



# Company Articles *under the* British Columbia Business Corporations Act

I am willing to hazard a guess that over 90 percent of individuals who are shareholders in a British Columbia corporation have not the slightest idea what their company's articles say, yet these articles are the equivalent of the "instruction manual" for acquiring, disposing of, and voting one's shares, as well as for the whole area of corporate governance, one very much in the news of late.

One of the advantages (to offset the hassles) of the "new" *British Columbia Business Corporations Act* (the "new Act"), which came in to force on March 29, 2004, is that it created an opportunity for the drafters of the new Act and other leading corporate law practitioners to sit down together and draft a new, 21st century set of "standard articles" that not only adopt some of the flexibility provided for in the new Act, but incorporate into the articles themselves some of the rules for corporate governance that, in the past, would have been found in the old *Company Act* or in the case law.

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Moreover, the compulsory transition requirements of the new Act provide corporate law practitioners an excellent opportunity to invite their clients with pre-existing companies, which have to undergo transition anyway, to consider going to the showroom to check out the shiny new 2004 model of company articles.

First, be reminded that a pre-existing company that chooses not to update its articles is deemed on transition to have adopted the following five mandatory Pre-existing Company Provisions ("PCPs"), whether they are suitable or not:

1. the majority vote for special resolutions is three quarters (there are

other options under the new Act);

2. shares of the Company must first be offered for sale to existing shareholders on a *pro rata* basis;
3. the issue price of shares without par value must be set by a special resolution;
4. before allotting shares, the Company must offer the shares to existing shareholders on a *pro rata* basis; and
5. shares must be redeemed on a *pro rata* basis.

By adopting new articles, a company may opt out of the above mandatory provisions that were provided for in the new Act to protect shareholders in pre-existing companies from having their rights diluted without their consent.

I have listed below a limited selection of the suggestions made by the drafters of the new "standard" articles for a more convenient set of rules in situations that have caused difficulties in the past. I am not (intentionally, at least) including provisions meant to dictate the power balance, as it were, within a company. These choices need to be left for each individual, unique company and its advisors. I am including what I consider more or less universally appropriate rules designed to simplify and clarify the governance of any BC company.

## 1. Splitting of Share Certificates

If a shareholder surrenders a share

certificate to the Company with a written request that the Company issue, in the shareholder's name, two or more share certificates, each representing a specified number of shares and in the aggregate representing the same number of shares as the share certificate so surrendered, the Company must cancel the surrendered share certificate and issue replacement share certificates in accordance with that request.

## **2. Payment for Shares**

Except as provided for by the *Business Corporations Act*, no share may be issued until it is fully paid. A share is fully paid when:

- (1) consideration is provided to the Company for the issue of the share by one or more of the following:
  - (a) past services performed by the Company;
  - (b) property;
  - (c) money; and
- (2) the value of the consideration received by the Company equals or exceeds the issue price set for the share under Article [3.1].

## **3. Warrants and Rights**

Subject to the *Business Corporations Act*, the Company may issue share purchase warrants, options, and rights upon such terms and conditions as the directors determine, which share purchase warrants, options, and rights may be issued alone or in conjunction with debentures, debenture stock, bonds, shares, or any other securities issued or created by the Company from time to time.

## **4. Transferor Remains Shareholder**

Except to the extent that the *Business Corporations Act* otherwise provides, the transferor of shares is deemed to remain the holder of the shares until the name of the transferee is entered in a securities register of the Company in respect of the transfer.

## **5. Legal Personal Representative Recognized on Death**

In case of the death of a shareholder, the legal personal representative or, if the shareholder was a joint holder, the surviving joint holder will be the only person recognized by the Company as having any title to the shareholder's interest in the shares. Before recognizing a person

as a legal personal representative, the directors may require proof of appointment by a court of competent jurisdiction, a grant of letters probate, letters of administration, or such other evidence or documents as the directors consider appropriate.

## **6. Resolution Instead of Annual General Meeting**

If all the shareholders who are entitled to vote at an annual general meeting consent by a unanimous resolution under the *Business Corporations Act* to all of the business that is required to be transacted at that annual general meeting, the annual general meeting is deemed to have been held on the date of the unanimous resolution. The shareholders must, in any unanimous resolution passed under this Article, select as the Company's annual reference date, a date that would be appropriate for the holding of the applicable annual general meeting.

## **7. Attendance by Non-Shareholders at Shareholder Meeting**

The directors, the president (if any), the secretary (if any), the assistant secretary (if

any), any lawyer for the Company, the auditor of the Company, and any other persons invited by the directors are entitled to attend any meeting of shareholders, but if any of those persons does attend a meeting of shareholders, that person is not to be counted in the quorum and is not entitled to vote at the meeting unless that person is a shareholder or proxy holder entitled to vote at the meeting.

