

**Wong, Gina G FIN:EX**

---

**From:** Cain, Joann FIN:EX  
**Sent:** Friday, March 3, 2006 4:08 PM  
**To:** Sinkwich, Jill D FIN:EX  
**Cc:** Hetherington, Tona M FIN:EX  
**Subject:** FW: AULC's  
**Attachments:** Scan001.PDF

Can't remember if I already sent this....

s.14

Page 002 to/à Page 019

Withheld pursuant to/removed as

s.14



## Wong, Gina G FIN:EX

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**From:** Cain, Joann FIN:EX  
**Sent:** Sunday, June 3, 2007 8:41 PM  
**To:** Skinner, Michael FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** FW: IFC BC June 2007 newsletter  
**Attachments:** IFC BC June Newsletter.pdf

Article on the BC ULC legislation from Ron Bozzer.....

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**From:** Robyn Alcock [<mailto:ralcock@ifcbc.com>]  
**Sent:** Friday, June 1, 2007 10:18 AM  
**To:** Robyn Alcock  
**Subject:** IFC BC June 2007 newsletter

Good Morning,

Attached please find a copy of the IFC BC's June Newsletter.

Regards,

Robyn Alcock

Administrative Assistant  
International Financial Centre BC  
T: 604.683.6626  
F: 604.683.6646  
E: [ralcock@ifcbc.com](mailto:ralcock@ifcbc.com)



International Financial Centre  
BRITISH COLUMBIA

n e w s l e t t e r

June 2007

Copyright

Page 022

Withheld pursuant to/removal as

Copyright

## Wong, Gina G FIN:EX

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**From:** Cain, Joann FIN:EX  
**Sent:** Thursday, October 18, 2007 4:40 PM  
**To:** Hetherington, Tona M FIN:EX; Sinkwich, Jill D FIN:EX  
**Cc:** Cormier, Shelly FIN:EX  
**Subject:** FW:

fyi

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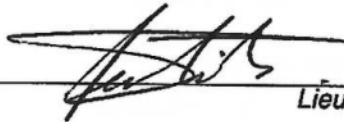
**From:** Emerson, Barb AG:EX  
**Sent:** Thursday, October 18, 2007 2:33 PM  
**To:** Cain, Joann FIN:EX; Townshend, Ron B FIN:EX  
**Subject:**



00000000

**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

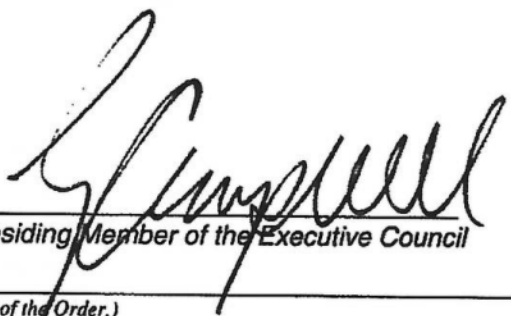
Order in Council No. 673, Approved and Ordered OCT 18 2007

  
Lieutenant Governor

**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective October 29, 2007, the Business Corporations Regulation, B.C. Reg. 65/2004, is amended as set out in the attached Schedule.

  
Minister of Finance

  
Presiding Member of the Executive Council

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section:- Business Corporations Act, S.B.C. 2002, c. 57, s. 432

Other (specify):- OIC 201/2004

September 12, 2007

page 1 of 2

R/919/2007/7

Page 24 of 335 FIN-2016-62541-S1

## SCHEDULE

- 1** *The following section is added to Part 1 of the Business Corporations Regulation, B.C. Reg. 65/2004:*

### **Prescribed persons**

- 3.1** The following persons are prescribed for the purposes of section 51.21 (3) (c) of the Act:

- (a) ULC Grocery Ltd.;
- (b) ULC Urban Learning Canada Inc.

- 2** *Section 7.1 (2) is amended by adding "51.21 (4) (b)," after "21 (1) (b)."*

- 3** *Section 9 is amended*

- (a) *in subsection (1) by adding "that is not a foreign unlimited liability corporation within the meaning of section 51.1 of the Act" after "foreign corporation", and*

- (b) *by adding the following subsection:*

- (3) An assumed name of a foreign corporation that is a foreign unlimited liability corporation within the meaning of section 51.1 of the Act must have the words "Unlimited Liability Company" or "Unlimited Liability Corporation" or the abbreviation "ULC" as part of and at the end of it.

- 4** *The heading to Part 9 is repealed and the following substituted:*

### **PART 9 – COMPANY ALTERATIONS .**

- 5** *The following section is added to Part 9:*

#### **Restrictions on continuations of foreign unlimited liability corporations**

- 23.1** An unlimited liability corporation under the *Business Corporations Act* (Alberta) must not be continued into British Columbia as an unlimited liability company unless there is provided to the registrar, in addition to the records required under section 302 of the Act,

- (a) an affidavit of a director of the corporation stating that the director believes and has reasonable grounds for believing that
  - (i) the corporation is, and the continued unlimited liability company will be, able to pay its liabilities as they become due, and
  - (ii) the realizable value of the continued unlimited liability company's assets will not be less than the aggregate of its liabilities, or
- (b) an order approving the continuation from a court of competent jurisdiction in Alberta.

Page 026 to/à Page 027

Withheld pursuant to/removed as

s.14

## Wong, Gina G FIN:EX

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**From:** Cormier, Shelly FIN:EX  
**Sent:** Friday, October 19, 2007 2:56 PM  
**To:** FIN FCSP Branch  
**Subject:** FW: Vol 34 No 26

---

**From:** Emerson, Barb AG:EX  
**Sent:** Friday, October 19, 2007 10:43 AM  
**To:** Emerson, Barb AG:EX  
**Subject:** Vol 34 No 26



Vol 34 No 26  
Emerson, Barb AG:EX  
Emerson, Barb AG:EX

Barbara Emerson  
A/Manager - OIC Administration  
Ministry of Attorney General  
Ph: (250) 387-0725  
Fx: (250) 387-4349  
email: [Barb.Emerson@gov.bc.ca](mailto:Barb.Emerson@gov.bc.ca)



**Proclamations:**

- 2 Minute Wave of Silence – 11:00 a.m. on November 11, 2007
- Crime Prevention Week – November 1 to 7, 2007

**Approved and Ordered October 10, 2007**

- |     |   |   |
|-----|---|---|
| 659 | Oil and Gas<br>commission, s. 2;<br>Public Service, s. 15 | The appointment of Ross Curtis as a director and commissioner of the Oil and Gas Commission, made by OIC 98/2006 and continued under OIC 64/2007, is rescinded. |
|-----|---|---|

**Approved and Ordered October 16, 2007**

- |     |                       |  |
|-----|-----------------------|--|
| 660 | Public Service, s. 15 | Michelle Brockway is appointed to the position of Records Clerk in the Public Affairs Bureau, Ministry of Finance.                                       |
| 661 | Public Service, s. 12 | Tara Faganello is appointed Assistance Deputy Minister, Ministry of Finance.   |
| 662 | Public Service, s. 15 | The Schedule to the General Appointment Order, 2006, OIC 656/2006, is amended by adding the following appointment: Lynn Charman, Public Affairs Officer. |

**Approved and Ordered October 18, 2007**

- |     |   |  |
|-----|---|--|
| 663 | Public Service, s. 15   | <p>The Schedule to the General Appointment Order, 2006, OIC 656/2006, is amended as follows:</p> <p>a) by adding Karla Limion, Manager, Awards and Recognition, Office of the Premier;</p> <p>b) by repealing Karla Renshaw, Manager, Awards and Recognition, Office of the Premier.</p> |
| 664 | AE<br>University,<br>ss. 19 (1) (d), 20 (1.1)<br>and 21       | Anthony R. Gage is appointed to the Board of Governors of the University of Victoria for a term ending September 7, 2010.  |
| 665 | AL<br>Agricultural Land<br>Commission, s. 5 (2)               | Effective November 1, 2007, William Norton is appointed a member and vice-chair of the Provincial Agricultural Land Commission for a term expiring November 1, 2009.   |
| 666 | AG<br>Attorney General<br>Statutes Amendment,<br>2007, s. 228 | Sections 1 to 8, 10 to 12, 32 to 37, 45, 46, 50, 55, 56, 59, 60, 62, 63 and 66 to 68 of the <i>Attorney General Statutes Amendment Act, 2007</i> , S.B.C. 2007, c. 14, are brought into force.   |

667	AG	Criminal Code, s. 672.38 and 672.39	<p>The following individual are appointed to the British Columbia Review Board for the terms indicated:</p> <p>a) Dr. Roy Holland a term commencing November 1, 2007 and ending December 31, 2008,</p> <p>b) Fern Jeffries for a term commencing January 1, 2008 and ending December 31, 2010, and</p> <p>c) Dr. Hugh Parfitt for a term commencing January 1, 2008 and ending December 31, 2008.</p>
668	AG	Notaries, s. 15	A Commission under the Great Seal is issued appointing Warren John Fensom a Notary Public under section 15 of the <i>Notaries Act</i> for so long as he continues to be employed in his present capacity as Deputy Judge Advocate, Department of National Defence, Pacific Region, Victoria, British Columbia.
669	AG	Notaries, s. 15	A Commission under the Great Seal is issued appointing Teresa Adams a Notary Public under section 15 of the <i>Notaries Act</i> for so long as she continues to be employed at the Service BC Centre in Atlin, British Columbia.
670	EIA	Employment and Assistance, s. 35; Employment and Assistance for Persons with Disabilities, s. 26	B.C. Reg. 263/2002, the Employment and Assistance Regulation, and B.C. Reg. 265/2002, the Employment and Assistance for Persons with Disabilities Regulation, are amended.
671	EM	Oil and Gas Commission, s. 6 (1) (c)	Approval is given to the Oil and Gas Commission to enter into an agreement with the National Energy Board substantially in the form of the draft agreement dated August 1, 2007, a copy of which is on file at the office of the Commissioner of the Oil and Gas Commission.
672	FIN	Finance Statutes Amendment, 2007, s. 85	Effective October 29, 2007, sections 2, 3, 5, 7, 10, 12, 13, 16, 17, 22, 23, 26 and 31 to 33 of the <i>Finance Statutes Amendment Act, 2007</i> , S.B.C. 2007, c. 7, are brought into force.
673	FIN	Business Corporation, s. 432	Effective October 29, 2007, B.C. Reg. 65/2004, the Business Corporations Regulation, is amended.

674	FOR	Forest and Range Practices, s. 136; Administrative Tribunal, ss. 2 and 3	<ol style="list-style-type: none"> <li>1. John Dunford is appointed as a member to the Forest Practices Board for a term of two years effective October 21, 2007 and ending October 21, 2009;</li> <li>2. Guenter Stahl is reappointed as a member to the Forest Practices Board for a term of two years effective November 1, 2007 and ending November 1, 2009.</li> </ol>
675	FOR	Homeowner Protection Amendment, 2007, s. 27; Homeowner Protection, s. 32	<p>Effective November 19, 2007,</p> <ol style="list-style-type: none"> <li>a) the <i>Homeowner Protection Amendment Act, 2007</i>, S.B.C. 2007, c. 20, is brought into force, and</li> <li>b) B.C. Reg. 29/99, the Homeowner Protection Act Regulations, are amended.</li> </ol>
676	HLTH	Health, s. 41; Health Authorities, s. 19	<ol style="list-style-type: none"> <li>a) The appointment of Dr. Andrew Larder as a Medical Health Officer by the regional health board for the Interior Health Authority is approved, and</li> <li>b) The appointment of Dr. Elizabeth Brodtkin as a Medical Health Officer by the regional health board for the Fraser Health Authority is approved.</li> </ol>
677	HLTH	Health Professions, s. 12	<p>B.C. Reg. 103/95, the Midwives Regulation, is amended in item 2 of Schedule 2 by adding the following paragraph:</p> <p>(f. 1) fetal fibronectin;</p>
678	HLTH	Medicare Protection, s. 4	<p>OIC 474/2007 is amended by striking out "Karen Mattern" and substituting "Karin Mattern".</p>
679	SBR	Assessment, 2007, s. 23	<ol style="list-style-type: none"> <li>1. B.C. Reg. 411/95, section 1 of the Standards for the Classification of Land as a Farm Regulation, is amended by repealing the definition of "farm".</li> <li>2. Section 11 is repealed.</li> </ol>

### **Ministerial Orders**

257	HLTH	Food Safety, s. 8	<ol style="list-style-type: none"> <li>1. Graham Hickling is appointed as an inspector under the <i>Food Safety Act</i>.</li> <li>2. The person appointed under section 1 is limited to exercising powers under the Act necessary for enforcing <ol style="list-style-type: none"> <li>(a) the provisions of the Act with respect to meat that is or is likely to be contaminated or otherwise unfit for human consumption, and</li> <li>(b) the Meat Inspection Regulation, B.C. Reg. 349/2004.</li> </ol> </li> </ol>
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258	HLTH	Health Authorities, s. 4	Sandra Heath is appointed as a voting member of the Vancouver Coastal Health Authority for a term of three years.
259	HLTH	Health Professions, s. 17	John Zimmer is reappointed as a public member to the Board of the College of Physical Therapists of British Columbia for a term effective November 18, 2007 to November 18, 2010.
260	AE	College and Institute, s. 5.1 (a)	Camosun College may grant, in its own name, the degrees of: Bachelor of Business Administration, major in Marketing Communications Management; and Bachelor of Business Administration, major in Human Resources Management and Leadership.
261	EIA	Employment and Assistance, s. 19	The following persons are reappointed to the Employment and Assistance Appeal Tribunal effective for the term indicated: William H. Bell - October 21, 2007 to October 21, 2010 Elizabeth Cytra - October 21, 2007 to October 21, 2010 Alexander Dyball - October 21, 2007 to October 21, 2010 Ruth Embree - October 21, 2007 to October 21, 2010, Hugh Gaffney - October 21, 2007 to October 21, 2010, David Allan Handy - October 21, 2007 to October 21, 2010, David Alan Head - October 21, 2007 to October 21, 2010, Lachlan Heron - October 21, 2007 to October 21, 2010, Peter Knittel - October 21, 2007 to October 21, 2010, Sheldon Nider - October 21, 2007 to October 21, 2010, Don Peters - October 12, 2007 to October 12, 2010; Garnet Renning - October 21, 2007 to October 21, 2010, Brian Thurber - October 21, 2007 to October 21, 2010, Shiela Toth - October 21, 2007 to October 21, 2010, Martha Warren - October 21, 2007 to October 21, 2010; and Willam Wright - October 17, 2007 to October 17, 2010.
262	HLTH	Health Professions, s. 17	Joyce Henderson is reappointed as a public member to the Board of the College of Massage Therapists of British Columbia for a term effective November 21, 2007 to November 21, 2010.
263	HLTH	Health Authorities, s. 4	W. Murray Sadler, Q.C. is appointed as a voting member of the Provincial Health Services Authority for a term of three years.
264	AL	Land, s. 18 (2)	The land below a natural boundary of a body of water, being District Lot 89, Nanaimo District, is disposed of by Crown grant.
265	CS	Resort Associations, s. 2	The area outlined in bold on the Schedule A map is established as the Red Resort Promotion Area.

266	CS	Resort Associations, s. 3	<p>1. The area outlined in bold on the Schedule B map is specified as Resort Land; and</p> <p>2. A resort association is hereby incorporated under the name "Red Resort Association".</p>
267	AL	Land, s. 18 (2)	The disposition in fee simple of the Crown filled foreshore described as District Lots 2184 and 2185, Clayoquot District.
268	FIN	Public Sector Pension Plans, s. 19 (3) (e) and (f)	<p>Re: British Columbia Investment Management Corporation: Effective October 15, 2007, MO 02/05 appointing Chris Trumpy as Chair is rescinded.</p> <p>Sidney O. Fattedad is appointed Chair effective October 15, 2007 to April 30, 2008.</p> <p>Anne Lippert is appointed as a member effective October 15, 2007 to October 15, 2010.</p>
269	FOR	Safety Standards, s. 43 (1)	Abigail Fulton is appointed as a Vice-Chair of the Safety Standards Appeal Board for a term of three years ending September 15, 2010.
270	FOR	Homeowner Protection, s. 33 (b)	Effective November 19, 2007, B.C. Reg. 334/2000, the Form of Evidence Regulation, is repealed and replaced.
271	AL	Agricultural Land Commission, s. 5 (3)	Effective November 1, 2007, the appointment of William Norton made by MO 265/2006 is rescinded.
272	AL	Agricultural Land Commission, s. 5 (3)	Effective November 1, 2007, Denise Dowswell is appointed a member of the Provincial Agricultural Land Commission for a term expiring November 1, 2009.
273	AL	Agricultural Land Commission, s. 5 (3)	Effective November 1, 2007, Roger Mayer is appointed a member of the Provincial Agricultural Land Commission for a term expiring November 1, 2009.
274	AE	College and Institute, s. 5.1 (b)	Malaspina University-College may grant, in its own name, the degree of: Bachelor of Hospitality Management.

<u>Originating Ministry Abbreviation</u>	<u>Originating Ministry</u>	<u>Information Contact</u>	<u>Phone No.</u>
AE	Advanced Education & Minister Responsible for Research & Technology	Jeanette Cook	387-2644
AG	Attorney General & Minister Responsible for Multiculturalism	Sheila Doyle	356-0111
AL	Agriculture & Lands	Mark Parsons	387-3195
		Brian Braidwood	356-7643
		Patricia Aikens	356-0960
ARR	Aboriginal Relations & Reconciliation	David Hoadley	356-1439
CFD	Children and Family Development	Elaine Vale	952-6317
CS	Community Services & Minister Responsible for Seniors' & Women's Issues	Shannon Mullen & Kim Russell	953-4334 387-8976
ECON	Economic Development	Nancy Murray	952-0104
EDUC	Education & Minister Responsible for Early Learning & Literacy	Dave Duerksen	356-1404
EIA	Employment & Income Assistance	Michael Turanski	387-6434
EM	Energy, Mines & Petroleum Resources	Rhonda DeChamplain	952-0253
ENV	Environment & Minister Responsible for Water Stewardship & Sustainable Communities	Brendan McCombs	356-5016
FIN	Finance	Shelley MacLean	356-6696
FOR	Forests & Range & Minister Responsible for Housing	Leah Howard	387-2112
		Karen MacMillan	387-4082
		Maureen Yelovatz	356-5766
HLTH	Health Societies Section	Linda Gee	952-2281
LCS	Labour & Citizens' Services	Laverne Bennett	952-1048
PS/SG	Public Safety and Solicitor General	Grace Foran	387-8817
		Jeannie Hoskins	387-5131
		Terri Allen	387-1123
SBR	Small Business & Revenue & Minister Responsible for Deregulation	Chris Cliff	387-5680
TSA	Tourism, Sports & the Arts	Shannon Mullen & Kim Russell	953-4334 387-8976
TRAN	Transportation	Gillian Moxham	356-8191
EAO	Environmental Assessment Office	Marlene Cochrane	356-7475
PSA	Public Service Agency	Gurmeet Sall	356-8371

For further information on any Order in Council listed on the attached resume, contact the appropriate Information Contact listed above. For information regarding past Orders in Council, contact Barbara Emerson at 387-0725 or Doris Dardengo at 387-0724 (Internet: Doris.Dardengo@gov.bc.ca), (Barb.Emerson@gov.bc.ca).

Names and telephone numbers of Information Contacts are subject to change. When making further inquiries regarding these Orders in Council, please refer to the most recent list received.

Information Contacts Revised October 18, 2007

ARCS 195-04  
ISSN 0382-1897  
<http://www.qp.gov.bc.ca/statreg/oic/>  
VOL. 34 - No. 26  
October 19, 2007

## **ORDER IN COUNCIL AND MINISTERIAL ORDER RESUME**

**OIC No. 659 - 679**  
**MO No. 257 - 274**

The attached resume is a report of the decisions of the Lieutenant Governor in Council and Ministers. This Resume is issued for information purposes only.

Orders in Council are official documents implementing Government decisions concerned with the day-to-day operation of the Province.

Please note that on the resume, Column 1 shows the Order in Council identifying number; Column 2, the originating Ministry (in abbreviated form); Column 3, the name of the Act which provides the authority for the Order; and Column 4, a resume of the subject matter.

From time to time, Orders are made by a Minister that do not require the approval of the Lieutenant Governor in Council.

These Orders will be included in the Resume under a separate heading entitled "Ministerial Orders".

A format similar to Orders in Council will be followed indicating the number, ministry responsible, statutory authority and a brief resume of the subject matter.

It is hoped that this distribution of information regarding Orders in Council will prove to be of benefit to you and the people of British Columbia.

**Ministry of  
Attorney General**

**Legal Services Branch  
Order in Council Administration**

**Mailing Address:**  
PO BOX 9226 STN PROV GOVT  
Victoria BC V8W 9J1

**Telephone:** 250 387-0725  
**Facsimile:** 250 387-4349

**Location:**  
Room 208  
553 Superior Street  
Victoria BC  
V8V 1X4

Page 036 to/à Page 041

Withheld pursuant to/removed as

s.14



## Wong, Gina G FIN:EX

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**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, November 26, 2007 2:06 PM  
**To:** Hetherington, Tona M FIN:EX; Adam, Valerie K FIN:EX  
**Subject:** FW: Media Request - Michael Kane - Vancouver Sun - US/Canada Tax Treaty

fyi

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**From:** Cain, Joann FIN:EX  
**Sent:** Monday, November 26, 2007 2:02 PM  
**To:** Tkachyk, Mary FIN:EX  
**Cc:** Robinson, Andy FIN:EX; Sinkwich, Jill D FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: Media Request - Michael Kane - Vancouver Sun - US/Canada Tax Treaty

s.13,s.14

Joann

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**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, November 26, 2007 1:52 PM  
**To:** Anderson, Maryann PAB:EX  
**Cc:** Robinson, Andy FIN:EX; Sinkwich, Jill D FIN:EX; Cain, Joann FIN:EX; Flanagan, Paul FIN:EX  
**Subject:** RE: Media Request - Michael Kane - Vancouver Sun - US/Canada Tax Treaty

Hi Maryann,  
s.13

-- Mary

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**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, November 26, 2007 1:12 PM  
**To:** Handy, Erin FIN:EX; Flanagan, Paul FIN:EX; Tkachyk, Mary FIN:EX  
**Cc:** MacLean, Shelley FIN:EX; PAB FIN Media Requests PAB:EX; PAB Communications - Finance; Lewis, Katrina FIN:EX  
**Subject:** Media Request - Michael Kane - Vancouver Sun - US/Canada Tax Treaty  
**Importance:** High

**Reporter / Outlet:** Michael Kane, Vancouver Sun

**Phone Number:** 604-605-2290

**Deadline:** Today

**Request:** Not a request for the Minister. Reporter would like to know how recently proposed changes to the Canada/US Tax treaty will affect ULCs in British Columbia. A Vancouver law firm (Clark Wilson) has informed the reporter that the Treaty changes will negate the tax benefits for American investors operating a ULC in Canada.

**Date & Time of Inquiry:** 1:01:54 PM Nov. 26, 07

**Date & Time of Response:** 1:10 PM Nov 26 07

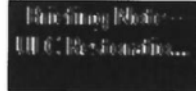
**Date & Time Request Met:** enter final contact time; F-11

## Wong, Gina G FIN:EX

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**From:** Adam, Valerie K FIN:EX  
**Sent:** Friday, December 21, 2007 4:29 PM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** ULC Briefing Note

Please find attached an updated version of the ULC briefing note containing your recent comments. Please let me know the next steps. Thanks so much.



