

**COMPANY LAW****CONTENTS****ORDINARY PROCEDURES**

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## Chapter 7

### Ordinary Procedures<sup>1</sup>

For further discussion of this subject please see the *British Columbia Company Law Practice Manual* (Vancouver: CLE), Chapter 8.

For a description of how shares are **issued**, see §6.02

#### [§7.01] Transfers of Shares

##### 1. General Information

A share is transferable as provided by the articles of the company (s. 113). Various restrictions on the transfer of shares in the articles can include such things as pre-emptive rights, directors' approval, etc. A shareholders' agreement may also contain contractual restrictions on transfer. (See discussion at §18.06.) In addition, there are legislative limitations and restrictions on certain transfers. See, for example, the *Hospital Act*, R.S.B.C. 1996, c. 200, s. 12(4) and the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267, s. 19(2), (3).

If shares are subject to a restriction on transfer, the share certificate must bear a conspicuous statement that the restriction exists (s. 57(1)(e)). Section 117 stipulates that every transfer is to be recorded in the company's central securities register. A proper "instrument of transfer" must be delivered to the company in order for the transfer of shares to be registered (s. 114), but an instrument of transfer is not required to register a transmission of shares under s. 119, or for a redemption of shares or an involuntary transfer, such as one under s. 244(3) or s. 300(7).

##### 2. Transmission of Shares on Death and Bankruptcy

When a shareholder of a company dies, a person who is the personal or other legal representative of the shareholder's estate may apply to the company to effect a transmission of shares to the representative in his or her representative capacity. In order to effect the transmission, the representative is required to produce the following documents:

- the declaration of transmission referred to in s. 118(a);

- a copy of the grant of probate, letters of administration, etc., as outlined in s. 118(c); and
- the share certificate (s. 118(b)).

In the case of the bankruptcy of a shareholder, the trustee in bankruptcy may apply to the company to effect a transmission of shares to the trustee. In order to effect such a transmission, the trustee is required to produce the following documents:

- the declaration of transmission referred to in s. 118(a);
- a copy of the court order or assignment in bankruptcy and a copy of the instrument appointing the trustee, as outlined in s. 118(d); and
- the share certificate (s. 118(b)).

Notwithstanding provisions in the articles of the company, the deposit of the above documents is sufficient authority to allow the company to register the representative or trustee as the registered holder of the shares in that representative capacity (s. 119).

The personal representative or trustee has the rights and obligations of the shareholder (s. 115(1)). Transfers by personal representatives and trustees are as valid as if that person had been a shareholder (s. 116).

#### [§7.02] Shareholders' Meetings

##### 1. Definitions: "Shareholders" and "Resolutions"

A "shareholder" is defined as a person whose name is registered in a securities register of a company as a registered owner of a share of the company or, until such registration is made, a subscriber (in the case of a pre-existing company) or an incorporator (s. 1(1)).

The *Business Corporations Act* defines a number of different types of resolutions in s. 1(1):

- An "ordinary resolution" is a resolution passed by a simple majority of the votes cast by the shareholders at a general meeting or that is consented to in writing by at least a "special majority" of the votes entitled to be cast on the resolution at a general meeting, after the resolution has been submitted to all shareholders entitled to vote on it.
- A "special resolution" is a resolution passed at a general meeting by at least a "special majority" of the votes cast by the shareholders

<sup>1</sup> **Brock H. Smith** of Clark Wilson LLP, Vancouver, kindly reviewed and revised this chapter in January 2004, updated it in December 2004, and reviewed it again in December 2005. Reviewed and revised in January 1996 by Jennifer A. McCarron, Bull, Housser & Tupper, Vancouver.

at a general meeting for which the company has given notice of its intention to propose that resolution or that is consented to in writing by all of the shareholders entitled to vote on the resolution at a general meeting.

Note that a “special majority” is the number of votes that a company’s articles state are required in order for the company to pass a special resolution, which must be between 2/3 and 3/4 of the votes cast on the resolution. If the company’s articles do not specify a number of votes, then the number defaults to 2/3.

