory changes;
- any of the mandatory changes required to be made to its *Articles* under section 438(3)(b) are changed or removed (i.e. any information moved from the *Memorandum* to the *Articles* is changed or removed);
- any other information contained in the optional changes is inconsistent with the information contained in the *Notice of Articles* (i.e. the company cannot change its authorized share structure until after the *Transition Application* has been filed).

**Preparation**

- ① Change to "Directors" if the directors will be passing the resolution.
- ② All paragraphs other than the paragraphs that set out:
  - the name of the company;
  - the authorized share structure.

must be moved from the *Memorandum* to the *Articles*. However, any provision of the *Memorandum* respecting the company's subscribers, their names, addresses and occupations, as well as the number and types of shares taken by them need **not** be moved from the *Memorandum* to the *Articles* (Regulation 41).

When copying the text, you must follow the substantive language in the *Memorandum*, for example, the language in paragraphs regarding private company restrictions and maximum share price, and any other provisions.

- ③ If the registered office is no longer located at the address or in the city or municipality described in the *Memorandum*, use this paragraph. If the information only sets the name of the city or municipality and that information is correct – see ⑥.
- ④ Insert the article, part or paragraph number(s) in the *Articles* (usually at the end of the existing *Articles*) that will contain the provisions moved from the *Memorandum* (other than special rights and restrictions on shares).
- ⑤ Section 23 of the Old Act provided that the words "the objects for which the Company is established" are deemed to be struck out and replaced with the words "the businesses that the Company is permitted to carry on are restricted to the following...". These restrictions must also be moved into the *Articles*.
- ⑥ If the information regarding the location of the registered office is correct, move the paragraph to the *Articles*.

*Continued...*

<sup>(1)</sup> This resolution may be either a directors or ordinary resolution (s. 437(1)(a)). The decision as to whether to use an ordinary resolution or a directors resolution is arbitrary and should be decided by the supervising solicitor

**SHAREHOLDERS<sup>①</sup> RESOLUTIONS**  
**OF**  
**{NAME OF COMPANY}**  
**(the “Company”)**

**WHEREAS** pursuant to Subsection 436(1) of the *Business Corporations Act* (the “Act”) the Company is required to file a transition application in the form established by the Registrar of Companies and, if necessary, to alter its Articles as required by the Act.

**RESOLVED THAT:**

②

1. ③ Pursuant to Section 438(3)(c) of the Act, paragraph No. 2 of the Memorandum setting out the address of the registered office of the Company be deleted.
2. Pursuant to Section 438(3)(c) of the Act, the following paragraphs be moved from the Memorandum of the Company to its Articles and the Articles be altered by the addition of Article/Part ④ as follows:

**“ARTICLE/PART ④**

**MANDATORY ADDITIONS UNDER THE  
*BUSINESS CORPORATIONS ACT, S.B.C. 2002 ch. 57***

- ④.01 The businesses that the Company is permitted to carry on are restricted to the following:  
*{Insert objects of the company listed in the Memorandum of the company}*. ⑤
- ④.02 The Company shall have the powers conferred by Section 22 of the Companies Act (RSBC 1960 ch. 67) so far as such powers are not inconsistent with the restrictions set out in Article ③.01.
- ④.03 The liability of the members is limited.
- ④.04 ⑥ The registered office of the Company will be situate in the City of *{City}*, in the Province of British Columbia.

*Continued...*

**ORDINARY RESOLUTIONS**  
**(Authorizing Transition and Mandatory Changes**  
**to the Articles of a Pre-1973 Company)**

**Preparation (Continued)**

- ① Use this paragraph if special rights and restrictions are contained in the *Memorandum* of the company and they are required to be moved to the *Articles* but the *Articles* are not being replaced in their entirety.

Note: Prepare a separate page entitled:

**“SCHEDULE “A”**  
**SPECIAL RIGHTS AND RESTRICTIONS”**

- ② Insert the part or article number in the *Articles* that will contain the special rights and restrictions (usually the number following the last section in the *Articles*).
- ③ Insert this paragraph (and delete paragraph 3 above it) if the Articles of the company will be replaced in their entirety.
- ④ Delete the reference to the Special Rights and Restrictions if the shares of the company do not have any special rights and restrictions attached to them.
- ⑤ Insert the name of the law firm.
- ⑥ Insert the effective date of the resolution or leave the day blank.
- ⑦ Check the *Central Securities Register* of the company and insert the names of all the voting shareholders. If the directors will pass the resolution, check the company's *Register of Directors* and insert the names of all the directors.
- ⑧ If the directors will pass the resolution, replace “*shareholders entitled to vote thereon*” with “*the directors*”.

**Processing**

Attach a copy of the new Articles and/or the Special Rights and Restrictions, if applicable, titled “Schedule A” and a copy of the Transition Application titled “Schedule B”.

This document is signed concurrently with the other documents relating to the transition. Once it is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see *Transmittal Letter (Forwarding Transition Documents)* (page 68).

*Ordinary Resolutions  
(Authorizing Transition and Mandatory Changes  
to the Articles of a Pre-1973 Company)*

Page 2

③3. The special rights and restrictions attached to the shares of the Company as contained in paragraph *{paragraph number in Memorandum}* of the Memorandum of the Company be moved to the Articles of the Company by adding, as Article/Part ② the special rights and restrictions set out in Schedule "A" attached hereto.

③4. The existing Articles ④ and Special Rights and Restrictions of the Company be cancelled and the form of Articles ④ and Special Rights and Restrictions attached hereto as Schedule "A" be adopted as the Articles and Special Rights and Restrictions of the Company in substitution for, and to the exclusion of the existing Articles ④ and Special Rights and Restrictions of the Company.

5. The Company file a Transition Application containing a Notice of Articles with the Registrar of Companies in the form attached hereto as Schedule "B".

6. *{Name of Law Firm}* ⑤ be appointed as the Company's agent to electronically file the Transition Application containing a Notice of Articles with the Registrar of Companies.

7. 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.

Dated: *{Date}* ⑥

---

⑦ *{NAME OF SHAREHOLDER/DIRECTOR}*

---

⑦ *{NAME OF SHAREHOLDER/DIRECTOR}*

**NOTICE**

The foregoing Resolutions altering the *Articles* of the Company will not be effective until the above Resolutions consented to in writing by all of the ⑧ shareholders entitled to vote thereon ⑧ are received at the records office of the Company and until the Transition Application containing a Notice of Articles has been filed with the Registrar of Companies.

## ORDINARY RESOLUTION

### (Authorizing Transition and Mandatory Changes to Articles of a Post 1973 Company)

#### General Notes

This resolution<sup>(1)</sup> should be used to approve the transition instead of the *Ordinary Resolution (Authorizing Basic Transition)* (page 52) if:

- the company was incorporated after 1973; or had its *Memorandum* rolled over into the *Company Act* after 1973; and
- certain **mandatory** changes to the *Articles* of the company are required, such as the insertion of the following into the *Articles* of the company:
  - any special rights and restrictions contained in the *Memorandum* of the company,
  - any other paragraphs contained in the *Memorandum* of the company not contained in the *Notice of Articles*, such as a restriction on the business of the company; or
  - the Reporting Company provisions if the company was deemed to be a reporting company under the Old Act (but was not a reporting issuer).

