

THE NEW *SOCIETIES ACT* (BRITISH COLUMBIA)

Effective November 28, 2016 the *Societies Act* (the “**New Act**”) came into force in British Columbia replacing the current *Society Act* (the “**Old Act**”). The New Act is designed to facilitate modern corporate practices and align the legislative regime in British Columbia with other Canadian jurisdictions.

This memorandum is a summary of the transition requirements and some of the more significant changes under the New Act.

For more details, you may go [here](#) to review the sections of the New Act and [here](#) to review the Societies Regulation.

TRANSITIONING TO THE NEW ACT

All pre-existing societies are required to file a transition application with the British Columbia Registry Services (the “**Registrar**”) by November 28, 2018, which is two years after the New Act came into force.

Before transitioning an existing society into the New Act, the following four special rules should be reviewed and considered:

- (a) *Unalterable provisions* - If an existing society has an unalterable provision in its constitution, that provision must be moved from its constitution to its bylaws on transition. The unalterable provision included in the bylaws must be copied word for word from the constitution. The provision must be marked as “previously unalterable” and cannot be amended until *after* the existing society has transitioned. There may be restrictions on changing previously unalterable provisions. Some societies require the consent of a government body or other institutions (Section 18 of the Societies Regulation sets out a few examples) to alter a previously unalterable provision.
- (b) *Member-Funded Society* - If an existing society wants to become a member-funded society on transition, it must pass a special resolution authorizing this choice of status *before* the transition application can be filed. The member-funded society statement (that will be automatically included in the society’s constitution when member-funded status is chosen) is intended to act as a public notification of the nature of the society.

- (c) *Reporting Societies* - If an existing society is a reporting society under the Old Act, a prescribed set of reporting society provisions (the “**Reporting Provisions**”) must be included, word for word, in the society’s bylaws. The Reporting Provisions are available on the BC Registry website. The Reporting Provisions cannot be amended until *after* the existing society has transitioned.
- (d) *Occupational Title Societies* - If an existing society is classified as an occupational title society (“**OT**”) under the Old Act, its bylaws must *not*, on transition, include any alterations to the provisions that are required for OT status (as set out in Sections 206, 207 and 243 of the New Act). After transition, the OT may amend these provisions, but only by special resolution and with the consent of the Registrar. The Registrar may cancel a society’s OT status if it files a transition application that includes alterations to these bylaw provisions or alters them after transition without consent.

As part of the transition process, the bylaws of existing societies should be reviewed to determine if they need to be amended to reflect the provisions in the New Act. For example, Section 11(1) and (3) of the New Act requires that:

- 11(1) A society must have bylaws that contain provisions respecting the internal affairs of the society, including provisions respecting the following:
 - (a) membership in the society, including
 - (i) the admission of members and any rights and obligations arising from membership,
 - (ii) if there is more than one class of members, a description of each class and the rights and obligations that apply to each class, and
 - (iii) if members may cease to be in good standing, the conditions under which that may occur;
 - (b) the society's directors, including
 - (i) the manner in which directors must or may be elected or appointed, and
 - (ii) the expiry of directors' terms of office, if other than at the close of the next annual general meeting after a director's designation, election or appointment;
 - (c) general meetings, including
 - (i) the quorum for general meetings, if greater than 3 voting members,
 - (ii) whether proxy voting is permitted, and
 - (iii) if the bylaws authorize indirect or delegate voting or voting by mail or another means of communication, including by fax, email or other electronic means, the rules respecting how that voting is to occur;
 - (d) any restrictions on
 - (i) the activities that the society may carry on, or
 - (ii) the powers that the society may exercise.
- 11(3) A society must not have bylaws that contain a provision that is inconsistent with this Act, the regulations or any other enactment of British Columbia or Canada, and if a provision of the bylaws is inconsistent with this Act, the regulations or any other enactment of British Columbia or Canada, the provision has no effect.

Accordingly, the bylaws of an existing society should be amended if they do not comply with the requirements of Section 11(1) and (3) of the New Act.

The transition application filed with the Registrar will include the following documents:

1. the constitution containing *only* the name and purposes of the society and, if the society is a “member-funded society”, a member funded statement;
2. bylaws which include:
 - (a) all provisions (including the unalterable provisions) from the society’s pre-transition constitution other than the society’s name and its purposes;
 - (b) the current bylaws (including all past amendments) of the society pre-transition, unless the bylaws are amended as part of the transition;
 - (c) if the society is a pre-existing reporting society, the Reporting Provisions; and
3. a statement of directors and registered office for the society with the full name and address of the directors and the delivery address and mailing address of the registered office of the society immediately prior to transition.

One of the most significant changes in the New Act is the introduction of mandatory electronic filings. This means that the existing constitution and bylaws of each existing society must be converted into an electronic format which consolidates all previous amendments made to the constitution and bylaws.

