

DIRECTORS AND OFFICERS

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EXPLANATION

The directors and officers of a corporation have different functions and different authority:

- the **directors** are **elected** by the shareholders to manage, or supervise the management of, the business and affairs of a corporation and to provide for the establishment of sound business policies;
- the **officers** (the president, secretary, treasurer, etc.) are **appointed** by the directors to carry out the business policies and operations of the corporation on a daily basis.

The officers may be the same persons as the directors. The Act does not require a corporation to appoint officers, so unless the *By-Laws*, *Articles* or *Shareholder Agreement* of the corporation state that the corporation must appoint officers, the directors may choose not to appoint any officers, or to appoint only one or several. The directors may also define the positions and responsibilities of the officers, if appointed.

This chapter of the *Guide* deals with both directors and officers.

DIRECTORS

Subject to any *Unanimous Shareholders Agreement*, directors are individuals who have the legal responsibility and power to manage or supervise the management of the business and affairs of the corporation (s. 102(1)). Subject to the Act and the *By-Laws* and/or *Articles* of the corporation, the shareholders elect the directors.

The directors as a whole are collectively referred to as the **Board of Directors**.

There are a number of qualifications and conditions which must be satisfied before a person may be elected as a director. The following are some of the requirements governing the election of directors:

Number of Directors

- Every corporation must have at least **one** director (s.102(2)) and a **distributing** corporation with more than one shareholder must have at least three directors, at least two of whom are not employees or officers of the corporation or its affiliates;
- The *Articles* of a corporation may specify either:
 - a “**fixed**” Board which defines the number of directors the corporation must have. When the *Articles* provide for “cumulative voting” (see page 6), the Board must be a “fixed” Board; or
 - a “**floating**” Board which specifies a range between the minimum and the maximum number of directors (for example, minimum of three, maximum of six). When the *Articles* provide for a “floating” Board, there is no provision in the Act determining the number of directors at any given time, so the shareholders may, by ordinary resolution, determine the number of directors at the first annual meeting and at each subsequent annual meeting.

Some firms include a mechanism in the *Articles* for determining the number of directors.

Personal qualifications for election (s. 105(1))

The following persons are disqualified from being a director of a corporation:

- anyone who is less than eighteen years of age;
- anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;
- a person who is not an individual; or
- a person who has the status of bankrupt.

Residency requirements

At least twenty-five per cent of the directors must be ordinarily resident in Canada, but if a corporation has less than four directors, at least one director must be normally resident in Canada (s. 105(3)). A “resident Canadian” is defined as (s. 2(1)):

- a Canadian citizen ordinarily resident in Canada;
- a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons⁽¹⁾; or
- a permanent resident within the meaning of subsection 2(1) of the *Immigration and Refugee Protection Act* and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he or she first became eligible to apply for Canadian citizenship.

This last qualification may present difficulties for persons who have lived in Canada for a number of years but have never taken out citizenship.

Exceptions to residency requirements

Certain types of industries (such as airlines or book publishers) are required to maintain a specified level of Canadian ownership or control, and therefore the majority of the directors of the corporation must be resident Canadians (s. 105(3.1)). If there are only one or two directors, the director or one of the two directors as the case may be, must be a resident Canadian (s.105(3.3)). Certain holding corporations that would otherwise have to comply with the majority requirement, may only be required to have a one-third majority of resident Canadian directors if less than five per cent of the gross revenues of the holding corporation and its subsidiaries are earned in Canada (s. 105(4)).

⁽¹⁾ Section 13 of the Regulations prescribes the classes of persons who are exempt as persons working overseas for the government of Canada, employees of a Canadian-controlled corporation, students at recognized educational institutions, full-time employees of an international association or organization of which Canada is a member and seniors over the age of 60 who had their 60th birthday while living in Canada and have lived outside Canada for less than 10 years.

Share qualification

A director is not required to hold shares in the corporation unless required to do so by the *Articles* of the corporation (s. 105(2)). Occasionally the *Articles* of a corporation provide that the directors must be shareholders, but such a requirement is rare. More common is the requirement that certain shareholders, or the holders of certain classes of shares, have the right to nominate one or more directors. This right is often contained in a *Shareholder Agreement*.

Election of Directors

First Directors:

Section 106(1) of the Act states that at the time of sending *Articles of Incorporation* to the Federal Director, the Incorporators will file a *Notice of Directors* in the prescribed form⁽¹⁾.

The Incorporators are not deemed to be the first directors of the corporation. An Incorporator is only a first director of the corporation if he or she is listed as a director on the *Form 2 – Initial Registered Office Address and First Board of Directors*.

The directors named in the *Form 2* will hold office from the date of incorporation until the first meeting of the shareholders of the corporation (s. 106(2)).

Succeeding Directors

The directors that succeed the first directors must be elected or appointed in accordance with the Act and as specified in the *Articles* and *By-Laws* of the corporation.

Generally directors hold office until the next annual meeting (or consent resolutions in lieu thereof), unless the shareholders have elected the director for an expressly stated term, which shall not exceed three years (s. 106(3)). The directors may elect directors for staggered terms⁽²⁾ (s. 106(4)). The shareholders may elect the directors by an ordinary resolution in writing. The election or appointment of an individual as a director is not valid unless (s. 106(9)):

- he or she was present at the meeting when the election or appointment took place and he or she did not refuse to hold office as a director; or
- he or she consented in writing to act as a director **before** the election or appointment or **within ten days after it**; or
- he or she has acted as a director pursuant to the election or appointment.

Do not file a *Form 6 – Changes Regarding Directors* before you receive the written consent of the director, in case the director does not consent to the appointment or election.

⁽¹⁾ A *Form 2 - Information Regarding the Registered Office and the Board of Directors* must accompany the application for incorporation – (see the **Incorporation** chapter).

⁽²⁾ A staggered term allows the shareholders to elect directors for one, two or three year terms so that when the directors' terms of office expire and new directors are elected, the entire Board of Directors does not change at the same time.

Amendment to Articles

If the number of directors is increased or decreased, it may be necessary to pass a special resolution to amend the **Articles** if the Board of directors is “fixed” (the number of directors is fixed in the **Articles**) or “floating” (there is a minimum and maximum number of directors set out in the **Articles**) (s 173(1)(m)). Such amendment is subject to section 107 (the provisions regarding cumulative voting set out below) and section 112 which provides:

- the Board may be decreased, or the minimum and maximum number of directors changed, by the shareholders, subject to the provisions of s. 107(h) regarding cumulative voting (see page 6); and
- any such decrease will not shorten the term of a current director.

If a special resolution amending the **Articles** is passed, it will also be necessary to file **Form 4 - Articles of Amendment** with Corporations Canada. The amendment to the **Articles** is described in the **Amendments to Articles** chapter in Volume II of this Guide.

Directors Increasing the Board

Unless prohibited by the **Articles**, **By-Laws** or any **Unanimous Shareholder Agreement** and provided that the number of directors set out in the **Articles** is not fixed or, if not fixed, that the size of the Board does not increase to more than the maximum number of directors permitted by the **Articles**, the directors may appoint one or more additional directors to the Board of Directors of the corporation. However, if additional directors are so appointed, the number of additional directors must not exceed **one-third** of the number of directors elected at the previous annual meeting of shareholders (s. 106(8)). For example, if there were four directors and the directors wish to increase the board by one director before the next annual meeting or consent resolutions in lieu thereof, the directors would have the power to do so, since this addition would be less than one-third of the current number of directors appointed. On the other hand, if there were only two directors and the directors wanted to appoint two additional directors, the Board would be increased by more than one-third. In this situation, the shareholders (and not the directors) would be required to approve the appointment of the additional directors.

Cumulative Voting for Directors

Cumulative voting means that every shareholder entitled to vote at an election of directors has the right to cast at the meeting a number of votes equal to the number of votes attached to the shares held by the shareholder, multiplied by the number of directors to be elected. Cumulative voting permits a shareholder to amass (cumulate) all his or her votes for directors and cast all his or her votes in favour of one candidate or distribute them among the candidates in such a manner as the shareholder sees fit. For example, if a corporation has ten directors and there are five hundred shares outstanding, the total number of votes that may be cast for the election of directors is 10 x 500, or 5,000. In this case, a shareholder with 51 shares (10.2 percent of the outstanding shares) would be guaranteed one board seat because all votes may be cast for one candidate. This provision facilitates the election of minority representatives to the board. A separate vote of shareholders is taken with respect to each candidate nominated for director unless a unanimous resolution

is passed permitting two or more persons to be elected by a single resolution. If there are more candidates than positions available, the candidate who receives the least number of votes is eliminated until the number of candidates that remains equals the number of positions to be filled. If a shareholder has voted for more than one candidate, but has not specified the distribution of the votes amongst the candidates, the votes shall be distributed evenly amongst the candidates (s. 107).