If mandatory changes are required, certain **optional** changes (s. 436(2)) (see the **Explanation** on page 8) may be made in the same resolution concurrently with the mandatory changes unless the company's existing *Articles* require another form of resolution to make such alterations.

However, a *Special Resolution* to approve such optional changes must be passed after the filing of the *Transition Application* and such optional changes cannot be made concurrently with the mandatory changes if any of the following conditions apply:

- the alterations remove all or any of the Pre-existing Company Provisions;
- special rights and restrictions attached to the shares of the company are added, changed or deleted except as necessitated by the mandatory changes;
- any of the mandatory changes required to be made to its *Articles* under section 438(3)(b) are changed or removed (i.e. any information moved from the *Memorandum* to the *Articles* is changed or removed);

any other information contained in the optional changes is inconsistent with the information contained in the *Notice of Articles* (i.e. the company cannot change its authorized share structure until after the *Transition Application* has been filed).

#### Preparation

- ① Change to "Directors" if the directors will be passing the resolution.
- ② Delete these paragraphs if all of the share classes of the company have unique identifying names. Adjust the paragraph as applicable. If the share class has no name, you may substitute:
 

*"The shares of the company be named "Common" shares"*

Note that if there are share classes with identical names (distinguished only by differing par values) or a share class with no name, Corporate OnLine will not allow you to save a second share class with an identical name or a share class with no name.
- ③ Use this paragraph if special rights and restrictions are contained in the *Memorandum* of the company and they are required to be moved to the *Articles* but the *Articles* are not being replaced in their entirety. Prepare a separate page entitled: "Schedule "A" – Special Rights and Restrictions".
- ④ Insert the part or article number in the *Articles* that will contain the mandatory additions (usually the number following the last section in the *Articles*).
- ⑤ Insert this paragraph (and delete paragraph 3 above it) if the *Articles* of the company will be replaced in their entirety.
- ⑥ Delete the reference to the Special Rights and Restrictions if the shares of the company do not have any special rights and restrictions attached to them.
- ⑦ Insert this paragraph if the company is a pre-existing Reporting Company, but not a reporting issuer (see the **Explanation** on page 7.)

*Continued...*

<sup>(1)</sup> This resolution may be either a directors or ordinary resolution (s. 437(1)(a)). The decision as to whether to use an ordinary resolution or a directors resolution is arbitrary and should be decided by the supervising solicitor

**SHAREHOLDERS<sup>①</sup> RESOLUTIONS**  
**OF**  
**{NAME OF COMPANY}**  
**(the “Company”)**

**WHEREAS:**

A. Pursuant to Subsection 436(1) of the *Business Corporations Act* (the “Act”) the Company is required to file a transition application in the form established by the Registrar of Companies and, if necessary, to alter its Articles as required by the Act;

②B. Regulation 41.1 of the Regulations of the Act requires that shares that do not have an identifying name must be given a unique identifying name in the Transition Application and Notice of Articles.

**RESOLVED THAT:**

③1. The special rights and restrictions attached to the shares of the Company as contained in paragraph *{paragraph number in Memorandum}* of the Memorandum of the Company be moved to the Articles of the Company by adding, as Article/Part ④ the special rights and restrictions set out in Schedule “A” attached hereto.

⑤2. The existing Articles and ⑥Special Rights and Restrictions of the Company be cancelled and the form of Articles ⑥and Special Rights and Restrictions attached hereto as Schedule “A” be adopted as the Articles and ⑥Special Rights and Restrictions of the Company in substitution for, and to the exclusion of the existing Articles ⑥and Special Rights and Restrictions of the Company.

⑦3. The addition as Part ④ of the Articles the Statutory Reporting Company Provisions contained in Table 2 of the Regulations under the Act set out in Schedule “A” attached hereto.

②4. The Preferred shares of the Company with a par value of *{Par Value}* each be renamed as “Class A Preferred” shares with a par value of *{Par Value}* and the Preferred shares of the Company with a par value of *{Par Value}* each be renamed as “Class B Preferred” shares with a par value of *{Par Value}*.

*Continued...*

**ORDINARY RESOLUTIONS**  
**(Authorizing Transition and Mandatory Changes**  
**to the Articles of a Post 1973 Company)**

**Preparation (Continued)**

- ① Insert the name of the law firm.
- ② Insert the effective date of the resolution or leave the day blank.
- ③ Check the *Central Securities Register* of the company and insert the names of all the voting shareholders. If the directors will pass the resolution, check the company's *Register of Directors* and insert the names of all the directors.
- ④ If the directors will pass the resolution, replace "*shareholders entitled to vote thereon*" with "*the directors*".

**Processing**

Attach a copy of the new Articles and/or the Special Rights and Restrictions, if applicable, titled "Schedule A" and a copy of the Transition Application titled "Schedule B".

This document is signed concurrently with the other documents relating to the transition. Once it is prepared, checked and approved by the supervising solicitor, it is forwarded to the company for signature – see *Transmittal Letter (Forwarding Transition Documents)* (page 68).

**Ordinary Resolutions**  
**(Authorizing Transition and Mandatory Changes**  
**to the Articles of a Post 1973 Companies)**

**Page 2**

1. The Company file a Transition Application containing a Notice of Articles with the Registrar of Companies in the form attached hereto as Schedule "B".
3. **{Name of Law Firm}**① be appointed as the Company's agent to electronically file the Transition Application containing a Notice of Articles with the Registrar of Companies.
4. 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.

Dated: **{Date}**②

---

③ **{NAME OF SHAREHOLDER/DIRECTOR}**

---

③ **{NAME OF SHAREHOLDER/DIRECTOR}**

**NOTICE**

The foregoing Resolutions altering the *Articles* of the Company will not be effective until the above Resolutions consented to in writing by all of the ④ shareholders entitled to vote thereon④ are received at the records office of the Company and until the Transition Application containing a Notice of Articles has been filed with the Registrar of Companies.

## DIRECTORS RESOLUTION (Adopting New Forms of Share Certificates)

### General Notes

The purpose of this Resolution is to:

- adopt new forms of *Share Certificates* for the company complying with section 57(1) of the Act (mainly, adding the words “a British Columbia Business Corporations Act company,” and removing reference to the Memorandum); and
- replace the existing *Share Certificates* with Certificates in the new format if necessary, and if instructed by the supervising solicitor or the client.

This resolution may be prepared at the same time as the resolution authorizing the transition rollover. It may be combined with the any resolution authorizing the transition as long as resolution is a directors resolution.

### Preparation

- ① If the existing *Share Certificates* will be replaced to comply with the New Act and if instructed to do so by the client and/or the supervising solicitor, insert the description of the class of shares that are presently issued.

*“It is appropriate that the Share Certificates representing the issued {Common} shares of the Company be replaced to reference the New Act.”*

- ② Insert one of the two paragraphs depending on whether there is only one class of shares or there are several classes of shares issued. List all the classes of shares that are issued.
- ③ Describe the share class or classes for which new *Share Certificates* will be adopted (generally all of the share classes of the company).
- ④ Insert only if the existing *Share Certificates* will be replaced to comply with the New Act and if instructed to do so by the client and/or the supervising solicitor.