- A “unanimous resolution” is a resolution passed or consented to in writing by all of the shareholders entitled to vote on that resolution.
- An “exceptional resolution” is a resolution passed at a general meeting by a number of votes specified in the company’s articles that is greater than a “special majority” or that is consented to in writing by all of the shareholders entitled to vote on that resolution at a general meeting.
- A “separate resolution” and a “special separate resolution” are resolutions on which only shareholders holding shares of a particular class or series of shares are entitled to vote. Note s. 181 of the Act, which addresses the procedures for meetings involving separate resolutions.
- A “consent resolution” is a resolution (of shareholders or directors, as the case may be) that is consented to in writing by a sufficient number of shareholders or directors. For a special, exceptional, or unanimous resolution, all shareholders entitled to vote at a general meeting must consent to the resolution in writing for it to be effective. For the requirements for consenting in writing to an ordinary resolution or a special separate resolution, refer to subparagraph (b) of their respective definitions (Act, s. 1(1)). For the requirements of a consent resolution of directors, see the *Practice Material: Company*, §5.02.7.

In general, ordinary resolutions are required for matters that do not significantly affect the company or its value. Special resolutions are required to approve matters with significant consequences to a company. In some cases, the company may want to use an exceptional resolution to impose a specific threshold of approval that is higher than a special majority. There are several provisions in the *Business Corporations Act* that require a unanimous resolution of the shareholders. As well, if a company chooses, it could require unanimous

shareholder approval in order for an exceptional resolution to pass.

## 2. Annual General Meetings: Calling, Notice, Quorum and Waiver

Every company must hold its first annual general meeting within 18 months after incorporation and, thereafter, at least once each calendar year and not more than 15 months after the last annual general meeting (s. 182(1)). However, the shareholders have the right to defer the date of an annual general meeting, to consent in writing to all of the business required to be transacted at that annual general meeting or to waive the holding of that meeting or any earlier annual general meeting that the company was required to hold (s. 182(2)). A unanimous resolution is required in order to effect any of these matters. Upon application by the company, the Registrar of Companies may allow the company to hold its annual general meeting on a date that is later than the required meeting date (s. 182(4)).

When a company holds an annual general meeting, the directors must place before each meeting the company’s financial statements prepared in accordance with the Act. For a company that is a reporting issuer, the company must provide the shareholders with a copy of the financial statements and the related auditor’s report that the company is required to file with the Securities Commission under the *Securities Act* (s. 185(1)(a)). There are similar provisions for a company that is a reporting issuer equivalent (s. 185(1)(b)). For other companies, s. 185(1)(c) requires that the financial statements be prepared in accordance with ss. 198 and 199, unless the shareholders have waived this requirement by a unanimous resolution under s. 200. Section 204 requires a company to appoint an auditor on or before each annual reference date (as defined in s. 1(1)). This appointment commonly occurs at the annual general meeting. Finally, the directors are elected at this meeting. Generally, directors retire at the annual general meeting and are eligible for re-election. One should always check the articles for the rules governing the election process.

The articles of a company normally set out the procedures for calling a general meeting. Notwithstanding the articles, the directors of a company must call a general meeting upon the requisition by one or more shareholders holding at least 1/20 of the issued voting shares (s. 167), unless the directors are excused from doing so by s. 167(7). A general meeting also may be called by the court if a company fails to hold a general meeting as required, or if it is impractical to hold or conduct a general meeting in the normal way as prescribed

in the Act, the regulations to the Act or the articles (s. 186). The company auditor is entitled to attend any general meeting (s. 219(1)) and must attend at a directors' meeting when requested to do so (s. 219(2)).

Every company is required to give its shareholders notice of any general meeting (s. 169(1)). The exact notice period is prescribed by regulation, but in any event cannot be more than 2 months before the meeting. Shareholders and any other person entitled to receive notice of a meeting may waive or reduce the period of notice for a particular meeting (s. 170(1)). The waiver or reduction of a notice period need not be in writing (s. 170(2)) and any person who attends at the meeting is deemed to have waived his or her entitlement to notice, unless the attendance is for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called (s. 170(3)). Notice is deemed to have been received on the day following the date of mailing, excluding Saturdays and holidays, unless the company's charter provides for a longer period (s. 6(2)). One should always check the articles for notice provisions (s. 7(1)(b)). The notice of a general meeting should specify the time and place of the meeting, and provide a clear description of the business and matters to be discussed. To determine the shareholders who are entitled to notice of, or to vote at, the general meeting, the directors may fix in advance a date as the record date (ss. 171(c) and (d)). If no date is fixed, then the record date is considered to be 5 p.m. on the day immediately preceding the date on which the notice of meeting was mailed to the shareholders or, if no notice was sent, the beginning of the meeting.

Unless otherwise provided for in the articles, a quorum for transaction of business at a general meeting is two persons entitled to vote at the meeting, whether present in person or by proxy (s. 172(1)(a) and (b)). However, if the number of shareholders entitled to vote at the meeting is less than the requisite quorum, then quorum for that meeting is all of the shareholders entitled to vote at the meeting, whether present in person or by proxy (s. 172(1)(c)).

