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The old Company Act of British Columbia (the “Old Act”) was replaced with a new Business Corporations Act (the “New Act”) effective in early 2004. The New Act was intended to remedy some of the deficiencies in the Old Act and to permit corporate filings online to reduce paper flow.

Under the New Act, a company incorporates by filing a notice of articles which contains the company name, the names and prescribed addresses of the directors, the address for the registered and records office, the share structure and an indication of whether there are any special rights and restrictions attached to the shares and whether there are any restrictions on the issue of shares. The articles, which contain all of the rules and regulations for how a company operates and any special rights and restrictions attached to the shares, are no longer filed with the Registrar of Companies, but are available at the registered and records office for inspection.

The incorporators of the company sign a short form of incorporation agreement which preserves the contract basis of British Columbia companies, which agreement is on file at the registered and records office only.

Some of the changes which the New Act brought are as follows:

- **Pre-Incorporation Contracts**
  - A company may within a reasonable period of time after its incorporation be able to adopt a pre-incorporation contract, after which adoption, the company will become liable under the contract and the original contracting party will be relieved from liability under it.

- **Authorized Share Structure**
  - It is now possible to have an unlimited number of authorized shares of a class or to continue to have limited numbers of authorized shares of a class.
  - We continue to be able to use par value shares as well as non par value shares and par values no longer have to be in Canadian currency.

- **Issue of Shares**
  - We are permitted to set the capital for shares without par value at an amount less than the actual consideration received for them.
  - Companies are permitted to issue fractional shares and in some cases it is possible to validate the issue of shares by unanimous resolution of all shareholders instead of by court order.

- **Rights of First Refusal**
  - The rights of first refusal contained in the Old Act for the allotment of new shares, the repurchase of shares of a company and the redemption of shares continue for pre-existing non-reporting companies. However, a company is now permitted to provide in its articles that the company does not need to comply with the rights of first refusal provisions in the New Act.
- **Insolvent**
  - The New Act clarifies the definition of insolvent to make it clear that a company is insolvent only where a company is unable to pay its debts as they become due in the ordinary course of business.

- **Financial Assistance**
  - The prohibitions against giving financial assistance without special resolutions have been repealed and the New Act specifically provides that a company can give financial assistance to any person (which includes corporate entities) for any purpose by means of a loan guarantee, provision of security or otherwise.
  - There is no solvency requirement, but the company will be required to disclose any material financial assistance to certain persons involved in the company or for the purpose of the purchase of shares.

- **Reduction of Capital**
  - A company is no longer required to get a court order to reduce the capital of the company and may do it by special resolution as long as the remaining capital is equal to or greater than the realizable value of the company’s assets less its liabilities.

- **Dividends**
  - A company is able to pay dividends out of profits, capital or otherwise, except that a company may not pay a dividend if it is insolvent or if the payment of dividend will render it insolvent.
  - The insolvency restriction does not apply to stock dividends.

- **Purchase of Shares of Parent Company**
  - A subsidiary is permitted to purchase the shares of its parents as long as it is not insolvent or as long as the purchase will not render it insolvent.

- **Financial Statements and Auditors**
  - Non-reporting companies are permitted to waive the production of financial statements by unanimous resolution of all shareholders (voting and non-voting).
  - Non-reporting companies may waive the appointment of an auditor by unanimous resolution of all shareholders (voting and non-voting).