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

<i>Share Cert.</i>	<i>Name</i>	<i>Number and Class of Shares</i>
{Cert. No.}	{Name Of Shareholder}	{number and class of shares}

3. The following *Share Certificate(s)* be issued in exchange for the cancelled Certificates:

<i>Share Cert.</i>	<i>Name</i>	<i>Number and Class of Shares</i>
{Cert. No.}	{Name Of Shareholder}	{number and class}

4. 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.”

- ⑤ Check the *Register of Directors* of the company and insert the names of all directors.

### Processing

Prepare and attach forms of specimen *Share Certificates* to the Resolution for each class of shares – mark each with the words “Exhibit A”, “Exhibit B”, etc. – see the **Records** chapter.

If the existing *Share Certificates* are being replaced, prepare new *Share Certificates* – see *Share Certificates* in the **Records** chapter.

Once this document (and the appropriate *Share Certificates*) are prepared, checked and approved by the supervising solicitor, they should be forwarded to the client with the resolution authorizing the transition (see the *Transmittal Letter (Forwarding Transition Documents)* – page 68).

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

**WHEREAS:**

- A. The British Columbia *Business Corporations Act* (the “New Act”) came into force on March 29<sup>th</sup>, 2004;
- B. It is expedient to adopt a new form of Share Certificate to comply with the New Act;
- C. ①

**RESOLVED THAT:**

- 1. ②The form of Share Certificate attached as Schedule “A” be adopted as the new form of Share Certificate for the ③Common shares of the Company.

*or – if there are several classes of shares issued:*

- 1. ②The forms of Share Certificates attached as Schedules “A”, “B” and “C” respectively be adopted as the new forms of Share Certificates for the Class X, the Class Y and the Class Z shares respectively.

④

Dated effective *{Date}*.

\_\_\_\_\_  
⑤ *{NAME OF DIRECTOR}*

\_\_\_\_\_  
⑤ *{NAME OF DIRECTOR}*

## TRANSITION APPLICATION AND NOTICE OF ARTICLES (Form 43)

### General Notes

The *Transition Application* (containing a *Notice of Articles*) must be filed with the Registrar before March 29<sup>th</sup>, 2006, that is within two years of the New Act coming into force (s. 436(1)(a)) and must be in the form established by the Registrar (s. 437(2)). The *Notice of Articles* must set out:

- the information with respect to the directors that was shown in the records of the Registrar immediately before the time of filing;  
Note: If you have recently filed a *Notice of Directors* showing a business address for any director, show that address.
- the mailing address and the delivery address of the company that was the **registered** office of the company immediately before the time of filing;
- the mailing address and the delivery address of the company that was the **records** office of the company immediately before the time of filing;
- the name of the company that the company had immediately before the **time** of filing and, if applicable, any existing translation of the company's name (in the prescribed manner), that the company intends to use outside Canada;
- that the **Pre-existing Company Provisions** contained in the Regulations to the New Act apply to the company;
- the authorized share structure of the company (s. 53); and
- in respect of each class and series of shares, whether there are special **rights** or restrictions attached to the shares of that class or series of shares.

If a class of shares of a pre-existing company does not have an identifying name (e.g. the Memorandum states that the company is authorized to issue 10,000 shares without par value), those shares must be given a unique identifying name (Regulation 41.1). Shares that do not have a name are deemed to be "**common**" unless you are instructed otherwise by the supervising solicitor. See the explanation on page 4 or the checklist on page 20.

### Preparation

The instructions printed in the form are complete, however the additional explanations set out below are included for those items that may be confusing.

**Note:** The instructions for pages 2 and 3 of Form 43 are contained on this page.

**Item B** Set out the name of the company exactly as it is shown on the latest Certificate of Incorporation, Amalgamation, Continuation, Restoration or Change of Name, as applicable.

**Item F** Do not remove the  which indicates that the Pre-existing Company Provisions apply to the company.

### Processing

This document is signed concurrently with the other documents relating to the transition. Once it is prepared, checked and approved by the supervising solicitor, it is sent to the company for signature – see *Transmittal Letter (Forwarding Transition Documents)* (page 68).



Ministry of Finance  
 Corporate and Personal  
 Property Registries  
[www.fin.gov.bc.ca/registries](http://www.fin.gov.bc.ca/registries)

**TRANSITION APPLICATION**  
**FORM 43 – BC COMPANY**  
 Section 437 *Business Corporations Act*

Telephone: 250 356-8626

**DO NOT MAIL THIS FORM to the Corporate and Personal Property Registries unless you are instructed to do so by registry staff. The Regulation under the *Business Corporations Act* requires this form to be filed on the Internet at [www.corporateonline.gov.bc.ca](http://www.corporateonline.gov.bc.ca)**

***Freedom of Information and Protection of Privacy Act (FIPPA)***  
 The personal information requested on this form is made available to the public under the authority of the *Business Corporations Act*. Questions about how the *FIPPA* applies to this personal information can be directed to the Administrative Assistant of the Corporate and Personal Property Registries at 250 356-1198, PO Box 9431 Stn Prov Govt, Victoria BC V8W 9V3.

**A INCORPORATION NUMBER OF COMPANY**

**B NAME OF COMPANY**

Enter the name of the company applying for transition.

**C CERTIFIED CORRECT – I have read this form and found it to be correct.**

NAME OF AUTHORIZED SIGNING AUTHORITY FOR THE COMPANY	SIGNATURE OF AUTHORIZED SIGNING AUTHORITY FOR THE COMPANY	DATE SIGNED YYYY / MM / DD
	X	

**NOTICE OF ARTICLES**

**A NAME OF COMPANY**

Set out the name of the company. The name must be the name that the company had immediately before the time of this filing.

**B TRANSLATION OF NAME**

Set out every translation of the company name that the company intends to use outside of Canada.

**C DIRECTOR NAME(S) AND ADDRESS(ES)**

Set out the name and prescribed address of each individual who was, immediately before the time of this filing, a director of the company. A prescribed address for a director is either (a) the delivery address and, if different, the mailing address for the office at which the individual can usually be served with records between 9:00 a.m. and 4 p.m. on business days or (b) the delivery address and, if different, the mailing address of the individual's residence. The delivery address must not be a post office box. Before this form can be filed, the company must ensure that immediately before the transition application is submitted to the registrar for filing, the information in the corporate register respecting the directors of the company is correct. Attach an additional sheet if more space is required.

LAST NAME	FIRST NAME	MIDDLE NAME	PROVINCE/STATE	COUNTRY	POSTAL CODE/ZIP CODE
DELIVERY ADDRESS					
MAILING ADDRESS					
LAST NAME	FIRST NAME	MIDDLE NAME			
DELIVERY ADDRESS					
MAILING ADDRESS					
LAST NAME	FIRST NAME	MIDDLE NAME			
DELIVERY ADDRESS					
MAILING ADDRESS					
LAST NAME	FIRST NAME	MIDDLE NAME			
DELIVERY ADDRESS					
MAILING ADDRESS					
LAST NAME	FIRST NAME	MIDDLE NAME			
DELIVERY ADDRESS					
MAILING ADDRESS					
LAST NAME	FIRST NAME	MIDDLE NAME			

**D REGISTERED OFFICE ADDRESSES**

Set out the delivery and mailing addresses of the office that was the registered office of the company immediately before the time of this filing.