All general meetings must be held in British Columbia, unless the articles otherwise provide or unless the company obtains either the consent of the shareholders by ordinary resolution or the consent of the registrar before the meeting is held (s. 166).

### 3. Voting

Unless the articles otherwise provide, every shareholder has one vote for each share held by that shareholder (s. 173(1)). At the annual general meeting, voting is generally by a show of hands except where a poll is demanded and except where a shareholder is participating in a meeting by telephone or other communications medium (s. 173(2)). When a vote is taken by a show of hands each shareholder present is entitled to one vote only, regardless of the number of shares he or she holds. Note that the vote by hands includes by proxy if proxies are permitted (see 4 below). Always check the articles of the company for the voting procedures. If a motion is made at any meeting, the chair's declaration that the motion is carried by the requisite majority is, unless a poll is demanded, conclusive evidence of that fact, without proof of the votes recorded in favour or against the resolution (s. 173(3)). In addition, a subsidiary cannot vote shares of a holding company (s. 177).

At any meeting at which a motion has been submitted, a shareholder or proxyholder who is entitled to attend the meeting may demand a poll. On a poll, every shareholder who votes in person or by proxy may cast the number of votes to which he or she is entitled. Every ballot cast on a poll and every proxy voted at a meeting must be held by the secretary for three months after the meeting, during which period they remain open to inspection at the records office of the company (ss. 173(5) and (6)).

For class meetings, check the articles of the company. If the articles are silent, s. 181 stipulates that the provisions governing general meetings shall apply.

### 4. Proxies

Check the articles of the company for provisions relating to proxies. A "proxy" is defined in s. 1(1) of the Act as "a record by which a shareholder appoints a person as the nominee of the shareholder to attend and act for and on behalf of the shareholder at a meeting of shareholders", and is recognized in s. 173. The provisions relating to the form of proxies, information circulars and proxy solicitation requirements for reporting companies that were in the *Company Act* were not included in the *Business Corporations Act*, thus leaving these requirements to the *Securities Act* and comparable legislation in other jurisdictions.

Companies that are reporting companies but not reporting issuers or reporting issuer equivalents (defined in s. 1(1) as "pre-existing reporting companies") are not subject to securities legislation. Part 13 of the *Business Corporations Act* sets out certain rules applicable to pre-existing reporting

companies. Section 433 of the Act provides for the creation of “Statutory Reporting Company Provisions” that will apply to a pre-existing reporting company until it alters its articles to include those provisions in them. The Statutory Reporting Company Provisions are found in Table 2 to the Regulation and include rules relating to proxies and information circulars that are very similar to the provisions of ss. 151-155 of the *Company Act*. There are also rules relating to general meetings of pre-existing reporting companies in s. 184 of the Act.

### [§7.03] Financial Statements

When a company holds an annual general meeting, the directors must place before each meeting the company’s financial statements prepared in accordance with the Act. If a company is a reporting issuer, the company must provide the shareholders with a copy of the financial statements and the related auditor’s report that it is required to file with the Securities Commission under the *Securities Act* (s. 185(1)(a)). There are similar provisions for a company that is a reporting issuer equivalent (s. 185(1)(b)). For other companies, s. 185(1)(c) requires that the financial statements be prepared in accordance with ss. 198 and 199, unless the shareholders have waived this requirement by a unanimous resolution under s. 200. Section 204 requires a company to appoint an auditor on or before each annual reference date (as defined in s. 1(1)). This appointment commonly occurs at the annual general meeting. On demand by a qualifying debentureholder, companies are required to furnish him or her with the latest financial statement and a copy of the auditor’s report on it (s. 201).

A “qualifying debentureholder” is defined in s. 1(1) to mean a person who holds a debenture and who was the holder of that debenture immediately prior to the coming into force of the Act. In other words, persons who became debentureholders after the date that the Act came into force have no right under the Act to receive this information.

Before a company issues or circulates a financial statement, the directors must approve it. One or more directors signatures must evidence this approval (s. 199(1)). The form and contents of financial statements are prescribed by regulation. (see Part 8 of the Regulation).

### [§7.04] Annual Report

Every company must file with the Registrar of Companies an annual report in the prescribed form (Form 6 to the Regulation) within 2 months of each anniversary date of the company’s recognition under the Act (s. 51). These reports must be filed electronically. The fee for filing annual reports is prescribed by

regulation. Failure to file an annual report within this period may result in the registrar dissolving the company (s. 422(1)(a)).