Cumulative voting rights are sometimes (but rarely) provided for in the *Articles*. Such rights are generally granted when there will be a fairly large board of directors and a number of minority shareholders. When the *Articles* provide for cumulative voting rights, the minority shareholders have a better chance of electing a slate of directors of their choice since two or more minority shareholders may agree to cast all of their votes for one or more candidates of their choice.

Section 107 of the Act provides that if the *Articles* provide for cumulative voting:

- the *Articles* must provide for a fixed number of directors and not a minimum and maximum number;
- each director ceases to hold office at the close of the first annual meeting of shareholders following the director's election;
- a director may only be removed from office if the number of votes cast in favour of the director's removal is greater than the product of the number of directors required by the *Articles* and the number of votes cast against the motion (i.e. if there are 5 directors and 100 outstanding voting shares resulting in 500 votes, there would have to be at least 251 votes cast in favour of removing the director – see the definition of Cumulative Voting on page 6);
- the number of directors required by the *Articles* may only be decreased if the number of votes cast in favour of the motion is greater than the product of the number of directors required by the *Articles* and the number of votes cast against the motion (i.e. if there are 5 directors and 100 outstanding voting shares resulting in 500 votes, there would have to be at least 251 votes cast in favour of decreasing the Board – see the definition of Cumulative Voting on page 6).

Vacancy on Board

Generally, a vacancy occurs when a director dies or resigns. A quorum of directors may fill a vacancy for the unexpired portion of the term of office (s. 111(1)), provided that:

- if the vacancy is filled at a meeting of directors, any requirement under section 114(3) requiring a certain percentage of Canadian directors to be present at the meeting has been met;
- if the holders of any class or series of shares have an exclusive right to elect one or more directors and a vacancy occurs among those directors, the remaining directors of that class or series of shares (or the shareholders of that class if there are no such remaining directors) may fill the vacancy providing that there is nothing in the *Articles* to the contrary, (s. 111(3));
- the *Articles* do not provide that a vacancy among the directors shall only be filled by a vote of the shareholders, or by a vote of the holders of any class or series of

shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series (s. 111(4)).

A director appointed to fill a vacancy holds office for the unexpired term of the director he or she replaces (s. 111(5)).

Ceasing to Hold Office

A director ceases to hold office (s. 108(1)) when:

- the director dies or resigns;
- the director becomes disqualified under s. 105(1) – see page 4; or
- the director is removed in accordance with s. 109. The corporation may remove a director before the expiration of the director's term of office by:
 - an ordinary resolution at a special meeting of the shareholders; or
 - if the shareholders of any class or series of shares have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution of the shareholders of that class or series.

Resignation or Removal of Director

The resignation of a director becomes effective on the date a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later (s. 108(2)).

Right to Attend Shareholders Meetings

A director of a corporation is entitled to receive notice of, and to attend and be heard at, every meeting of shareholders (s. 110(1)), so if a shareholders' meeting is called for the purpose of removing a director, the director being removed is entitled to receive notice of, and attend at, such meeting. A director who resigns or is being removed is entitled to submit to the corporation a written statement giving reasons for resigning or opposing such removal (s. 110(2)). The corporation is required to forward a copy of the statement of such director to:

- every shareholder entitled to receive notice of the meeting to replace the director or to appoint or elect a replacement of that director; and
- to the Federal Director at Corporations Canada;

unless the statement is included in or attached to a management proxy circular required by section 150 (s. 110(3)).

If No Directors in Office

Sometimes, when a corporation is sold and the entire Board of Directors resigns or the sole director of a corporation dies, the corporation is left without directors.

Section 109(4) of the Act provides that if all of the directors have resigned or have been removed without replacement, a person who manages or supervises the business or affairs

of the corporation is deemed to be a director for the purposes of the Act. However, this section does **not** apply to (s.109(5)):

- an officer who manages the business or affairs of the corporation under the supervision or control of a shareholder or other person;
- a lawyer, notary, accountant or other professional who participates in the management of the corporation solely for the purpose of providing professional services; or
- a trustee in bankruptcy, a receiver, receiver-manager or secured creditor.

Loss of Quorum

A quorum of directors is the minimum number of directors who must be present (in person or by conference telephone) at a meeting of directors in order for business to be conducted. A quorum is:

- a majority of the number of directors or the minimum number of directors required by the *Articles* (s. 114(2)); or
- as otherwise set out in the *Articles* or *By-Laws* of the corporation.

When the number of directors in office falls below the number required to form a quorum, or in the case of a “floating” Board, if there has been a failure to elect the number or minimum number of directors provided for in the *Articles*, subsection 111(2) of the Act requires the remaining directors to call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting, or if there are no directors then in office, the meeting may be called by any shareholder.

Form 6 - Changes Regarding Directors

Within 15 days after a change in its directors or in the address of any of its directors, a corporation must complete and file with Corporations Canada a *Form 6 - Changes Regarding Directors* (ss. 113(1) and 113(1.1)).

OFFICERS

A corporation is not required by the Act to have officers. Subject to the *Articles*, the *By-Laws* and any *Unanimous Shareholder Agreement*, the directors may designate the offices of and appoint officers of the corporation, specify their duties and delegate to them the power to manage the day to day business and affairs of the corporation (s. 121), except the powers to do anything referred to in subsection 115(3) (see **Limits on Authority** page 14).

The *Articles*, *By-Laws* or a *Shareholder Agreement* of the corporation may provide that the corporation is required to appoint officers and may provide a description of the officers’ specific duties. A president and secretary are usually appointed, but officers may also include a chair of the board, chief executive officer (CEO), chief financial officer (CFO) or treasurer, and one or more vice-presidents.

A director may also act as an officer of the corporation and any person may hold more than one office (ss. 121(b) and (c)). The qualifications for an individual to act as an officer are not specified by the Act.

LIABILITY OF DIRECTORS AND OFFICERS

Directors and officers have a fiduciary duty to manage the affairs of the corporation in a manner consistent with its best interests. This fiduciary duty is owed to the corporation. A fiduciary duty is founded on trust and confidence and any breach of this duty may make the director or officer personally liable to the corporation.

Every director and officer of a corporation must act honestly and in good faith with a view to the best interests of the corporation and exercise the care, diligence and skill that a reasonably prudent person would exercise in similar circumstances (s. 122(1)).

In addition, every director and officer of a corporation must comply with the Act, the Regulations and the *Articles*, *By-Laws* and any *Unanimous Shareholder Agreement* of the corporation (s. 122(2)).

Under section 118(1) of the Act, directors who vote for, or consent to, a resolution that authorizes the corporation to issue shares under section 25 for a consideration other than money, are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money the corporation would have received if the share had been issued for money on the date of the resolution.

A director is **not** liable under sections 118(1) if the director proves that he or she did not know and could not reasonably have known that the share was issued for a consideration less than the fair market value (s. 118(6)).

Any action to enforce a liability under this section of the Act must be commenced within two years of the date of the resolution authorizing the actions complained of (s. 118(7)).

Other transactions that could result in such liability are (s. 118(2)):

- purchasing, redeeming or acquiring shares of the corporation when the corporation is insolvent or such action would render the corporation insolvent;
- paying an unlawful commission;
- paying a dividend if the corporation is insolvent or such payment renders the corporation insolvent;
- making a payment to a shareholder if a shareholder has exercised rights of dissention or commenced an action for oppression.

Directors of a corporation are also jointly and severally liable for up to six months' wages of the corporation's employees (s. 119(1)). There are some limitations on this liability, such as the director must be sued for the debt within six months of the date the debt

became due and within two years of the director ceasing to be a director. Relevant provincial legislation relating to wage claims may apply to this issue and should also be reviewed.

A director of a corporation who knowingly authorized a corporation to transfer shares held in itself assisting the corporation to comply with Canadian ownership or control quotas, may be liable on summary conviction to a fine or imprisonment, or both (s. 32(4)).