DELIVERY ADDRESS OF THE COMPANY'S REGISTERED OFFICE	PROVINCE	POSTAL CODE
	BC	
MAILING ADDRESS OF THE COMPANY'S REGISTERED OFFICE	PROVINCE	POSTAL CODE
	BC	

**F RECORDS OFFICE ADDRESSES**

Set out the delivery and mailing addresses of the office that was the records office of the company immediately before the time of this filing.

DELIVERY ADDRESS OF THE COMPANY'S RECORDS OFFICE

PROVINCE	POSTAL CODE
BC	

MAILING ADDRESS OF THE COMPANY'S RECORDS OFFICE

PROVINCE	POSTAL CODE
BC	

**F PRE-EXISTING COMPANY PROVISIONS** (refer to Part 17 and Table 3 of the Regulation under the *Business Corporations Act*)

Pre-existing Company Provisions apply to this company.

**G AUTHORIZED SHARE STRUCTURE**

Set out the authorized share structure of the company. The information set out must reflect the information that was contained in the company's memorandum or articles immediately before the time of this filing. Attach an additional sheet if more space is required.

For each class or series of shares please **re-state** the information contained in the company's memorandum or articles.

- The identifying name of each class or series of its shares.
- The maximum number of shares of the class or series of shares that the company is authorized to issue.
- The kind of shares of the class or series of shares – state whether the shares are without par value or with par value – if with par value, state the amount of the par value, in Canadian dollars.
- Whether or not there are special rights or restrictions attached to the shares of the class or series of shares.

Identifying name of class or series of shares	Maximum number of shares of this class or series of shares that the company is authorized to issue	Kind of shares of this class or series of shares.			Are there special rights or restrictions attached to the shares of this class or series of shares?	
	MAXIMUM NUMBER OF SHARES AUTHORIZED	WITHOUT PAR VALUE (✓)	WITH A PAR VALUE OF (\$)	TYPE OF CURRENCY	YES (✓)	NO (✓)
				CAD		
				CAD		
				CAD		
				CAD		
				CAD		
				CAD		
				CAD		
				CAD		

## TRANSMITTAL LETTER (Forwarding Transition Documents)

### General Notes

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

Many firms are forwarding the transition documents with the annual documents of the company. If your firm will be enclosing annual documents with the transition documents, include the optional clauses provided in the precedent letter shown opposite.

### Preparation

- ① Change to a directors resolution if the directors will be signing the resolution authorizing the transition. If changes must be made to the Articles, add:

*“and authorizing the mandatory changes required to be made to the Company's Articles in order to comply with the Act.”*

If changes to the Articles are being made, you may wish to add a paragraph explaining these changes, such as:

*“Please note that the Company's Memorandum contained special rights and restrictions and that the Act requires that those special rights and restrictions be moved to the Articles of the Company. Accordingly, the enclosed directors' resolution authorizes the transition and attaches a schedule to the existing Articles containing the special rights and restrictions.”*

- ② Delete the reference to the new forms of Share Certificates if the company will not be adopting new forms of Share Certificates at this time.
- ③ If you will not be forwarding annual maintenance documents to the company along with the transition documents, delete this paragraph and the following paragraphs regarding enclosure of the annual maintenance documents. If you will only be forwarding the annual report and not the resolutions at this time, delete the reference to the annual consent resolutions in the previous sentence and substitute:

*“Accordingly, we enclose for signature and return to our office the ④ Annual Report for the Company.”*

- ④ Insert the year of the annual maintenance documents (usually the current year).
- ⑤ Insert the date of the previous financial year end from the financial statements.
- ⑥ If an auditor will be appointed or this resolution is contained in the *Shareholders Resolutions (in lieu of Annual General Meeting)* and there are no non-voting shareholders, delete this item.
- ⑦ Delete this sentence if you are not attaching a Corporate Summary Report. If you do not have a corporate database, you may wish to attach a list of directors to the letter or a copy of the *Register of Directors*. In such case, amend the sentence accordingly.

*Continued...*

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

*{date}*

*{name and address of client}*

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

**Re: *{Name of the Company}* (the “Company”) – Transition Rollover**

As noted in our previous letter, the Company has until March 29, 2006 to transition under the new British Columbia *Business Corporations Act* (the “Act”) which was brought into force on March 29, 2004.

We have prepared and enclose the following documents required to transition the Company under the Act for signature and return to our office:

1. ① Shareholders Resolution approving the transition application;
2. ② Directors Resolution approving new forms of share certificates;
3. Transition Application containing a Notice of Articles.

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

**If the Company fails to file the Transition Application and Notice of Articles with the Registrar of Companies on or before March 29<sup>th</sup>, 2006, the Registrar may dissolve the Company.**

③ The Company has come forward in our system for the preparation of its ④ *{Year}* annual consent resolutions and Annual Report. Accordingly, we enclose for signature and return to our office the following:

1. Directors' Resolutions approving the financial statements for the year ended ⑤;
2. Shareholders Resolutions in lieu of the Annual General Meeting;
3. ⑥ Shareholders Resolutions Waiving the Appointment of an Auditor;
4. Directors Resolutions appointing officers;
5. ④ Annual Report.

You will note that the Annual Report form has changed and now only lists officers. ⑦ We have listed the Company's current directors in the enclosed Corporate Summary Report. If the information contained in the Annual Report is correct, please have any director or officer of the Company sign the Annual Report as indicated and return it to us for electronic filing with the Registrar of Companies.

*Continued...*

**TRANSMITTAL LETTER**  
**(Forwarding Transition Documents)**

**Preparation (Continued)**

- ① If the financial statements are audited, substitute “audited”.
- ② If there is only one director, substitute “the sole director”.
- ③ If you are attaching a *Notice to Auditor of Appointment*, insert:  

*“We will forward the signed Notice to Auditor of Appointment to the auditor.”*
- ④ You may delete the remainder of this paragraph if you will be forwarding a separate letter to the client regarding changes to the company’s *Articles*.

**Processing**

Make sufficient copies of the letter and enclosures to have:

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

Ensure that all enclosures are attached to the letter.

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

*Continued...*

*Letter to Client*  
*(Forwarding Transition Documents)*  
Page 2

Please review these documents and, if in order, arrange to have them signed and returned to us together with a copy of the ① unaudited financial statements signed by ② one of the directors. The financial statements will be placed in a section of the Records Book which is not available for inspection by the public. ③

If there are any changes to be made or if you have any questions, please call us.

The filing of the transition application is the first step in transitioning the Company under the Act. ④ Please let us know if you would like us to conduct a brief review of your current Articles or meet with you to discuss the changes that would be required in order to take the greatest advantage of the provisions of the Act. Your board of directors may not amend your current Articles in any material manner as part of the transition process. Accordingly, any material amendments we might suggest be made to your Articles will need to be approved by the Company's shareholders.

Yours truly,

*{NAME OF LAW FIRM}*

cc: *{name of accountant}*

**REPORT TO CLIENT ON TRANSITION**  
**(Explaining Optional Changes to Articles)**

**General Notes**

When the basic transition has been completed, and the *Transition Application* filed, your firm may wish to report to the client on the transition and seek instructions from the client regarding optional changes that may be made to the Articles of the company.

**Preparation**

- ① Insert the date that the Transition Application was electronically filed.
- ② Delete this paragraph if a *Notice of Change of Directors* changing the directors' addresses was not filed.