*Regards,*

*Valerie K.W. Adam*

A/Policy Analyst  
Financial & Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia

Telephone: 250-387-3513  
e-mail: [valerie.adam@gov.bc.ca](mailto:valerie.adam@gov.bc.ca)

**Ministry of Finance**  
**BRIEFING DOCUMENT**

**DRAFT**

**TO:** Honourable Carole Taylor  
Minister of Finance

**DATE REQUESTED:** October 29, 2007

**DATE REQUIRED:**

**DATE PREPARED:** December 21, 2007

**Initiated By:**

**Phone # /E-MAIL**

**Ministry** Mary Tkachyk  
**Contact:** A/Director  
Financial and Corporate  
Sector Policy Branch

**Phone #/E-MAIL:** 387-1248  
Mary.Tkachyk@gov.bc.ca

**REF #:**

---

**TITLE:** Proposal to amend the *Business Corporations Act* to provide for the Restoration of an Unlimited Liability Company.

---

**PURPOSE:**

(X) **DECISION REQUIRED**  
(X) **UPDATE/REVISION**

---

**COMMENTS:** The *Finance Statutes Amendment Act, 2007*, amended the *Business Corporations Act* to enable the creation and alteration of Unlimited Liability Companies (ULCs) effective October 29, 2007. The issue of how a ULC should be restored if it was dissolved for any reason was overlooked in the amending legislation and consequently, there is uncertainty as to the conditions under which these entities can restore.

---

**DATE PREPARED:** December 21, 2007

**TITLE:** *Business Corporations Act* amendment to enable the restoration of a dissolved Unlimited Liability Company

**ISSUE:** This briefing note discusses amending the *Business Corporations Act* (BCA) to specifically provide for the restoration of an Unlimited Liability Company (ULC) after dissolution has taken place. The proposal is in response to a problem that came to light during the corporate registry's implementation of the ULC framework and subsequent identification by the Financial and Corporate Sector Policy Branch staff that restoration of a ULC was not covered by the Act.

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**OPTIONS:**

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**RECOMMENDATION:** s.13

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APPROVED / NOT APPROVED (If appropriate)

---

Carole Taylor  
Minister

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Date

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## **Wong, Gina G FIN:EX**

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**From:** Townshend, Ron B FIN:EX  
**Sent:** Thursday, February 23, 2006 10:51 AM  
**To:** 'mpawlowsky@gov.mb.ca'  
**Cc:** Mueller, Liz E FIN:EX; Adam, Valerie K FIN:EX; Johnson, Sherrilyn A FIN:EX; 'SLasker@gov.mb.ca'; Sinkwich, Jill D FIN:EX  
**Subject:** FW: Unlimited Liability Corporations (ULC's)  
**Attachments:** ULC Consultation Letter.doc

Myron:

See attached response to your note re ULC's. Looking forward to meeting you in person in one of the upcoming gatherings in Lake Tahoe or Regina this year.

Ron

Ron Townshend

Registrar  
Corporate and Personal Property Registries

Telephone: 250 356 8658  
E-mail: [Ron.Townshend@gov.bc.ca](mailto:Ron.Townshend@gov.bc.ca)

-----Original Message-----

From: Sinkwich, Jill D FIN:EX  
Sent: Thursday, February 23, 2006 9:28 AM  
To: Townshend, Ron B FIN:EX  
Cc: Mueller, Liz E FIN:EX; Hetherington, Tona M FIN:EX  
Subject: FW: Unlimited Liability Corporations (ULC's)

Ron -- further to Liz's question below, no we did not publish a discussion paper, nor are we aware of any such papers published by other provinces. However, we did send major stakeholders (primarily from the legal and accounting communities) a letter seeking comments on the general idea of ULCs. I'm attaching a copy of this letter. Please feel free to forward it to your counterpart in Manitoba.

-----Original Message-----

From: Mueller, Liz E FIN:EX  
Sent: Thu, February 16, 2006 4:08 PM  
To: Sinkwich, Jill D FIN:EX

Subject: FW: Unlimited Liability Corporations (ULC's)

Below is a note from the Registrar in Manitoba asking about a consultation paper supposedly drafted by BC relating to ULC's. I don't recall this paper, do you?

Liz Mueller  
Deputy Registrar  
Corporate & Personal Property Registries  
(250)356-8669  
Fax (250)356-9422  
e-mail: [Liz.Mueller@gov.bc.ca](mailto:Liz.Mueller@gov.bc.ca)

-----Original Message-----

From: Townshend, Ron B FIN:EX  
Sent: Thursday, February 16, 2006 4:04 PM  
To: Mueller, Liz E FIN:EX  
Subject: Fw: Unlimited Liability Corporations (ULC's)  
Importance: High

Liz, can you follow up. News to me.

Thanks

Ron

-----Original Message-----

From: Pawlowsky, Myron (CCA) < >  
To: Townshend, Ron B FIN:EX <[Ron.Townshend@gov.bc.ca](mailto:Ron.Townshend@gov.bc.ca)>  
CC: Lasker, Shane (CCA) <[SLasker@gov.mb.ca](mailto:SLasker@gov.mb.ca)>  
Sent: Thu Feb 16 14:22:32 2006  
Subject: Unlimited Liability Corporations (ULC's)

Hi Ron - we're doing a bit of a preliminary look at ULC's. One of our research people said that B.C. (or maybe your Bar Association?) has done a consultation paper on this topic. Are you aware of this, and if so, could you forward us a copy? Please copy Shane Lasker of my office with your response, as I'm away Friday. Thanks!

Myron Pawlowsky

Chief Operating Officer

Companies Office

Dept. of Finance, Prov. of Manitoba

ph: 204-945-4206 fax: 204-945-1459

email: [mpawlowsky@gov.mb.ca](mailto:mpawlowsky@gov.mb.ca)

Date

Cliff #

Name

Address

Address/PC

Dear

Re: Unlimited Liability Companies (ULCs)

We are contacting you as a stakeholder to obtain further information about the costs, benefits and requirements of unlimited liability companies (ULCs).

A number of BC-based corporate advisors have recently suggested that British Columbia's *Business Corporations Act* (BCA) be amended to allow unlimited liability corporations (ULCs) to be incorporated here. The provincial government wishes to better understand the potential economic benefits of ULCs, as well as the technical changes that might be required to permit their effective incorporation in British Columbia.

Nova Scotia has allowed the incorporation of ULCs under their legislation for many years but the provision only became a popular tax planning tool in the 1990s. Just recently, Alberta passed a bill to allow incorporations of ULCs in that province.

Canadian tax authorities (federal and provincial) treat ULCs just the same as limited companies. For U.S. tax purposes, however, they are considered "transparent" and therefore U.S. investors can benefit from flow through provisions for losses, etc. As a result, it is reported that tax planners have been utilizing ULCs incorporated in Nova Scotia for many of their activities related to acquisitions, restructurings and divestitures of Canadian assets by US investors.

Specifically, we seek input on the following two issues:

1. Economic benefits for British Columbia Proponents of ULCs argue that allowing for their incorporation in British Columbia would stimulate economic activity by providing potential U.S. investors with a corporate vehicle that enhances U.S. tax advantages, thereby facilitating U.S. equity investment in the province. On the other hand, some have argued that there is no direct correlation between the incorporation of ULCs and increased economic activity. For instance, the use of

ULCs to isolate failing propositions so that losses can be made available to U.S. shareholders does not, in and of itself, suggest increased local economic activity.

We would appreciate hearing from you about any experiences you have had with ULCs, including details about what they have been used for and any assessment of the potential local economic benefits.

2. Required amendments to BCA Professionals familiar with ULCs have suggested that there is a risk that simply transplanting Nova Scotia's provisions into the BCA could result in a structure that does not meet the U.S. criteria for a "flow through" type of entity. (In this regard, it appears that the recent Alberta legislation differs from the Nova Scotia model by providing for shareholders liability with respect to going concerns as well as on winding up.) As well, since the Nova Scotia provisions are extremely old, there may be opportunities to improve them in the BC context.

On this issue, we would appreciate obtaining from you any information or advice respecting the appropriate legislative framework for ULCs, including the problems and potentialities of importing ULC provisions into the BCA, and the relative merits of the Alberta approach.

The deadline for receiving comments is **October 31, 2005**, to enable the government to proceed with the next phase of its review of the proposal.

- **By email:** [FCSP@gov.bc.ca](mailto:FCSP@gov.bc.ca)
- **By fax:** (250) 387-9093
- **By mail:** PO Box 9418 STN PROV GOVT, Victoria BC V8W 9V1

Thank you in advance for your participation in this important review.

Sincerely,

Tamara Vrooman  
Deputy Minister

Page 054

Withheld pursuant to/removed as

s.14

## Wong, Gina G FIN:EX

---

**From:** Sinkwich, Jill D FIN:EX  
**Sent:** Wednesday, March 22, 2006 10:48 AM  
**To:** 'Benjamin.Evans@FMC-Law.com'  
**Cc:** Johnson, Sherrilyn A FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** RE: Unlimited Liability Companies  
**Attachments:** ULC Consultation Letter.doc

Dear Mr. Evans,

Your e-mail has been forwarded to our branch, which is responsible for policy development in this area, for response

In answer to your question, the possibility of amending the Business Corporations Act to accommodate ULCs is under consideration. In the fall of 2005, the Ministry of Finance sent major stakeholders a letter seeking comments on the merits of ULCs generally, as well as their views on the appropriate model. I am attaching a copy of that letter for your information.

If you have any further questions, please do not hesitate to contact me directly

Jill Sinkwich  
Manager  
Financial and Corporate Sector Policy Branch  
Ministry of Finance  
Phone: (250) 387-9092  
Fax: (250) 387-9093

---

**From:** Johnson, Sherrilyn A FIN:EX  
**Sent:** Tue, March 14, 2006 9:04 AM  
**To:** Sinkwich, Jill D FIN:EX  
**Subject:** FW: Unlimited Liability Companies

For reply. Thank you.

### Sherrilyn Johnson

Administrative Assistant  
Corporate and Personal Property Registries  
Phone: 250 356-8661 Fax: 250 356-9422  
Email: [Sherrilyn.Johnson@gov.bc.ca](mailto:Sherrilyn.Johnson@gov.bc.ca)

-----Original Message-----

**From:** Evans, Benjamin [<mailto:Benjamin.Evans@FMC-Law.com>]  
**Sent:** March 13, 2006 4:51 PM  
**To:** Johnson, Sherrilyn A FIN:EX  
**Subject:** Unlimited Liability Companies

Ms. Johnson,

One of my colleagues and I are preparing a presentation in respect of Unlimited Liability Companies ("ULCs"), which have been permitted in Nova Scotia for some time, and allowed more recently in Alberta. During the course of our presentation, we would like to give an update regarding the position of the other Canadian provinces/territories with respect to ULCs and whether any of the other provinces have been considering or discussing the possibility of allowing ULCs in the future.

I would appreciate it greatly if you would be able to refer me to someone at BC Finance, in the Corporate Department or otherwise, with whom I may discuss this matter.

Thank you very much for your time.

**Benjamin C. Evans, BComm, CA, LLB**  
Tax Counsel

**Fraser Milner Casgrain LLP**  
<http://www.fmc-law.com/>  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V5  
(780) 423-7178 Direct Line  
(780) 423-7276 Fax  
[benjamin.evans@fmc-law.com](mailto:benjamin.evans@fmc-law.com)

This message, and any documents attached thereto, is intended only for the addressee and may contain privileged or confidential information. Any unauthorized disclosure is strictly prohibited. If you have received this message in error, please notify us immediately so that we may correct our internal records. Please then delete the original message. Thank you.

Date

Cliff #

Name

Address

Address/PC

Dear

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A number of BC-based corporate advisors have recently suggested that British Columbia's *Business Corporations Act* (BCA) be amended to allow unlimited liability corporations (ULCs) to be incorporated here. The provincial government wishes to better understand the potential economic benefits of ULCs, as well as the technical changes that might be required to permit their effective incorporation in British Columbia.

Nova Scotia has allowed the incorporation of ULCs under their legislation for many years but the provision only became a popular tax planning tool in the 1990s. Just recently, Alberta passed a bill to allow incorporations of ULCs in that province.

Canadian tax authorities (federal and provincial) treat ULCs just the same as limited companies. For U.S. tax purposes, however, they are considered "transparent" and therefore U.S. investors can benefit from flow through provisions for losses, etc. As a result, it is reported that tax planners have been utilizing ULCs incorporated in Nova Scotia for many of their activities related to acquisitions, restructurings and divestitures of Canadian assets by US investors.

Specifically, we seek input on the following two issues:

1. Economic benefits for British Columbia Proponents of ULCs argue that allowing for their incorporation in British Columbia would stimulate economic activity by providing potential U.S. investors with a corporate vehicle that enhances U.S. tax advantages, thereby facilitating U.S. equity investment in the province. On the other hand, some have argued that there is no direct correlation between the incorporation of ULCs and increased economic activity. For instance, the use of



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- **By email:** [FCSP@gov.bc.ca](mailto:FCSP@gov.bc.ca)
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Thank you in advance for your participation in this important review.

Sincerely,

Tamara Vrooman  
Deputy Minister

**Wong, Gina G FIN:EX**

---

**From:** Evans, Benjamin <Benjamin.Evans@FMC-Law.com>  
**Sent:** Wednesday, March 22, 2006 11:39 AM  
**To:** Sinkwich, Jill D FIN:EX  
**Subject:** RE: Unlimited Liability Companies

Ms. Sinkwich,

Thank you very much for your assistance. Your update is exactly what we were looking for.

Kindest regards,

**Benjamin C. Evans, BComm, CA, LLB**  
Tax Counsel

**Fraser Milner Casgrain LLP**  
<<http://www.fmc-law.com/>>  
2900 Manulife Place  
10180 - 101 Street  
Edmonton, AB T5J 3V5  
(780) 423-7178 Direct Line  
(780) 423-7276 Fax  
[benjamin.evans@fmc-law.com](mailto:benjamin.evans@fmc-law.com)

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---

**From:** Sinkwich, Jill D FIN:EX [<mailto:Jill.Sinkwich@gov.bc.ca>]  
**Sent:** Wednesday, March 22, 2006 11:48 AM  
**To:** Evans, Benjamin  
**Cc:** Johnson, Sherrilyn A FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** RE: Unlimited Liability Companies

Dear Mr. Evans,

Your e-mail has been forwarded to our branch, which is responsible for policy development in this area, for response

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If you have any further questions, please do not hesitate to contact me directly

Jill Sinkwich  
Manager  
Financial and Corporate Sector Policy Branch  
Ministry of Finance  
Phone: (250) 387-9092  
Fax: (250) 387-9093

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**From:** Johnson, Sherrilyn A FIN:EX  
**Sent:** Tue, March 14, 2006 9:04 AM  
**To:** Sinkwich, Jill D FIN:EX  
**Subject:** FW: Unlimited Liability Companies

For reply. Thank you.

## Sherrilyn Johnson

Administrative Assistant  
Corporate and Personal Property Registries  
Phone: 250 356-8661 Fax: 250 356-9422  
Email: [Sherrilyn.Johnson@gov.bc.ca](mailto:Sherrilyn.Johnson@gov.bc.ca)

-----Original Message-----

**From:** Evans, Benjamin [<mailto:Benjamin.Evans@FMC-Law.com>]  
**Sent:** March 13, 2006 4:51 PM  
**To:** Johnson, Sherrilyn A FIN:EX  
**Subject:** Unlimited Liability Companies

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I would appreciate it greatly if you would be able to refer me to someone at BC Finance, in the Corporate Department or otherwise, with whom I may discuss this matter.

Thank you very much for your time.

**Benjamin C. Evans, BComm, CA, LLB**  
Tax Counsel

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<<http://www.fmc-law.com/>>  
2900 Manulife Place  
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Page 061 to/à Page 068

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## Wong, Gina G FIN:EX

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**From:** Mueller, Liz E FIN:EX  
**Sent:** Tuesday, April 18, 2006 8:58 AM  
**To:** Hetherington, Tona M FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** FW: Business Law Reform - Corporate Law  
**Attachments:** Stage II Final Consultation Paper V10.doc

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Attached is the final proposal for changes to Ontario's Corporations Act, in case you would like to make any comments. Nothing there for the registries at this time.

Liz Mueller  
Deputy Registrar  
Corporate & Personal Property Registries  
(250)356-8669  
Fax (250)356-9422  
e-mail: [Liz.Mueller@gov.bc.ca](mailto:Liz.Mueller@gov.bc.ca)

-----Original Message-----

**From:** Townshend, Ron B FIN:EX  
**Sent:** Tuesday, April 04, 2006 11:10 PM  
**To:** Mueller, Liz E FIN:EX  
**Subject:** FW: Business Law Reform - Corporate Law

Liz:

Want to have a go at comments. Review of this document and going over it with you to compare our BCA would be a great learning tool for me. What do you think?

Ron

-----Original Message-----

**From:** Doppelt, Allen (MGS) [<mailto:Allen.Doppelt@mgs.gov.on.ca>]  
**Sent:** Monday, April 03, 2006 9:11 AM  
**To:** [shaw.richard@ic.gc.ca](mailto:shaw.richard@ic.gc.ca); Townshend, Ron B FIN:EX;  
[beverly.traxel@gov.ab.ca](mailto:beverly.traxel@gov.ab.ca); [pflory@justice.gov.sk.ca](mailto:pflory@justice.gov.sk.ca);  
[mpawlowsky@gov.mb.ca](mailto:mpawlowsky@gov.mb.ca); [klara.depokomandy@req.gouv.qc.ca](mailto:klara.depokomandy@req.gouv.qc.ca);  
[mackleankh@gov.ns.ca](mailto:mackleankh@gov.ns.ca); [Charles.McAllister@snb.ca](mailto:Charles.McAllister@snb.ca); [ejshea@gov.pe.ca](mailto:ejshea@gov.pe.ca);  
[dlaing@mail.gov.nf.ca](mailto:dlaing@mail.gov.nf.ca); [gary\\_macdougall@gov.nt.ca](mailto:gary_macdougall@gov.nt.ca); [svangenne@gov.nu.ca](mailto:svangenne@gov.nu.ca);  
[Richard.Roberts@gov.yk.ca](mailto:Richard.Roberts@gov.yk.ca)  
**Cc:** Mitsopoulos, John (MGS); Kalsbeek, Michelle (MGS)  
**Subject:** FW: Business Law Reform - Corporate Law

Dear CACLA colleagues, I have attached for your information a comprehensive consultation paper related to potential changes to the Ontario Business Corporations Act. Seven major areas are addressed. Some background information and options are set out for each issue. Comments are requested by May 12, 2006.

Allen

SOLICITOR/CLIENT PRIVILEGE

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Allen Doppelt  
Senior Counsel  
Ministry of Government Services

**MINISTRY OF GOVERNMENT SERVICES  
Policy and Consumer Protection Services Division**

**Phase II**

**BUSINESS LAW MODERNIZATION  
CONSULTATION**

**April 3<sup>rd</sup>, 2006**

Page 072 to/à Page 109

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Page 110 to/à Page 167

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## Wong, Gina G FIN:EX

---

**From:** Mueller, Liz E FIN:EX  
**Sent:** Thursday, May 25, 2006 11:00 AM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Cc:** Adam, Valerie K FIN:EX  
**Subject:** FW: ULCs

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi.

Valerie and I have reviewed the legislation and naturally have some suggestions and questions. We should get together at your earliest convenience to discuss. I say early because the more information we have now gives me a better indication of the cost to implement. We need this for budget projections.

There will be fairly significant changes to corporate online to accommodate ULC's. It would definitely be our biggest release since COLIN was implemented in March of 04.

### Comments:

- 1) Mom and Pops would have to be protected against accidentally opting for a ULC, so we may need to do a fair bit of strategizing on how this option is presented, help text, etc.
- 2) A fee review would have to accompany the legislation. I assume we would perhaps charge more for this option and perhaps more for filing an annual report? Alberta charges the usual incorporation fee for this (Alberta allows this to be done through amendment as well). Nova Scotia (I believe) charges several thousands of dollars for ULC status and more for the annual reports as well.
- 3) Because this is a type of status that can be added or removed, we will need to make it clear to the searching public that a BC company can add or delete this status and show a history of what has happened that company via its incorporation number.
- 4) We currently have 122 foreign ULC corporations registered as extraprovincial companies, so maybe we need to recognize this in the legislation.
- 5) I assume we will need to Gazette the information and also I assume we will produce a certificate for the change of name and for the status?
- 6) If there are low volumes of these, perhaps we need to consider how we process them. i.e. how much do we retool COLIN versus what we might do on paper.

Again probably more questions and issues arise at this point than anything else. Regardless, there will be a fair bit of analysis and decision making and policy making needed to integrate this entity type.

### Liz Mueller

Deputy Registrar  
Corporate & Personal Property Registries  
(250)356-8669  
Fax (250)356-9422  
e-mail: [Liz.Mueller@gov.bc.ca](mailto:Liz.Mueller@gov.bc.ca)

-----Original Message-----

**From:** Sinkwich, Jill D FIN:EX  
**Sent:** Monday, May 08, 2006 3:01 PM

**To:** Mueller, Liz E FIN:EX  
**Cc:** Hetherington, Tona M FIN:EX  
**Subject:** ULCs

As discussed, so you can start thinking about it, here is our FIRST draft of the ULC provisions, showing redline changes to existing BCA sections and a new Part 2.1 containing provisions solely related to ULCs. We'll keep you posted on developments, but in the meantime, let us know if there is anything that drives you nuts.



Page 170 to/à Page 208

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s.14

## Wong, Gina G FIN:EX

---

**From:** Kerry MacLean <MACLEAKH@gov.ns.ca>  
**Sent:** Friday, June 30, 2006 5:34 AM  
**To:** Beverly.Traxel@gov.ab.ca; Mueller, Liz E FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX  
**Subject:** RE: ULC's

Hi Bev and Liz,

We allow ULCs to use a french version of a legal element. Also they can just use Company or Corporation.

Have a nice long weekend.

Kerry

Kerry MacLean  
Registrar of Joint Stock Companies  
Service Nova Scotia and Municipal Relations  
1505 Barrington Street 10th Floor North  
PO Box 1529  
Halifax N.S.  
B3J 2Y4

Phone: (902)424-7742

Fax: (902)424-4633

[www.rjsc.ca](http://www.rjsc.ca)

>>> <[Beverly.Traxel@gov.ab.ca](mailto:Beverly.Traxel@gov.ab.ca)> 06/29/06 7:29 PM >>>

Hello Liz:

In Alberta, only Unlimited Liability Corporation or ULC are permitted. No French form of the legal element

Cheers

Bev

-----Original Message-----

From: Mueller, Liz E FIN:EX [<mailto:Liz.Mueller@gov.bc.ca>]  
Sent: Thursday, June 29, 2006 4:17 PM  
To: Beverly Traxel; Kerry MacLean  
Cc: Sinkwich, Jill D FIN:EX  
Subject: ULC's

Hello Bev and Kerry!

Can you tell me whether Nova Scotia or Alberta allow an Unlimited Liability Company to use the french form of that designation, or must they use only "Unlimited Liability Company" or "ULC".

Thanks you guys!