A director or officer of a distributing corporation may also be liable for certain offences in connection with the solicitation of proxies and insider trading which are beyond the scope of this Guide.

A director who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution or action taken at the meeting, unless (s. 123(1)):

- the director's dissent to a resolution is recorded in the minutes of the meeting;
- the director delivers a written notice of dissent to the secretary of the meeting before the meeting is adjourned; or
- the director sends a dissent notice by registered mail to the corporation at its registered office immediately after the meeting is adjourned.

However, a director who votes for, or consents to, a resolution is not entitled to such dissent.

A director who is absent from a meeting is deemed to have consented to any resolution or action taken at the meeting, unless the director, within seven days of becoming aware of the resolution (s. 123(3)):

- causes a dissent to be placed in the minutes of the meeting;
- sends a dissent by registered mail or delivers it to the registered office of the corporation.

As noted above, s. 118(6) of the Act places some limitations on the liability of directors. Section 123(4) further provides that a director is **not** liable under section 118 or 119, and has complied with his or her duties under subsection 122 if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised under comparable circumstances, including reliance, in good faith on (s. 123(4)):

- financial statements of the corporation; and/or
- a report of a professional such as a lawyer, accountant, engineer or appraiser.

In addition to their fiduciary duty to the corporation and their potential liability under the Act, directors and officers may also become liable under other statutes. A few of the many statutes that provide for joint and several liability of directors are:

- Provincial *Employment Standards Acts*;
- the *Income Tax Act* – liability for failure to withhold employees' income tax, employment insurance and CPP contributions;

- Provincial *Environmental and Land Use Acts* – liability for certain environmental violations of the corporation or in the use of any lands that the corporation holds; and
- Provincial *Securities Acts* – liability for violations of the insider trading rules.

Directors may also be held liable under certain provisions of the *Criminal Code* if they have knowingly aided and abetted in committing an offence.

DISCLOSURE OF INTEREST

Directors and officers of a corporation must disclose in writing their interest in any contract or transaction with the corporation, whether made or proposed, which is material to the corporation if the director or officer (s. 120(1)):

- is a party to the contract or transaction;
- is a director or officer of a party to the transaction; or
- has a material interest in a party to the transaction.

This disclosure requirement prevents directors from making secret profits or taking advantage of corporate opportunities for their own profit. For example, if a person is a director of a corporation that manufactures widgets (Corporation A) and this individual owns a substantial interest in another corporation (Corporation B) that owns land which Corporation A has agreed to purchase so that a widget factory could be built, this individual (the director of Corporation A) would have to disclose to Corporation A his or her interest in the transaction before the sale took place.

The disclosure of interest of a director must be made (s. 120(2)):

- at the meeting at which a proposed contract or transaction was first considered;
- if the director was not materially interested in the contract or transaction, at the time the proposed contract or transaction was first considered or becomes interested after a contract or transaction was made, at the first meeting after the director becomes so interested;
- if a person who was not a director at the time the contract or transaction was entered into later becomes a director, at the first meeting after the individual becomes a director.

The disclosure of interest of an officer who is not a director must be made (s. 120(3)):

- immediately after the officer becomes aware that the contract or transaction will be considered at the meeting of the directors;
- if the officer was not materially interested in the contract or transaction, at the time the proposed contract or transaction was first considered or becomes interested after a contract or transaction was made, immediately after the individual becomes so interested;

- if a person who was **not** an officer at the time the contract or transaction is entered into later becomes an officer, immediately after the individual becomes an officer.

If the contract or transaction is such that it would be entered into by the corporation in the ordinary course of business without the approval of the directors or shareholders, the officer or director shall disclose his or her interest in writing to the corporation or request that a disclosure of the director's or officer's interest in the contract or transaction be entered in the minutes of a meeting of the directors or a committee of the directors immediately after he or she becomes aware of the contract or transaction (s. 120(4)).

A director required to make a disclosure under this section shall not vote on any resolution to approve such a contract or transaction unless the contract or transaction (s. 120(5)):

- relates primarily to his remuneration as a director, officer, employee or agent of the corporation;
- is for indemnity or insurance under section 124; or
- is with an affiliate.

Section 120(7) provides an exception to the disclosure rule if:

- disclosure of the interest was made in accordance with section 120;
- the directors approved the contract or transaction; and
- the contract or transaction was reasonable and fair to the corporation when it was approved.

Section 120(7.1) further provides that even if the disclosure requirements are not met, a director or officer acting in good faith is not accountable to the corporation or its shareholders for any profit realized by such director or officer, if:

- the contract or transaction for which disclosure is required is approved or confirmed by special resolution of the shareholders;
- sufficient disclosure was made to the shareholders before the contract was approved or confirmed; and
- the contract was reasonable and fair to the corporation when it was approved.

The court may set aside the contract or transactions on any terms that it thinks fit, or require a director or officer to account to the corporation for any profit or gain realized on it, or both, if a director or officer fails to comply with the disclosure requirements (s. 120(8)).

<p style="text-align: center;">INDEMNIFICATION OF DIRECTORS AND OFFICERS</p>

Under the Act, a corporation may indemnify any director or officer, former director or officer, or any other person who acted at the corporation's request as a director or officer, or an individual acting in a similar capacity, of another entity (such as a proprietorship

operated by the corporation), for any liabilities or expenses incurred as a result of acting as a director or officer of the corporation (s. 124(1)).

However, a corporation may be prohibited from indemnifying a director or officer if (s. 124(3)) :

- the director or officer did not act honestly or in good faith with a view to the best interests of the corporation; or
- in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director or officer had reasonable grounds for believing that his or her conduct was unlawful.

The corporation may, with the approval of a court, indemnify an individual referred to in subsection 124(1) in respect of an action by or on behalf of the corporation or other entity to procure a judgment in its favour, to which the individual is made a party because of the individual's association with the corporation or other entity against all liabilities incurred by the individual in connection with such action (s. 124(4)) provided the individual fulfills the conditions set out in s. 124(3).

The individual described in subsection 124(1) may be entitled to indemnification under subsection 124(5) and the corporation or the individual described in subsection 124(1) may apply to court for an order approving an indemnity under this section (s. 124(7)).

To help cover the cost of such indemnification, a corporation is entitled to purchase and maintain director's or officer's liability insurance (s. 124(6)).

RESTRICTION ON POWERS

By way of a *Unanimous Shareholders Agreement*, a corporation may restrict, in whole or in part, the powers of its directors to manage, or supervise the management of, the business and affairs of the corporation (s. 146(1)). If the powers to manage the business and affairs of a corporation are transferred to the shareholders of the corporation, the shareholders will have all the rights and powers of the directors, but they will also have the duties and liabilities of the directors with respect to those powers (s. 146(5)), including their liabilities under section 119.

Limits on Delegation of Authority

Directors may appoint a managing director who is a resident Canadian or a committee of directors and delegate to them any of the powers of the directors (s. 115(1)), except that such managing director or committee of directors has **no** authority to:

- submit to the shareholders any question or matter requiring the approval of the shareholders;
- fill a vacancy among the directors or in the office of auditor, or appoint additional directors;
- issue shares (securities) except as authorized by the directors;

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- issue shares of a series under section 27 except as authorized by the directors;
 - declare dividends;
 - purchase, redeem or otherwise acquire shares issued by the corporation;
 - pay a commission referred to in section 41 except as authorized by the directors;
 - approve a management proxy circular referred to in Part XIII;
 - approve a take-over bid circular or directors' circular referred to in Part XVII;
 - approve any financial statements referred to in section 155; or
 - adopt, amend or repeal By-Laws.

“Indoor Management Rule”

Section 18 of the Act provides that persons dealing with the corporation are not required to determine whether:

- the *Articles*, *By-Laws* and any *Unanimous Shareholder Agreement* have been complied with;
- the directors named in the most recent *Form 2 - Initial Registered Office Address and First Board of Directors* or *Form 6 – Changes Regarding Directors* are in fact directors of the corporation;
- the place named in the most recent *Form 2 - Initial Registered Office Address and First Board of Directors* or *Form 3 - Change of Registered Office Address* is in fact the registered office of the corporation;
- a person held out as a director, officer or agent of the corporation has been duly appointed and has the authority to exercise the powers and perform the duties that are customary in the business of the corporation;
- a document issued by any director, officer or agent of a corporation is valid or genuine; or
- the sale, lease or exchange of property which requires the approval of the shareholders of the corporation has been properly authorized.