*Continued...*

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

*{date}*

*{name and address of client}*

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

**Re: *{Name of the Company}* (the “Company”) – Transition Rollover**

This letter is to report to you on filing a transition application on behalf of the Company and to advise you about certain optional changes that the Company may wish to consider making to its Articles if the Company wishes to take advantage of the “business friendly” provisions of the *Business Corporations Act* (the “BCBCA”).

As required by the BCBCA, we have reorganized the Company’s Records Book and prepared a Central Securities Register (previously the Register of Members, Transfers and Allotments). A Transition Application was electronically filed with the Registrar of Companies on ① *{Date}*. Enclosed, for your reference, is a copy of Transition Application.

②As instructed by you, we have also electronically filed a notice to change the B.C. directors’ addresses from their residential addresses to your office address.

The BCBCA has certain provisions available to the Company if its existing Articles are appropriately amended. These new provisions include:

- (a) the ability to transfer to others, in whole or in part, the powers of directors to manage or supervise the management of the business;
- (b) the ability to specify a percentage between 66-2/3% and 75% (the “Special Majority”) for the majority required to approve a special resolution;
- (c) the ability to require that certain specified matters need approval by an “exceptional resolution” (a resolution requiring a specified majority greater than a Special Majority); and
- (d) an ability to hold general meetings of shareholders outside British Columbia without the approval of the Registrar of Companies.

*Continued...*

**REPORT TO CLIENT ON TRANSITION**  
**(Explaining Optional Changes to Articles)**

**Preparation (Continued)**

- ① Check with the supervising solicitor or your corporate supervisor to determine whether you will be sending an *Options Worksheet* to the client. If you will not be sending an *Options Worksheet*, delete the references to the *Options Worksheet* and adjust the paragraphs accordingly.
- ② Insert the estimated amount, or if no quote will be included at this time, delete this sentence and the following sentence.
- ③ You may forward a copy to the accountant if instructed to do so by the corporate supervisor or supervisory solicitor, in which case, add “cc: *{name of accountant}*”

**Processing**

Make sufficient copies of the letter and enclosures to have:

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

Ensure that all enclosures are attached to the letter.

*Continued...*

*Report to Client on Transition  
(Explaining Optional Changes to Articles)  
Page 2*

① We are attaching an Options Worksheet setting out some of the changes to the Articles that the Company may wish to consider. Please complete the Worksheet if you are considering making any of these changes and return it to our office so that we may start reviewing the Company's Articles in order to discuss with you the changes that you have requested.

Subject to a limited number of exceptions, corporate conduct will be governed by the Company's Articles and the Pre-existing Company Provisions in the Regulations to the BCBCA which preserve certain provisions of the former *Company Act*. For example, the Pre-existing Company Provisions continue to require a three-quarter majority vote of the shareholders to pass a special resolution.

① A brief description of the Pre-existing Company Provisions is set out at the end of the worksheet. Please contact us if you require a copy of the full text of, or further information regarding, the Pre-existing Company Provisions.

If the Company wishes to remove the application of the Pre-existing Company Provisions from the Notice of Articles filed with the Registrar of Companies, it must pass a special resolution to remove the application of the Pre-existing Company Provisions and then file a Notice of Alteration to a Notice of Articles.

In general, we recommend that the Company rollover its Articles into the BCBCA, whether or not you decide to remove the Pre-existing Company Provisions. The language used in the existing Articles of the Company is no longer appropriate and there are a number of references to provisions in the former *Company Act* which no longer exist. In addition, the new Articles are better suited to modern companies and the way in which business is conducted today.

① If you wish to adopt new Articles, please complete and return the enclosed Options Worksheet to us as soon as possible. We estimate the cost of passing a special resolution to replace the Company's Articles to our firm's standard set of Articles will be \$② and the cost of removing the Pre-existing Company Provisions and filing a Notice of Alteration will be \$②. This latter cost includes the fee of \$100 payable to the Registrar of Companies for filing the Notice of Alteration. If you would like us to estimate the cost of any other changes, please request a quote when you return the enclosed Options Worksheet to us.

If you have any questions or would like to meet to discuss any of the provisions of the BCBCA and how they might benefit the Company, please contact us.

Yours truly,

*{NAME OF LAW FIRM}*

③



**TRANSITION OPTIONS WORKSHEET  
FOR CHANGES TO ARTICLES UNDER THE NEW ACT**

NAME OF COMPANY: \_\_\_\_\_

**BACKGROUND**

On March 29, 2004, British Columbia's long-awaited *Business Corporations Act* (the "New Act") came into force. The New Act replaced the *Company Act* (the "Old Act") and substantially overhauls and updates the corporate legislation in this Province.

The following Worksheet is only applicable should you choose to make optional amendments to your Company's existing Articles primarily for the purpose of taking advantage of the increased flexibility provided under the New Act. If your preference is this option (i.e. rather than keeping the Company's existing Articles without change or replacing the existing Articles with new standard Articles), please review and complete this Worksheet and return it to us. This Worksheet does not represent all possible amendments, but certainly some of the key ones. We have provided some notes for clarification of the Pre-Existing Company Provisions at the end of the worksheet.

The New Act provides greater flexibility as compared to the Old Act. However, this flexibility is not available to the Company unless you specifically amend the existing Articles of your Company. If, after reviewing this Worksheet and accompanying notes, you need further clarification or have questions about whether additional flexibility exists under the New Act, please contact us.

Prescribed Addresses: If you want to change addresses of any directors (i.e. to an office address), set out the changes on a separate sheet.

Directors/Officers: If you want to change directors/officers, set out the changes on a separate sheet.

Articles: Pre-Existing Company Provisions ("PCP's") apply to every pre-existing company until they are removed. See column 2 below for the Company's current set-up.

If you want to change your Articles (and remove PCPs) complete the chart below.

While reviewing this Worksheet, you should ensure any documents and agreements that the Company has previously signed, particularly banking and security documents, do not prohibit it from amending its Articles without the consent of any other contracting parties.

*Continued...*

*Transition Options Worksheet**Page 2***PRE-EXISTING COMPANY PROVISIONS****Remove Pre-existing Company Provisions****Don't change** **Remove provisions** 

**Note:** Unless the Pre-existing Company Provisions are removed, all of the default provisions listed in the table below under the column "Default" apply to the Company. If these provisions are removed as set out above, some or all of the following default provisions may be added to the Articles:

Article	Default	Option	Your Choice
Pre-emptive right or right of first refusal of existing shareholders on share allotments	Pre-emptive rights on share allotments apply to all pre-existing companies	Articles may not provide for pre-emptive rights	Pre-emptive rights <input type="checkbox"/> No pre-emptive rights <input type="checkbox"/>
Right of first refusal of existing shareholders on share repurchases or share redemptions	Right of first refusal applies to all pre-existing companies	Articles may not provide for the right of first refusal on share repurchases and share redemptions	Right of First Refusal <input type="checkbox"/> No Right of First Refusal <input type="checkbox"/>
Majority of shareholders required to pass Special Resolution	Majority of 3/4 required to pass a Special Resolution	Majority of 2/3 required to pass a Special Resolution	Three-quarters <input type="checkbox"/> Two-thirds <input type="checkbox"/>
Determination of issue price of shares allotted	For pre-existing companies, the default is by special resolution unless the Articles provide that the directors may set the price or consideration	May be set by directors resolution	Special Resolution <input type="checkbox"/> Directors Resolution <input type="checkbox"/>