Liz Mueller  
Director Registries Programs and Policy  
Corporate & Personal Property Registries  
(250)356-8669  
Fax (250)356-9422  
e-mail: [Liz.Mueller@gov.bc.ca](mailto:Liz.Mueller@gov.bc.ca)

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Page 211 to/à Page 217

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**Wong, Gina G FIN:EX**

---

**From:** Dillon, Brian FIN:EX  
**Sent:** Tuesday, July 18, 2006 11:39 AM  
**To:** Sinkwich, Jill D FIN:EX  
**Subject:** Limited liability

Extract from article re limited liability -- perhaps a little different than I suggested but some of the same ideas re big versus small cos, minimum number of shareholders and undercapitalization:

From: "Limited Liability" by William Carney at: <http://encyclo.findlaw.com/5620book.pdf>

**"5. Exceptions to Limited Liability: Lifting or Piercing the Veil**

Copyright



Page 219

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**Wong, Gina G FIN:EX**

---

**From:** Mueller, Liz E FIN:EX  
**Sent:** Wednesday, July 19, 2006 5:06 PM  
**To:** Sinkwich, Jill D FIN:EX  
**Cc:** Adam, Valerie K FIN:EX; Turner, Debbie L FIN:EX  
**Subject:** RE: ULCs

As discussed, I think Unlimited Liability Company and ULC are relatively new terms in the business community and certainly for the public. Understanding corporate structures is a challenge for non-professionals. Because this is a new term, I think including the french version at this time would be very confusing and misleading to the public. As it is the registrar's role to limit confusion, I would recommend the french version not be allowed at this time.

**Liz Mueller**

Director Registries Programs and Policy  
Corporate & Personal Property Registries  
(250)356-8669  
Fax (250)356-9422

e-mail: [Liz.Mueller@gov.bc.ca](mailto:Liz.Mueller@gov.bc.ca)

-----Original Message-----

**From:** Sinkwich, Jill D FIN:EX  
**Sent:** Monday, July 17, 2006 5:07 PM  
**To:** Mueller, Liz E FIN:EX  
**Subject:** FW: ULCs

Page 221 to/à Page 231

Withheld pursuant to/removed as

s.14

Page 232 to/à Page 241

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## FEE ISSUE PAPER

**MINISTRY: Finance**

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s.12

## **BACKGROUND**

**Canadian ULCs which originally could be formed only in Nova Scotia but are now also available in Alberta, are used primarily by U.S. based companies as vehicles for tax planning. Canadian tax authorities (federal and provincial) treat ULCs just the same as limited companies. For U.S. tax purposes, however, they are considered “transparent” and therefore U.S. investors can benefit from flow through provisions for losses, etc. As a result, tax planners have been using ULCs for many of their activities related to acquisitions, restructurings and divestitures of Canadian assets by U.S. investors. Province of Alberta’s fee for formation of a ULC is \$100.00 plus fees charged by individual service providers, for an approximate amount of \$275.00. There are no fees to file an annual report for any business corporation in Alberta. Province of Nova Scotia’s fee for formation of a ULC is \$4000.00 and the annual report filing fee is \$2000.00 . However these fees are likely to come down as Nova Scotia no longer has exclusivity with respect to the formation of ULCs in Canada.**

Page 244 to/à Page 248

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s.12

## APPENDIX 1: CATEGORIES OF FEES

- 1) **Public subsidy fees** — Some public services are provided to meet the general social and economic needs of all British Columbians. Services such as health care, education, income assistance and justice are funded mainly through general revenue, but may be partially covered through user fees. These fees (such as college tuition or ambulance services) are charged to encourage responsible use, or to reflect potential economic benefits to individuals (such as a better paying job upon graduation). To prevent user fees from hampering access for specific users, such as non-profit organizations, the elderly, the disabled, or those with low incomes, the government often provides an additional subsidy (such as student assistance). Public subsidy fees are not intended to fully recover government's cost to deliver programs. The level at which a program is to be subsidized is determined by government.
- 2) **Regulatory and inspection fees** — Some public services are directed to specific individuals or companies and are provided either at the request of these parties or because of their activities. Services such as the regulation of companies and recording of real estate transfers ensure fair dealing and legitimacy among those regulated, as well as general consumer protection, while inspections ensure that health and safety standards are maintained at sites for the protection of owners, workers and the general public. The government believes that protecting the public in these areas is a cost that should be charged against the commercial activities that create a need for government involvement. For these types of goods or services, charges are generally set to fully recover government's direct costs of providing the good or service. Exceptions do occur when, for example, full cost recovery would cause undue financial hardship on users.
- 3) **Resource fees** — Goods or services involving use of natural resources or public infrastructure, generally provide economic benefits to users well in excess of government's service costs. A share of these benefits are returned to the government, regardless of the cost to provide associated services. In these cases, a resource fee may exceed government's direct costs
- 4) **Private sector fees** — In providing essential public services, government sometimes supplies other ancillary services that may also be provided by the private sector. Services such as the publication of maps are generated in support of government programs but are also available to the public. For these services, government usually charges fees in line with rates established in the private sector.



## APPENDIX 2: CLIENT IMPACT ASSESSMENT

The "simplicity and fairness" criterion in the **Ministry Rationale** section should include a client impact assessment.

Incorporate the following table into the section to clearly identify the client group(s) impacted by the fee proposal (use the identification labels for the three identification categories outlined on the next page):

Affected Client Groups			
Broad Category	Economic Sector	Specific Clients	Nature of Impact

In addition, the client impact assessment should include the following information:

- the number of clients affected, the health of the sector and the clients' ability to pay;
- the degree of consultation that has occurred with affected client groups (if none, ministries should explain why consultation was not undertaken);
- identify any other fees charged by BC ministries / Crown corporations that could, when combined with the proposed fee, affect competitiveness or client impact;
- if ministry proposals affect clients of other ministries or other ministries directly, indicate whether consultation has taken place with other ministries;
- an assessment of the potential public response or reaction to the proposal;
- the ministry's communication strategy for handling adverse public reaction (outline public reaction to previous increases, such as the number of phone calls or letters generated by the changes);
- problems with existing fees (e.g. bad debts resulting from clients not currently paying the fee); and
- the potential impact on clients if the proposal is not approved.

### APPENDIX 3: IDENTIFICATION OF AFFECTED CLIENTS

Broad Category	Economic Sector	Specific Clients
<p><b>Choose from:</b></p> <ul style="list-style-type: none"> <li>- Public (Individuals)</li> <li>- Business</li> <li>- Government</li> <li>- Non Profit</li> </ul>	<p><b>Choose from:</b></p> <ul style="list-style-type: none"> <li>- Agriculture</li> <li>- Forestry</li> <li>- Fishing &amp; Hunting</li> <li>- Mining</li> <li>- Utilities</li> <li>- Construction</li> <li>- Manufacturing</li> <li>- Wholesale Trade</li> <li>- Retail Trade</li> <li>- Transportation &amp; Warehousing</li> <li>- Information</li> <li>- Finance &amp; Insurance</li> <li>- Real Estate &amp; Rental &amp; Leasing</li> <li>- Professional, Scientific, &amp; Technical Services</li> <li>- Management of Companies &amp; Enterprises</li> <li>- Administrative &amp; Support</li> <li>- Waste Management &amp; Remediation Services</li> <li>- Education Services</li> <li>- Health Care &amp; Social Assistance</li> <li>- Arts, Entertainment, &amp; Recreation</li> <li>- Accommodation &amp; Food Services</li> <li>- Other Services (except Public Administration)</li> <li>- Public Administration <ul style="list-style-type: none"> <li>• Federal</li> <li>• Provincial</li> <li>• Local</li> </ul> </li> </ul>	<p><b>Specify one or more groups:</b></p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> <li>- Seniors</li> <li>- Campers</li> <li>- Recreational fishers</li> <li>- Mortgage brokers</li> <li>- Hotel operators</li> <li>- Pulp mill owners</li> </ul>

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Withheld pursuant to/removed as

s.12

## Wong, Gina G FIN:EX

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**From:** Cain, Joann FIN:EX  
**Sent:** Wednesday, September 20, 2006 2:01 PM  
**To:** Sinkwich, Jill D FIN:EX  
**Subject:** FW: fee issue paper - clean copy  
**Attachments:** fee\_issue\_paper\_ULC liz 13.doc

fyi

-----Original Message-----

**From:** Townshend, Ron B FIN:EX  
**Sent:** Wed, September 20, 2006 12:57 PM  
**To:** Waldo, Carol FIN:EX; Twyford, Philip FIN:EX  
**Cc:** Hopkins, Jim FIN:EX; Cain, Joann FIN:EX; Clark, Scott FIN:EX; Mueller, Liz E FIN:EX; Johnson, Sherrilyn A FIN:EX  
**Subject:** RE: fee issue paper - clean copy

Thanks Carol.

We addressed the suggestions made by TB staff below and tidied up the format with no changes to the figures from the earlier version. See attachment.

Ron

-----Original Message-----

**From:** Waldo, Carol FIN:EX  
**Sent:** Monday, September 18, 2006 12:30 PM  
**To:** Townshend, Ron B FIN:EX  
**Subject:** RE: fee issue paper

Ron,

FYI in the end, (at Cheryl's direction) we did not take the updated paper to Tamara or the Minister since the fee amount didn't change. We did however, put the new paper in the submission that went to TBS.

Carol

-----Original Message-----

**From:** Townshend, Ron B FIN:EX  
**Sent:** Tue, September 12, 2006 4:43 PM  
**To:** Waldo, Carol FIN:EX  
**Subject:** FW: fee issue paper

fyi

Ron

-----Original Message-----

From: Townshend, Ron B FIN:EX  
Sent: Tuesday, September 12, 2006 4:41 PM  
To: Twyford, Philip FIN:EX  
Cc: Clark, Scott FIN:EX; Cain, Joann FIN:EX  
Subject: RE: fee issue paper

Philip:

We originally submitted this issue paper through Joann's shop so I have no concerns about the policy folks making the necessary changes as noted below to ensure consistency. Let me know and I will work with Joann.

Ron

-----Original Message-----

From: Twyford, Philip FIN:EX  
Sent: Tuesday, September 12, 2006 4:21 PM  
To: Townshend, Ron B FIN:EX  
Subject: Fw: fee issue paper

Ron;

Some initial thoughts from MJ

-----Original Message-----

From: Roy, Marie-Josée FIN:EX  
To: Twyford, Philip FIN:EX  
Sent: Tue Sep 12 14:26:14 2006  
Subject: RE: fee issue paper

Here are some of my comments:

s.12

\* I assume it is not the final draft as formatting is all over the place...  
For readability, table with numbers should be formatted.  
TOC will need fixing.

Because this is Finance, this better be perfect.

I might have other comments later.

Marie-Josée

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From: Twyford, Philip FIN:EX  
Sent: Tue, September 12, 2006 1:00 PM  
To: Roy, Marie-Josée FIN:EX  
Subject: FW: fee issue paper

MJ;

Here's the revised fee issue paper. Any concerns from your side?

thanks

---

From: Townshend, Ron B FIN:EX  
Sent: Tue, September 12, 2006 12:13 PM  
To: Waldo, Carol FIN:EX; Twyford, Philip FIN:EX; Cain, Joann FIN:EX  
Cc: Mueller, Liz E FIN:EX; Clark, Scott FIN:EX; Hopkins, Jim FIN:EX  
Subject: FW:

Revised fee issue paper for Unlimited Liability Companies as reviewed and approved by Jim H.

Feel free to call Scott or me if you have any questions.

Ron

<< File: fee\_issue\_paper\_ULC liz 12.doc >>

Ron Townshend

Registrar  
Corporate and Personal Property Registries

Telephone: 250 356 8658

E-mail: [Ron.Townshend@gov.bc.ca](mailto:Ron.Townshend@gov.bc.ca)

## FEE ISSUE PAPER

**MINISTRY:** Finance

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s.12

## BACKGROUND

Canadian ULCs, which originally could be formed only in Nova Scotia but are now also available in Alberta, are used primarily by U.S. based companies as vehicles for tax planning. Canadian tax authorities (federal and provincial) treat ULCs just the same as limited companies. For U.S. tax purposes, however, they are considered "transparent" and, therefore, U.S. investors can benefit from flow through provisions for losses, etc. As a result, tax planners have been using ULCs for many of their activities related to acquisitions, restructurings and divestitures of Canadian assets by U.S. investors. Province of Alberta's fee for formation of a ULC is \$100 plus fees charged by individual service providers, for an approximate amount of \$275.00. There are no fees to file an annual report for any business corporation in Alberta. Province of Nova Scotia's fee for formation of a ULC is \$4,000 and the annual report filing fee is \$2,000. However, these fees are likely to come down, as Nova Scotia no longer has exclusivity with respect to the formation of ULCs in Canada.



Page 259 to/à Page 264

Withheld pursuant to/removed as

s.12

Page 265 to/à Page 270

Withheld pursuant to/removed as

s.14

## Wong, Gina G FIN:EX

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**From:** Townshend, Ron B FIN:EX  
**Sent:** Tuesday, February 6, 2007 11:31 AM  
**To:** Skinner, Michael FIN:EX; Sinkwich, Jill D FIN:EX; Turner, Debbie L FIN:EX  
**Cc:** Hollier, Deborah J FIN:EX  
**Subject:** RE: Name search question re ULCs

Following your phone call this morning, I checked with DJ and we have no societies or co operatives with "ULC" in their names. Also, there are no partnerships or proprietorships whose name starts with "ULC" and I have asked for a report to see if the letters appear somewhere in the body of the names for these entities (unlikely but best to be thorough).

Via this note I am also relaying your request to our Names unit to block the future use of "ULC" for our business and corporate names.

As an aside one of the companies listed below may be dissolved for failure to transition (ULC Urban Learning Canada Inc.) so we may soon be down to one.

Ron

---

**From:** Townshend, Ron B FIN:EX  
**Sent:** Mon, February 5, 2007 3:04 PM  
**To:** Skinner, Michael FIN:EX  
**Cc:** Turner, Debbie L FIN:EX  
**Subject:** RE: Name search question re ULCs

Hopefully, Michael, we can find a way to avoid that situation.

Ron

---

**From:** Skinner, Michael FIN:EX  
**Sent:** Mon, February 5, 2007 2:48 PM  
**To:** Townshend, Ron B FIN:EX  
**Subject:** RE: Name search question re ULCs

Thanks very much, Ron. Very helpful. These companies will, it seems, have to look at changing their names as they would appear to be offside the proposed changes to the BCA.

MTS

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**From:** Townshend, Ron B FIN:EX  
**Sent:** Mon, February 5, 2007 2:25 PM  
**To:** Skinner, Michael FIN:EX  
**Subject:** FW: Name search question re ULCs

As requested, Michael, there are only two companies with "ULC" descriptors so I do not see any big concerns about potential name conflicts if under the legislation.

Ron

---

**From:** Turner, Debbie L FIN:EX  
**Sent:** Mon, February 5, 2007 1:51 PM  
**To:** Townshend, Ron B FIN:EX  
**Cc:** Adam, Valerie K FIN:EX

**Subject:** RE: Name search question re ULCs

Ron, there are two BC companies that begin with ULC, ULC Grocery Ltd. and ULC Urban Learning Canada Inc. All the other companies with ULC in their names are ULC's extraprovincially registered in BC.

Debbie Turner  
Program Manager  
Name Reservations/Partnerships  
& Search Unit

Direct Line 250 356-7716

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**From:** Townshend, Ron B FIN:EX  
**Sent:** Mon, February 5, 2007 12:45 PM  
**To:** Turner, Debbie L FIN:EX  
**Cc:** Adam, Valerie K FIN:EX  
**Subject:** Name search question re ULCs  
**Importance:** High

Debbie:

Our policy folks want to know if we have any existing company names with the letters "ULC", e.g. ULC Contracting, etc.? This question was raised because the legislation will require Unlimited Liability Companies to be described by the "ULC" descriptor.

Ron

## **Wong, Gina G FIN:EX**

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**From:** Skinner, Michael FIN:EX  
**Sent:** Wednesday, February 7, 2007 12:24 PM  
**To:** Townshend, Ron B FIN:EX; Turner, Debbie L FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** ULCs both domestic and foreign

Hi, Ron and Debbie -

A brief note of warning/inquiry, etc., about Unlimited Liability Companies (ULCs) that will be part of the legal landscape here with the coming into force of the proposed amendments to the BCA.

The new structure - Part 2.1 - being added to the BCA to allow for the creation of ULCs makes it an offence for a corporation to display a name that includes the letters ULC; conversely, it requires all true ULCs to use the words Unlimited Liability Company or the abbreviation ULC as part of its name.

Our question is - what is the registry doing to identify the true extrapro ULCs that may want to continue into the province? Alberta and Nova Scotia have them, and they would be eligible (and required) to use that title if continuing into BC. However, there may be extrapros applying for registration in BC that include ULC as part of their company name but are not "ULCs" as contemplated by BCA part 2.1. Have you folks developed a name protocol to identify and segregate true extrapro ULCs from the companies that would improperly display ULC as part of the distinctive or descriptive elements of their name?

Hope this is clear. Look forward to discussing this with you. While this is a BCA compliance question, there will of course be some TILMA overlap.

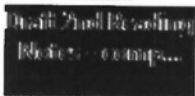
Best regards -

Michael T. Skinner, B. Comm., LL.B.  
Policy Analyst  
Financial and Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia  
(250) 387-6591  
[Michael.Skinner@gov.bc.ca](mailto:Michael.Skinner@gov.bc.ca)

## Wong, Gina G FIN:EX

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**From:** Skinner, Michael FIN:EX  
**Sent:** Thursday, March 1, 2007 2:15 PM  
**To:** Sinkwich, Jill D FIN:EX  
**Subject:** Draft 2nd Reading Notes - with a ULC comment



Jill - your ULC refinements look good. I thought the last ULC-related sentence was slightly awkward and so offer a revised version for you to think about. I was able to find one substantive comment about the utility of ULCs, from a 2005 paper by the Bennett Jones law firm ([http://www.bennettjones.ca/publications\\_comment-spring-2005.htm](http://www.bennettjones.ca/publications_comment-spring-2005.htm)) that I have incorporated in the attached draft. The relevant quote is:

In the context of discussing U.S. entities used in cross-border tax planning, it is worth noting that the CRA takes the view that a limited liability company formed pursuant to U.S. corporate laws which is a disregarded entity [such as a ULC - /mts] or partnership for U.S. tax purposes does not qualify for any benefits under the *Canada-United States Income Tax Convention*, 1980 (the "*Treaty*"). Therefore, limited liability corporations should generally not be used in cross-border tax planning without careful consideration.

The modified draft may be too technical for second reading, but I say better to make a compelling technical case that risks turning ULCs into a boring corporate law dissertation [read: hopefully less controversial], than have the media grab onto a "sop to American multinationals" angle.

Something to think about...

/MTS

SECOND READING NOTES (following day)

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***FINANCE STATUTES AMENDMENT ACT, 2007***

(THE HOUSE LEADER CALLS FOR SECOND READING OF BILL NO.XX (*Finance Statutes Amendment Act, 2007.*)

(THE SPEAKER CALLS UPON THE MINISTER.)

The Minister rises and moves:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL NOW BE READ A SECOND TIME.**

**MISTER SPEAKER, THIS BILL CONTAINS  
AMENDMENTS TO A NUMBER OF STATUTES  
WHICH DEAL WITH THE CORPORATE AND  
REAL ESTATE SECTORS OF THIS PROVINCE.  
THE STATUTES AMENDED ARE THE  
*BUSINESS CORPORATIONS ACT*, THE  
*COOPERATIVE ASSOCIATION ACT*, THE  
*REAL ESTATE DEVELOPMENT MARKETING  
ACT* AND THE *REAL ESTATE SERVICES  
ACT*.FOR THE MOST PART, THESE**

**AMENDMENTS ARE TECHNICAL IN NATURE,  
BUT ARE ESSENTIAL TO THESE SECTORS.**

**THE *BUSINESS CORPORATIONS ACT* IS  
THE BASIC FRAMEWORK LEGISLATION  
GOVERNING THE BUSINESS SECTOR IN THIS  
PROVINCE. THE CHANGES PROPOSED TO  
THIS ACT WILL, FIRST AND MOST NOTABLY,  
INTRODUCE A NEW CORPORATE  
STRUCTURE CALLED THE UNLIMITED  
LIABILITY COMPANY, OR "U.L.C.". AS THE  
NAME SUGGESTS, SHAREHOLDERS IN AN  
UNLIMITED LIABILITY COMPANY AGREE TO  
TAKE RESPONSIBILITY FOR THE DEBTS AND  
LIABILITIES OF THE COMPANY.**

**MISTER SPEAKER, UNDER CANADIAN  
TAX LAW, U.L.C.s ARE TREATED JUST LIKE  
ANY OTHER CORPORATION. HOWEVER,**



**BECAUSE OF THIS SHAREHOLDER  
LIABILITY, UNITED STATES TAX LAW  
ALLOWS PROFITS AND LOSSES INCURRED  
BY A U.L.C. TO “FLOW-THROUGH” TO ITS  
SHAREHOLDERS. WHAT THIS MEANS IS  
THAT U.L.C.s CAN BE USED BY AMERICAN  
INVESTORS BOTH TO AVOID DOUBLE  
TAXATION OF CORPORATE INCOME AND TO  
MORE EFFECTIVELY ALLOCATE LOSSES  
INCURRED BY THE U.L.C. FOR THESE  
REASONS, U.L.C.s PROVIDE AN IMPORTANT  
TAX PLANNING AND CORPORATE  
REORGANIZATION TOOL. U.L.C.S ARE IN  
FACT INDISPENSABLE TO U.S. COMPANIES  
WANTING TO INVEST IN CANADA. I AM  
ADVISED THAT, IN CONTRAST TO THE  
ADVANTAGES OF U.L.C.S, LIMITED LIABILITY  
COMPANIES FORMED UNDER AMERICAN  
LAW DO NOT QUALIFY FOR ANY BENEFITS**

UNDER THE 1980 TAX TREATY BETWEEN  
CANADA AND THE U.S.; FOR THAT REASON  
THE U.L.C. IS THE VEHICLE OF CHOICE FOR  
U. S. FIRMS TO MOVE INVESTMENT CAPITAL  
INTO BRITISH COLUMBIA.

MISTER SPEAKER, U.L.C.s HAVE  
BEEN IN EXISTENCE IN NOVA SCOTIA FOR  
OVER 100 YEARS, AND WERE RECENTLY  
INTRODUCED IN ALBERTA. THIS NEW U.L.C.  
FRAMEWORK WILL MAKE BRITISH  
COLUMBIA COMPETITIVE WITH THOSE  
PROVINCES, AND, ~~WILL CONTRIBUTE TO~~  
~~BC'S ECONOMY~~ BY FACILITATING GREATER  
LEVELS OF INCORPORATION, CROSS-  
BORDER INVESTMENT AND JOB CREATION,  
WILL CONTRIBUTE TO BC'S ECONOMY.