These provisions are commonly referred to as the “indoor management rule”.

PROCEDURE/CHECKLIST

1. Receive instructions from the client to change, add or remove a director, directors, officer or officers of the corporation

Note: If **only** the residential address of a director or officer is changed – proceed to Step 7 –prepare a ***Form 6 - Changes Regarding Directors***

2. Make sure that all of the requirements for electing or appointing the person(s) as director(s) or officer(s) are complied with (i.e. age, residency, number of directors, share qualification, etc. – see **Explanation** page 4)
3. Check the **Articles**, **By-Laws** and **Shareholder Agreement** (if any) for any provisions regarding the appointment of directors and officers and any restrictions on the powers of the directors to manage the business
4. Check the **Articles** to determine whether there is a fixed number of directors set out or if there is a minimum or maximum number. If the number of directors is not the same as the number fixed in the **Articles**, or is not within the maximum and minimum number set out in the **Articles**, prepare a **Special Resolution** and **Form 4 - Articles of Amendment** to effect the change (see the **Amendments to Articles** chapter in Volume II of this Guide)
5. If applicable prepare:
 - (a) a **Consent to Act as a Director** (page 20)
 - (b) a **Resignation of Director** (page 22)
6. Check the following to determine the applicable resolution or document to be prepared:
 - (a) if a director is being appointed or is resigning or there is a change in the number of directors – **Shareholders Resolutions** (page 24)
 - (b) if a director is being removed at a special meeting - a **Notice of Meeting** (see the **Miscellaneous** chapter in Volume II of this Guide)
 - (c) if there is a casual vacancy – **Directors Resolutions (Filling Casual Vacancy)** appointing the new director and, if applicable, accepting the resignation (page 30)
 - (d) if an officer resigns, is removed or is appointed – **Directors Resolutions (Appointing Officers and/or Accepting their Resignations)** (page 32)
7. Prepare a **Form 6 - Changes Regarding Directors** (page 34)
8. Check if the corporation is extraprovincially registered in any jurisdiction that requires a **Notice of Change of Directors** to be filed. If so, prepare the appropriate form or instruct the agent in that province to prepare the form

9. Prepare a *Directors Resolution (Approving Indemnity and Disclosing Interest)*, if applicable (page 40)
10. Prepare an *Indemnity*, if applicable (page 42)
11. Prepare a *Disclosure of Interest*, if applicable (page 38) and a *Special Resolution (Approving Contract)* (page 42)
12. Prepare the *Transmittal Letter (Forwarding Documents for Signature)* (page 44)
13. Diarize the file for the return of documents from the client

Upon receipt of the signed documents:

14. File *Form 4 - Articles of Amendment*, if required, either by mailing, faxing or emailing it to Corporations Canada, by filing it with an agent or by electronic filing (see **Appendix B – Electronic Filings**)
15. File the *Form 6 - Changes Regarding Directors* either by mailing, faxing or emailing it to Corporations Canada, by filing it with an agent or by electronic filing (see **Appendix B – Electronic Filings**)
16. Diarize the file for receipt of the filed copy (if requested) of the *Form 6 - Changes Regarding Directors*, and *Form 4 - Articles of Amendment* (if applicable) from Corporations Canada. Note that copies of electronically filed documents are routinely sent by email to the person who filed the documents, a stamped copy of the *Form 4 – Articles of Amendment* will be returned with the *Certificate of Amendment* if paper filed or filed by email, but a copy of the *Form 6 – Changes Regarding Directors* will not be returned unless you request, and pay for, a certified copy. Note that if you file by email to corporations.efiling@ic.gc.ca be sure to include your name, business address, fax, telephone and email address, together with credit card information if you are filing a Form 4, and a request that the Certificate be emailed to you, if you wish to receive that service.
17. File the signed documents in the *Minute Book* as follows:

Tab in Minute Book	Documents
Charter Documents	<i>Articles of Amendment</i> (if any)
Directors Minutes/Resolutions	<i>Directors Resolution</i> <i>Consent to Act as Director/Officer</i> ⁽¹⁾ <i>Resignation of Director/Officer</i> ⁽¹⁾ <i>Indemnity</i> ⁽²⁾
Shareholders Minutes/Resolutions	<i>Shareholders Resolutions</i> <i>Consent to Act as Director/Officer</i> ⁽¹⁾ <i>Resignation of Director/Officer</i> ⁽¹⁾ <i>Disclosure of Interest</i> ⁽³⁾
Forms Filed	<i>Form 6 - Changes Regarding Directors</i>

18. Update your database if you have one
19. Record the changes in the *Register of Directors*, if you maintain a Register of Directors (not required under the Act)
20. Report changes to the corporation and the corporation's accountants (if required)

⁽¹⁾ If you have a tab for "Consents/Resignations", you may file the *Consents to Act as Director/Officer* and *Resignations of Director/Officer* under that tab. Otherwise, file these documents under the resolution that each document applies to.

⁽²⁾ If you have a tab for "Documents Approved by the Directors", you may file the *Indemnity Agreement* under that tab. If it is not your firm's policy to file such agreements in the Minute Book, file the *Indemnity Agreement* in the corporation's corporate file.

⁽³⁾ If you have a tab in the Minute Book for "Disclosures", you may file the *Disclosure of Interest* under that tab

CONSENT TO ACT AS A DIRECTOR

General Notes

The election and appointment of a director is not valid unless:

- the person consents in writing to act as a director before or within ten days after such election or appointment;
- the person is elected or appointed at a meeting at which the individual was present and did not refuse to act as a director; or
- the person acted as a director pursuant to the election or appointment (s. 106(9)).

A written *Consent to Act as a Director* with confirmation that the director meets the directors' qualifications set out in the Act and/or *By-Laws* is generally prepared. Before filing a *Form 6 - Changes Regarding Directors*, ensure that you have received a signed consent, unless the director attended the meeting at which he or she was elected, or has acted as a director.

Section 114(9) provides that, subject to the *By-Laws*, a director may consent to participate in meetings of the directors by means of telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. If the directors intend to hold telephone or video meetings, a consent to meetings by telephonic or electronic means is generally included in the *Consent to Act As A Director*.

Preparation

- ① Delete the following sentence if the *By-Laws* prohibit it or the directors do not wish to consent to the holding of meetings by telephone or other electronic means.
- ② Insert the effective date on which the director is to be appointed, or if the date is unknown, leave blank.
- ③ Insert the full legal name of the new director.
- ④ Insert the residential address of the director.
- ⑤ The text of section 105(1) of the Act is only included for the convenience of the person signing the *Consent to Act as a Director* since the person confirms that he or she is not disqualified under this section. If it is the policy of your law firm not to include this section, you may delete it.

Note: If you delete the text of section 105(1), delete the words: “*the text of which is set out below*” at the end of the third paragraph in the Consent.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

CONSENT TO ACT AS A DIRECTOR

TO: *{NAME OF CORPORATION}*
(the “Corporation”)

I consent to act as a director of the Corporation and to my election or appointment from time to time as a director of the Corporation. ① I further consent to any meeting of directors or of any committee of directors of the Corporation to be held by means of such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

This consent will continue in effect from year to year until:

- (a) the close of an annual meeting, or the completion of procedures in lieu thereof, at which my term of office as a director ends and I am not re-elected or re-appointed as a director;
- (b) when my resignation as a director becomes effective; or
- (c) when my written revocation of this consent is sent to the Corporation, or such later time as such revocation specifies it is to be effective.

I certify that I am not disqualified under section 105(1) of the *Canada Business Corporations Act* to act as a director.

I declare that	<input type="checkbox"/> I am	a Canadian citizen ordinarily resident in Canada and I undertake to notify the Corporation of any change in this status.
	<input type="checkbox"/> I am not	

Dated effective *{date}* ②

{NAME OF NEW DIRECTOR} ③

Full Residential address: *{address} ④

***YOU ARE REQUIRED UNDER SECTION 113(1.1) OF THE CANADA BUSINESS CORPORATIONS ACT TO NOTIFY THE CORPORATION OF ANY CHANGE TO YOUR ADDRESS WITHIN FIFTEEN DAYS AFTER THE CHANGE.**

⑤ PERSONS DISQUALIFIED AS DIRECTORS

Section 105(1) of the *Canada Business Corporations Act* provides that the following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than eighteen years of age;
- (b) anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (c) a person who is not an individual; or
- (d) a person who has the status of bankrupt.