CHANGES THAT APPLY TO EXISTING SOCIETIES IMMEDIATELY

Whether or not an existing society has transitioned under the New Act, there are certain provisions of the New Act which will apply to the society as of November 28, 2016. A society may need to change its procedures and operations to ensure compliance with the following requirements:

- (a) *Financial Statements* - If an existing society’s financial statements are prepared after November 28, 2016 they must include:
 - (i) unless the existing society is a member-funded society:
 - (A) a note in respect of the remuneration, if any, paid to its directors for being a director or for acting in another capacity (as set out in more detail in Section 36(1)(a) of the New Act and Section 8 of the Societies Regulation); and
 - (B) a note in respect of remuneration paid to its employees or contractors whose remuneration was at least \$75,000 or, if there are more than 10 employees or contractors receiving at least \$75,000, the 10 most highly remunerated persons (as set out in more detail in Section 36(1)(b) of the New Act and Section 9 of the Societies Regulation); and
 - (ii) a note that sets out the nature and amount of any loans, guarantees or other financial assistance given by the existing society outside the ordinary course of its business (as set out in Section 37 of the New Act).

- (b) *Disclosure of Conflicts of Interest* - The New Act requires that both directors and senior managers disclose the nature and extent of all material interests they may have in any matters that may conflict with their respective duties to the society (as set out in Sections 56, 57, and 62 of the New Act). Any director or senior manager who fails to disclose a material interest may be accountable to pay to the society an amount equal to any profit made by the director or senior manager as a consequence of the society entering into or performing a contract or transaction in which the director or senior manager had a material interest. All directors and senior managers should be made aware of their obligation to disclose all material interests prior to the society entering into or performing a contract or transaction in which the director or senior manager may have a material interest. This brings the rules relating to directors' conflicts into line with existing corporate laws.

SIGNIFICANT CHANGES UNDER THE NEW ACT

- (a) *Member-Funded Societies* - The New Act introduces a new type of society known as a member-funded society. A member-funded society is a society that is funded primarily by its members to carry on activities for the benefit of its members. As they only receive a small portion of their resources from the public by way of public donations or government funding and are effectively created to serve their members, member-funded societies are exempted from a number of restrictions and accountability measures that are applicable to societies generally. Examples of societies that would qualify as a member funded society are professional associations, private clubs, or sports clubs. A society cannot be a member-funded society if it is a registered charity or receives public donations or government funding above a certain threshold.

The Registrar has provided the following chart which sets out the differences in the requirements between member-funded societies and other societies:

	Member-funded Societies	Other Societies
Distribution of assets on winding up	No restrictions - assets could go to members (Section 199 of the New Act)	To be distributed to certain entities (e.g. non-member funded societies, registered charities or community service cooperatives)
Number of Directors	One director is sufficient – no residency requirements (Section 197(1) of the New Act)	At least three directors are required, one of whom is ordinarily resident in BC
Composition of board of directors	No restrictions on number of board members who are employed by or under contract with the society (Section 197(2) of the New Act)	Majority of board must not be employed by or be under contract with the society

	Member-funded Societies	Other Societies
Financial statements	No public right to copies (Section 195 of the New Act)	Public has right to obtain copies
Disclosure of remuneration in financial statements	Disclosure of remuneration is not required (Section 196 of the New Act)	Financials statements must set out remuneration paid to directors and to highly paid employees/contractors
Conversion to company	Can convert (Section 198 of the New Act)	Conversion not permitted

- (b) *Annual General Meetings* - Under the New Act, a society is not required to hold an annual general meeting (an “AGM”) in the calendar year in which it is incorporated. After its first AGM, the society must hold an AGM in each calendar year. A society will now be able to have all voting members consent by resolution in lieu of holding an AGM. The New Act also allows a society to make an application to the Registrar to request an extension of time in which it is required to hold its AGM. Members may participate at meetings electronically unless otherwise provided in the bylaws. Proxy voting is also allowed if permitted in the bylaws of the society.
- (c) *Special Resolution* - Under the New Act a special resolution is a resolution passed by at least 2/3 of the votes cast by the voting members, in person or by proxy. The bylaws of a society may set a higher threshold for any action requiring a special resolution except for the removal of a director. Special resolutions are no longer required to be filed with the BC Registrar (Section 66 of the Old Act has not been carried over to the New Act).
- (d) *Directors* - As of November 28, 2018 the following rules came into effect:
- (i) a designation, election or appointment of an individual as a director is invalid unless the individual consents in writing to be a director or the designation, election or appointment is made at a meeting at which the individual is present; and
 - (ii) a director may not be remunerated for acting as a director unless permitted by the bylaws of the society.

The New Act provides for qualifications that an individual must meet when being appointed as a director and allows for additional qualifications of directors to be set out in the bylaws of a society.

- (e) *Senior Managers* - Section 61 of the New Act allows for the directors of a society to appoint senior managers. A senior manager is appointed to exercise the directors' authority to manage the activities or internal affairs of the society as a whole or in respect of a principal unit of the society. A senior manager is subject to similar qualifications, duties and liabilities as are the directors of the society. An individual who is not qualified to be a director of a society is also not qualified to be a senior manager.
- (f) *Corporate Records* - Division 2 of the New Act provides for a detailed list of records to be kept by a society at its registered office and sets out how long a society is required to keep its records. Records may be kept in an electronic format, provided that they are available for inspection at the society's registered office. The New Act also clarifies the rules for the inspection of records by members, directors and others. A society's bylaws may restrict member access to accounting records and records of directors' proceedings.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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