## **THE OTHER BUSINESS CORPORATIONS**

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**ACT AMENDMENTS IN THIS BILL ARE  
LARGELY TECHNICAL IN NATURE. THESE  
AMENDMENTS REMOVE AMBIGUITY,  
ENHANCE CLARITY AND, IN SOME CASES,  
REFINE THE ORIGINAL POLICY TO IMPROVE  
THE OPERATION OF THE ACT. FOR  
EXAMPLE, COMPANIES WILL NO LONGER BE  
REQUIRED TO DATE-STAMP ALL RECORDS  
RECEIVED FOR FILING IN THE COMPANY  
RECORDS OFFICE. INSTEAD, THE ONLY  
RECORDS THAT WILL NEED TO BE  
PROCESSED IN THIS WAY ARE THOSE  
WHERE THE TIME OF RECEIPT IS CRITICAL.  
THIS SMALL CHANGE SHOULD RESULT IN A  
SIGNIFICANT REDUCTION IN THE  
REGULATORY BURDEN ON COMPANIES.**

**AS WELL, THE BILL AUTHORIZES COMPANIES TO ISSUE SHARES WITHOUT A CERTIFICATE. IN THIS AGE OF ELECTRONIC TRADING, THE PAPER SHARE CERTIFICATE IS BECOMING INCREASINGLY UNNECESSARY, AND THESE AMENDMENTS WILL ALLOW BC COMPANIES TO FURTHER STREAMLINE THEIR OPERATIONS.**

**MISTER SPEAKER, THIS BILL ALSO AMENDS THE *COOPERATIVE ASSOCIATION ACT*, THE LEGISLATION GOVERNING THE COOPERATIVE SECTOR IN THE PROVINCE. COOPERATIVES ARE CORPORATIONS, BASED ON “COOPERATIVE” PRINCIPLES SUCH AS OPEN MEMBERSHIP AND DEMOCRATIC MEMBER CONTROL, AND OPERATED TO PROVIDE THEIR MEMBERS WITH SERVICES OR PRODUCTS.**

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**AS CURRENTLY DRAFTED, THE COOPERATIVE ASSOCIATION ACT ASSUMES THAT COOPERATIVES ARE PROFIT-MOTIVATED BUSINESSES. ALTHOUGH NON-PROFIT COOPERATIVES, SUCH AS DAYCARES, DO EXIST, THESE CO-OPS CANNOT GUARANTEE TO FUNDING INSTITUTIONS, THE CANADA REVENUE AGENCY OR THE PUBLIC THAT THIS NON-PROFIT STATUS WILL CONTINUE.**

**THIS BILL WILL ALLOW COOPERATIVES TO ADOPT AN UNALTERABLE PROVISION IN THEIR MEMORANDUM THAT PROHIBITS THE DISTRIBUTION OF SURPLUSES TO MEMBERS. THIS WILL PROVIDE CO-OPS WITH THE ABILITY TO EFFECTIVELY GUARANTEE THEIR NON-PROFIT STATUS.**

**MISTER SPEAKER, THE *COOPERATIVE ASSOCIATION ACT* CONTAINS NUMEROUS CROSS REFERENCES TO THE *COMPANY ACT*, DESPITE THE REPLACEMENT OF THAT ACT IN 2004 WITH THE *BUSINESS CORPORATIONS ACT*. CONTINUED RELIANCE ON OLD *COMPANY ACT* PROVISIONS HAS CAUSED CONSIDERABLE INCONVENIENCE AND CONFUSION FOR THE COOPERATIVE SECTOR. THIS BILL WILL INCORPORATE THE RELEVANT PROVISIONS OF THE *COMPANY ACT* INTO THE *COOPERATIVE ASSOCIATION ACT*, PROVIDING, FOR THE FIRST TIME EVER, A “STAND-ALONE” ACT TO GOVERN THE COOPERATIVE SECTOR.**

**MISTER SPEAKER, THIS BILL WILL ALSO ALLOW THE REGISTRAR TO ESTABLISH THE FORMAT OF CORPORATE REGISTRY DOCUMENTS THAT MUST BE FILED BY COOPERATIVES. THE CHANGE WILL ALLOW THE REGISTRY TO MORE READILY ADAPT ITS FORMS IN THE INTERESTS OF CLARITY AND COMPLETENESS, AND WILL BRING THE *COOPERATIVE ASSOCIATION ACT* IN LINE WITH THE *BUSINESS CORPORATIONS ACT* AND THE *SOCIETY ACT*, WHICH ALREADY PROVIDE THE REGISTRAR WITH THE POWER TO ESTABLISH FORMS.**

**MISTER SPEAKER, THIS BILL ALSO MAKES TECHNICAL AMENDMENTS TO THE *REAL ESTATE DEVELOPMENT MARKETING ACT*, WHICH DEALS WITH THE MARKETING OF NEW REAL ESTATE DEVELOPMENTS.**

**THE AMENDMENTS WILL ENHANCE CONSUMER PROTECTION FOR PURCHASERS, AND CREATE MORE CERTAINTY FOR DEVELOPERS, BY CLARIFYING THE CIRCUMSTANCES UNDER WHICH REAL ESTATE DEPOSITS CAN BE PAID OVER TO A DEVELOPER. IN ADDITION, A MINOR AMENDMENT WILL CLARIFY THE EXEMPTION POWERS OF THE SUPERINTENDENT OF REAL ESTATE.**

**FINALLY, THIS BILL WILL AMEND THE *REAL ESTATE SERVICES ACT*, WHICH DEALS WITH THE LICENSING AND REGULATION OF REAL ESTATE AGENTS. THE MOST SIGNIFICANT AMENDMENT WILL GIVE THE REAL ESTATE COUNCIL ACCESS TO THE SPECIAL COMPENSATION FUND TO ALLOW REAL ESTATE TRANSACTIONS TO**



**COMPLETE IN SITUATIONS WHERE TRUST MONEY IS MISSING FROM A BROKERAGE TRUST ACCOUNT. CURRENTLY, CONSUMERS ARE REQUIRED TO WAIT UNTIL THEIR DEALS FAIL AND THEN SEEK COMPENSATION. THIS AMENDMENT WILL OFFER INCREASED CONSUMER PROTECTION AND ENHANCE PUBLIC CONFIDENCE IN THE INDUSTRY.**

~~IN ADDITION, THE ORIGINAL PURPOSE OF THE SPECIAL COMPENSATION FUND WILL BE CLARIFIED TO ENSURE THAT TRUE LOSSES INCURRED BY A PARTY TO A REAL ESTATE TRANSACTION ARE ALLOWED, WHILE THOSE RELATED SOLELY TO AN AGENT'S OWN FEES ARE BARRED.~~

~~THE AMENDMENTS WILL ALSO ASSIST  
BROKERAGES BY STREAMLINING THE  
REQUIREMENTS FOR THE HANDLING OF  
FEES THAT HAVE ALREADY BEEN EARNED.~~

~~FINALLY, THIS BILL AMENDMENTS TO  
THE *REAL ESTATE SERVICES ACT* WILL  
ALSO ENHANCE PUBLIC PROTECTION BY  
PREVENTING STRATA MANAGEMENT FIRMS  
AND RENTAL PROPERTY MANAGEMENT  
FIRMS FROM CONTRACTING OUT OF THE  
REQUIREMENT TO HOLD THEIR CLIENTS'  
MONEY IN TRUST. THIS IS ESPECIALLY  
IMPORTANT IN PROTECTING THE FUNDS OF  
STRATA CORPORATIONS.~~

~~FINALLY, MISTER SPEAKER, THE  
AMENDMENTS WILL ALSO ASSIST  
BROKERAGES. BY STREAMLINING THE~~

**REQUIREMENTS FOR THE HANDLING OF  
BROKERAGE FEES THAT HAVE ALREADY  
BEEN EARNED, THE BILL WILL ELIMINATE  
UNNECESSARY REGULATION .**

**MISTER SPEAKER, I MOVE SECOND  
READING OF BILL NO.XX."**

The Minister sits

BILL DEBATED.

(THE SPEAKER PUTS MOTION AND ANNOUNCES THE RESULT)

(BILL READ A SECOND TIME.)

The Minister rises and states:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL BE REFERRED TO A COMMITTEE OF  
THE WHOLE HOUSE FOR CONSIDERATION  
AT THE NEXT SITTING AFTER TODAY."**

The Minister sits

(MISTER SPEAKER PUTS MOTION.)

## Wong, Gina G FIN:EX

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**From:** Flanagan, Paul FIN:EX  
**Sent:** Thursday, April 5, 2007 4:45 PM  
**To:** Sinkwich, Jill D FIN:EX  
**Cc:** Cain, Joann FIN:EX; Robinson, Andy FIN:EX  
**Subject:** FW: Hansard Debates: ULCs...

I asked Andrew to take a look at Hansard.....

Paul

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**From:** Hoge, Andrew SBR:EX  
**Sent:** April 5, 2007 4:39 PM  
**To:** Flanagan, Paul FIN:EX  
**Cc:** Knowles, Marcia SBR:EX; Krasnick, Jeffrey S SBR:EX  
**Subject:** Hansard Debates: ULCs...

Hi Paul,

As discussed, I reviewed the recent Hansard debates which mention the ULC issue.

My summary is as follows:

ULCs were brought up in the context of the promise for regulatory reform by B. Ralston. The question asked was repeatedly asked "what is the reason for adding an unlimited liability company to the definitions of the Business Corporations Act... ?"

The consistent answer of the Honourable Carol Taylor was the desire to create more business for the people of British Columbia.

Potential alternative motives and consequences were explored and discussed.

It was acknowledged that these entities are used as financial planning tools in the United States (see beginning of Analysis section below). However, the motivation for introducing this entity to BC was solely as a business development initiative for the province.

Analysis:

In the debates, the fact ULCs are commonly used as a financial planning tool in the United States was noted. This is true because the primary reason ULCs are used is for U.S. citizens to acquire Canadian businesses because the use of the ULC allows:

- The Canadian seller to dispose of shares, which is their preference because they wish to use up their capital gains exemption to shelter the capital gain, or a portion of the capital gain, realized on the share sale from tax. Additionally, with a share sale certain other taxes may be avoided with the sale of shares such as property transfer tax and provincial sales tax.
- The U.S. purchaser to treat their purchase as a purchase of assets, which is their preference because the purchase price may bump the tax cost amount of the assets resulting in a higher capital cost allowance deduction (for depreciable assets) and/or a higher cumulative eligible capital deduction (for intangible assets).

The ULC solves these conflicting motivations because the ULC are treated as taxable corporations for Canadian tax purposes but can elect to be treated as a flow through entity for U.S. tax purposes (e.g. partnerships).

This is a topical issue on which our section has already received a question from the audit section regarding the treatment of a Nova Scotia ULC under the IFA Act.

All things being equal, the introduction of ULCs to the definitions of the Business Corporations Act would likely increase the potential viability of the *International Financial Activity Act*. The reason for this is that ULCs could be used by non-residents interested in incorporating in Canada and carrying on an international financial business through a permanent establishment in British Columbia. The availability of a ULC as an option through which to carry on business could be seen as more advantageous to these non-residents as opposed to if this entity were not an option.

If you have any questions, please do not hesitate to contact me at extension 67345.

Thanks,

**Andrew Hoge, CGA**

**Senior Income Tax Specialist**

**Income Taxation Branch**

**Ministry of Small Business and Revenue**

Email: [Andrew.Hoge@gov.bc.ca](mailto:Andrew.Hoge@gov.bc.ca)

Phone: (250) 356-7345

Fax: (250) 356-9243

## Wong, Gina G FIN:EX

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**From:** Skinner, Michael FIN:EX  
**Sent:** Friday, April 20, 2007 5:19 PM  
**To:** Adam, Valerie K FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX  
**Subject:** ULC registration forms

Hi, Val -

This is further to our telephone discussion. After some discussions with Jill and Joann about the requirements of the BCA, here's my understanding:

1. It would probably be a good idea for ULCs to have their own dedicated Incorporation Application form, to avoid possible confusion in the application process - as opposed to "checking a box" on a dual-purpose Ltd./ULC form. The ULCIA could, if registry staff consider it appropriate, incorporate a general warning about the liability of shareholders by reprinting the s. 51.11 statement at the top of the form prior to section "A" (name of company).
2. The rest of the IA form would be adapted as necessary for ULC use, the obvious modification being the name of the company, which must comply with BCA s. 51.21.
3. The content of the completing party statement is determined by BCA section 15. In a ULC context, it is not required that the incorporator acknowledge in writing that he/she understands that the company being incorporated is a ULC. The Articles and Incorporation Agreement referred to in the completing party statement may have little or nothing to say about "unlimited liability", since the BCA requires only that the NOA contain the liability statement. Therefore the Completing Party Statement does not appear to require modification.
4. The Notice of Articles for the ULC must incorporate the s. 51.11 liability statement; it doesn't seem to make a big difference whether the statement goes before or after the company name. The company name, again, must conform with s. 51.21. Under the general authority of the registrar to determine the content of forms (subject to the Act, of course) you could perhaps place a reminder at the heading to section F (authorized share structure) that BCA s. 51.2 requires each share certificate to contain the shareholder liability statement set out in ss. 51.11 and 51.2.

That's it for the moment. I would be happy to discuss this further with you.

Michael T. Skinner, B. Comm., LL.B.  
Policy Analyst  
Financial and Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia  
(250) 387-6591  
[Michael.Skinner@gov.bc.ca](mailto:Michael.Skinner@gov.bc.ca)

## Wong, Gina G FIN:EX

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**From:** Skinner, Michael FIN:EX  
**Sent:** Friday, May 4, 2007 11:25 AM  
**To:** Adam, Valerie K FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Cain, Joann FIN:EX  
**Subject:** RE: "ULC" named companies and other queries

Thanks, Val -

- Yes, please initiate the proceedings for Urban Learning Canada. Hopefully, the timing will work out since it looks like it will be an early fall OIC for the ULC-related amendments. (If it is a going concern as its website suggests, I suspect that Urban Learning will respond promptly to the Notice of Intent letter.)
- Please provide the registration details for both the identified "ULC" limited companies, i.e., full name and incorporation number.
- **IMPORTANT** - On a related note, and further to a separate e-mail, have you conducted a search to see if there are any companies registered in BC using the words "Unlimited company" as part of their name? "Unlimited company" is a Nova Scotia term and we are examining the issue of its use as part of an assumed name in BC. It may be confusing to permit use of the term here.

Thanks for your assistance,

Michael T. Skinner, B. Comm., LL.B.  
Policy Analyst  
Financial and Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia  
(250) 387-6591  
Michael.Skinner@gov.bc.ca

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**From:** Adam, Valerie K FIN:EX  
**Sent:** May 4, 2007 10:57 AM  
**To:** Skinner, Michael FIN:EX  
**Subject:** RE: "ULC" named companies and other queries

Hi Michael,

I agree that the timing looks awkward for the one company that has not filed any annual reports in the last 3 years, ULC Urban Learning Canada Inc.

When we initiate dissolution proceedings we send the company a letter of intent to dissolve. The letter gives the company one month from the date of the letter to bring themselves back up to date with filing their annual reports. If the company does not respond to this letter we put the company into the second stage of dissolution and we publish our intent to dissolve the company on QP Legalese.

If it helps, I can initiate the dissolution proceedings manually for ULC Urban Learning Canada Inc. I would do this because they are more than two years behind in their filings. However, I am not prepared to manually initiate dissolution proceedings on ULC Grocery Ltd. at this point in time.

In response to your last paragraph, I feel the companies should be identified within the Reg for the purpose of exemption with both their correct company name and their incorporation number. That way, there would be less of a chance for confusion should anyone choose to conduct a search.

Cheers.

*Regards,*

*Valerie K.W. Adam*

Manager Registries Programs,  
BC Registry Services,  
Ministry of Finance,  
2nd Floor 940 Blanshard St,  
Victoria, BC

Telephone: 250 356-8656  
Facsimile: 250 356-8923  
e-mail: valerie.adam@gov.bc.ca

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**From:** Skinner, Michael FIN:EX  
**Sent:** May 2, 2007 11:09 AM  
**To:** Adam, Valerie K FIN:EX  
**Subject:** RE: "ULC" named companies and other queries

Hello, Val -

Thank you for your response. I have a further question related to companies with ULC in their names on the register: is any notice given to the company prior to being dissolved? What if any warning or reminder communications take place between the registry and the company if the company ceases to remain in good standing?

I ask because the timing looks awkward - by this Fall we could be in a position where we are obliged to list the companies in an exemption section of the BCR, while knowing that they are on the verge of being dissolved. If we know they are going to be "rehabilitated" then it would appear to be less of an issue.

Also, how should the companies be identified within the Reg for the purpose of exemption? Is the name as provided below, e.g., ULC Urban Learning Canada Inc., adequate or should the incorporation number be included for precision?

Thanks -

Michael T. Skinner, B. Comm., LL.B.  
Policy Analyst  
Financial and Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia



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**From:** Adam, Valerie K FIN:EX  
**Sent:** May 2, 2007 9:22 AM  
**To:** Skinner, Michael FIN:EX  
**Subject:** RE: "ULC" named companies and other queries

Hi Michael,

Finally here are my responses to your questions. My answers are in red below.

*Regards,*

*Valerie K.W. Adam*

Manager Registries Programs,  
BC Registry Services,  
Ministry of Finance,  
2nd Floor 940 Blanshard St,  
Victoria, BC

Telephone: 250 356-8656  
Facsimile: 250 356-8923  
e-mail: valerie.adam@gov.bc.ca

---

**From:** Skinner, Michael FIN:EX  
**Sent:** April 25, 2007 11:53 AM  
**To:** Adam, Valerie K FIN:EX  
**Subject:** "ULC" named companies and other queries

Hi, Val -

A few items needing your response -

1. In anticipation of amendments to the BCA regulation, can you advise which companies have "ULC" as a part of their name? I believe a previous search yielded ULC Grocery Ltd. and ULC Urban Learning Canada Inc. Such companies in good standing will be prescribed in the regulation as exempted from the ULC naming restriction.

Also, one of the above companies - I believe it was Urban Learning Canada - has apparently not filed its annual report as required for the last year or two (?). We don't want to exempt a company if it's going to be struck in any event. Please advise of status and how long it may take to either get them to comply or be struck from the register.

First off, we did a check of our data base and there are no other companies with ULC in their name apart from the two known ones listed here. Both of these companies are behind in filing their annual reports. ULC Grocery Ltd. has not filed its annual report for the year 2007 and if it does not file for 2008, the earliest it would be dissolved would be June of 2008. ULC Urban Learning Canada Inc. has not filed its 2004, 2005, and 2006 annual reports. It is eligible to be dissolved at any time. Normally, it would have gone by now but we are still backlogged from when we stopped the dissolution program in order to cope with Transition filings. The system does a sweep each week and picks the next 1000 companies to be dissolved and therefore the dissolution of ULC Urban Learning Canada Inc. is imminent.

2. Technical ULC question: for the purpose of BCA regulations ss. 31 and 30, is there any reason why a document relating to a ULC (incorporation application, alteration, continuation, amalgamation) would not be included in the present lists, taking into account the fact that definitions of "limited company" and "unlimited liability company" are to be added - see s. 2 of the FSAA: [http://www.leg.bc.ca/38th3rd/3rd\\_read/gov14-3.htm](http://www.leg.bc.ca/38th3rd/3rd_read/gov14-3.htm) . Or will specific additional provision have to be made for such ULC-related filings?

I don't actually think specific additional provision has to be made for each individual ULC related filing for the purpose of ss 30 and 31 of the regulations. That being said, I do feel that the initial wording of section 30 (2) and 31 should be amended to include a statement that indicates these sections apply to both "limited company" and "unlimited liability company"

3. Following passage of the *Securities Transfer Act*, due to come into force July 1/07, the standard BCA Table 1 articles relating to share transfer will need to be changed by way of OIC - I am shooting for the same July 1 date. Do you give advance notice to the corporate community in such cases and if so, how much? Do you want to be consulted on the form of the amendments? The article provisions will become more complex in order to provide consistency with the new STA.

Yes, I would want to give advance notice to the corporate community as these Table 1 articles are used by many of our clients. How extensive is the amendment? I will need to update our example of the Table 1 articles on Corporate Online (this will require a computer build) and I will also need to update the example contained within our information packages so, yes, I need some lead time here.

Hope this information helps. I will address your other e-mail later today. Thanks. Valerie.

Thanks for your help -

Michael T. Skinner, B. Comm., LL.B.  
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(250) 387-6591  
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Page 295 to/à Page 296

Withheld pursuant to/removed as

s.12;s.14

## Wong, Gina G FIN:EX

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**From:** Dillon, Brian FIN:EX  
**Sent:** Wednesday, July 4, 2007 12:30 PM  
**To:** Robinson, Andy FIN:EX  
**Cc:** Cain, Joann FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** Hansard Extract

Andy: Here is the extract you asked for. Insurance Act review comments are highlights. Let us know if you need anything further. Brian

Extract

"Official Report of  
DEBATES OF THE LEGISLATIVE ASSEMBLY  
(Hansard)

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THURSDAY, MARCH 29, 2007

Morning Sitting

...

FINANCE STATUTES  
AMENDMENT ACT, 2007

The House in Committee of the Whole (Section B) on Bill 14; S. Hammell in the chair.

The committee met at 11:34 a.m.

On section 1.

**B. Ralston:** This particular section deals with amendments to the Business Corporations Act. The news release attached to the information bulletin says that it's designed to, in part, reduce the regulatory burden on business corporations.

**The time that we have in the Legislature is relatively limited. Last fall there wasn't a fall session. Other representatives in the business community — for example, the Insurance Council — have before the government a request for major amendments to the Insurance Act. There were several Supreme Court of Canada decisions that pointed out some serious flaws in the Insurance Act. Those have been requested for some time and I understand are not slated for legislation until at least sometime in 2008.**

[1135]

In the Canada Steps Up document of the Task Force to Modernize Securities Legislation in Canada, which has a goal to modernize securities legislation in Canada, they talk about the enhancement of the competitiveness of Canada's capital markets. What they do speak of is the discount that's assigned to Canada's capital markets because of the widely recognized weak enforcement of Canada's security laws.

They seek to remedy that, and they speak here — I'm going to read a passage from their report, because it speaks to the progress or lack of progress of this particular piece of legislation, the new British Columbia Securities Act — to the process of reaching a new act which would be put before the Legislature.

According to this document:

"The British Columbia Securities Commission... began a consultation process in 2002 in order to determine the best options for streamlining and simplifying its securities regulatory regime. The BCSC published a series of proposals

[ Page 6601 ]

starting in 2002, engaged in a variety of public consultation activities and eventually published its final proposals in October 2004. The final proposal was scheduled to come into effect on November 15, 2004.

"However, on November 18, 2004, the BCSC" — the Securities Commission — "advised that implementation of the new regime had been delayed. The government of British Columbia reportedly initially delayed implementing the proposal to give the industry more time to prepare for the changes. Since then, citing the progress of, and in order to devote greater attention to the harmonized and streamlined legislation represented by the passport system... in February 2006 the BCSC recommended a further deferral until at least December 31, 2007."

Those are two pieces of important legislation that appear to be far down the government's priority list. Given that time in the Legislature is limited and that legislative priorities are set by cabinet, can the minister advise why these revisions to the Business Corporations Act have bubbled up to the top of the agenda — as opposed to these other, I would submit, equally important if not more important pieces of legislation from substantive communities within the financial services industry?

Hon. C. Taylor: The answer is very straightforward and simple: it's because these pieces are uncomplicated, straightforward and easy to do, and therefore have come up quickly.

I will not comment on the securities regulations. As I said yesterday, that's not my portfolio. That is the Attorney General's.

On the Insurance Act. That has required a lot of consultation process that we went through this fall. We have within the ministry been working with Alberta as well to see if there are ways that we can coordinate the changes that everyone is making. There are a number of provinces looking at their insurance acts. That, again, is now prepared on a White Paper that's going back out into the community to make sure that we're going in a direction that is well understood, well supported.

We're doing it properly, and it takes time when you take a big act that hasn't been touched for some time. These are here today because they are needs that are more straightforward and easier to bring forward quickly.

S. Hawkins: I seek leave to make an introduction.

Leave granted.

Introductions by Members

S. Hawkins: Today in the gallery we have a distinguished delegation from the Czech Republic. The official visit of the committee on economy, agriculture and transport of the Senate of the Czech Republic is led by the hon. Jiri Šneberger, deputy speaker of the Senate of the parliament of the Czech Republic. Accompanying him are Mr. Pavel Vošalík, Ambassador of the Czech Republic to Canada; Mr. Ivan Adamec, chair of the Senate committee on economy, agriculture and transport; Mr. Josef Vaculík, deputy chair of the committee; Mrs. Sona Paukrtová, member of the committee; and Mrs. Ivana Vecerová, secretary of the committee. I ask that all members of this group be given a warm welcome to British Columbia and to this House.