**OTHER OPTIONS**

Article	Default	Option	Your Choice
Share Transfers	Act provides that shares are freely transferable (not recommended for privately held company)	Must be approved by directors and/or Right of first refusal to existing shareholders	Approval by directors <input type="checkbox"/> Right of first refusal <input type="checkbox"/>
Majority of shareholders required to pass Exceptional Resolution	No provision in existing Articles	A majority greater than a special resolution may be set	No Provision <input type="checkbox"/> Percentage required _____%
Changes to authorized share structure	Requires Special Resolution	May be changed to require an Exceptional Majority	Special Resolution <input type="checkbox"/> Exceptional Resolution <input type="checkbox"/>

*Continued...*

**Transition Options Worksheet**

**Page 3**

Article	Default	Option	Your Choice
Changes in special rights and restrictions	Requires Special Resolution	May be changed to require an Exceptional Majority	Special Resolution <input type="checkbox"/> Exceptional Resolution <input type="checkbox"/>
Changes to Articles	Requires Special Resolution	May be changed to: (a) a Directors Resolution; or (b) an Exceptional Resolution for certain sections	Special Resolution <input type="checkbox"/> Directors Resolution <input type="checkbox"/> Exceptional Resolution <input type="checkbox"/>
Change of Name	Requires Special Resolution	May be changed to a Directors Resolution	Special Resolution <input type="checkbox"/> Directors Resolution <input type="checkbox"/>
Period of notice required for special or exceptional resolution	21 days	May be not less than 9 days, but could be more than 21 days (up to 60 days)	21 Days <input type="checkbox"/> Specify number of days _____ (between 9 and 60)
General meetings of the shareholders	Must be held in BC	May be held outside BC	Must be held in BC <input type="checkbox"/> May be held outside BC <input type="checkbox"/>
Chairman has a casting vote	Chairman does not have a casting vote	Chairman has a casting vote	No casting vote <input type="checkbox"/> Casting vote <input type="checkbox"/>
Quorum required at shareholders meetings	Two persons present	A greater number may be specified	Two persons <input type="checkbox"/> Specified number _____
Directors term of office	Directors term ends each year and a new board is elected	Directors' terms may be indefinite or there could be staggered terms	Term expires every year <input type="checkbox"/> Indefinite term <input type="checkbox"/> Staggered terms <input type="checkbox"/>
Removal of Director	Director may be removed by special resolution	Director may be removed by an ordinary resolution; or Director may only be removed by exceptional majority	Special Resolution <input type="checkbox"/> Ordinary Resolution <input type="checkbox"/> Exceptional Resolution <input type="checkbox"/>
Powers of Directors to manage company	No restriction on powers	Powers may be restricted by transferring some powers to shareholders	No restriction on powers <input type="checkbox"/> Restrict powers <input type="checkbox"/>
Appointment of Officers	Company must have a president and secretary	Company is not required to have officers	Provide for officers <input type="checkbox"/> Provide for no requirement <input type="checkbox"/>

## **PRE-EXISTING COMPANY PROVISIONS**

### **1. The majority of votes required to pass a special resolution may be changed.**

Under the Old Act, the majority of votes required for the company to pass a special resolution at a shareholders' meeting (a "special majority") was 3/4 of the votes cast. Under the New Act, a "special majority" is defined as the majority required to pass a special resolution and may range from 2/3 to 3/4 of the votes cast, the usual percentage being 2/3's. The voting threshold for pre-existing companies remains 3/4.

Similarly, another pre-existing company provision is that the majority of votes required for the company to pass a special separate resolution of a class or series of shares is 3/4 of the votes cast unless the Memorandum or Articles specifies a different percentage.

### **2. Pre-Emptive rights or right of first refusal for existing shareholders on allotments of shares.**

The Old Act required that non-reporting BC companies provide existing shareholders with a right of first refusal (also called a "pre-emptive right") to purchase any future shares issued by the company. This right of first refusal is not an automatic statutory right for all BC companies incorporated under the New Act and the shareholders of pre-existing BC companies can remove the right. While such a right of first refusal provides comfort to existing shareholders that their share positions will not become diluted unless they are first given the opportunity to participate pro rata in additional issuances, this comfort limits the flexibility for directors to issue shares to a third party.

### **3. Right of first refusal for existing shareholders on the repurchase of shares by the company.**

The Old Act required that, before a company repurchased any of its shares, it had to offer to purchase the same number of shares of the particular class (or series) rateably from shareholders of the same class (or series).

The few limited exceptions to this requirement under the Old Act are continued under the New Act, specifically, where the purchase is made through a securities exchange or a quotation and trade reporting system, and where shares are being purchased from employees.

In addition, there are three new exceptions, namely:

- where a company is relieved from the obligation by a special separate resolution of the holders of shares of the particular class (or series);
- where there are reasonable grounds for believing that the purchase price for the shares is not more than their fair market value; and
- where fractional shares are being purchased.

4. **Right of first refusal for existing shareholders on the redemption of shares by the company.**

The Old Act required that, if a company proposed to redeem some, but not all, of the shares of a particular class or series of shares, the redemption be made pro rata among every shareholder who holds shares of the class or series of shares to be redeemed.

As under the Old Act, this restriction does not apply if the Memorandum or Articles provide that such a redemption need not be made rateably among every shareholder holding shares of the class or series.

6. **The issue price for shares**

Lastly, the issue price for shares without par value must be set by a special resolution of the company unless the Memorandum or Articles of the company provide that the directors may set the price.

## SPECIAL RESOLUTION (Authorizing Optional Changes to Articles)

### General Notes:

Any optional changes to the *Articles* must be authorized by special resolution<sup>(1)</sup> after the *Transition Application* has been filed unless the optional changes are made concurrently with mandatory changes (see page 5).

If the rights of the holders of one or more other, non-voting classes of shares are affected by this change or if the company is a pre-existing company removing the inalterable provisions previously contained in its Memorandum (in which case the shareholders must unanimously pass the resolution):

- prepare the resolution shown opposite for all the voting shareholders, and include the consent of the holders of any non-voting shares as part of the Special Resolution; or
- prepare the resolution shown opposite for the voting shareholders and prepare a special separate class resolution for the shareholders of each non-voting class of shares (see the *Shareholders Resolution* in the Authorized Share Structure chapter).

For a discussion on the requirements of special resolutions that call for the consent of non-voting classes of shares, refer to the notes with respect to the *Shareholders Resolution (Approving Changes to Authorized Share Structure)* in the Authorized Share Structure chapter.

### Preparation

- ① If there is only one class of shares authorizing the resolution, delete:
  - this paragraph; and
  - the reference to “and a Special Separate Resolution”.
- ② Briefly describe the changes that will be authorized. You may delete this option and insert the appropriate wording.
- ③ Delete the reference to the provisions moved into the *Memorandum* of the company if the company is not a pre-1973 company.
- ④ Delete this sentence and the reference to the *Notice of Alteration* if the company will not be removing the Pre-Existing Company Provisions or changing any special rights or restrictions.
- ⑤ If there is no effective date, delete to the end of the paragraph. If the alterations are to be effective on a specific date (and time) in the future, insert the date (and time) – see **Explanation** of “effective date” in the Authorized Share Structure chapter (Note: The date cannot be more than ten days after the proposed date of filing of the *Notice of Alteration* (Form 11) and it must be inserted in the *Notice of Alteration*).
- ⑥ Delete this entire paragraph if the *Articles* are not replaced.
- ⑦ Delete the reference to the special rights and restrictions if there are no special rights and restrictions attached to the shares of the company.
- ⑧ Delete these paragraphs if there are no restrictions on the business or powers of the company being cancelled.