RESIGNATION OF DIRECTOR/OFFICER

General Notes

When a director or officer resigns, the resignation should be documented and the resigning director or officer should provide the corporation or its solicitor with a written form of **Resignation**.

If a director is also an officer of the corporation, his or her resignation from office (e.g. president, vice-president, secretary, treasurer, etc.) should be included in the **Resignation**.

The resignation of a director becomes effective at the time that the written resignation is **sent** to the corporation, or on the date and time specified in the resignation, whichever is later (s. 108(2)).

Preparation

- ① If the resignation is for the position of an officer only, change “Director” to ”Officer”
- ② If your instructions are that the director is also resigning as an officer of the corporation, add the resignation from the appropriate office (e.g. president, secretary, etc.) to the **Resignation**.
- ③ Insert:
 - the effective date of the resignation; or
 - “...*immediately*”; or
 - “...*upon acceptance by the Board of Directors*”.
- ④ If in ②:
 - you have inserted “...*immediately*”, insert the effective date of the resignation or leave blank.
 - you have inserted the effective date of the resignation or “...*upon acceptance by the Board of Directors*”, insert the date the resignation is signed or leave the date blank.
- ⑤ Insert the name of the resigning director or officer.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded for signature to the corporation or the person resigning, as applicable – see **Transmittal Letter (Forwarding Documents for Signature)** (page 44).

RESIGNATION OF ①DIRECTOR

TO: *{NAME OF CORPORATION}*
 (the “Corporation”)

I resign as a director *{and/or as the president/secretary, etc}* ② of the Corporation effective ③.

Dated: ④*{date}*.

⑤*{NAME OF RESIGNING
DIRECTOR/OFFICER}*

SHAREHOLDERS RESOLUTIONS

(Determining Number of Directors, Electing and Appointing Directors and/or Confirming Resignations)

General Notes

The powers given to the shareholders to elect the directors of a corporation are generally found in the *By-Laws* of the corporation in the section usually entitled “Election and Term”. Section 111(1) of the Act requires that the shareholders appoint any directors resulting from an increase in the Board of Directors or a failure to elect the number fixed or minimum number of directors. Special provisions regarding the election of directors may also be contained in the *Articles*, *By-Laws* or a *Shareholder Agreement*. The Act does not provide a specific procedure for changing the number of directors within the minimum and maximum number of directors set out in the *Articles*, but sometimes a provision is contained in the *Articles* or *By-Laws*. If:

- there is not a quorum of directors, a special meeting of the shareholders must be called to fill the vacancy(s. 111(2));
- the number of directors set out under the *Articles* of the corporation is changed, a *Special Resolution* of the shareholders and *Form 4 – Articles of Amendment* are required to amend the *Articles* (ss. 112 and 173(1)(m)); or
- there has been a failure to elect the minimum number of directors required under the *Articles* of the corporation, a special meeting of the shareholders must be called to fill the vacancy (s. 111(2)).

If the *Special Resolution* requires an amendment to the *Articles* (see Explanation page 6), refer to the *Amendments to Articles* chapter in Volume II of this Guide.

An *Ordinary Shareholders Resolution* is required if:

- the number of directors is being increased by more than one-third of the current directors (s. 106(8));
- the entire Board is being replaced or the corporation has only one director and he or she is being replaced (s. 111(1));
- the number of directors within the minimum and maximum set out in the *Articles* is being determined and there is no authority for the directors to set the number in the *Articles* or *By-Laws* (s. 111(4)); or
- the holders of any class or series of shares have an exclusive right to elect one or more directors and there are no remaining directors elected by the holders of that class or series of shares (s. 111(3)).

Preparation

- ① Change as appropriate. If there is only one shareholder, change to “the sole Shareholder” and change “pass” to “passes”.
- ② Choose one of the alternatives depending on whether there is only one resignation or several, or delete all these paragraphs if there are no directors resigning.

Continued...

RESOLUTION OF THE ①SHAREHOLDERS

OF

{NAME OF CORPORATION}

(the "Corporation")

THE UNDERSIGNED being ①all of the shareholders of the Corporation pass the following resolution pursuant to the provisions of the *Canada Business Corporations Act*:

CHANGE OF DIRECTORS

WHEREAS:

②(A) A resignation as director has been received from *{NAME OF RESIGNING DIRECTOR}*; and

(B) *{NAME OF NEW DIRECTOR}* has consented in writing to act as a director of the Corporation.

or:

②(A) Resignations as directors have been received from *{NAME OF RESIGNING DIRECTOR}* and *{NAME OF RESIGNING DIRECTOR}*; and

(B) The following persons have consented in writing to act as directors of the Corporation:

{NAME OF NEW DIRECTOR}
{NAME OF NEW DIRECTOR}

NOW THEREFORE BE IT RESOLVED that:

1. ②The resignation of *{NAME OF RESIGNING DIRECTOR}* be confirmed.

or:

1. ②The resignations of the following persons as directors of the Corporation be confirmed:

{NAME OF RESIGNING DIRECTOR}
{NAME OF RESIGNING DIRECTOR}

Continued...

SHAREHOLDERS RESOLUTIONS

(Determining Number of Directors and Electing and Appointing Directors and/or Confirming Resignations)

Explanation (Continued)

Prepare the *Directors Resolutions (Filling Casual Vacancy)* instead of this resolution (page 30) if:

- there is a casual vacancy, and a quorum of the directors will be filling the vacancy (s. 111(1));
- the *Articles* so provide, and additional directors are being appointed, but no more than one-third of the number of current directors are being appointed (s. 106(8)); or
- the holders of any class or series of shares have an exclusive right to elect one or more directors and a vacancy occurs among those directors. In that case, the remaining directors elected by the holders of that class or series of shares may fill the vacancy (except a vacancy resulting from an increase in the number of minimum or maximum number of directors for the class or series of shares or a failure to elect the minimum number of directors provided in the *Articles* for that class or series) (s. 111(3)).

For an explanation of “casual vacancy” see **Explanation –Vacancy on Board** – page 7.

If a director who resigns or is appointed is also an officer, prepare the *Directors Resolution (Appointing Officers)* (page 32) **in addition** to this *Shareholders Resolution*. If you are preparing the *Directors Resolutions (Filling Casual Vacancy)* (see above), the resignation and/or appointment of an officer may be included in that resolution.

Preparation (Continued)

- ① If the number is not being changed, you may insert the first choice, but it is optional. If the number is being increased or decreased, insert the second choice, as appropriate.
- ② Insert this paragraph if there is only one director appointed.
- ③ Insert this paragraph (instead of ②) if several directors are appointed.
- ④ Insert the effective date of the change of directors or if you have not received instructions regarding the effective date, leave it blank.
- ⑤ Check the *Securities Register* of the corporation and insert the names of all of the shareholders entitled to vote.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

Shareholders Resolutions
(Determining Number of Directors and Electing and Appointing
Directors And/Or Confirming Resignations)

Page 2

2. ①The number of directors of the Corporation be determined at *{number}*.

or:

2. ①The number of directors of the Corporation be increased/decreased from *{number}* to *{number}*.

3. ②*{NAME OF NEW DIRECTOR}*, having consented to act, be appointed as a director of the Corporation to hold office until the next annual meeting or until revocation or resignation.

or:

4. ③The following persons, having consented to act, be appointed as directors of the Corporation to hold office until the next annual meeting or until revocation or resignation:

{NAME OF NEW DIRECTOR}
{NAME OF NEW DIRECTOR}

DATED the *{Date}*④

⑤*{NAME OF SHAREHOLDER}*

⑤*{NAME OF SHAREHOLDER}*

SHAREHOLDERS RESOLUTION (Removing a Director)

General Notes

Subject to any restrictions in the *Articles* regarding cumulative voting and the rights of any shareholders of a class or series of shares to elect directors, the shareholders may remove a director by an ordinary resolution at a special meeting (s. 109(1)).

This *Shareholders Resolution (Removing a Director)* should be prepared if the voting shareholders have unanimously agreed to remove a director or several directors and the *Articles* permit the removal.