[1140]

Debate Continued

B. Ralston: Well, it seems to me that five years is an inordinate delay in bringing forward a new securities act, particularly when issues of consumer protection are very high on the public agenda and there has been a woeful inaction on the part of the government.

Dealing with the issue of the insurance revisions, I'm advised that the process has been requested to speed up and is near conclusion. But the suggestion it will find its way onto the legislative agenda has fallen somewhat on deaf ears, and it has been deferred yet again, to 2008. So I don't accept what the minister says in

**terms of doing it right. If the minister's goal is only to do the easy things, then it seems to me that work of government might grind to a halt.**

Returning to what the information bulletin says about reducing regulatory burden, the Finance Committee in its 2005 report suggested that one of the ways to reduce the regulatory burden on business corporations might be to remove the tax on legal services. Indeed, the Finance Committee of 2005 made that recommendation. The Attorney General of the day, Mr. Plant, made repeated promises in opposition and never followed through on them during the years of government.

It would seem to me that if the government sought to reduce the regulatory burden on business.... Part of what we're going to deal with in this amendment is creating what are called unlimited liability companies. I expect that they will be incorporated here in British Columbia and that the attendant fees for establishing the company will flow to the province, and presumably some of the legal work and spinoff economic benefits will flow to the province as well. It would seem to me that one of the ways to encourage that would be to consider the recommendation of the Finance Committee in 2005.

Can the minister explain why she's chosen the easy stuff here rather than, perhaps slightly more difficult, the option of considering a change to the provincial sales tax on legal services?

As she may know, that tax is now before the Supreme Court of Canada, being challenged. Sections of the act have been struck down. It's increasingly difficult to comply with, and the regulatory burden to comply with it has been substantially increased. If the government is really interested in reducing regulatory burden — again, I'm reading from their press release — why hasn't the government considered those initiatives as opposed to doing the easy stuff here?

**Hon. C. Taylor:** I know that the member opposite is a lawyer, and I know that he knows we can't comment on cases such as legal services that are before the courts.

[ Page 6602 ]

I understand that he wishes to make a point, but I'm not able to comment on that. I will not, either, comment on the securities regulations, which belong to another minister. I will only comment on what the committee is here to talk about today.

Our Business Corporations Act, which is regarded as one of the most modern in Canada, was brought in just two and a half years ago. It is a living document, and every year we will bring up changes that we see that will benefit and improve the act. This is ongoing good governance. We will continue to do it, and therefore we have before us today a number of issues that we think will improve the act. That's why it's here.

**I would be shocked, in terms of our insurance reviews, if the member opposite or if the opposition as a whole is suggesting that we don't do this proper consultation. I would guarantee that very quickly there would be a very vocal response if we just came forward with legislation, having not completed our proper consultation. So from now on, I will answer questions about this particular act.**

**B. Ralston: Well, the insurance amendments are necessitated by a Supreme Court of Canada decision that is now of some years standing. So I don't accept.... Obviously, some consultation is necessary, but the initiative comes from the Supreme Court of Canada saying that parts of the act just don't work. There are major holes. The industry is very concerned about business practice and their ongoing business and writing policies that attempt to conform to an act that can't be enforced.**

[1145]

**It seems to me to be a major issue for the insurance industry in the province. It has been some years standing. It was certainly open to the government to bring it forward if there were a fall session, or this session. They've been told it's been repeatedly deferred, despite previous promises that it would be brought forward at least by 2007.**

The Chair: Member, on section 1.

B. Ralston: Dealing first with section 1, what this section proposes to do is in the definition of "charter" in the Business Corporations Act. I'm reading from article (a). The definition of charter, "in relation to a corporation, includes the corporation's articles, notice of articles or memorandum, regulations, bylaws or agreement or deed of settlement."

Page 300 to/à Page 301

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s.12

## Wong, Gina G FIN:EX

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**From:** Cain, Joann FIN:EX  
**Sent:** Wednesday, September 5, 2007 4:46 PM  
**To:** FIN FCSP Branch  
**Subject:** FW: Lang Michener LLP - In Brief Fall 2007

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**From:** Lang Michener LLP [mailto:info@langmichener.ca]  
**Sent:** Wednesday, September 5, 2007 6:31 AM  
**To:** Cain, Joann FIN:EX  
**Subject:** Lang Michener LLP - In Brief Fall 2007

To view this email as a web page, go [here](#).

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Page 303 to/à Page 304

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Page 305 to/à Page 307

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s.12

## Wong, Gina G FIN:EX

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**From:** Skinner, Michael FIN:EX  
**Sent:** Monday, September 17, 2007 11:12 AM  
**To:** Anderson, Maryann PAB:EX  
**Cc:** Townshend, Ron B FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** FW: Issue note on BCA

**Importance:** High

Hello, Maryann -

Further to our discussion this morning, I attach an e-mail string from January 07 relating to the preparation of an issue note (contained below as a Word attachment) on *Business Corporation Act* (BCA) amendments that were passed as part of Bill 14 (*Finance Statutes Amendment Act*) in the Spring 07 session. Two OICs will be presented for Cabinet approval on October 17: one brings into force the Bill 14 BCA amendments pertaining to Unlimited Liability Companies (ULCs); the second amends the *Business Corporations Regulation* to set out prescribed requirements referred to in the BCA. Together these OICs will bring into force on October 29 the statutory framework for the creation of ULCs.

Corporate Registry (Registrar Ron Townshend has been copied with this note) intends to issue a notice October 22, using BC Online, to its legal and corporate constituents informing them of the bringing into force of the ULC amendments and the October 29 "go live" date for its ULC corporate registration facility.

As I noted to you in our discussion, this is not likely to be controversial, as two other provinces (Alberta and Nova Scotia) have ULC legislation. Also, BC has approximately 250 ULCs from these two provinces registered extra-provincially here. Nonetheless, it is possible that persons or groups opposed to the facilitation of foreign investment in BC could oppose this initiative; it therefore appears wise to have an appropriate communications plan in place. In this respect, we value your advice and look forward to working together in anticipation of the October notice date.

Please call at your convenience to discuss this further.

Michael T. Skinner, B. Comm., LL.B.  
Policy Analyst  
Financial and Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia  
(250) 387-6591  
Michael.Skinner@gov.bc.ca

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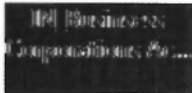
**From:** Cain, Joann FIN:EX  
**Sent:** Wednesday, January 31, 2007 11:07 AM  
**To:** Edwardson, Jamie PAB:EX  
**Cc:** Skinner, Michael FIN:EX  
**Subject:** FW: Issue note on BCA

Hi Jamie - I have tweaked the wording a bit -- also, I have made one new change: earlier in the note I replaced the reference to "limited-liability companies" with "limited companies" because a "Limited Liability Company" (commonly referred to as an LLC) is another one of those special US corporate vehicles that we don't actually have in Canada.

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**From:** Edwardson, Jamie PAB:EX  
**Sent:** Wed, January 31, 2007 9:13 AM  
**To:** Cain, Joann FIN:EX  
**Cc:** Skinner, Michael FIN:EX  
**Subject:** RE: Issue note on BCA

Thanks Joann. Would it be okay to give an example of the disadvantage we're removing, such as potential double-taxation?



Thanks.

Jamie Edwardson  
Public Affairs Officer  
Ministry of Finance  
Government of British Columbia  
Phone: (250) 356-5951

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**From:** Cain, Joann FIN:EX  
**Sent:** Tue, January 30, 2007 5:19 PM  
**To:** Edwardson, Jamie PAB:EX  
**Cc:** Skinner, Michael FIN:EX  
**Subject:** FW: Issue note on BCA

Hi Jamie - here are our comments - just a couple of edits, one for clarification and the other because we dropped one of our amendments back in September.

Thanks,  
*Joann Cain*  
*Director*  
*Financial and Corporate Sector Policy Branch*  
*Ministry of Finance*  
*(250)387-9090*  
*joann.cain@gov.bc.ca*

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**From:** Edwardson, Jamie PAB:EX  
**Sent:** Tue, January 30, 2007 11:36 AM  
**To:** Cain, Joann FIN:EX  
**Cc:** Skinner, Michael FIN:EX  
**Subject:** RE: Issue note on BCA

Hi Joann, I've run this past Robert; he had some minor changes -- mostly rejigging the order of a section -- and asked I start preparing an information bulletin/news release. Please let me know if there are any other changes to make to this issue note, then it can go to Andy.  
Could you just give me a brief overview of the consultations conducted in 2005 -- how they were run, was there a discussion paper, how formal/informal a consultation was it? Just for the back pocket.

<< File: IN\_Businesss Corporations Act - DRAFT.doc >>

Thanks.

Jamie Edwardson  
Public Affairs Officer  
Ministry of Finance  
Government of British Columbia  
Phone: (250) 356-5951

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**From:** Cain, Joann FIN:EX  
**Sent:** Fri, January 19, 2007 4:15 PM  
**To:** Edwardson, Jamie PAB:EX  
**Cc:** Skinner, Michael FIN:EX  
**Subject:** FW: Issue note on BCA

Hi Jamie - here is some wording cribbed from the first reading notes when the BCA was introduced in 2004:

"The *Business Corporations Act* replaced the *Company Act* in 2004 as the comprehensive code for the organization and governance of companies in the province. It contains many cutting-edge features intended to enhance British Columbia's business environment."

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**From:** Edwardson, Jamie PAB:EX  
**Sent:** Fri, January 19, 2007 2:01 PM  
**To:** Cain, Joann FIN:EX  
**Cc:** Skinner, Michael FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** RE: Issue note on BCA

Hi Joann, thanks for the review and changes. I've made a few further tweaks to the response points, trying to streamline them for speaking purposes. The background is unchanged.

One item I'd appreciate help on: I would like an approximately one-sentence summation of the BCA, responding to the question, "What is the Business Corporations Act/What's its purpose?". But it needs to be short, simple and plain language, even if it doesn't completely capture the extent and complexity of the act. The original file had a line that I took out of a previous issue note on the BCA, but I appreciate that it doesn't cut it.

<< File: IN\_Business Corporations Act - DRAFT 2.doc >>

Thanks.

Jamie Edwardson  
Public Affairs Officer  
Ministry of Finance  
Government of British Columbia  
Phone: (250) 356-5951

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**From:** Cain, Joann FIN:EX  
**Sent:** Fri, January 19, 2007 12:44 PM  
**To:** Edwardson, Jamie PAB:EX  
**Cc:** Skinner, Michael FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** Issue note on BCA

Hi Jamie -- We have made quite a few edits -- please take a look. The document you sent below is a redlined version, and the one I am attaching is a clean version.

<< File: ULCissuenote.doc >>

Thanks,  
Joann Cain  
Director  
Financial and Corporate Sector Policy Branch  
Ministry of Finance  
(250)387-9090  
joann.cain@gov.bc.ca

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**From:** Edwardson, Jamie PAB:EX  
**Sent:** Thu, January 18, 2007 2:14 PM  
**To:** Skinner, Michael FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX  
**Subject:** Issue note on BCA

Hi Michael, thanks again for the call this afternoon. As discussed, here is the first draft of the issue note. Under the standard process for these notes, once you, Jill and I are agreed, I advance it for sign-off to my Director, Robert Pauliszyn; Joann Cain; then Andy and finally to the DM and Minister's office--copying everyone along the way.

Once we're more or less settled on the note, I will also draft a paragraph just in case the BCA gets pulled in to a Misc. Bill. I agree it will probably be stand-alone, however, but that paragraph can easily lead an Information Bulletin. I doubt we would issue a full news release.

Please review the attached and make changes as you see fit. I leaned heavily on the legislation summary. The first couple of bullets provide a general statement of the act itself and the proposed changes. This is followed by an explanation of the provisions relating to ULCs and Uncertificated Shares.

Give me a call if you want to discuss.

<< File: IN\_Business Corporations Act - DRAFT.doc >>

Thanks,

Jamie Edwardson  
Public Affairs Officer  
Ministry of Finance  
Government of British Columbia  
Phone: (250) 356-5951

## ADVICE TO MINISTER

<p><b>CONFIDENTIAL ISSUES NOTE</b></p> <p><b>Ministry of Finance</b> <b>Date:</b> <b>Minister Responsible: Hon. Carole Taylor</b></p>	<p><b>Business Corporations Act amendments</b></p>
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### KEY FACTS REGARDING THE ISSUE:

The Business Corporations Act sets out the organization and governance of companies in British Columbia. It was introduced in 2004 to replace the Companies Act and enhance British Columbia's business environment. When first introduced, the act was intended to be updated regularly to keep it current with evolving practices.

Amendments to the Business Corporations Act were introduced on {date} as Bill X. They include:

- A framework to allow the incorporation of unlimited liability companies (ULCs) in British Columbia;
- Allowing BC companies to issue uncertificated securities (as opposed to a paper certificates) – this complements provisions of the proposed *Securities Transfer Act*.
- Other minor, technical amendments that allow directors to deal effectively with vacancies on a company's board, reduce the number of records that must be time and date-stamped, and clarify how a numbered company may display its name.

#### Unlimited Liability Companies

Unlimited liability companies are a tax planning and corporate reorganization tool that will help attract new incorporations and investment to B.C. Unlimited liability companies, in contrast to limited-liability companies, are corporations whose shareholders are liable for corporate debts. The ability to incorporate unlimited liability companies has been requested by the legal community and others for many years and was the subject of Ministry of Finance consultations in 2005.

The introduction of unlimited liability companies will help make B.C. more attractive to investment by providing a flexible, tax-effective structure. Although they are treated like any other corporation under Canadian tax rules, there are advantages for US tax purposes because tax credits, losses and other tax benefits may be flowed through the company to US shareholders. Moreover, they are one of several "flow-through" entities commonly used to avoid double taxation under the US tax rules, which, unlike the Canadian system, do not automatically ensure that corporate and individual tax is "integrated" to ensure that the same income is not taxed twice.

Both Nova Scotia and Alberta have similar legislation permitting unlimited liability companies. British Columbia's provisions are more attractive than either competing jurisdiction, because they combine the less onerous shareholder liability of the Nova Scotia model with the more modern and flexible provisions of the *Business Corporations Act*.

#### Uncertificated securities

Further amendments would allow BC companies to issue uncertificated (paperless) securities, as opposed to paper share certificates. These provisions complement the *Securities Transfer Act*, which contains specific rules for the transfer of both uncertificated and certificated securities. Both Alberta and Ontario have passed securities transfer acts, and Ontario has made amendments to allow uncertificated securities.

#### Other amendments

Other technical amendments address issues raised by an advisory committee (led by lawyer John Lundell), and are intended to:

- Add flexibility and reduce unnecessary regulation by:
  - allowing numbered companies to omit any preceding zero in their name;
  - allowing a quorum-less board of directors to call a shareholders' meeting to elect replacements;
  - streamlining the list of corporate documents that must be date-stamped.
- Provide greater certainty by clarifying that
  - ~~incorporations are valid, even if certain procedural requirements are unmet;~~
  - a company can have different classes of shares with or without special restrictions;
  - remedies for denial of access apply to dissolved companies' records;
  - 12:01 a.m. is "the beginning of the day" for the purpose of dating registry procedures;
  - capital reductions, if permitted, can be effected in any manner.

## **ADVICE AND RECOMMENDED RESPONSE:**

- ◆ **The Business Corporations Act sets out the organization and governance of companies in British Columbia. It was introduced in 2004 to replace the outdated Companies Act and enhance British Columbia's business environment.**
- ◆ **The Province is committed to keeping the Business Corporations Act current and innovative. These amendments will attract investment, refine corporate governance, reduce regulatory burden, and clarify the legislation.**

### **Unlimited Liability Companies**

- ◆ **Providing unlimited liability companies offers a corporate structure that will attract investment by U.S. business to in British Columbia.**
- ◆ **Unlimited liability companies are treated like any other corporation under Canadian tax rules. However, the structure provides removes disadvantages for US shareholders who wish to invest in Canadian assets under US tax laws, such as by helping to avoid potential double-taxation under US tax laws.**
- ◆ **Unlimited liability companies are not new, as Nova Scotia has offered them for many years and Alberta introduced similar legislation in 2005. By allowing their formation in BC, the Province is reducing business costs and delays, keeping BC competitive, and encouraging new investment in British Columbia.**
- ◆ **The legal and business communities have been asking for this change for several years. Consultations held by the Ministry of Finance in 2005 indicated strong support for the proposal.**

### **Uncertificated shares**

- ◆ **Businesses rely increasingly on electronic records to streamline their systems and records. These amendments let B.C. businesses issue paperless shares, helping B.C. companies stay competitive and efficient.**
- ◆ **This change matches provisions in the proposed Securities Transfer Act, which is set**



## ADVICE TO MINISTER

to be introduced in spring 2007.

Communications Contact:

Program Area Contact:

File Created:

File Updated:

File Location:

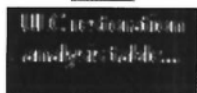
Program Area	Comm. Director	Deputy	Minister's Office

Draft

## Wong, Gina G FIN:EX

---

**From:** Skinner, Michael FIN:EX  
**Sent:** Thursday, October 4, 2007 5:42 PM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** ULC restoration analysis



Tona and Jill -

Herewith my attempt at "solving" the ULC restoration question, which, in view of the absence of precedents elsewhere, seems almost metaphysical in nature. The note that precedes the table is in landscape format for compatibility with the table, so the two could be presented as one document.

Michael T. Skinner, B. Comm., LL.B.  
Policy Analyst  
Financial and Corporate Sector Policy Branch  
Ministry of Finance, Province of British Columbia  
(250) 387-6591  
[Michael.Skinner@gov.bc.ca](mailto:Michael.Skinner@gov.bc.ca)

## ULC restoration under the Business Corporations Act (BCA)

**Background:** Amendments to the BCA set out in Bill 14-2007, the *Financial Statutes Amendment Act*, provide for a structure to enable the creation of Unlimited Liability Companies (ULCs), and will come into force by OIC November 29, 2007. However, the amendments that cover the creation, naming, amalgamation or continuance of ULCs do not specifically address the issue of restoration of a ULC that has, for whatever reason, been dissolved. Existing restoration provisions in the BCA are problematic as s. 364(2)(a) states that a company that is fully restored (as opposed to limited restoration under s. 361) is restored with the Notice of Articles it had immediately before dissolution – thus the shareholder liability statement would be revived. This introduces a significant question concerning fairness to shareholders, as the ULC framework is predicated on clear notice and voluntary assumption of unlimited liability by those choosing to become shareholders. If the ULC is a numbered company, restoration also introduces an inconsistency with the existing naming rule in s. 366(1)(b) that requires the words “B.C. Ltd.” to follow the incorporation number of the company.

**Issue:** How should restoration of a ULC be addressed in the BCA, if at all?

**Discussion:** The other two jurisdictions in Canada that have ULC legislation – Nova Scotia and Alberta – make no provisions for restoration that address ULCs specifically. Therefore one is left to speculate as to whether ULCs cannot be restored - a surprising conclusion since, apart from the shareholder liability framework, ULCs are companies like any other. The alternative interpretation is that they can be restored under the existing restoration provisions of the ABCA or the NSCA, which suggests that revival of shareholder liability was, from a policy perspective, not considered an obstacle to restoration by the drafters of these Acts. However, neither Alberta nor NS have BC's Notice of Articles framework. Alberta's revival provisions (ABCA, s. 208 and 210) provide for revival both by application to the Registrar (where the Registrar may impose “reasonable terms” on the revival) and by application to court, where the court has broad power to provide such directions “the Court thinks fit.” Section 136(4) of the NSCA requires a court application to restore to the register the name of a struck-off company.

Discussion of the advantages and use of ULCs by legal commentators has not made any reference to the restoration question. Lang Michener's September 2007 paper on ULCs, which includes a table comparing BC, AB and NS under headings such as Liability of Shareholders, Director Residency Requirement, Amalgamation, etc., makes no reference to restoration issues. Nor do similar articles (w/comparison tables) by Davis & Co., Lawson Lundell (BC), Bennett Jones (Calgary) or Patterson Palmer or Stewart McElvey (NS). Neither does the Ontario Bar Association's relatively comprehensive submission to the Ontario government re ULC legislation, in response to the April 2006 (Ontario Ministry of Government Services) Business Law Modernization Consultation – which referred to ULCs and the elements of a statutory ULC framework, but made no reference to the restoration issue.

The attached analysis table of the options for restoration has been sent to John Lundell, who has forwarded it to members of the BCA advisory committee for comment. We are waiting for a response. In the absence of guidance from the legal community – and perhaps the best comments might come from counsel for U.S. shareholders for whom the restoration issue may have practical consequences – the chart attempts to illustrate the likely consequences of a restoration scenario under various possible requirements. What appears clear is that the impact of restoration on various parties will vary with the ULC's particular circumstances: number of shareholders, assets held by the ULC (if any), purpose of restoration, "related person" initiating restoration process, etc.

The literature (law firm commentaries referred to above) suggests that ULCs typically have few shareholders: under U.S. tax law, a ULC with one shareholder is regarded as a "branch office" of the shareholder, and a ULC with one more than one shareholder is treated as a partnership. The fact that ULCs typically have few shareholders, combined with the inherent complexity of the ULC structure – in which the ULC is typically just one part of a larger corporate framework of holding companies and parent corporations – suggests that dissolution is not likely to happen due to inadvertence or neglect by the directors or legal counsel responsible for the ULC. Nor is it likely that ULCs will have large numbers of shareholders who are difficult to contact or coordinate; what is more likely is that dissolution will be a deliberate act undertaken as part of a corporate strategy with the active involvement of legal counsel.

What is more difficult to postulate is the reason for which restoration of a ULC may be sought, and the various interests of the affected parties. For this reason the safest course of action may be to require all ULC restorations to be made by way of court order, or alternatively by consent order with an affidavit attesting to the consent of all shareholders.

s.13

Page 318 to/à Page 320

Withheld pursuant to/removed as

s.14;s.13

## Wong, Gina G FIN:EX

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**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, October 22, 2007 11:46 AM  
**To:** Anderson, Maryann PAB:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX; Townshend, Ron B FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Hi Maryann,

Please see changes provided by Tona and Jill in the attached document. I agree with these changes.

-- Mary

---

**From:** Sinkwich, Jill D FIN:EX  
**Sent:** Monday, October 22, 2007 11:35 AM  
**To:** Tkachyk, Mary FIN:EX  
**Cc:** Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Mary - here are our changes.

---

**From:** Hetherington, Tona M FIN:EX  
**Sent:** Monday, October 22, 2007 11:06 AM  
**To:** 'Mary Tkachyk'  
**Cc:** Sinkwich, Jill D FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, October 22, 2007 10:52 AM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Jill/Tona,

Please have a look at this and let me know what you think.

*Mary Tkachyk*

Strategic & Corporate Policy Division  
Ministry of Finance  
phone: (250) 387-1248  
email: [Mary.Tkachyk@gov.bc.ca](mailto:Mary.Tkachyk@gov.bc.ca)

---

**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, October 22, 2007 10:48 AM  
**To:** Townshend, Ron B FIN:EX; Tkachyk, Mary FIN:EX  
**Subject:** in\_ULCs\_DRAFT2.doc

Good morning,

Draft IN attached on Unlimited Liability Companies being brought into force on October 29. Mary, info on ULC's will be posted on BC Online this afternoon.

Please advise on any changes.