*Continued...*

---

<sup>(1)</sup> If the Company will hold a general meeting to pass the resolution, see the **Miscellaneous** chapter for the form of *Notice* and *Minutes*. Until the *Articles* of the company have been changed, the type of resolution required to change the *Articles* remains a special resolution, and the minimum majority required to pass a special resolution remains 3/4

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

① Pursuant to the *Business Corporations Act* (the “Act”), the undersigned, being all of the shareholder(s) of the Company, by signing these resolutions, in our capacity as the holder(s) 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 members duly called and constituted.

**WHEREAS:**

- A. The Company has filed a Transition Application in the form established by the Registrar of Companies; and
- B. The directors of the Company have determined that it is in the best interests of the Company that:
- (a) the ② Articles of the Company be replaced;
  - (b) ③ the provisions contained, or deemed to be contained, in the Memorandum of the Company, other than prescribed provisions, that were moved into the Company’s Articles as required by the Act be removed from the Articles; and
  - (c) the ④ Pre-existing Company Provisions be removed and they no longer apply to the Company.

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

1. ④ The Pre-existing Company Provisions set forth in Table 3 of the Regulations to the Act be removed and no longer apply to the Company and the directors of the Company be authorized to instruct its agents to file a Notice of Alteration to a Notice of Articles reflecting the above changes ⑤ effective *{date and time}*.
2. ⑥ The existing Articles ③ including the provisions previously contained in the Company’s Memorandum, ⑦ and Special Rights and Restrictions of the Company be cancelled, and the form of Articles ⑦ and Special Rights and Restrictions attached hereto as Schedule “A” be adopted as the Articles ⑦ and Special Rights and Restrictions of the Company in substitution for, and to the exclusion of the existing Articles ⑦ and Special Rights and Restrictions of the Company.
- ③ 3. All restrictions on the businesses which the Company is permitted to carry on be cancelled and any and all restrictions on the powers of the Company be cancelled.
- ④ 4. The Articles of the Company be altered by deleting Article *{Article Number}* containing those restrictions and the Articles of the Company be renumbered accordingly.

*Continued...*

**SPECIAL RESOLUTION**  
**(Authorizing Optional Changes to Articles)**

**Preparation (Continued)**

- ① Delete this entire paragraph if the paragraphs contained in the *Memorandum* of the company which were moved to the *Articles* are not being removed.
- ② Insert the name of the law firm.
- ③ Delete if a Form 11 *Notice of Alteration* is not being filed.
- ④ Check the *Central Securities Register* of the company and, if there is only one class of shares, insert the names of **all** the shareholders.
- ⑤ If there are shareholders holding **several** classes of shares, prepare a separate authorization paragraph for each class of shareholders (whether voting or non-voting).
- ⑥ Check the *Central Securities Registers* and insert the names of all the shareholders for each class of shares.
- ⑦ If there is only one class of shares authorizing the resolution, delete the reference to “and a Special Separate Resolution”.
- ⑧ Delete the rest of this sentence if the Pre-existing Company Provisions are not being removed.

**Processing**

Prepare a new set of *Articles* (page 86) and attach as Schedule “A”, if applicable.

The *Articles* must either be reprinted to include the alterations, or a copy of the resolution must be attached to the *Articles*.

Once this document is prepared, checked and approved by the supervising solicitor, this resolution should be forwarded to the client – see the *Transmittal Letter (Forwarding Optional Documents)* (page 88).

*Continued...*

*Special Resolutions*  
*(Authorizing Optional Changes to Articles)*  
Page 3

①5. The provisions contained in Paragraph *{Paragraph Number}* of the Memorandum of the Company which were moved to the Articles of the Company as Part *{Part Number}* by *{Directors/Ordinary}* resolution dated *{Date}* be deleted in their entirety and the Articles of the Company be renumbered accordingly.

6. ②*{Name of Law Firm}* be appointed as the Company's agent to electronically file the Notice of Alteration to a Notice of Articles with the Registrar of Companies.

7. Any director or officer of the Company, signing alone, be authorized to execute and deliver all such documents and instruments, ③including the amendment to the Notice of Articles, 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.

Dated effective *{Date}*.

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

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

⑤The foregoing Special Resolutions are hereby consented to by every shareholder of the Company holding Class X 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.

\_\_\_\_\_  
 ⑥ *{NAME OF CLASS X SHAREHOLDER}*

\_\_\_\_\_  
 ⑥ *{NAME OF CLASS X SHAREHOLDER}*

**NOTICE**

The foregoing Special ⑦and Special Separate Resolutions altering the Articles of the Company will not be effective until the above Special ⑦and Special Separate Resolutions consented to in writing by all of the shareholders entitled to vote thereon are received at the records office of the Company ⑧and the Pre-existing Company Provisions will apply to the Company until the Notice of Alteration to a Notice of Articles has been filed with the Registrar of Companies.

## ARTICLES

### General Notes

The *Articles* contain the rules and regulations governing the operation of the company.

Section 438(4) the New Act requires that a company's *Articles* must comply with sections 12 (1)(b), (c) and (2)(c) of the new Act, that is that the *Articles* must:

- be mechanically or electronically produced;
- be divided into consecutively numbered or lettered paragraphs;
- set out the company's incorporation (or recognition) number;
- set out the name of the company that the company had immediately before filing the *Transition Application*; and
- set out, in the prescribed manner, any existing or new translation of that name that the company intends to use outside Canada.

Most law firms have their own form of *Articles* that are printed or photocopied for each company. Their length typically varies from 15 to 35 pages. Alternatively, the company may choose to adopt the *Table 1 Articles* contained in Schedule 1 to the *Regulations*.<sup>(1)</sup>

Note: The supervising solicitor should review the existing *Articles* of each company and make careful note of any special instructions from the client. The *Articles* must then be drafted to remain consistent with the existing *Articles* and the client's instructions.

### Preparation

- ① Insert the incorporation (or amalgamation or continuation) number from the appropriate certificate.
- ② Insert the name of the company exactly as shown on the appropriate certificate recognizing the company or any subsequent *Certificate of Change of Name*.
- ③ If there are special rights and restrictions attached to the shares of the company, insert the special rights and restrictions in the last section of the *Articles*. If you do not have the special rights and restrictions in electronic format (i.e. the *Articles* or their amendments were not drafted by your firm or were drafted a long time ago), you will have to either add the special rights and restrictions by retyping them or by using a scanner and OCR program to incorporate the special rights and restrictions into the new *Articles*.
- ④ Delete the signature block for the Incorporator's signature at the end of the *Articles*

### Processing

If the set of *Articles* that you are using has an index page or pages, ensure that the name of the company is also inserted on the first page of the index.

Make three copies:

- attach one copy to the *Shareholders Resolution (Authorizing Optional Changes to Articles)* (page 82);
- keep one copy in the company's *Records Book*; and
- forward the other copy to the client when you report on the transition.

<sup>(1)</sup> Copies of both the CLE Articles and the Table 1 Articles have been included with the electronic precedents accompanying this *Guide*.