If the shareholders are not all in agreement with the decision to remove a director:

- a general meeting will have to be called, and
- a notice specifying the intention to propose the resolution removing the director or directors will have to be sent to all of the voting shareholders of the corporation.

(see the **Miscellaneous** chapter in Volume II of this Guide for the *Notice of Shareholders Meeting*).

Preparation

- ① Change as appropriate. If there is only one shareholder, change to “the sole Shareholder” and change “pass” to “passes”.
- ② Change as appropriate. If the director has left the employment of the corporation and did not resign prior to leaving, you may substitute:
“WHEREAS {NAME OF DIRECTOR BEING REMOVED} has left the employment of the Corporation and it is appropriate to remove him/her as a director.”
- ③ Use the first choice if only **one** director is being removed or use the second choice if **several** directors are removed.
- ④ If the number of directors is not being changed, you may insert the first choice, but it is optional. If the number is being increased or decreased, insert the second choice, as appropriate.
- ⑤ If no replacement or additional directors will be appointed, omit this paragraph.
- ⑥ Insert the effective date of the change of directors or if you have not received instructions, leave it blank.
- ⑦ Check the *Securities Register* of the corporation and insert the names of all of the shareholders entitled to vote.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

RESOLUTION OF THE ①SHAREHOLDERS

OF

{NAME OF CORPORATION}

(the "Corporation")

THE UNDERSIGNED being ①all of the shareholders of the Corporation pass the following resolution pursuant to the provisions of the Canada Business Corporations Act:

REMOVAL OF DIRECTOR

②WHEREAS {NAME OF DIRECTOR BEING REMOVED} has had notice of his removal and the opportunity to submit to the Corporation a written statement opposing his/her removal;

NOW THEREFORE BE IT RESOLVED that:

1. ③{NAME OF DIRECTOR BEING REMOVED} be removed as a director of the Corporation effective immediately.

or:

1. ③The following persons be removed as directors of the Corporation effective immediately:

{NAME OF DIRECTOR BEING REMOVED}
{NAME OF DIRECTOR BEING REMOVED}

2. ④The number of directors of the Corporation be determined at {number}.

or:

2. ④The number of directors of the Corporation be increased/decreased from {number} to {number}.

3. ⑤The following persons, having consented to act, be appointed as directors of the Corporation to hold office until the next annual meeting or until revocation or resignation:

{NAME OF NEW DIRECTOR}
{NAME OF NEW DIRECTOR}

DATED the {Date}⑥

⑦{NAME OF SHAREHOLDER}

⑦{NAME OF SHAREHOLDER}

DIRECTORS RESOLUTIONS (Filling Casual Vacancy)

General Notes

This Resolution is prepared **instead of** the *Shareholders Resolutions* (subject to any *Unanimous Shareholder Agreement* restricting the powers of the directors) when:

- a **casual vacancy** in the board of directors of a corporation occurs (see **Explanation – Vacancy on Board** (page 7)); or
- if the *Articles* grant the directors the power to increase the number of directors, and
- the number of additional directors does not exceed one-third of the number of current directors (s. 106(8)). For example, if there were four directors, and the directors wish to appoint an additional director before the next **Annual meeting**.

You should prepare the *Shareholders Resolutions* (page 24) to approve the appointment of the additional director if:

- more than one-third of the current directors is added (for example, if there are only two directors and the directors wish to appoint one additional director); and
- the *Articles* do not grant the directors the power to increase the number of directors;
- the individual who is replaced was the only director of the corporation (for example, the sole director died and is replaced); or
- a *Unanimous Shareholder Agreement* has restricted the powers of the directors to act.

Consents to Act (and if applicable, *Resignations*) should also be prepared and signed. Check the *Articles* and *By-Laws* of the corporation to ensure that the directors and/or the shareholders have the power to increase the board of directors between annual meetings. If they do not have this power, advise the responsible solicitor and request instructions.

If the director who resigns is also an officer, the *Directors Resolutions (Appointing Officers)* (page 32) should be prepared in addition to this resolution, or the appropriate paragraph from that resolution inserted here.

Preparation

- ① Change as appropriate. If there is only one director, change to “the sole Director” and change “pass” to “passes”.
- ② Insert this paragraph if a director has died.
- ③ Insert this paragraph if a director has resigned.
- ④ Insert the section of the *By-Laws* or *Articles* relating to filling a casual vacancy. Omit this paragraph if a new director is not being appointed.
- ⑤ If a director has resigned or died, chose the appropriate paragraph and insert it.
- ⑥ If new directors are appointed chose the appropriate paragraph and insert it.
- ⑦ Insert the effective date of the resolution or leave blank if you do not know the date.
- ⑧ Check the *Register of Directors* of the corporation and insert the names of all directors.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

RESOLUTIONS OF ①ALL OF THE DIRECTORS

OF

{NAME OF CORPORATION}

(the “Corporation”)

THE UNDERSIGNED being ①all of the directors of the Corporation ①pass the following resolutions pursuant to the provisions of the *Canada Business Corporations Act*.

VACANCY ON BOARD

WHEREAS:

②(A) {NAME OF DIRECTOR}, a director and officer of the Corporation, died on {date of death};

or:

③(A) {NAME OF DIRECTOR} resigned effective {date};

②(B) Section 108(1)(a) of the *Canada Business Corporations Act* provides that a director ceases to hold office when he dies;

③(C) As a result of such resignation, there now exists a casual vacancy on the board of directors; and

(D) Pursuant to subsection ④ of the *By-Laws* of the Corporation, the remaining directors may fill a casual vacancy.

NOW THEREFORE BE IT RESOLVED that:

1. ⑤The resignation of {NAME OF RESIGNING DIRECTOR} be accepted.

or:

1. ⑤{Name of Director} is no longer a director and officer of the Corporation.

2. ⑥{NAME OF NEW DIRECTOR}, who has consented in writing to act as a director, be appointed a director of the Corporation, to hold office until the next annual meeting of the Corporation or until revocation or resignation.

or:

⑥ The following persons, having consented in writing to act as directors, be appointed directors of the Corporation, to hold office until the next annual meeting of the Corporation, or until revocation or resignation:

{NAME OF NEW DIRECTOR}
{NAME OF NEW DIRECTOR}

DATED the {Date}⑦

⑧{NAME OF DIRECTOR}

⑧{NAME OF DIRECTOR}

DIRECTORS RESOLUTIONS

(Appointing Officers and/or Accepting their Resignation)

General Notes

This Resolution is used when an officer dies, resigns or is removed from office and/or a new officer is appointed and there is no change in directors.

If there is also a change in directors, the contents of this resolution may be combined with the *Directors Resolutions (Casual Vacancy)* (page 26). However if the *Shareholders Resolutions* (page 22) is prepared to change the directors, then this resolution must be prepared in addition to the *Shareholders Resolutions*.

Preparation

- ① Change as appropriate. If there is only one director, change to “the sole Director” and change “pass” to “passes”.
- ② Delete the preamble if an officer did not die.
- ③ Insert the appropriate paragraph depending on whether the officer is resigning or whether there is one or several resignations. If the officer died, and no officer resigned, delete both paragraphs.
- ④ Insert the full name of the resigning officer and his/her office or position.
- ⑤ Insert one of the paragraphs depending on whether there is one resignation or several.
- ⑥ Insert the full legal name of the new officer.
- ⑦ Insert the office or position of the new officer.
- ⑧ Insert the effective date of the resolution, or leave blank if you do not know the date.
- ⑨ Check the *Register of Directors* of the corporation and insert the names of all directors.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

RESOLUTIONS OF ①ALL OF THE DIRECTORS

OF

{NAME OF CORPORATION}

(the "Corporation")

THE UNDERSIGNED being ①all of the directors of the Corporation ①pass the following resolutions pursuant to the provisions of the *Canada Business Corporations Act*.