Thanks so much,

Maryann

**Maryann Anderson**  
Public Affairs Officer  
Communications, Ministry of Finance  
p: 250.356.5951 f: 250.356.2822

Page 323

Withheld pursuant to/removed as

s.13



## Wong, Gina G FIN:EX

---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Tuesday, October 23, 2007 1:40 PM  
**To:** Anderson, Maryann PAB:EX  
**Cc:** Hetherington, Tona M FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Hi Maryann,

Please see attached changes. We have had some discussion about this and have come up with wording we are reasonably comfortable with from a tax perspective.

*Mary Tkachyk*

Strategic & Corporate Policy Division  
Ministry of Finance  
phone: (250) 387-1248  
email: [Mary.Tkachyk@gov.bc.ca](mailto:Mary.Tkachyk@gov.bc.ca)

---

**From:** Hetherington, Tona M FIN:EX  
**Sent:** Tuesday, October 23, 2007 11:10 AM  
**To:** Tkachyk, Mary FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

I only made the one clarification (to companies) but otherwise did not change it as I do not understand the tax aspects. I agreed with Jill's questions but, as Joann reviewed the draft and Jill's questions, I will go with Joann's edits.

---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Tuesday, October 23, 2007 10:59 AM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Have a look and if you're ok, we'll send it on to Maryann.

---

**From:** Cain, Joann FIN:EX  
**Sent:** Tuesday, October 23, 2007 10:58 AM  
**To:** Tkachyk, Mary FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

See my small edits in the document

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**From:** Tkachyk, Mary FIN:EX  
**Sent:** Tuesday, October 23, 2007 9:34 AM  
**To:** Cain, Joann FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Hi Joann,

Would you mind having a look at this. We have tried to incorporate your suggested wording. Thanks.

*Mary Tkachyk*

Strategic & Corporate Policy Division  
Ministry of Finance  
phone: (250) 387-1248  
email: [Mary.Tkachyk@gov.bc.ca](mailto:Mary.Tkachyk@gov.bc.ca)

---

**From:** Sinkwich, Jill D FIN:EX  
**Sent:** Tuesday, October 23, 2007 9:26 AM  
**To:** Tkachyk, Mary FIN:EX  
**Cc:** Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Changes made. However, I still have some concerns -- I don't know if the double taxation problem indeed relates, as is asserted, to "foreign income from Canada". Nor am I entirely clear that the flow through benefits are different from the double tax problem (i.e. is it "As well"?). I would ask Joann to read it over again.

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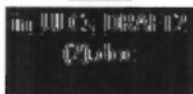
**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, October 22, 2007 2:49 PM  
**To:** Tkachyk, Mary FIN:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX; Townshend, Ron B FIN:EX  
**Subject:** RE: in\_ULCs\_DRAFT2.doc

Thanks.

I do need a little more detail on the specific benefits to U.S. tax investors in case we need to provide examples to media of why this would be advantageous.

I've added some wording for consideration.

Thanks,  
Maryann



---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, October 22, 2007 11:46 AM  
**To:** Anderson, Maryann PAB:EX  
**Cc:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX; Townshend, Ron B FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Hi Maryann,

Please see changes provided by Tona and Jill in the attached document. I agree with these changes.

-- Mary

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**To:** Tkachyk, Mary FIN:EX  
**Cc:** Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

Mary - here are our changes.

---

**From:** Hetherington, Tona M FIN:EX  
**Sent:** Monday, October 22, 2007 11:06 AM  
**To:** 'Mary Tkachyk'  
**Cc:** Sinkwich, Jill D FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

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**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, October 22, 2007 10:52 AM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs\_DRAFT2.doc

---

Jill/Tona,

Please have a look at this and let me know what you think.

**Mary Tkachyk**

Strategic & Corporate Policy Division

Ministry of Finance

phone: (250) 387-1248

email: [Mary.Tkachyk@gov.bc.ca](mailto:Mary.Tkachyk@gov.bc.ca)

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**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, October 22, 2007 10:48 AM  
**To:** Townshend, Ron B FIN:EX; Tkachyk, Mary FIN:EX  
**Subject:** in\_ULCs\_DRAFT2.doc

Good morning,

Draft IN attached on Unlimited Liability Companies being brought into force on October 29. Mary, info on ULC's will be posted on BC Online this afternoon.

Please advise on any changes.

<< File: in\_ULCs\_DRAFT2.doc >>

Thanks so much,

Maryann

**Maryann Anderson**

Public Affairs Officer

Communications, Ministry of Finance

p: 250.356.5951 f: 250.356.2822

Page 327

Withheld pursuant to/removed as

s.13

Program Area	Comm. Director	Deputy	Minister's Office

## Wong, Gina G FIN:EX

---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, October 29, 2007 12:14 PM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX  
**Subject:** FW: in\_ULCs

fyi

---

**From:** Robinson, Andy FIN:EX  
**Sent:** Monday, October 29, 2007 11:59 AM  
**To:** Anderson, Maryann PAB:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** FW: in\_ULCs

Approved with changes.

Andy

---

**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, October 29, 2007 9:00 AM  
**To:** Robinson, Andy FIN:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** FW: in\_ULCs

Hi Andy,

Have you had a chance to review this IN?

Thanks,  
Maryann

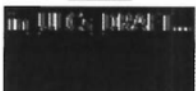
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**From:** Anderson, Maryann PAB:EX  
**Sent:** Tuesday, October 23, 2007 3:31 PM  
**To:** Robinson, Andy FIN:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** in\_ULCs

Hi Andy,

For review and approval. IN on Unlimited Liability Corporations, as amendments are coming into force on October 29th.

Mary has reviewed and approved.



Page 330

Withheld pursuant to/removed as

s.13

## Wong, Gina G FIN:EX

---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, December 3, 2007 3:08 PM  
**To:** Sinkwich, Jill D FIN:EX; Hetherington, Tona M FIN:EX; Adam, Valerie K FIN:EX  
**Cc:** Cain, Joann FIN:EX  
**Subject:** FW: in\_ULC-CanadaUS Tax Treaty Implications.doc

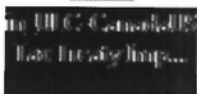
fyi

---

**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, December 3, 2007 2:43 PM  
**To:** Tkachyk, Mary FIN:EX  
**Subject:** RE: in\_ULC-CanadaUS Tax Treaty Implications.doc

Hi Mary,

Yes it was finalized. Final is attached.



---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, December 3, 2007 2:22 PM  
**To:** Anderson, Maryann PAB:EX  
**Subject:** FW: in\_ULC-CanadaUS Tax Treaty Implications.doc

Hi Maryann,

I lost track of this as I was away that day. Did the IN get finalized? Thanks.

-- Mary

---

**From:** Flanagan, Paul FIN:EX  
**Sent:** Tuesday, November 27, 2007 2:18 PM  
**To:** Anderson, Maryann PAB:EX; Armstrong, Glen E FIN:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** RE: in\_ULC-CanadaUS Tax Treaty Implications.doc

<< File: in\_ULC-CanadaUS Tax Treaty Implications (2).doc >>

---

**From:** Anderson, Maryann PAB:EX  
**Sent:** November 27, 2007 2:05 PM  
**To:** Armstrong, Glen E FIN:EX; Flanagan, Paul FIN:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** FW: in\_ULC-CanadaUS Tax Treaty Implications.doc

Have you had a chance to review this?

Thanks,  
Maryann



**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, November 26, 2007 3:20 PM  
**To:** Flanagan, Paul FIN:EX; Armstrong, Glen E FIN:EX; Tkachyk, Mary FIN:EX  
**Subject:** in\_ULC-CanadaUS Tax Treaty Implications.doc

An IN based on our discussions regarding what implications the new provisions of the canada/us Tax Treaty will have on ULC.s. Please review and advise if you are okay.

We can update the note after you get more information from the feds.

<< File: in\_ULC-CanadaUS Tax Treaty Implications.doc >>

Thanks,  
Maryann

Page 333

Withheld pursuant to/removed as

s.13

## Wong, Gina G FIN:EX

---

**From:** Tkachyk, Mary FIN:EX  
**Sent:** Thursday, December 27, 2007 1:08 PM  
**To:** Townshend, Ron B FIN:EX  
**Cc:** Adam, Valerie K FIN:EX; Sinkwich, Jill D FIN:EX  
**Subject:** FW: in\_ULC-CanadaUS Tax Treaty Implications.doc

Ron, as promised fyi, here is the IN PAB prepared primarily with Tax Policy Branch.

-- Mary

---

**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, December 3, 2007 2:43 PM  
**To:** Tkachyk, Mary FIN:EX  
**Subject:** RE: in\_ULC-CanadaUS Tax Treaty Implications.doc

Hi Mary,

Yes it was finalized. Final is attached.



in\_ULC-CanadaUS  
Tax Treaty Imp...

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**From:** Tkachyk, Mary FIN:EX  
**Sent:** Monday, December 3, 2007 2:22 PM  
**To:** Anderson, Maryann PAB:EX  
**Subject:** FW: in\_ULC-CanadaUS Tax Treaty Implications.doc

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**Sent:** Tuesday, November 27, 2007 2:18 PM  
**To:** Anderson, Maryann PAB:EX; Armstrong, Glen E FIN:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** RE: in\_ULC-CanadaUS Tax Treaty Implications.doc

<< File: in\_ULC-CanadaUS Tax Treaty Implications (2).doc >>

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**From:** Anderson, Maryann PAB:EX  
**Sent:** November 27, 2007 2:05 PM  
**To:** Armstrong, Glen E FIN:EX; Flanagan, Paul FIN:EX  
**Cc:** Tkachyk, Mary FIN:EX  
**Subject:** FW: in\_ULC-CanadaUS Tax Treaty Implications.doc

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Maryann

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**From:** Anderson, Maryann PAB:EX  
**Sent:** Monday, November 26, 2007 3:20 PM  
**To:** Flanagan, Paul FIN:EX; Armstrong, Glen E FIN:EX; Tkachyk, Mary FIN:EX  
**Subject:** in\_ULC-CanadaUS Tax Treaty Implications.doc

An IN based on our discussions regarding what implications the new provisions of the canada/us Tax Treaty will have on ULC.s. Please review and advise if you are okay.

We can update the note after you get more information from the feds.

<< File: in\_ULC-CanadaUS Tax Treaty Implications.doc >>

Thanks,  
Maryann

## Alberta: Business Corporations Act

### Continuance of extra-provincial corporation as ulc

15.5(1) Section 188 applies to an extra-provincial corporation continued as an unlimited liability corporation under this Act, and in addition,

- (a) the property of the extra-provincial corporation continues to be the property of the unlimited liability corporation,
- (b) if prior to the date shown on the certificate of continuance the shareholders of the extra-provincial corporation had **unlimited liability** for any liability, act or default of the extra-provincial corporation, the unlimited liability corporation and the shareholders of the unlimited liability corporation continue to be liable without limit for any liability, act or default of the extra-provincial corporation,
- (c) if prior to the date shown on the certificate of continuance the shareholders of the extra-provincial corporation **were not, as shareholders, liable** for any liability, act or default of the extra-provincial corporation,
  - (i) the unlimited liability corporation continues to be liable for the obligations of the extra-provincial corporation, and
  - (ii) the shareholders of the unlimited liability corporation become liable without limit for any liability, act or default of the extra-provincial corporation **that existed as of the date shown on the certificate of continuance** and are liable without limit for any liability, act or default of the unlimited liability corporation **on and from the date shown** on the certificate of continuance,

Conversion to ulcorp: (a) the shareholders of the limited corporation as it existed prior to the date shown on the certificate of amendment

- (i) become liable for any liability, act or default of the limited corporation that existed as of the date shown on the certificate of amendment, and
- (ii) are liable for any liability, act or default of the unlimited liability corporation on and from the date shown on the certificate of amendment,

### Amalgamation of limited with unlimited liability company to form ulcorp:

(2) Section 186(a) to (c) and (g) apply to an amalgamation under this Part, and in addition, if a limited corporation amalgamates with an unlimited liability corporation and the resulting corporation is an unlimited liability corporation,

- (a) the shareholders of the amalgamated unlimited liability corporation are liable for any liability, act or default of the amalgamated unlimited liability corporation, whether it arises before or after the date shown on the certificate of amalgamation,

(d) an existing cause of action, claim or liability to prosecution of the extra-provincial corporation includes the unlimited liability corporation and the shareholders of the unlimited liability corporation, (b) an existing cause of action, claim or liability to prosecution includes the shareholders of the unlimited liability corporation, (b) an existing cause of action, claim or liability to prosecution pertaining to the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation includes the shareholders of the amalgamated unlimited liability corporation,

(e) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial corporation may continue to be prosecuted by or against the unlimited liability corporation or the shareholders of the unlimited liability corporation, (c) a civil, criminal or administrative action or proceeding pending by or against the limited corporation as of the date shown on the certificate of amendment may continue to be prosecuted by or against the unlimited liability corporation or by or against the shareholders of the unlimited liability corporation, and (c) a civil, criminal or administrative action or proceeding pending by or against the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation may continue to be prosecuted by or against the amalgamated unlimited liability corporation or by or against the shareholders of the amalgamated unlimited liability corporation, and

(f) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial corporation may be enforced against or by the unlimited liability corporation or the shareholders of the unlimited liability corporation. (d) a conviction against, or ruling, order or judgment in favour of or against, the limited corporation as of the date shown on the certificate of amendment, may be enforced by or against the unlimited liability corporation or by or against the shareholders of the unlimited liability corporation. (d) a conviction against, or ruling, order or judgment in favour of or against, the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation may be enforced by or against the amalgamated unlimited liability corporation or by or against the shareholders of the amalgamated unlimited liability corporation.

### **Continuation of foreign unlimited liability corp as limited**

**(2)** When an extra-provincial corporation that was incorporated as an unlimited liability corporation is continued as a limited corporation,

(a) the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance continue to be liable without limit for any liability, act or default of the extra-provincial corporation that existed as of the date shown on the certificate of continuance,

**Conversion of unlimited liability company to limited:** (a) the shareholders of the unlimited liability corporation as it existed prior to the amendment or amalgamation continue to be liable without limit for any liability, act or default of the unlimited liability corporation that existed as of the date shown on the certificate of amendment or amalgamation,

(b) an existing cause of action, claim or liability to prosecution is unaffected, (b) an existing cause of action, claim or liability to prosecution is unaffected,

(c) a civil, criminal or administrative action pending by or against the extra-provincial corporation may continue to be prosecuted by or against the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance or by or against the limited corporation, and (c)

a civil, criminal or administrative action or proceeding pending by or against the unlimited liability corporation may continue to be prosecuted by or against the shareholders of the unlimited liability corporation as it existed prior to the amendment or amalgamation by or against the limited corporation, and

(d) a conviction against, or ruling, order or judgment in favour of or against, the unlimited liability corporation may be enforced against or by the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance or against or by the limited corporation. (d) a conviction against, or ruling, order or judgment in favour of or against, the unlimited liability corporation may be enforced by or against the shareholders of the unlimited liability corporation as it existed prior to the amendment, amalgamation or continuance or by or against the limited corporation.

## **Alberta: Business Corporations Act**

---

(1) (kk) "unlimited liability corporation" means a corporation whose shareholders have unlimited liability for any liability, act or default of the corporation, as set out in section 15.2.

### **Application**

1.1 Subject to Part 2.1, this Act applies to unlimited liability corporations.

### **Articles of incorporation**

**6(1)** Subject to section 15.3, articles of incorporation shall be in the prescribed form and shall set out, in respect of the proposed corporation,

- (a) the name of the corporation,
- (b) the classes and any maximum number of shares that the corporation is authorized to issue, and
  - (i) if there are 2 or more classes of shares, the special rights, privileges, restrictions and conditions attaching to each class of shares, and
  - (ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of each series, and the rights, privileges, restrictions and conditions attaching to the shares of each series,

### **Corporate name**

**10(1)** Subject to section 15.4(1), the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be the last word of the name of every corporation, and a corporation may use and may be legally designated by either the full or the abbreviated form.

**(3)** Subject to section 15.4(2), no person other than a body corporate shall carry on business within Alberta under any name or title that contains the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." or the words "Professional Corporation".

**(4)** A person carrying on business in contravention of subsection (3) or section 15.4(2) is guilty of an offence and liable to a fine of not more than \$5000.

**(10)** Where a corporation carries on business or identifies itself by a name other than its corporate name, the name shall not contain a word referred to in subsection (3) or section 15.4(2).



## **Part 2.1**

### **Special Rules Respecting Unlimited Liability Corporations**

#### **Definition**

15.1 For the purposes of this Part, "limited corporation" means a corporation whose shareholders are not, as shareholders, liable for any liability, act or default of the corporation except under section 38(4), 146(7) or 227(4).

#### **Liability**

15.2(1) The liability of each of the shareholders of a corporation incorporated under this Act as an unlimited liability corporation for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.

(2) Notwithstanding subsection (1), but subject to any immunity from liability otherwise available on pleading the *Limitations Act* as a defence, a former shareholder of an unlimited liability corporation is not liable for any liability, act or default of the unlimited liability corporation unless an action to enforce a claim arising out of that liability, act or default is brought within 2 years from the date on which the former shareholder last ceased to be a shareholder of the unlimited liability corporation.

(3) A former shareholder of an unlimited liability corporation is not liable for any liability, act or default of the unlimited liability corporation that did not exist on or prior to the date on which the former shareholder last ceased to be a shareholder of the unlimited liability corporation.

#### **Articles of incorporation, etc.**

15.3 In addition to meeting the requirements of section 6, the articles of incorporation, amalgamation, amendment, continuance or conversion of an unlimited liability corporation shall contain an express statement that the liability of each of the shareholders of the unlimited liability corporation for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.

#### **Corporate name**

15.4(1) The name of every unlimited liability corporation shall end with the words "Unlimited Liability Corporation" or the abbreviation "ULC", and an unlimited liability corporation may use and may be legally designated by either the full or the abbreviated form.

(2) No person other than a body corporate that is an unlimited liability corporation shall carry on business within Alberta under any name or title that contains the words "Unlimited Liability Corporation" or "ULC".

## **Continuance of extra-provincial corporation**

**15.5(1)** Section 188 applies to an extra-provincial corporation continued as an unlimited liability corporation under this Act, and in addition,

(a) the property of the extra-provincial corporation continues to be the property of the unlimited liability corporation,

(b) if prior to the date shown on the certificate of continuance the shareholders of the extra-provincial corporation had unlimited liability for any liability, act or default of the extra-provincial corporation, the unlimited liability corporation and the shareholders of the unlimited liability corporation continue to be liable without limit for any liability, act or default of the extra-provincial corporation,

(c) if prior to the date shown on the certificate of continuance the shareholders of the extra-provincial corporation were not, as shareholders, liable for any liability, act or default of the extra-provincial corporation,

(i) the unlimited liability corporation continues to be liable for the obligations of the extra-provincial corporation, and

(ii) the shareholders of the unlimited liability corporation become liable without limit for any liability, act or default of the extra-provincial corporation that existed as of the date shown on the certificate of continuance and are liable without limit for any liability, act or default of the unlimited liability corporation on and from the date shown on the certificate of continuance,

(d) an existing cause of action, claim or liability to prosecution of the extra-provincial corporation includes the unlimited liability corporation and the shareholders of the unlimited liability corporation,

(e) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial corporation may continue to be prosecuted by or against the unlimited liability corporation or the shareholders of the unlimited liability corporation,

(f) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial corporation may be enforced against or by the unlimited liability corporation or the shareholders of the unlimited liability corporation.

**(2)** When an extra-provincial corporation that was incorporated as an unlimited liability corporation is continued as a limited corporation,

(a) the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance continue to be liable without limit for any liability, act or default of the extra-provincial corporation that existed as of the date shown on the certificate of continuance,

(b) an existing cause of action, claim or liability to prosecution is unaffected,

(c) a civil, criminal or administrative action pending by or against the extra-provincial corporation may continue to be prosecuted by or against the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance or by or against the limited corporation, and

(d) a conviction against, or ruling, order or judgment in favour of or against, the unlimited liability corporation may be enforced against or by the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance or against or by the limited corporation.

**(3)** Section 188(2) to (6) and (8) to (12) apply to an application under this section.

### **Conversion from unlimited liability corporation to limited corporation**

**15.6(1)** Sections 173 and 186(c) to (f) apply to an unlimited liability corporation that is converted to a limited corporation by amendment of its articles or by amalgamation, and in addition

(a) the shareholders of the unlimited liability corporation as it existed prior to the amendment or amalgamation continue to be liable without limit for any liability, act or default of the unlimited liability corporation that existed as of the date shown on the certificate of amendment or amalgamation,

(b) an existing cause of action, claim or liability to prosecution is unaffected,

(c) a civil, criminal or administrative action or proceeding pending by or against the unlimited liability corporation may continue to be prosecuted by or against the shareholders of the unlimited liability corporation as it existed prior to the amendment or amalgamation by or against the limited corporation, and

(d) a conviction against, or ruling, order or judgment in favour of or against, the unlimited liability corporation may be enforced by or against the shareholders of the unlimited liability corporation as it existed prior to the amendment, amalgamation or continuance or by or against the limited corporation.

**(2)** Section 186(a) to (c) and (g) apply to an amalgamation under this Part, and in addition, if a limited corporation amalgamates with an unlimited liability corporation and the resulting corporation is an unlimited liability corporation,

(a) the shareholders of the amalgamated unlimited liability corporation are liable for any liability, act or default of the amalgamated unlimited liability corporation, whether it arises before or after the date shown on the certificate of amalgamation,

(b) an existing cause of action, claim or liability to prosecution pertaining to the amalgamating unlimited liability corporation or the amalgamating limited

corporation as it existed prior to amalgamation includes the shareholders of the amalgamated unlimited liability corporation,

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(c) a civil, criminal or administrative action or proceeding pending by or against the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation may continue to be prosecuted by or against the amalgamated unlimited liability corporation or by or against the shareholders of the amalgamated unlimited liability corporation, and

(d) a conviction against, or ruling, order or judgment in favour of or against, the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation may be enforced by or against the amalgamated unlimited liability corporation or by or against the shareholders of the amalgamated unlimited liability corporation.

**(3)** If the articles of a limited corporation are amended to convert it to an unlimited liability corporation,

(a) the shareholders of the limited corporation as it existed prior to the date shown on the certificate of amendment

(i) become liable for any liability, act or default of the limited corporation that existed as of the date shown on the certificate of amendment, and

(ii) are liable for any liability, act or default of the unlimited liability corporation on and from the date shown on the certificate of amendment,

(b) an existing cause of action, claim or liability to prosecution includes the shareholders of the unlimited liability corporation,

(c) a civil, criminal or administrative action or proceeding pending by or against the limited corporation as of the date shown on the certificate of amendment may continue to be prosecuted by or against the unlimited liability corporation or by or against the shareholders of the unlimited liability corporation, and

(d) a conviction against, or ruling, order or judgment in favour of or against, the limited corporation as of the date shown on the certificate of amendment, may be enforced by or against the unlimited liability corporation or by or against the shareholders of the unlimited liability corporation.

### **Continuation of actions after dissolution**

15.7 Section 227 applies to a body corporate that before its dissolution was an unlimited liability corporation, and in addition

(a) the liability of the shareholders for obligations of the unlimited liability corporation arising from actions and proceedings commenced by or against it before its dissolution or within 2 years after its dissolution is unlimited, and

(b) any shareholder, including a former shareholder who last ceased to be a shareholder within 2 years prior to the date of dissolution, may be held responsible for the full amount of any claim against the unlimited liability corporation that originated before dissolution, regardless of the amount, if any, received by the shareholder on the distribution of the corporation's property at dissolution.