### [§7.05] Registrar of Companies

#### 1. Records Maintained by the Registrar

The records maintained by the registrar include:

##### (a) Name index and register

The Index and Register contains the name of every British Columbia company, as well as private Act, extraprovincial and trust companies, cooperatives, and societies.

##### (b) Register of dissolved companies

A record is maintained for every company, extraprovincial company, society, cooperative and trust company that has ever been registered with the Registrar of Companies. The record shows when the company was dissolved or ceased to be registered, and also shows the names of companies that have changed their names.

##### (c) Receivers and receiver managers

A receiver or receiver manager must file with the registrar a notice respecting his or her appointment, change of address and ceasing to act within 7 days after the effective date (s. 106).

##### (d) Company files

Under the *Business Corporations Act*, very few records are filed with the registrar and most records that must be filed must be submitted in electronic form. Copies of these records can be obtained from the registrar through Corporate Online. All company records (including ones submitted to and issued by the registrar) are maintained at the company’s records office.

#### 2. Filings With the Registrar

Most records that must be filed with the registrar must be filed in electronic form (see s. 30(2) of the Regulation and the *Registry Statutes Amendment Act*, S.B.C. 2002, c. 17). It is important to watch for records that are not effective until filed. In addition, the time limits for filings should be noted. The registrar has discretion to refuse filings under s. 408. The consequences of being in default of the duty to file any record required by the Act are set out in s. 422(1).

## [§7.06] Registered and Records Offices

### 1. Records Office Functions

Every company must keep the company records listed in s. 42 at its records office. A company must make different records available for inspection and copying by certain classes of persons. The following classes can be differentiated:

- current directors (s. 46(1)(a));
- former directors (ss. 46(2));
- shareholders (ss. 46(3)(a), 148(5), 195(8), 46(1)(b)(i));
- former shareholders (ss. 46(3)(b), 148(6), 195(9), 46(2));
- qualifying debentureholders (s. 43(3)(a)); and
- any other person (members of the public) (s. 46(4)-(5), 46(1)(b)(ii)).

The documents that members of the public are entitled to inspect are broader for companies that are public companies or pre-existing reporting companies (s. 46(4)).

Companies may, by ordinary resolution, impose restrictions on the times during which a person, other than a current director, may inspect their records, but those restrictions must comply with the inspection times prescribed by regulation. It is best to separate records according to who can inspect them.

### 2. Duty of Care

All companies and their agents have a duty of care to prepare and maintain records in a complete state, as required by the Act, and so as to avoid loss, mutilation or destruction and falsification of entries (s. 44(4)(a), (b) and (c)). Also, they have a duty to provide simple, reliable and prompt access to the records and registers required by the Act (s. 44(4)(d)).

### 3. Copies of Records

If a person entitled to inspect a company record requests a copy of that record, the company must provide to that person the requested copy promptly and, in any event, within 48 hours of the request, excluding Saturdays and holidays (s. 48(1)). The company may prescribe a fee for some, but not all, copies requested by such person (s. 48(1) and (2)).

A person is entitled to receive from the person who has custody or control of a company's central securities register a list setting out the names and addresses of shareholders of that company and the number of shares of each class or series held by that shareholder (s. 49(1)). There are certain procedural requirements that must be met in order for a person

to receive this list (s. 49(2)) and, once the list has been received, there are limitations on the uses that can be made of the information in the list (s. 49(3)).

Section 44 deals with various forms of records. All records must be maintained in a bound or loose-leaf form or, in the case of records that a company must maintain pursuant to s. 42, in the manner prescribed in that section.

### 4. Records to be kept at Records Office

The Act sets out certain requirements relating to documents that companies must keep at their records office (s. 42)<sup>2</sup>. Certain documents must be stored at the records office (s. 42) including:

- the certificate of incorporation;
- a signed copy of the incorporation agreement;
- a copy of the company's articles;
- a copy of the company's central securities register (unless the directors designate another location under s. 111(4));
- a register of directors;
- minutes of general meetings, class meetings and every directors' meeting, and consent resolutions of shareholders or directors;
- a copy of every document filed and certificate issued by the registrar; and
- financial statements.

### 5. Examination of the Records

Section 46 sets out a procedure for examining corporate records. Every current director of a company may examine and take extracts of ("inspect") any records of that company, as may a former director in relation to the time when he or she was a director (s. 46(1) and (2)).