- **Registered and Records Offices**
  - The list of records required to be kept at a records office has been amended slightly to remove items like documents approved by directors, mortgages, prospectuses and by adding consents to act, resignations and consents of directors, disclosures of conflict of interest, financial assistance and current financial statements.
  - A central securities register replaced the register of members, allotments and transfers and there are no longer registers of debentures or indebtedness.
  - Persons other than directors of the company may only inspect the central securities register or obtain a shareholder’s list with the consent of the company or if they provide to the records office an affidavit of the person seeking the inspection giving their name and address and stating that they will only use the information obtained from the central securities register to influence the voting of the shareholders of the company, acquire securities of the company, effect an amalgamation or reorganization of the company, or to call a meeting.
- **Directors and Officers**
  - There is no longer any residency requirement, either in British Columbia or in Canada, for directors of companies, and directors may show a prescribed address, which can be other than their residence address in the corporate records.
  - There is no longer a requirement that a company have both a president and a secretary, or that the president be a director of the company, or that the company have any officers.
  - A director can sign a consent to act as a director after the director’s appointment, with retroactive effect, and a resignation of a director will no longer have to be received at the registered office to be effective, as long as it is received by the company or a lawyer for the company.
  - Directors are permitted to transfer their powers and duties to other persons who will assume the powers, duties and liabilities of directors.
  - If the articles permit, directors can appoint additional directors or replacement directors.

- **Conflicts of Interest**
  - The New Act expands on the conflict of interest provisions and applies to chairs, presidents, certain vice-presidents and directors, such that if a matter is material to both the company and to the director or senior officer, the conflict will need to be disclosed and the interested director will refrain from voting on the resolution approving the transaction.
  - If all of the directors are in conflict, then all of the directors will sign the resolution approving, but the shareholders will need to pass a special resolution to remove the obligation to account for profits.

- **Resolutions**
  - The companies are now permitted to set the percentage which is required for passing a special resolution at a general meeting anywhere between 2/3 and 3/4 of the votes cast. If the articles do not specifically provide, a special majority will be 2/3 of the votes cast for new companies, or, if the company continues to have the pre-existing company provisions apply, 3/4 of the votes cast.
  - A company may require in its articles exceptional resolutions for specific types of decisions where a decision requires a majority that is greater than a special majority.
  - Ordinary resolutions in writing (I.E. not passed at a meeting) no longer require the signature of all shareholders, but only a special majority of shareholders.
  - The articles of the company can also provide that many corporate alterations, including most capital alterations and changes to the corporate name or alterations to the articles can be done by the type of resolution specified in the articles, so that they could be passed by a directors resolution if the articles so provide. If the articles don’t specifically provide, the alteration will still require a special resolution.

- **Shareholder’s Meetings**
  - General meetings of shareholders may now be held at a location outside of British Columbia if the articles or an ordinary resolution so provide.
  - Meetings are also permitted to be held by electronic or telephone means.
  - The time limit for annual general meetings is extended to 18 months after incorporation for the first one and thereafter 15 months after the previous one (but with at least one in each calendar year).

- **Amalgamations**
  - An amalgamation between a company and its wholly owned subsidiaries or between a wholly owned subsidiary of the same company is now permitted without a court order and without amalgamation agreements.
- **Compulsory Acquisitions**
  - The compulsory acquisitions provisions commonly known as the 90% squeeze out provisions remain mostly unchanged except for the provision that the offeror no longer has to be a British Columbia company and that joint offers are permitted. This avoids having to incorporate a British Columbia company specifically for the purpose of making an offer under the compulsory acquisitions provisions.

- **Disposal of Undertaking**
  - The requirement for a special resolution for the disposition of all or substantially all of a company's undertaking is still in place, but with additional exceptions for short term leases or transfers to subsidiaries or parent companies.

- **Dissolutions**
  - It is possible to carry out a short form dissolution without a liquidator where a company has no liabilities or where adequate provision has been made for payment of each of its liabilities.

- **Restorations**
  - Certain restorations are able to be done by the Registrar without a court order.

- **Extraprovincial Companies**
  - The legal disabilities attached to an extraprovincial company carrying on business in British Columbia, but not extraprovincially registered here, have been removed and an extraprovincial company which is not registered in British Columbia is able to maintain a court action or acquire or hold land in British Columbia.

This information applies as a general rule but may change depending upon the specific circumstances of your own situation. You should consult a lawyer before acting on any of this information.

If you have any questions, please do not hesitate to contact us:

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