Incorporation ① No. ①

PROVINCE OF BRITISH COLUMBIA

BUSINESS CORPORATIONS ACT

ARTICLES

of

*{NAME OF COMPANY} ②*

**TEXT OF THE ARTICLES**

③ **Special Rights and Restrictions**

④

## TRANSMITTAL LETTER (Forwarding Optional Change Documents)

### General Notes

This letter is **only** prepared if the client wishes to make optional changes to its Articles by adopting new **Articles**, adopting any optional changes or removing the Pre-existing Company Provisions after the Transition Application has been filed.

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

### Preparation

- ① Insert the **date** of the *Report to Client (Explaining Optional Changes to Articles)*.
- ② Delete **the** rest of this sentence if the client did not return the Options Worksheet.
- ③ Delete **the** reference to the new **Articles** if the client does not wish any changes made to the **Articles**.
- ④ Delete **the** reference to removing the Pre-existing Company Provisions if the Pre-existing Company Provisions will not be removed
- ⑤ Delete **the** reference to removing the mandatory changes to the Articles if the mandatory changes to the Articles will not be removed. Note these changes are usually **the** paragraphs contained in the Memorandums of pre-1973 companies that were not **been** rolled over into the 1973 *Company Act*.
- ⑥ Delete **the** reference to the *Notice of Alteration* if the company will not be removing the Pre-existing Company Provisions, changing its authorized share structure or changing its special rights and restrictions at this time.

### Processing

Make sufficient **copies** of the letter and enclosures to have:

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

Ensure that all **enclosures** are attached to the letter.

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

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

*{date}*

*{name and address of client}*

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

**Re: *{Name of the company}* (the “Company”) – Transition Rollover**

Further to our letter of *{date}*<sup>①</sup>, and the <sup>②</sup>Transition Options Worksheet that you returned to us with instructions for the optional changes to be made to the Company’s Articles, we have prepared and enclose the following documents for signature and return to our office:

1. Shareholders Resolution adopting <sup>③</sup>new Articles, <sup>④</sup> removing the Pre-existing Company Provisions and <sup>⑤</sup>removing the mandatory changes to the Articles required by section 438(3) of the *Business Corporations Act*; and
2. <sup>⑥</sup>Notice of Alteration to a Notice of Articles (Form 11).

Please arrange to have these documents signed and returned to us for insertion in the Company's Records Book <sup>⑥</sup>and in order that the Form 11 may be filed with the Registrar of Companies.

Please call if you have any questions.

Yours truly,

*{NAME OF LAW FIRM}*

cc: *{name of accountant}*

## REPORT TO CLIENT (Optional Changes)

### General Notes

When the certified copies of the *Notice of Alteration to a Notice of Articles* (if applicable) have been received from the Registrar, you should report on the optional changes to the *Articles* of the company.

### Preparation

- ① Include the appropriate changes made to the *Articles*. Remove any changes that were not made.
- ② If the *Notice of Alteration* was not filed, delete this sentence and the following sentence. Otherwise, copy the date of the *Notice of Alteration to a Notice of Articles* from the certified copy. If the *Notice of Alteration* was not filed, you could substitute:

*“We confirm that the Company’s Articles have now been replaced by our standard form of Articles which comply with the new Act. Please note that the Pre-Existing Company Provisions will remain in effect and continue to apply to the Company.”*

- ③ Delete this sentence if the company has not replaced its *Articles* with new standard *Articles*.
- ④ Omit if the account is not being forwarded at this time.
- ⑤ Omit if no copy is sent to the accountant.

### Processing

Make a copy of the letter and enclosures for the corporate file and ensure that all enclosures are attached to the letter.

If instructed to do so by the supervising solicitor or corporate supervisor, forward a copy of this letter (and all enclosures) to the company’s accountant.

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

*{date}*

*{name and address of client}*

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

**Re: *{Name of the company}* (the "Company")  
Transition Rollover into the *Business Corporations Act* (the "New Act")**

We are pleased to advise you that the Notice of Alteration to a Notice of Articles (Form 11) containing ① a notification of the date of passing a special resolution to alter the special rights and restrictions attached to the shares of the Company, remove the Pre-existing Company provisions and alter the authorized share structure of the Company was filed with the Registrar of Companies effective *{Date}*②. We enclose a copy of the Notice of Alteration for your records. ③ We confirm that the Company's Articles have now been replaced by our standard form of Articles which comply with the New Act.

We have filed the documents in the Company's Records Book and have updated the Company's Articles to reflect the changes.

④ As this matter has now been completed, we enclose our statement of account for acting on your behalf in this matter.

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

Yours truly,

*{NAME OF LAW FIRM}*

cc: *{name of accountants}*⑤

## REMINDER LETTER TO CLIENT

### General Notes

This letter is prepared is the transition documents have not been returned by the client. Generally, when following up with clients, the most common situations are:

- the client fails to return any of the documents, or pay the account of the law firm;
- the client returns the documents (some of which may be only partially signed), and doesn't pay the law firm's account;
- the client pays the law firm's account, but doesn't return the documents (or returns the documents only partially signed).

You should determine which situation applies. Most corporate departments follow-up with the client by telephone, fax or email before forwarding a reminder letter. Sometimes, if a client is difficult to get hold of, a letter is required. The letter shown opposite contemplates the situation where none of the documents have been returned. You may adjust the wording according to the situation.

### Preparation

- ① Replace with "*Directors Resolution*" if a *Directors Resolution* was forwarded instead of a *Shareholders Resolution*.
- ② Insert the year of the annual maintenance documents. If the client has returned the annual maintenance or the annual maintenance documents are not overdue, delete the reference to the annual maintenance documents
- ③ Delete the reference to the *Annual Consent Resolutions* if only the *Annual Report* is outstanding, or alternatively, delete the reference to the *Annual Report*, if only the *Annual Consent Resolutions* are outstanding. Adjust the wording depending on which documents have not been returned.
- ④ If the account has been paid, or has not yet been forwarded to the client, delete the reference to the account.
- ⑤ Insert the date of the account, if applicable.

### Processing

Make one copy of the letter for the file.

Diarize the file for two to three weeks.

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

*{date}*

*{name and address of the company}*

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

**Re: *{name of the Company}* (the "Company")  
Transition Application and ① *{year}* Annual maintenance**

On reviewing the corporate records of the Company, we note that the ① Shareholders Resolution authorizing the Transition Application, the Transition Application, the ② Annual Report ③ and Annual Consent Resolutions have not been returned to us.

**If the Company does not file a Transition Application before March 29, 2006, the Registrar of Companies will dissolve the Company. In addition, the failure to file Annual Reports with the Registrar of Companies is an offence under the British Columbia *Business Corporations Act*, for which penalties may be imposed on the Company and its directors and officers and may also result in the Company being dissolved. Any remaining property of the Company may escheat to the Crown on dissolution. Liabilities of directors, officers and shareholders will continue after dissolution and may be enforced as if the Company had not been dissolved.**

We enclose further copies of the documents for your convenience. To maintain the Company's good standing with and to comply with the British Columbia *Business Corporations Act*, please return the signed documents to us as soon as possible, ④ together with a cheque to cover our account dated ⑤.

If you have any questions in connection with this matter, please do not hesitate to contact us.

Yours truly,

***{NAME OF LAW FIRM}***