### **Names of unlisted shareholders**

15.8 The listed shareholders of an unlimited liability corporation shall provide to the Registrar on request the names and addresses of all unlisted shareholders of the unlimited liability corporation.

### **Warning on certificate**

15.9(1) An unlimited liability corporation must ensure that each share certificate issued by it displays in a prominent position on the face of the certificate the information that the liability of an owner of the share or shares represented by the certificate for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.

(2) The liability of a shareholder of an unlimited liability corporation is unaffected by any failure of the unlimited liability corporation to comply with subsection (1).

### **Shareholder immunity**

46(1) The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under section 38(4), 146(7) or 227(4) or Part 2.1.

(2) Subject to section 48(8), the articles may provide that the corporation has a lien on a share registered in the name of a shareholder or the shareholder's legal representative for a debt of that shareholder to the corporation, including an amount unpaid in respect of a share issued by a body corporate on the date that it was continued under this Act.

(3) A corporation may enforce a lien referred to in subsection (2) in accordance with its bylaws.

### **Amendment of articles**

173(1) Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to

(a) change its name, subject to section 12,

(b) add, change or remove any restriction on the business or businesses that the corporation may carry on,

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(c) change any maximum number of shares that the corporation is authorized to issue,

(d) create new classes of shares,

(e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued,

(f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,

(g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,

(h) cancel a class or series of shares where there are no issued or outstanding shares of that class or series,

(i) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,

(j) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series,

(k) revoke, diminish or enlarge any authority conferred under clauses (i) and (j),

(l) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 107 and 112,

(m) subject to section 48(8), add, change or remove restrictions on the transfer of shares,

(m.1) add or remove an express statement establishing the unlimited liability of shareholders as set out in section 15.2, or

(n) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

### **Effect of certificate of amalgamation**

186 Subject to section 15.6, on the date shown in a certificate of amalgamation

- (a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective,
- (b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation,
- (c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation,
- (d) an existing cause of action, claim or liability to prosecution is unaffected,
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation,
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation, and
- (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

#### **Continuation of actions after dissolution**

**227(1)** In this section, "shareholder" includes the legal representatives of a shareholder.

**(2)** Subject to section 15.7, notwithstanding the dissolution of a body corporate under this Act,

- (a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved,
- (b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within 2 years after its dissolution as if the body corporate had not been dissolved, and
- (c) any property that would have been available to satisfy any judgment or order if the body corporate had not been dissolved remains available for that purpose.

**(3)** Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 106 or 113.



(4) Notwithstanding the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed in the liquidation is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on the distribution, and an action to enforce that liability may be brought within 2 years after the date of the dissolution of the body corporate.

(5) The Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to any conditions the Court thinks fit and, if the plaintiff establishes the plaintiff's claim, the Court may refer the proceedings to a referee or other officer of the Court who may

(a) add as a party to the proceedings before the referee or other officer each person who was a shareholder found by the plaintiff,

(b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute toward satisfaction of the plaintiff's claim, and

(c) direct payment of the amounts so determined.

## **Regulations**

266 The Lieutenant Governor in Council may make regulations

(a) prescribing any matter required or authorized by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount of the fee;

(c) prescribing the format and contents of annual returns, notices and other documents required to be sent to the Registrar or to be issued by the Registrar;

(c.1) prescribing requirements for the purposes of section 131(3) and (3.1);

(d) prescribing rules with respect to exemptions permitted by this Act;

(e) declaring that, for the purpose of section 155(1)(a), the standards as they exist from time to time, of any accounting body named in the regulations are to be in force in Alberta, in whole or in part or with any revisions, variations or modifications that are specified by the regulations;

(f) respecting names of corporations and extra-provincial corporations;

(g) prohibiting the use of any names or any words or expressions in a name;



- (h) defining any word or expression used in sections 12(1)(c) and 282(1)(c);
- (i) prescribing requirements for the purposes of sections 12(1)(d) and 282(1)(d);
- (j) respecting the circumstances and conditions under which a name under sections 12(1) and 282(1) may be used;
- (k) prescribing the documents referred to in sections 12(3), 177(2), 185(1), 208, 210(5), 280 and 289(1);
- (l) prescribing the punctuation marks and other marks that may form part of a name;
- (m) respecting
  - (i) the form in which and the period of time for which records referred to in section 272(1) are to be kept, and
  - (ii) the disposal of records referred to in section 272(1);
- (n) prescribing the maximum fee that may be charged under section 48(2);
- (o) prescribing the period of time for which information in the register referred to in section 49(1) must be kept.;
- (p) respecting the disclosure of financial assistance for the purpose of section 45(3);
- (q) respecting unlimited liability corporations including, without limitation, regulations
  - (i) requiring or authorizing the filing with the Registrar of articles, amendments to articles and other documents by an unlimited liability corporation, and
  - (ii) prescribing the fees that may be charged by the Registrar in respect of the filing, examination or copying of any document of an unlimited liability corporation, or in respect of any action that the Registrar is required or authorized to take under this Act with regard to an unlimited liability corporation

## **Interpretation Act**

Corporate rights and powers

16 Words in an enactment establishing or continuing a corporation

- (a) vest in the corporation power
  - (i) to sue in its corporate name,
  - (ii) to contract and be contracted with by its corporate name,
  - (iii) to have a common seal and to alter or change it at pleasure,
  - (iv) to have perpetual succession,
  - (v) to acquire and hold real property and personal property for the purposes for which the corporation is established and to dispose of the real property or personal property at pleasure, and
  - (vi) to regulate its own procedure and business;
- (b) make the corporation liable to be sued in its corporate name;
- (c) vest in a majority of the members of the corporation the power to bind the others by their acts;
- (d) exempt from personal liability for its debts, obligations or acts those individual members of a corporation that is not an unlimited liability corporation as defined in the *Business Corporations Act* who do not contravene the provisions of the enactment establishing the corporation;
- (e) in the case of a corporation having a name consisting of an English and a French form or a combined English and French form, vest in the corporation power to use either the English or French form of its name, or both forms, and to show on its seal both the English and French forms of its name or to have 2 seals, one showing the English and the other showing the French form of its name.

## **Effect of registration and procedure**

68 (1) Subject to this Section, any company registered as unlimited may register under this Act as limited, but the registration of an unlimited company as a limited company shall not affect any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of the company before the registration.

### **Limits of liability**

135 In the event of a company being wound up, every present and past member shall, subject to this Section, be liable to contribute to the assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding up and for the adjustments of the rights of the contributories among themselves, with the qualifications following:

(a) a past member shall not be liable to contribute if he has ceased to be a member for one year or upwards before the commencement of the winding up;

(b) a past member shall not be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member;

(c) a past member shall not be liable to contribute unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act;

(d) in the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member;

(e) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company in the event of its being wound up;

(f) nothing in this Act shall invalidate any provision contained in any contract whereby the liability of the individual members of the contract is restricted, or whereby the funds of the company are alone made liable in respect of the policy or contract;

(g) a sum due to any member of a company, in his character of a member, by way of dividends, profits or otherwise, shall not be deemed to be a debt of the company, payable to that member in a case of competition between himself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves. *R.S., c. 81, s. 135.*

	<b>BC</b>	<b>Nova Scotia</b>	<b>Alberta</b>
<b>Liability</b>	Only on winding up	Only on winding up	Liability is immediate and on-going; continues through winding up
<b>Statement of liability</b>	In name, notice of articles and on shares	In articles	Same as BC
<b>Liability of former shareholders</b>	Not liable if winding up occurs 1 year or more after leaving	Same as BC	Not liable if action to recover debts brought 2 years or more after leaving
<b>Transformation from Ltd to ULC by alteration</b>	Unanimous vote	Not allowed – must form as ULC in first place	Special resolution with dissent rights
<b>Transformation from ULC to Ltd by alteration</b>	Special resolution (no dissent) of ULC; liability of shareholders (for debts on dissolution of new company) continues despite transformation  Former shareholders not liable if ceased to be shareholder of ULC 1 year prior to dissolution of new company.	Must re-register (re-incorporate) as limited; liability continues despite transformation	Special resolution (with dissent); liability continues despite transformation
<b>Amalgamation of BC companies resulting in ULC</b>	Unanimous vote for any limited shareholders; special resolution with dissent for others	Yes, but court approval required	Special resolution with dissent
<b>Amalgamation resulting in Ltd</b>	Special resolution (with ordinary dissent for amalg); liability continues despite transformation	Maybe, but court approval required	Special resolution with dissent; liability continues despite transformation
<b>Amalgamations in</b>	Allowed only for limited foreign corps that continue in as Ltds. (i.e. not allowed if involves a fulc or ULC, or result in a	Not allowed in any circumstances	Allowed only if one corp is wholly owned sub of the other

	ULC, due to need to protect shareholders/creditors)		
<b>Continuation into province: Ltd becomes Ltd</b>	Yes -- Ordinary procedures apply	Same	Same
<b>Ltd becomes ULC</b>	No – to protect shareholders, must continue in as Ltd and then transform.	No, not allowed	Yes. Shareholders take on new liability with no protections
<b>Fulc becomes ULC</b>	Yes, subject to regs to protect creditors (of AB fulcs) or possibly shareholders	Unclear	Yes. Shareholders “continue to be liable”, but unclear under which rules (presumably AB’s – no protections for shareholder/creditors)
<b>Fulc becomes Ltd</b>	No – to protect creditors, must continue in as ULC and then transform	Unclear	Yes. Shareholders “continue to be liable”, but unclear under which rules (presumably of old jurisdiction)
<b>Fees</b>	Incorporation fee of \$1000 plus \$45 annual report fee	\$100 (plus private agency fees of about \$175)	Incorporation \$4000; annual fee \$2000

Example of shareholders' liability

Liability means ULC debts incurred while the shareholder was a shareholder of the ULC

Shareholders A, B, C, D buy into Ltd	Shareholder A sells shares in Ltd.	Ltd transforms to ULC	Shareholder B sells shares of ULC	ULC transforms into Ltd	Shareholder C sells shares	Co wind up
	No liability		Not liable unless company (in any form) winds up within one year of sale of shares		C liable regardless of when winding up occurs	C and D both liable

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<b>Liability</b>	Only on winding up	Only on winding up	Liability is immediate and on-going; continues through winding up
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<b>Transformation from ULC to Ltd by alteration</b>	Special resolution (no dissent); liability continues despite transformation	Must re-register (re-incorporate) as limited; liability continues despite transformation	Special resolution (with dissent); liability continues despite transformation
<b>Amalgamation resulting in ULC</b>	Unanimous vote for any limited shareholders; special resolution with dissent for others	Yes, but court approval required	Special resolution with dissent
<b>Amalgamation resulting in Ltd</b>	Special resolution (with ordinary dissent for amalg); liability continues despite transformation	Maybe, but court approval required	Special resolution with dissent
<b>Amalgamations in</b>	Allowed only for limited foreign corps that continue in as Ltds. (i.e. not allowed if involves a full or ULC, or result in a ULC, due to need to protect shareholders/creditors)	Not allowed in any circumstances	Allowed only if one corp is wholly owned sub of the other
<b>Continuation into province: Ltd becomes Ltd</b>	Yes -- Ordinary procedures apply	Same	Same
<b>Ltd becomes ULC</b>	No – to protect shareholders, must	No, not allowed	Yes. Shareholders take on new liability

	continue in as Ltd and then transform.		with no protections
<b>Fulc becomes ULC</b>	Yes, subject to regs to protect creditors (of AB fulcs) or possibly shareholders	Unclear	Yes. Shareholders "continue to be liable", but unclear under which rules (presumably AB's – no protections for shareholder/creditors)
<b>Fulc becomes Ltd</b>	No – to protect creditors, must continue in as ULC and then transform	Unclear	Yes. Shareholders "continue to be liable", but unclear under which rules (presumably of old jurisdiction)
<b>Fees</b>	Incorporation fee of \$1000 plus \$45 annual report fee	\$100 (plus private agency fees of about \$175)	Incorporation \$4000; annual fee \$2000

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Shareholders A, B, C, D buy into Ltd	Shareholder A sells shares in Ltd.	Ltd transforms to ULC	Shareholder B sells shares of ULC	ULC transforms into Ltd	Shareholder C sells shares	Co wind up
	No liability		Not liable unless company (in any form) winds up within one year of sale of shares		C liable regardless of when winding up occurs	C and D both liable



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## Business Corporations Act

### Unlimited Liability Companies

**Q: What is a ULC?**

**A: A ULC, in contrast to a limited company, is a corporation whose shareholders may be liable for corporate debts. Shareholders of limited companies are not liable for debts of the corporation.**

**Q: What is the purpose of allowing ULCs?**

**A: ULCs are used primarily by US-based companies as vehicles for tax planning. A major part of this is avoiding double taxation that would occur if a conventional corporate structure is used. Canadian tax authorities treat ULCs the same as limited companies, and Canadian tax revenue will therefore be unaffected. For U.S. tax purposes, however, ULCs are considered "transparent", and U.S. investors can therefore benefit from flow-through provisions for profit or loss allocation, etc. As a result, ULCs have been used for acquisitions, restructurings and divestitures of Canadian assets by US investors.**

**Q: If ULCs are intended to encourage investment in BC by US shareholders in order to receive tax benefits in the US, how can we be sure that the proposed structure will work – i.e. meet the US tax rules?**

**A: The corporate framework was developed with assistance from a US tax expert who has confirmed that the framework should meet the US requirements. Ultimately, a ruling from the US Internal Revenue Service (IRS) will provide final confirmation on this, however we are advised that the IRS will not provide such a ruling until the legislation is actually passed. We are currently seeking advice on whether this ruling can be obtained after passage - but before the coming into force of the legislation.**

**Q: What if the US should change its laws – would the BC government be seen to be chasing a short-term loophole to assist foreign corporations?**

**A: There is little likelihood that the US would change its laws in this area. The use of flow-through, or "transparent" corporate structures to avoid double taxation is part of a long-established framework of legitimate tax planning in the US. As an integral part of the tax system, ULCs and a variety of other "flow-through vehicles" serve to mitigate double taxation in the American system where "corporate tax integration", such**

**we have in Canada, does not exist** In Canada, corporate tax integration rules operate to ensure that profits distributed from corporations to shareholders are not double taxed through the use of various credits (such as the dividend tax credit) and other mechanisms.

**Q: What are ULCs currently being used for?**

**A: We are advised that ULCs are being used in a number of different industries in order to acquire and operate businesses and assets located in Canada. In particular, they are being used lately in some notable oil and gas acquisitions by US corporations. I am advised that these corporate structures can be very complex, often utilizing several ULCs to maximize the advantages of flowing exploration tax credits and early tax losses on long term projects to US corporate shareholders.**

**As a simple example, a US company interested in acquiring BC oil and gas resources for development may incorporate a BC ULC to make the acquisition. In the early years of exploration and development, the ULC would be likely to incur significant expenses and little income. Because of US tax rules, the resulting tax losses could be used to offset taxable income of the US parent (shareholder) for American tax purposes. In Canada, the ULC (just like any other Canadian corporation) would only be able to take advantage of the tax losses in a future year when it has earned taxable income against which the losses can be applied.**

**Q: Why are we doing this if the main reason for it is to allow US shareholders to dodge taxes?**

**A: Nova Scotia ULCs are currently being used to facilitate US investment all over Canada already. The legal community has been requesting that we provide for ULCs in BC for more than a decade, as, although they can structure these transactions using Nova Scotia or Alberta ULCs, it would be much more efficient to be able to incorporate them in BC.**

**We have been advised that without ULCs there are potential negative US tax consequences for US investors wishing to invest in Canada. Allowing for ULCs should help to stimulate the flow of foreign capital into the province, which would potentially benefit local economies and create jobs.**

**Q: Might the investing public be misled or placed in danger of inadvertently assuming liability by investing in ULCs without proper professional advice?**

**A:** ULC legislation has been specifically structured so as to provide ample warning to potential investors about the nature of the company and the liabilities of shareholders. We have been advised that there are no examples to date of a ULC having issued publicly traded shares; it is not intended to be an investment vehicle for the general public, but rather a tax-planning vehicle for the US shareholders.

**Q:** Do any other jurisdictions allow them?

**A:** Yes. Nova Scotia has had ULCs for over 100 years. Alberta has permitted the incorporation of ULCs since 2005, and Ontario is currently consulting on similar amendments to their corporate legislation.

**Q:** Is the proposed model for ULCs in BC the same as those in Nova Scotia and Alberta?

**A:** The proposal for BC ULCs is modelled on Nova Scotia ULCs, in that shareholder liability for corporate debts is only triggered upon the winding up of the ULC. In contrast, shareholders of Alberta ULCs are liable for corporate debts on an ongoing basis. Tax planners are expected to prefer the Nova Scotia and BC models due to this distinction.

**Q:** If Nova Scotia and Alberta already allow ULCs, why would US investors choose BC to incorporate their ULCs?

**A:** BC's *Business Corporations Act* (BCA), rewritten and brought into force in 2004, is much more modern legislation than that in either Nova Scotia or Alberta. The BCA has adopted a much more flexible framework, which, for example, no longer requires resident directors. In addition, Nova Scotia is currently charging \$6,000 to incorporate a ULC, where BC's fee is proposed to be only \$1,000.

Although Alberta's fee for incorporation of a ULC is relatively cheap, at \$100, shareholders of Alberta ULCs are liable for corporate debt on an ongoing basis, while under the BC proposal, shareholder liability is only triggered on wind up of the corporations.

Allowing ULCs to be formed under BC's more modern and flexible BCA, at a reasonable charge, will make British Columbia a more attractive

jurisdiction in which to incorporate and will give this province a competitive edge.

**Q: Do ULCs have any implications for the Corporate Registry?**

**A: Yes. Changes to the computer system (Corporate OnLine) will be required to accommodate ULCs. The Registry will recover these costs through increased filing fees for ULCs (e.g. it would cost \$1000 to incorporate a ULC compared to \$350 for an ordinary limited company.) A Ministry of Finance budget submission seeking a \$1,000 incorporation fee for ULCs has recently been approved by Cabinet.**

**Q: What do other provinces charge for ULCs?**

**A: The Nova Scotia registry is currently charging \$6,000 for the incorporation and registration of ULCs, and a \$2,000 annual fee. Alberta charges the same as for a limited company: \$100, with no annual fee.**

**Q: Are there any risks to shareholders in allowing for these entities to be created?**

**A: Yes. Shareholders will face potentially greater liability for the company's debts than they would in a normal limited company. However, as in Nova Scotia, this liability would only arise on winding up, and not while the company is being operated as a going concern.**

Shareholders will be forewarned, in that the company's Notice of Articles and share certificates will be required to have printed on them a statement of this increased liability. As well, it is anticipated that the higher incorporation filing costs will deter people from inadvertently incorporating a ULC.

#### **Technical Amendments**

**Q: Why are further amendments to the BCA needed?**

**A: The BCA is a progressive piece of legislation, and generally it works very well. However, it is also a lengthy and complex Act, that has only been in force for 2 ½ years. As lawyers and other corporate advisors work through the provisions, the need for certain refinements and adjustments has come to light.**

I also understand that the government committed to ensuring that the Act stays up-to-date. Addressing these relatively minor, housekeeping matters on a regular basis is part of that process.

**Q: Why are we going to allow companies to issue uncertificated shares?**

These amendments complement the new securities transfer provisions contained in the proposed *Securities Transfer Act* (STA).

The legislation on transferring shares in BC companies is currently found in the BCA, and deals only with certificated shares. The STA provides a comprehensive, modern framework for transfer of both certificated and uncertificated shares, thus enabling companies to move to using uncertificated shares. Relieving companies of the obligation to provide share certificates will enable them to access the modern, efficient transfer rules contained in the STA.

This amendment would not affect existing shareholders who have already received a paper certificate. As well, the ability to move to uncertificated shares can be curtailed by a company's articles.

**Q: How will the amendments reduce the regulatory burden?**

**A: The amendments will**

- enhance flexibility for companies, for example, by giving them more options respecting the use of their corporate name, the procedures for filling vacancies on boards of directors, and the type of shares that can be issued; and
- reduce red tape by eliminating unnecessary records office procedures.

**Q: Does any other province allow for uncertificated shares?**

**A: Yes. Ontario has already made the necessary changes, and I understand that Alberta is considering similar changes to complement its STA.**

## **Business Corporations Act**

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### **Unlimited Liability Companies**

**Q: What is a ULC?**

**A: A ULC, in contrast to a limited company, is a corporation whose shareholders may be liable for corporate debts. Shareholders of limited companies are not liable for debts of the corporation.**

**Q: What is the purpose of allowing ULCs?**

**A: ULCs are used primarily by US-based companies as vehicles for tax planning. Canadian tax authorities treat ULCs the same as limited companies, and Canadian tax revenue will therefore be unaffected. For U.S. tax purposes, however, ULCs are considered "transparent", and U.S. investors can therefore benefit from flow-through provisions for profit or loss allocation, etc. As a result, ULCs have been used for acquisitions, restructurings and divestitures of Canadian assets by US investors.**

**Q: If ULCs are intended to encourage investment in BC by US shareholders in order to receive tax benefits in the US, how can we be sure that the proposed structure will work – i.e. meet the US tax rules?**

**A: The corporate framework was developed with assistance from a US tax expert who has confirmed that the framework should meet the US requirements. Ultimately, a ruling from the US Internal Revenue Service (IRS) will provide final confirmation on this, however we are advised that the IRS will not provide such a ruling until the legislation is actually passed. We are currently seeking advice on whether this ruling can be obtained after passage - but before the coming into force of the legislation.**

**Q: What are ULCs currently being used for?**

**A: We are advised that ULCs are being used in a number of different industries in order to acquire and operate businesses and assets located in Canada. In particular, they are being used lately in some notable oil and gas acquisitions by US corporations. I am advised that these corporate structures can be very complex, often utilizing several ULCs to maximize the advantages of flowing exploration tax credits and early tax losses on long term projects to US corporate shareholders.**



As a simple example, a US company interested in acquiring BC oil and gas resources for development may incorporate a BC ULC to make the acquisition. In the early years of exploration and development, the ULC would be likely to incur significant expenses and little income. Because of US tax rules, the resulting tax losses could be used to offset taxable income of the US parent (shareholder) for American tax purposes. In Canada, the ULC (just like any other Canadian corporation) would only be able to take advantage of the tax losses in a future year when it has earned taxable income against which the losses can be applied.

**Q: Why are we doing this if the main reason for it is to allow US shareholders to dodge taxes?**

**A: Nova Scotia ULCs are currently being used to facilitate US investment all over Canada already. The legal community has been requesting that we provide for ULCs in BC for more than a decade, as, although they can structure these transactions using Nova Scotia or Alberta ULCs, it would be much more efficient to be able to incorporate them in BC.**

We have been advised that without ULCs there are potential negative US tax consequences for US investors wishing to invest in Canada. Allowing for ULCs should help to stimulate the flow of foreign capital into the province, which would potentially benefit local economies and create jobs.