Every shareholder and qualifying debentureholder also may inspect all records except certain categories of records (s. 46(3)) (generally these are the directors' resolutions and minutes of directors' meetings).

In addition, shareholders may inspect "portions" of any record that contains a statement that a director or senior officer has a disclosable interest in a material contract or transaction (s. 148(5)), or a disclosure of material financial assistance given by a company to certain categories of persons or in certain circumstances (s. 195(8)).

A member of the public ("any person") also may inspect certain records. With respect to a public company or a pre-existing reporting company, a

<sup>2</sup> Note that s. 43 permits a company to store certain of its records at a different location, so long as the records can be produced for inspection within 48 hours.

member of the public has the same right to inspect as a shareholder does (s. 46(4)), but the person cannot inspect the disclosure records under ss. 148(5) or 195(8). A member of the public has substantially more limited access to the records of any other company (s. 46(5)).

Finally, the articles of a company may also permit shareholders, former shareholders, or members of the public, wider access (ss. 46(1)(b) and (2)). These same sections also give former shareholders limited access to records.

Depending on the person making the inspection, the company may have the right to levy a charge for providing requested copies.

## 6. Time Coverage of Records

For companies incorporated or transitioned under the *Business Corporations Act*, records must be maintained from the date of incorporation or transition, although some records of a transitioned company must be kept for a longer period. Pre-existing companies must also maintain the records required by s. 42(2)(e), subject to the exceptions in s. 42(3). After 7 years, it is possible to move certain records to a location other than the records office, so long as they can be produced for inspection within 48 hours of a request.

## 7. Other Records and Materials

The following provisions concern records similar to, but not listed in, the records office provisions discussed above. These include subscriptions, share certificates, consents to act as directors, and the like.

Every share certificate issued by a company must state clearly the name of the company and words indicating that it is a British Columbia company (s. 57(1)(a)). The share certificate must also include the name of the person to whom the certificate is issued, the number, class and kind of shares (and the amount of the par value shares, if applicable), date of issue, the certificate number, and a statement outlining any restrictions on transfers as well as the date of certificate (s. 57(1)(b) to (f)). If the share certificate is only partly paid up, it must state the amount that has been paid (s. 57(2)). Special rights or restrictions must be noted in the text (ss. 57(3) and 51(4)). A share certificate must have one manual signature (s. 110(1)). Any other signatures required may be printed or mechanically reproduced on the share certificate.

Although a seal is not required in British Columbia to make, vary or discharge a contract (s. 193(1) and (4)), companies without a seal encounter problems with land title offices and lending institutions

(*Property Law Act*, R.S.B.C. 1996, c. 377, s. 16(2)). If a company does have a seal, it must have its name engraved in legible characters upon it (s. 27(2)). The company's articles govern how to execute documents under seal.

Every company must keep proper accounting records of all financial and other transactions of the company (s. 196(1)). The accounting records of a company must be kept in a place determined by the directors (s. 196(2)). If and to the extent permitted by the articles, a company must allow a shareholder to inspect and obtain a copy of its accounting records (s. 196(4)). The directors may, subject to the provisions of the company's articles, permit a shareholder to inspect and receive copies of a company's accounting records (s. 196(5)).

## [§7.07] Auditors and Audits

### 1. Requirements for Auditor

Section 204 requires a company to appoint an auditor on or before each annual reference date (as defined in s. 1(1)). This appointment normally occurs at the annual general meeting. However, a company will not be required to appoint an auditor if all shareholders (voting and non-voting) resolve by a unanimous resolution to waive the appointment (s. 203(2)). Although public companies are not excluded from the application of s. 203(2), the requirements of the *Securities Act* make such a waiver by a public company all but impossible.

### 2. Appointment of Auditor

The directors of a company must appoint the first auditor of the company to hold office until the annual reference date following the recognition of the company, or fill any casual vacancy in the office of auditor (s. 204(1) and (4)). Otherwise, on or before each annual reference date the shareholders must appoint by ordinary resolution an auditor to hold office until the next annual reference date (s. 204(3)). If for any reason no auditor is appointed, the court may, on application of a shareholder or creditor, appoint an auditor (s. 204(5)). Prompt notice to an auditor of his or her appointment is required in writing (s. 204(6)). The qualifications of "authorized persons" to act as auditors, as well as the duties and rights of an auditor are set out in ss. 205 to 211. The shareholders must set the remuneration of the auditor, but this power falls to the directors if the shareholders so authorize by ordinary resolution, the articles so provide, or the directors appoint the auditor (s. 207).