APPOINTMENT OF OFFICER(S)

②WHEREAS *{Name of Deceased Officer}*③ who was the *{position or office}*③ of the Corporation, died on *{Date}*;

NOW THEREFORE BE IT RESOLVED that:

1. ③The resignation of *{NAME OF RESIGNING OFFICER}*④ as *{position or office}*④ be accepted.

or:

1. ③The following resignations be accepted:

*{NAME OF RESIGNING OFFICER}*④ *{position or office}*④

*{NAME OF RESIGNING OFFICER}*④ *{position or office}*④

2. ⑤*{NAME OF NEW OFFICER}*⑥, who has consented to act as an officer, be appointed as the *{position or office}*⑦ of the Corporation.

or:

2. ⑤The following persons, each of whom has consented to act as an officer, be appointed to the offices set opposite their respective names:

*{NAME OF NEW OFFICER}*⑥ *{position or office}*⑦

*{NAME OF NEW OFFICER}*⑥ *{position or office}*⑦

DATED the *{Date}*⑧

⑨*{NAME OF DIRECTOR}*

⑨*{NAME OF DIRECTOR}*

Form 6 - CHANGES REGARDING DIRECTORS

General Notes

Section 113(1) states that:

“A corporation shall within fifteen days after:

(a) a change is made among its directors; or

(b) it receives a notice of change of address of a director referred to in subsection (1.1)

send to the Director a notice, in the form that the Director fixes, setting out the change, and the Director shall file the Notice.”

Once all **Resignations**, **Consents** and **Resolutions** have been signed, a **Form 6 - Changes Regarding Directors** must be filed with Corporations Canada, by mailing or faxing it to Corporations Canada, by filing it with an agent or by electronic filing (see **Appendix B – Electronic Filings**). This form is **not** necessary if a director ceases to be a director and is re-elected or re-appointed on the same day as in the case of annual meetings (see the **Annual Maintenance** chapter in Volume II of this Guide), but this form **is** necessary if a director changes his or her address.

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.

ITEMS 3 and 4 Insert the date of change, as well as the names of any directors newly appointed or ceasing to act. If no directors were appointed or ceased (i.e. only an **address change** is being reported), you may insert “N/A” or leave these sections blank

ITEM 5 Insert the full names of **all** the directors after the change as well as their residential addresses

ITEM 6 Insert the full name and residential address of any director who has changed his or her address

Processing

Once the document has been prepared, checked and approved by the supervising solicitor, make two copies: retain one copy for your file and forward one copy to the client for signature – see **Transmittal Letter (Forwarding Documents for Signature)** (page 44).

When the Form is returned – see steps 14 to 17 of the **Procedure/Checklist**.

Before filing the Form with Corporations Canada, ensure that the appropriate **Consents** and **Resolutions** have been received and signed and placed in the **Minute Book**.



**Canada Business Corporations Act (CBCA)
FORM 6
CHANGES REGARDING DIRECTORS
(Sections 106 and 113(1))**

1 - Corporate name

--

2 - Corporation number

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3 - The following individuals are new members of the board of directors

<i>First and last name</i>	<i>Address (must be a street address, a P.O. Box is not acceptable)</i>	<i>Canadian Resident Yes / No</i>	<i>Start Date (YYYY-MM-DD)</i>
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	
		<input type="checkbox"/> Yes <input type="checkbox"/> No	

4 - The following individuals are no longer members of the board of directors

<i>First name</i>	<i>Last name</i>	<i>End Date (YYYY-MM-DD)</i>

5 - Change of address of directors

<i>First and last name</i>	<i>New address (must be a street address, a P.O. Box is not acceptable)</i>

6 - Declaration

I hereby certify that I have relevant knowledge of the corporation, and that I am authorized to sign this form.

Signature: _____

Print name: _____ *Telephone number:* _____

Note: Misrepresentation constitutes an offence and, on summary conviction, a person is liable to a fine not exceeding \$5000 or to imprisonment for a term not exceeding six months or to both (subsection 250(1) of the CBCA).



INDEMNITY

General Notes

If a solicitor acts as a director of a corporation or if a person acts as a nominee director and has no financial interest in the corporation, she or he may request that the corporation indemnify him or her from any liabilities that might result from acting as a director. See **Explanation – Liability of Directors and Officers** (page 10) for a discussion of when a director or officer of a corporation may be held personally liable.

It is also quite common for a nominee director to request that the principals of the corporation or the parent corporation (if the corporation is a subsidiary) be a party to the agreement and jointly and severally agree to indemnify the director. The example shown opposite is a simple *Indemnity* granted by the corporation in favour of a new director. Confirm the use of this document with your supervising solicitor.

Preparation

- ① Insert the full legal name of the new director.
- ② Insert the date on which the *Indemnity* is to be effective.

Processing

Once the document has been prepared, checked and approved by the supervising solicitor, make three copies: retain one copy for your file and forward two copies to the client for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

INDEMNITY

TO: *{Name of Director}*Ⓣ (the “Director”)

RE: *{Name of Corporation}*(the “Corporation”)

WHEREAS the Corporation has requested the Director to act as a director or officer of the Corporation, or as both;

NOW THEREFORE WITNESSETH THAT in consideration of the Director acting as a director of the Corporation, the Corporation agrees as follows:

1. To indemnify and save harmless the Director against all costs, charges, and expenses, including, without limitation, an amount paid to settle an action or to satisfy a judgment, reasonably incurred by the Director in respect of any civil, criminal, administrative, investigative or other proceeding in which the Director is involved by reason of being or having been a director or officer of the Corporation or acting at the Corporation’s request as a director or officer, or an individual acting in a similar capacity, of another entity, if:
 - (a) the Director has acted honestly and in good faith with a view to the best interests of the Corporation or, as the case may be, to the best interests of the other entity for which the Director acted as director or officer or in a similar capacity at the Corporation’s request; and
 - (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Director had reasonable grounds for believing that his or her conduct was lawful.
2. To immediately institute and diligently and faithfully pursue the proceedings necessary to obtain the approval of the court where that is necessary in order to enable the Corporation to indemnify and save harmless the Director.
3. To indemnify the Director in respect of all costs, charges and expenses reasonably incurred by the Director in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the Director is subject by reason of being or having been a director of the Corporation, if:
 - (a) the Director was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the Director ought to have done; and
 - (b) the Director fulfils the conditions set out in 1(a) and 1(b) of this Indemnity.
4. This Indemnity shall enure to the benefit of the Director whether or not he or she is a director or officer of the Corporation at the time any claim is made, brought or asserted and the obligations of the Corporation under this Indemnity shall extend to the Director’s estate, heirs, executors, administrators or assigns and this Indemnity shall remain binding on the Corporation and its successors and permitted assigns.
5. The Corporation agrees to sign such further and other documents and cause to be done such further and other acts and things as may be necessary or desirable in order to give full effect to this Indemnity.

DATED this Ⓣ*{Date}*

{NAME OF CORPORATION}

By: _____
Authorized signatory

DISCLOSURE OF INTEREST

General Notes

Directors and senior officers of the corporation must disclose their interest in any contract or transaction with the corporation that is material to the corporation. See **Explanation – Disclosure of Interest** (page 12) for a description of the exceptions to the disclosure rules. The directors or senior officers may disclose their interest at a meeting of the directors or by advising the corporation in writing. The example opposite is a form of *Disclosure* that should be prepared if you are aware of a conflict of interest between a director or an officer and the corporation. Check with the supervising solicitor as to whether a form of disclosure is required.

Preparation

- ① Check the *Register of Directors* and *Securities Register* and:
 - if the director is not an officer, delete “officer”;
 - if the director is not a shareholder, delete “and shareholder”; or
 - if the disclosure is made by an officer or shareholder who is not a director, delete “director”.
- ② Insert description of transaction.
- ③ Insert the effective date of the transaction or leave blank if you do not know the date.
- ④ Insert the name of the director or senior officer who is disclosing his or her interest.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is sent for signature to the director or senior officer, as applicable – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

DISCLOSURE OF INTEREST

TO: *{NAME OF CORPORATION}*
 (the "Corporation")

AND TO: The Directors thereof

Pursuant to the provisions of paragraph 120(1)(b) of the *Canada Business Corporations Act*, the undersigned discloses that he/she is interested in the proposed agreement between himself/herself and the Corporation by virtue of being a director, officer and shareholder^① of the Corporation and the ^②*{owner of the property that will be transferred to the Corporation under the terms of the agreement}*, after approval by the directors and shareholders of the Corporation.

Dated: *{date}* ^③

^④*{NAME OF DIRECTOR OR OFFICER}*

DIRECTORS RESOLUTION **(Approving Indemnity and Disclosing Interest)**

General Notes

This resolution is prepared when the directors will be authorizing the corporation to grant an Indemnity to a director.