## 8. Votes by Joint Shareholders

If there are joint shareholders registered in respect of any share:

- (1) any one of the joint shareholders may vote at any meeting, either personally or by proxy, in respect of the share as if that joint shareholder were solely entitled to it; or
- (2) if more than one of the joint shareholders is present at any meeting, personally or by proxy, and more than one of them votes in respect of that share, then only the vote of the joint shareholder present whose name stands first on the central securities register in respect of that share will be counted.

## 9. Election of Directors

At every annual general meeting and in every unanimous resolution contemplated by Article [10.2]:

- (1) the shareholders entitled to vote at the annual general meeting for the election of directors must elect, or in the unanimous resolution appoint, a board of directors consisting of the number of directors for the time being set under these Articles; and
- (2) all the directors cease to hold office immediately before the election or appointment of directors under paragraph (1), but are eligible for re-election or re-appointment.

## 10. Failure to Elect or Appoint Directors

If:

- (1) the Company fails to hold an annual general meeting and all the shareholders entitled to vote at an annual general meeting fail to pass the unanimous resolution contemplated by Article [10.2], on or before the date by which the annual general meeting is required to be held under the

*Business Corporations Act*; or

- (2) the shareholders fail, at the annual general meeting or in the unanimous resolution contemplated by [Article 10.2], to elect or appoint any directors; then each director then in office continues to hold office until the earlier of:
  - (3) the date on which his successor is elected or appointed; and
  - (4) the date on which he or she otherwise ceases to hold office under the *Business Corporations Act* or these Articles.

## 11. Directors' Meetings by Telephone or Other Medium

A director may participate in a meeting of the directors or of any committee of the directors in person or by telephone if all directors participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other.

A director may participate in a meeting of the directors or of any committee of the directors by a communications medium other than telephone if all directors participating in the meeting, whether in person or by telephone or other communications medium, are able to communicate with each other and if all directors who wish to participate in the meeting agree to such participation.

A director who participates in a meeting in a manner contemplated by this Article is deemed for all purposes of the *Business Corporations Act* and these Articles to be present at the meeting and to have agreed to participate in that manner.

## 12. Consent Directors' Resolutions in Writing

A resolution of the directors or of any committee of the directors consented to in writing by all of the directors entitled to vote on it, whether by signed document, fax, email, or any other method of transmitting legibly recorded messages, is as valid and effective as if it had been passed at a meeting of the directors or of the committee of the directors duly called and held.

Such resolution may be in two or more counterparts that together are deemed to constitute one resolution in writing. A resolution passed in that manner

is effective on the later of the date stated in the resolution or the latest date stated on any counterpart.

A resolution of the directors or of any committee of the directors passed in accordance with this Article is deemed to be a proceeding at a meeting of directors or of the committee of the directors and to be as valid and effective as if it had been passed at a meeting of the directors or of the committee of the directors that satisfies all the requirements of the *Business Corporations Act* and all the requirements of these Articles relating to meetings of the directors or of a committee of the directors.

## 13. Directors May Appoint Officers (it is optional)

The directors may, from time to time, appoint such officers, if any, as the directors determine; the directors may, at any time, terminate any such appointment.

The directors may, for each officer:

- (1) determine the functions and duties of the officer;
- (2) entrust to and confer on the officer any of the powers exercisable by the directors on such terms and conditions and with such restrictions as the directors think fit; and
- (3) revoke, withdraw, alter, or vary all or any of the functions, duties, and powers of the officer.

## 14. Method of Giving Notices

Unless the *Business Corporations Act* or these Articles provide otherwise, a notice, statement, report, or other record required or permitted by the *Business Corporations Act* or these Articles to be sent by or to a person may be sent by any one of the following methods:

- (1) mail addressed to the person at the applicable address for that person as follows:
  - (a) for a record mailed to a shareholder, the shareholder's registered address;
  - (b) for a record mailed to a director or officer, the prescribed address for mailing shown for the director or officer in the records kept by the Company or the mailing

address provided by the recipient for the sending of that record or records of that class;

- (c) in any other case, the mailing address of the intended recipient
- (2) delivery at the applicable address for that person as follows, addressed to the person:
- (a) for a record delivered to a shareholder, the shareholder's registered address;
  - (b) for a record delivered to a director or officer, the prescribed address for delivery shown for the director or officer in the records kept by the Company or the delivery address provided by the recipient for the sending of that record or records of that class;
  - (c) in any other case, the delivery address of the intended recipient
- (3) sending the record by fax to the fax number provided by the intended recipient for the sending of that record or records of that class;
- (4) sending the record by email to the email address provided by the intended recipient for the sending of that record or records of that class;
- (5) physical delivery to the intended recipient.

The Articles I have selected here are by no means all ones that arise from the provisions of the new Act. Many would have been authorized under the old Act and the ideas in others have existed in previous sets of Articles. But the clear and comprehensive language of this version makes the old appear new; most important, these articles are now in a style much more likely to be read and understood by shareholders.

We should take this opportunity to encourage all our company clients to consider an upgrade. ▲

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