Confirm that there is no *Unanimous Shareholder Agreement* that restricts the powers of the directors to pass the resolution.

Preparation

- ① Change as appropriate. If there is only one director, change to “the sole Director” and change “pass” to “passes”.
- ② Insert the date that the director was appointed as a director.
- ③ Insert the name of the director who is being indemnified.
- ④ Insert the effective date of the resolution or leave blank if you do not know the date.
- ⑤ Check the *Register of Directors* of the corporation and insert the names of all directors.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

RESOLUTIONS OF ①ALL OF THE DIRECTORS

OF

{NAME OF CORPORATION}

(the “Corporation”)

THE UNDERSIGNED being ①all of the directors of the Corporation ①pass the following resolutions pursuant to the provisions of the *Canada Business Corporations Act*.

INDEMNITY

WHEREAS:

- (A) The Corporation is authorized to indemnify its directors;
- (B) In connection with his/her appointment as a director of the Corporation on *{Date of Appointment}*②, *{Name of Director}*③ has requested that the Corporation provide him/her with an indemnity in the form attached hereto as Schedule A (the “Indemnity”), such indemnity to be effective from the date of his/her appointment as a director;
- (C) *{Name of Director}*③ has disclosed his/her interest in the Indemnity in accordance with section 120 of the *Canada Business Corporations Act* (the “Act”) and a copy of his/her Disclosure is attached hereto as Schedule B; and
- (D) In accordance with section 120(5)(b) of the Act, *{Name of Director}*③ is permitted to vote on these resolutions.

NOW THEREFORE BE IT RESOLVED that: the Corporation is authorized to enter into, execute and deliver the Indemnity in the form attached as Schedule A with such amendments as the director executing the Indemnity on behalf of the Corporation may approve, such approval to be evidenced by the director executing the final form of Indemnity on behalf of the Corporation, at which time the Indemnity so executed and delivered will be a valid and binding obligation of the Corporation and performance by the Corporation of its obligations thereunder is authorized.

DATED the *{Date}*④

⑤{NAME OF DIRECTOR}

⑤{NAME OF DIRECTOR}

SPECIAL RESOLUTION (Approving Contract)

General Notes

Section 120(7) of the Act allows the directors to approve a contract or transaction for which disclosure is required by a director or officer under section 120(1). However, unless the disclosure is made to approve a contract or transaction in connection with:

- the remuneration of the director as a director, officer, employee or agent of the corporation or an affiliate;
- an indemnity or director's liability insurance; or
- an affiliate of the corporation;

the director making the disclosure must abstain from voting on the resolution (s. 120(5)).

Section 120(7.1) of the Act allows the shareholders, by special resolution, to approve such a contract.

A *Special Resolution (Approving Contract)* should be prepared if the directors will not be holding a meeting and one or more of the directors is prohibited from voting under section 120(5). The form opposite is an example of the wording of such a resolution.

Preparation

- ① Change as appropriate. If there is only one shareholder, change to "the sole Shareholder" and change "pass" to "passes".
- ② Insert the name or names of the director or directors who have disclosed their interest.
- ③ If the resolution is intended to ratify the issue of shares to the director or directors in connection with the contract or transaction, insert this paragraph. If there is no share issuance, you may substitute:

*"The transaction between the Corporation and {NAME OF DIRECTOR}③,
substantially on the terms set out in the draft agreement attached hereto as
Schedule A be authorized and approved;"*
- ④ Insert a description of the number and class of shares to be issued to the Director.
- ⑤ Insert the date of the resolution of directors approving the share issuance.
- ⑥ Insert the effective date of the resolution or if you have not received instructions, leave the day blank.
- ⑦ Check the *Securities Register* of the corporation and insert the names of all of the **voting** shareholders.

Processing

Once this document is prepared, checked and approved by the supervising solicitor, it is forwarded to the corporation for signature – see *Transmittal Letter (Forwarding Documents for Signature)* (page 44).

RESOLUTION OF THE ①SHAREHOLDERS

OF

{NAME OF CORPORATION}

(the "Corporation")

THE UNDERSIGNED being ①all of the shareholders of the Corporation pass the following resolution pursuant to the provisions of the Canada Business Corporations Act:

APPROVAL OF CONTRACT

WHEREAS:

(A) {NAME OF DIRECTOR}② has declared to the Corporation an interest in a contract or transaction with the Corporation and the shareholders, having received disclosure of that declaration and the nature and extent of the interest wish to ratify that contract or transaction.

NOW THEREFORE BE IT RESOLVED. as a special resolution, that:

③ 1. The issue of ④ shares in the capital of the Corporation to {NAME OF DIRECTOR}② on the terms and conditions specified in a resolution of directors dated ⑤{Date} is hereby ratified and confirmed.

Dated effective: {Date}⑥.

⑦{NAME OF SHAREHOLDER}

⑦{NAME OF SHAREHOLDER}

TRANSMITTAL LETTER **(Forwarding Documents for Signature)**

General Notes

When all documents have been prepared, checked and approved by the supervising solicitor, arrangements should be made to have them signed by the relevant parties. Unless the corporation consists of only one or two individuals who will be signing the documents in the lawyer's office, the documents are usually forwarded to the corporation to be signed by the appropriate parties and returned to the law firm.

Preparation

- ① Omit if there is no change in the officers.
- ② Omit if **no** new directors are appointed or you have already received the *Consents to Act*.
- ③ Omit if **no** directors or officers are resigning or if you have already received the *Resignations*.
- ④ Omit if a Directors Resolution is not enclosed.
- ⑤ Omit if a Shareholders Resolution is not enclosed.
- ⑥ Omit if it is your firm policy for the supervising solicitor to sign the *Form 6 - Changes Regarding Directors* rather than having the client sign it.
- ⑦ Omit if an Indemnity is not enclosed.
- ⑧ Omit if it is not your firm policy to enclose an account with the documents.

Add any other documents that are being forwarded to the corporation for signature such as a *Notice of Change of Directors* in the appropriate form, if required by any extraprovincial jurisdiction.

Processing

Make sufficient copies of:

- the letter and enclosures to have one set for the file; and
- if appropriate, the statement of account for your file and the accounting department.

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 back from the client.

When the executed documents have been returned – see **Procedure/Checklist Steps Error! Reference source not found.** through 20 on page **Error! Bookmark not defined.**

File No _____

{date}

{name and address of client}

Dear _____:

Re: *{Name of the Corporation}* (the “Corporation”) – Change of Directors

Further to your instructions with respect to the change of the Corporation’s directors ① and officers, we have prepared and enclose the following documents for signature and return to our office:

1. ②Consent(s) to Act as Director(s);
2. ③Resignation(s) of Director(s) and Officer(s);
3. ④Directors Resolutions authorizing the change of directors and officers;
4. ⑤Shareholders Resolutions authorizing the change of directors;
5. ⑥Form 6 - Changes Regarding Directors; and
6. ⑦Indemnity.

We thank you for your instructions ⑧ and also enclose our statement of account for services rendered and anticipated disbursements.

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

Yours truly,

{NAME OF LAW FIRM}

TRANSMITTAL LETTER **(Change of Address of Director)**

General Notes

If the address of a director changes, the corporation must file a **Form 6 - Changes Regarding Directors** within 15 days of being notified of the change (s. 113(1.1)).

Some solicitors routinely have the directors of the corporation pass a resolution granting him or her the authority to sign notices such as this one. If the directors have passed such a resolution, it will not be necessary to forward the Form 6 to the client to sign.

Preparation

- ① Insert the name of the director who has moved.

Processing

Make sufficient copies of the letter and enclosures to have one set for the file and 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 back from the client.

When the executed documents have been returned – see **Procedure/Checklist** Steps 17 through 20 on page **Error! Bookmark not defined.**

File No _____

{date}

{name and address of client}

Dear _____:

Re: *{Name of the Corporation}* (the “Corporation”)

It is a requirement under the *Canada Business Corporations Act* to report changes in the address of a present director of the Corporation.

As we have recently been advised of the change in the residential address of ①*{Director}*, we have prepared and enclose a Form 6 - Changes Regarding Directors (the “Notice”). If the residential address of any other director has changed from that listed in part 5 of the Notice, please insert the details in part 6.

Once the Notice has been completed, please have it signed by a current director or authorized officer, and return it to us for filing with Corporations Canada.

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

Yours truly,

{NAME OF LAW FIRM}