**Q: Do any other jurisdictions allow them?**

**A: Yes. Nova Scotia has had ULCs for over 100 years. Alberta has permitted the incorporation of ULCs since 2005, and Ontario is currently consulting on similar amendments to their corporate legislation.**

**Q: Is the proposed model for ULCs in BC the same as those in Nova Scotia and Alberta?**

**A. The proposal for BC ULCs is modelled on Nova Scotia ULCs, in that shareholder liability for corporate debts is only triggered upon the winding up of the ULC. In contrast, shareholders of Alberta ULCs are liable for corporate debts on an ongoing basis. Tax planners are expected to prefer the Nova Scotia and BC models due to this distinction.**

**Q: If Nova Scotia and Alberta already allow ULCs, why would US investors choose BC to incorporate their ULCs?**



**A: BC's *Business Corporations Act* (BCA), rewritten and brought into force in 2004, is much more modern legislation than that in either Nova Scotia or Alberta. The BCA has adopted a much more flexible framework, which, for example, no longer requires resident directors. In addition, Nova Scotia is currently charging \$6,000 to incorporate a ULC, where BC's fee is proposed to be only \$1,000.**

**Although Alberta's fee for incorporation of a ULC is relatively cheap, at \$100, shareholders of Alberta ULCs are liable for corporate debt on an ongoing basis, while under the BC proposal, shareholder liability is only triggered on wind up of the corporations.**

**Allowing ULCs to be formed under BC's more modern and flexible BCA, at a reasonable charge, will make British Columbia a more attractive jurisdiction in which to incorporate and will give this province a competitive edge.**

**Q: Do ULCs have any implications for the Corporate Registry?**

**A: Yes. Changes to the computer system (Corporate OnLine) will be required to accommodate ULCs. The Registry will recover these costs through increased filing fees for ULCs (e.g. it would cost \$1000 to incorporate a ULC compared to \$350 for an ordinary limited company.) A Ministry of Finance budget submission seeking a \$1,000 incorporation fee for ULCs has recently been approved by Cabinet.**

**Q: What do other provinces charge for ULCs?**

**A: The Nova Scotia registry is currently charging \$6,000 for the incorporation and registration of ULCs, and a \$2,000 annual fee. Alberta charges the same as for a limited company: \$100, with no annual fee.**

**Q: Are there any risks to shareholders in allowing for these entities to be created?**

**A: Yes. Shareholders will face potentially greater liability for the company's debts than they would in a normal limited company. However, as in Nova Scotia, this liability would only arise on winding up, and not while the company is being operated as a going concern.**

Shareholders will be forewarned, in that the company's Notice of Articles and share certificates will be required to have printed on them a statement of this increased liability. As well, it is anticipated that the higher incorporation filing costs will deter people from inadvertently incorporating a ULC.

### Technical Amendments

**Q: Why are further amendments to the BCA needed?**

**A: The BCA is a progressive piece of legislation, and generally it works very well. However, it is also a lengthy and complex Act, that has only been in force for 2 ½ years. As lawyers and other corporate advisors work through the provisions, the need for certain refinements and adjustments has come to light.**

**I also understand that the government committed to ensuring that the Act stays up-to-date. Addressing these relatively minor, housekeeping matters on a regular basis is part of that process.**

**Q: Why are we going to allow companies to issue uncertificated shares?**

**These amendments complement the new securities transfer provisions contained in the proposed *Securities Transfer Act* (STA).**

**The legislation on transferring shares in BC companies is currently found in the BCA, and deals only with certificated shares. The STA provides a comprehensive, modern framework for transfer of both certificated and uncertificated shares, thus enabling companies to move to using uncertificated shares. Relieving companies of the obligation to provide share certificates will enable them to access the modern, efficient transfer rules contained in the STA.**

**This amendment would not affect existing shareholders who have already received a paper certificate. As well, the ability to move to uncertificated shares can be curtailed by a company's articles.**

**Q: How will the amendments reduce the regulatory burden?**

**A: The amendments will**

- **enhance flexibility for companies, for example, by giving them more options respecting the use of their corporate name, the**

procedures for filling vacancies on boards of directors, and the type of shares that can be issued; and

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- reduce red tape by eliminating unnecessary records office procedures.

**Q: Does any other province allow for uncertificated shares?**

**A: Yes. Ontario has already made the necessary changes, and I understand that Alberta is considering similar changes to complement its STA.**

Page 271 to/à Page 432

Withheld pursuant to/removed as

s.12

Page 0001 to/à Page 1286

Withheld pursuant to/removed as

s.12

*Finance Statutes Amendment Act, 2007*

The Minister rises and states:

**"MISTER SPEAKER, I HAVE THE  
HONOUR TO PRESENT A MESSAGE FROM  
HER HONOUR THE LIEUTENANT  
GOVERNOR."**

Give the message to the Page

(PAGE TAKES MESSAGE TO THE SPEAKER.)

The Minister sits

THE SPEAKER: (READS MESSAGE)

"THE LIEUTENANT GOVERNOR TRANSMITS HERewith BILL NO. XX  
INTITULED FINANCE STATUTES AMENDMENT ACT, 2007 AND  
RECOMMENDS THE SAME TO THE LEGISLATIVE ASSEMBLY."

You, Minister of Finance, rise and state:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL BE INTRODUCED AND READ A FIRST  
TIME NOW."**

The Minister sits

(THE SPEAKER PUTS THE MOTION AND ANNOUNCES THE RESULTS.)

You, Minister of Finance, rise and state (Introduction Statement):

**"MISTER SPEAKER, I AM PLEASED TO INTRODUCE THE *FINANCE STATUTES AMENDMENT ACT, 2007* WHICH AMENDS MINISTRY OF FINANCE STATUTES, INCLUDING THE *BUSINESS CORPORATIONS ACT*, THE *COOPERATIVE ASSOCIATION ACT*, THE *REAL ESTATE DEVELOPMENT MARKETING ACT* AND THE *REAL ESTATE SERVICES ACT*.**

**THE CHANGES PROPOSED TO THE *BUSINESS CORPORATIONS ACT* INCLUDE TECHNICAL AMENDMENTS TO CLARIFY, SIMPLIFY AND REFINE THE REQUIREMENTS OF THE ACT. MORE IMPORTANTLY, THE AMENDMENTS INTRODUCE A NEW CORPORATE**

**STRUCTURE CALLED THE UNLIMITED  
LIABILITY COMPANY, OR ULC.**

---

**THE ULC IS AN EFFECTIVE TAX  
PLANNING AND CORPORATE  
REORGANIZATION TOOL THAT WILL  
FACILITATE GREATER LEVELS OF  
INVESTMENT AND JOB CREATION IN  
BRITISH COLUMBIA.**

**THIS BILL WILL AMEND THE  
*COOPERATIVE ASSOCIATIONS ACT* TO  
.....**

**THIS BILL WILL AMEND THE *REAL  
ESTATE SERVICES ACT* TO...**



**THIS BILL WILL AMEND THE *REAL  
ESTATE DEVELOPMENT MARKETING ACT*  
TO ...**

**MISTER SPEAKER, I MOVE THAT THE  
BILL BE PLACED ON THE ORDERS OF  
THE DAY FOR SECOND READING AT THE  
NEXT SITTING OF THE HOUSE AFTER  
TODAY."**

The Minister sits

(THE SPEAKER PUTS MOTION.)

FIRST READING NOTES

*Finance Statutes Amendment Act, 2007*

The Minister rises and states:

**"MISTER SPEAKER, I HAVE THE  
HONOUR TO PRESENT A MESSAGE FROM  
HER HONOUR THE LIEUTENANT  
GOVERNOR."**

Give the message to the Page

(PAGE TAKES MESSAGE TO THE SPEAKER.)

The Minister sits

THE SPEAKER: (READS MESSAGE)

"THE LIEUTENANT GOVERNOR TRANSMITS HERewith BILL NO. XX  
INTITULED FINANCE STATUTES AMENDMENT ACT, 2007 AND  
RECOMMENDS THE SAME TO THE LEGISLATIVE ASSEMBLY."

You, Minister of Finance, rise and state:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL BE INTRODUCED AND READ A FIRST  
TIME NOW."**

The Minister sits

(THE SPEAKER PUTS THE MOTION AND ANNOUNCES THE RESULTS.)

You, Minister of Finance, rise and state (Introduction Statement):

**"MISTER SPEAKER, I AM PLEASED TO INTRODUCE THE *FINANCE STATUTES AMENDMENT ACT, 2007* WHICH AMENDS MINISTRY OF FINANCE STATUTES, INCLUDING THE *BUSINESS CORPORATIONS ACT*, THE *COOPERATIVE ASSOCIATIONS ACT*, THE *REAL ESTATE SERVICES ACT* AND THE *REAL ESTATE DEVELOPMENT MARKETING ACT*.**

**THE CHANGES PROPOSED TO THE *BUSINESS CORPORATIONS ACT* INCLUDE TECHNICAL AMENDMENTS TO CLARIFY, SIMPLIFY AND REFINE THE REQUIREMENTS OF THE ACT. MORE IMPORTANTLY, THE AMENDMENTS WILL, FIRST AND MOST NOTABLY, INTRODUCE A NEW CORPORATE STRUCTURE**

**CALLED THE UNLIMITED LIABILITY  
COMPANY, OR ULC.**

**THE ULC STRUCTURE WILL FACILITATE  
GREATER LEVELS OF INVESTMENT AND  
JOB CREATION IN BRITISH COLUMBIA,  
AS IT IS AN EFFECTIVE TAX PLANNING  
AND CORPORATE REORGANIZATION  
TOOL THAT WILL MAKE BRITISH  
COLUMBIA MORE ATTRACTIVE AS A  
JURISDICTION IN WHICH TO  
INCORPORATE.**

~~**SECOND, THE BILL AUTHORIZES  
COMPANIES TO ISSUE "UNCERTIFICATED  
SECURITIES" IN ORDER TO BRING BC'S  
SHARE HOLDING AND TRANSFER  
REQUIREMENTS IN LINE WITH CURRENT  
ELECTRONIC SHARE TRANSFER**~~

~~PRACTICES IN THE SECURITIES  
INDUSTRY, AND WITH THE PROPOSED  
SECURITIES TRANSFER ACT.~~

~~THIRD, THE BILL MAKES CORRECTIONS  
AND TECHNICAL REFINEMENTS TO THE  
ACT.~~

THIS BILL WILL AMEND THE  
*COOPERATIVE ASSOCIATIONS ACT* TO  
.....

THIS BILL WILL AMEND THE *REAL  
ESTATE SERVICES ACT* TO...

THIS BILL WILL AMEND THE *REAL  
ESTATE DEVELOPMENT MARKETING ACT*  
TO ...

**MISTER SPEAKER, I MOVE THAT THE  
BILL BE PLACED ON THE ORDERS OF  
THE DAY FOR SECOND READING AT THE  
NEXT SITTING OF THE HOUSE AFTER  
TODAY."**

The Minister sits

(THE SPEAKER PUTS MOTION.)

Page 1296 to/à Page 1560

Withheld pursuant to/removed as

s.12

SECOND READING NOTES (following day)

***FINANCE STATUTES AMENDMENT ACT, 2007***

(THE HOUSE LEADER CALLS FOR SECOND READING OF BILL NO.XX (*Finance Statutes Amendment Act, 2006.*)

(THE SPEAKER CALLS UPON THE MINISTER.)

The Minister rises and moves:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL NOW BE READ A SECOND TIME.**

**MISTER SPEAKER, THIS BILL CONTAINS  
AMENDMENTS TO A NUMBER OF STATUTES  
WHICH DEAL WITH THE BUSINESS,  
COOPERATIVE AND REAL ESTATE SECTORS  
OF THIS PROVINCE. THE STATUTES  
AMENDED ARE THE *BUSINESS  
CORPORATIONS ACT*, THE *COOPERATIVE  
ASSOCIATIONS ACT*, THE *REAL ESTATE  
SERVICES ACT* AND THE *REAL ESTATE  
DEVELOPMENT MARKETING ACT*.**



**FOR THE MOST PART, THESE  
AMENDMENTS ARE TECHNICAL IN NATURE,  
BUT ARE ESSENTIAL TO THESE SECTORS.**

**THE *BUSINESS CORPORATIONS ACT*  
IS THE BASIC FRAMEWORK LEGISLATION  
GOVERNING THE BUSINESS SECTOR IN THIS  
PROVINCE. AMENDMENTS IN THIS BILL ARE  
FOR THE MOST PART TECHNICAL OR  
HOUSEKEEPING IN NATURE, TO ADDRESS  
INCONSISTENT LANGUAGE, TO REMOVE  
AMBIGUITY, ENHANCE CLARITY AND  
ENSURE THAT THE PROVISIONS ACTUALLY  
WORK IN PRACTICE.**

**THE *BUSINESS CORPORATIONS ACT*  
AMENDMENTS ALSO INTRODUCE A  
SIGNIFICANT NEW CORPORATE  
STRUCTURE: THE UNLIMITED LIABILITY**

**CORPORATION, OR ULC. AS THE NAME SUGGESTS, SHAREHOLDERS IN A ULC AGREE TO TAKE FULL RESPONSIBILITY FOR ALL DEBTS AND LIABILITIES OF THE COMPANY IN THE EVENT THAT THE COMPANY IS LIQUIDATED OR DISSOLVED.**

**ULCs HAVE BEEN IN EXISTENCE IN NOVA SCOTIA FOR OVER 100 YEARS, AND WERE RECENTLY INTRODUCED IN ALBERTA. THEY ARE AN EFFECTIVE TAX PLANNING AND CORPORATE REORGANIZATION TOOL, ESPECIALLY FOR AMERICAN BUSINESSES HOLDING CANADIAN ASSETS.**

**UNDER U.S. TAX LAW, USING A ULC PROVIDES A “FLOW-THROUGH” VEHICLE FOR ALLOCATION OF PROFITS OR LOSSES. THIS ENABLES THESE BUSINESSES TO**

**AVOID DOUBLE TAXATION OF CORPORATE INCOME FROM CANADIAN INVESTMENTS, OR WRITE OFF LOSSES FROM, FOR EXAMPLE, DEVELOPMENT ACTIVITIES IN BRITISH COLUMBIA'S RESOURCE SECTOR.**

**ADDITIONALLY, THE BILL AUTHORIZES COMPANIES TO ISSUE "UNCERTIFICATED SECURITIES" - THAT IS, SHARES THAT ARE NOT REPRESENTED BY A PAPER SHARE CERTIFICATE. IN THE AGE OF ELECTRONIC SHARE TRADING, THE PAPER SHARE CERTIFICATE IS INCREASINGLY BECOMING A RELIC OF A BYGONE ERA. WHILE COMPANIES MAY STILL LEGALLY CHOOSE TO ISSUE SHARE CERTIFICATES, THIS PROVISION WILL BRING BC'S SHARE HOLDING AND TRANSFER REQUIREMENTS IN LINE WITH CURRENT PRACTICES IN THE**

**SECURITIES INDUSTRY, AND WITH THE PROPOSED *SECURITIES TRANSFER ACT* – A BILL ALSO BEING INTRODUCED THIS SESSION. IT IS WORTH NOTING, MR. SPEAKER, THAT ALL JURISDICTIONS IN CANADA AND THE U.S. HAVE ADOPTED, OR ARE MOVING TOWARD THE ADOPTION, OF PROVISIONS SIMILAR TO THOSE CONTAINED IN THE *SECURITIES TRANSFER ACT* TO PROVIDE UNIFORM STANDARDS FOR THE ISSUANCE, HOLDING AND TRANSFER OF CORPORATE SECURITIES.**

**A FEW OF THE *BUSINESS CORPORATION ACT* AMENDMENTS REFINE THE ORIGINAL POLICY TO IMPROVE THE EFFICIENCY OR UTILITY OF THE ACT. FOR EXAMPLE, COMPANIES WILL NO LONGER BE REQUIRED TO DATE-STAMP ALL RECORDS RECEIVED**

**FOR FILING IN THE COMPANY RECORDS  
OFFICE. ONLY THOSE RECORDS TO WHICH  
A LEGAL SIGNIFICANCE ATTACHES TO THE  
TIME AND DATE OF RECEIPT WILL BE  
STAMPED, RESULTING IN A SIGNIFICANT  
REDUCTION IN REGULATORY RED TAPE FOR  
CORPORATE RECORDS OFFICERS.**

**MISTER SPEAKER, THIS BILL ALSO  
AMENDS THE *COOPERATIVE ASSOCIATION  
ACT*, THE CORPORATE LEGISLATION  
GOVERNING THE COOPERATIVE SECTOR IN  
THIS PROVINCE. ESSENTIALLY,  
COOPERATIVES ARE CORPORATIONS  
BASED UPON CERTAIN “COOPERATIVE”  
PRINCIPLES, OPERATED TO PROVIDE THEIR  
MEMBERS WITH SERVICES OR PRODUCTS,  
WHERE THERE IS DEMOCRATIC MEMBER**

**CONTROL (ONE VOTE PER MEMBER) AND  
WHERE MEMBERSHIP IS OPEN TO ALL.**

**AS CURRENTLY DRAFTED, THE  
*COOPERATIVE ASSOCIATION ACT* ASSUMES  
THAT COOPERATIVES ARE BUSINESS-  
ORIENTED AND PROFIT-MOTIVATED  
BUSINESSES. ALTHOUGH NON-PROFIT  
COOPERATIVES, SUCH AS DAYCARES, DO  
EXIST, THEY CANNOT GUARANTEE TO  
GRANTING INSTITUTIONS, THE CANADA  
REVENUE AGENCY OR THE PUBLIC THAT  
THIS STATUS WILL CONTINUE. THIS BILL  
WILL ALLOW COOPERATIVES TO ADOPT AN  
UNALTERABLE PROVISION IN THEIR  
MEMORANDUM THAT PROHIBITS THE  
DISTRIBUTION OF SURPLUS TO MEMBERS,  
PROVIDING COOPERATIVES WITH THE**

**ABILITY TO EFFECTIVELY GUARANTEE NON-PROFIT STATUS.**

**MISTER SPEAKER, THE *COOPERATIVE ASSOCIATION ACT* CONTAINS NUMEROUS CROSS REFERENCES TO THE *COMPANY ACT*, DESPITE THE REPLACEMENT OF THAT ACT IN 2004 WITH THE *BUSINESS CORPORATIONS ACT*. CONTINUED RELIANCE ON *COMPANY ACT* CROSS REFERENCES HAS LED TO CONSIDERABLE EFFORT AND CONFUSION FOR THE COOPERATIVE SECTOR. THIS BILL WILL INCORPORATE THE RELEVANT PROVISIONS OF THE *COMPANY ACT* INTO THE *COOPERATIVE ASSOCIATION ACT*, PROVIDING COOPERATIVES WITH A “STAND-ALONE” ACT TO GOVERN THEIR SECTOR,**

**SOMETHING THE COOPERATIVE SECTOR  
HAS WANTED FOR NUMEROUS YEARS.**

**MR. SPEAKER, THIS BILL WILL ALLOW THE  
REGISTRAR TO ESTABLISH THE FORMAT OF  
DOCUMENTS THAT MUST BE FILED BY  
COOPERATIVES WITH THE CORPORATE  
REGISTRY. THE CHANGE WILL ALLOW THE  
REGISTRY TO MORE READILY ADAPT ITS  
FORMS IN THE INTERESTS OF CLARITY AND  
COMPLETENESS. CURRENTLY, A  
REGULATION MUST BE AMENDED BY  
CABINET IN ORDER TO CHANGE A FORM, A  
TIME AND RESOURCE INTENSIVE PROCESS.  
THIS CHANGE WILL BRING THE  
*COOPERATIVE ASSOCIATION ACT* IN LINE  
WITH THE *BUSINESS CORPORATIONS ACT*  
AND THE *SOCIETY ACT*, WHICH ALREADY**



**PROVIDE THE REGISTRAR WITH THE POWER TO ESTABLISH FORMS.**

**THIS BILL ALSO MAKES TECHNICAL AMENDMENTS TO THE *REAL ESTATE DEVELOPMENT MARKETING ACT*, WHICH DEALS WITH THE MARKETING OF NEW REAL ESTATE DEVELOPMENTS. THE AMENDMENTS WILL ENHANCE CONSUMER PROTECTION FOR PURCHASERS AND CERTAINTY FOR THE DEVELOPER BY CLARIFYING THE CIRCUMSTANCES UNDER WHICH REAL ESTATE DEPOSITS CAN BE PAID OVER TO A DEVELOPER. IN ADDITION, A MINOR AMENDMENT WILL ALSO CLARIFY THE EXEMPTION POWERS OF THE SUPERINTENDENT OF REAL ESTATE.**

**THIS BILL WILL ALSO AMEND THE *REAL ESTATE SERVICES ACT*, WHICH DEALS WITH**

**THE LICENSING AND REGULATION OF REAL ESTATE AGENTS. THE MOST SIGNIFICANT AMENDMENT WILL ALLOW THE REAL ESTATE COUNCIL ACCESS TO SPECIAL COMPENSATION FUND MONEY TO ALLOW REAL ESTATE TRANSACTIONS TO COMPLETE IN SITUATIONS WHERE TRUST MONEY IS MISSING FROM A BROKERAGE TRUST ACCOUNT. CURRENTLY, CONSUMERS ARE REQUIRED TO WAIT UNTIL THEIR DEAL FAILS AND THEN SEEK COMPENSATION. THIS AMENDMENT WILL OFFER INCREASED CONSUMER PROTECTION AND ENHANCE PUBLIC CONFIDENCE IN THE INDUSTRY.**

**IN ADDITION, THE ORIGINAL PURPOSE OF THE SPECIAL COMPENSATION FUND WILL BE CLARIFIED TO ENSURE THAT TRUE**

**LOSSES INCURRED BY A PARTY TO A REAL ESTATE TRANSACTION ARE ALLOWED, WHILE THOSE RELATED SOLELY TO A LICENSEE'S OWN REMUNERATION ARE BARRED.**

**AMENDMENTS TO THE *REAL ESTATE SERVICES ACT* WILL ALSO ENHANCE PUBLIC PROTECTION BY PREVENTING STRATA MANAGEMENT FIRMS AND RENTAL PROPERTY MANAGEMENT FIRMS FROM CONTRACTING OUT OF THE REQUIREMENT THAT THEY HOLD THEIR CLIENT'S MONEY IN TRUST. THIS IS ESPECIALLY IMPORTANT IN PROTECTING THE FUNDS OF STRATA CORPORATIONS. FINALLY, THE AMENDMENTS WILL ASSIST BROKERAGES BY STREAMLINING THE REQUIREMENTS FOR**

**THE HANDLING OF REMUNERATION THAT  
HAS ALREADY BEEN EARNED.**

**I MOVE SECOND READING OF BILL NO.XX."**

The Minister sits

BILL DEBATED.

(THE SPEAKER PUTS MOTION AND ANNOUNCES THE RESULT)

(BILL READ A SECOND TIME.)

The Minister rises and states:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL BE REFERRED TO A COMMITTEE OF  
THE WHOLE HOUSE FOR CONSIDERATION  
AT THE NEXT SITTING AFTER TODAY."**

The Minister sits

(MISTER SPEAKER PUTS MOTION.)

SECOND READING NOTES (following day)

***FINANCE STATUTES AMENDMENT ACT, 2007***

(THE HOUSE LEADER CALLS FOR SECOND READING OF BILL NO.XX  
(*Finance Statutes Amendment Act, 2006.*)

(THE SPEAKER CALLS UPON THE MINISTER.)

The Minister rises and moves:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL NOW BE READ A SECOND TIME.**

**MISTER SPEAKER, THIS BILL CONTAINS  
AMENDMENTS TO A NUMBER OF  
STATUTES WHICH DEAL WITH THE  
BUSINESS AND FINANCIAL SECTORS OF  
THIS PROVINCE. THE STATUTES AMENDED  
ARE THE *BUSINESS CORPORATIONS ACT*,  
THE *COOPERATIVE ASSOCIATIONS ACT*,  
THE *REAL ESTATE SERVICES ACT* AND  
THE *REAL ESTATE DEVELOPMENT  
MARKETING ACT*.**

**FOR THE MOST PART, THESE  
AMENDMENTS ARE TECHNICAL IN  
NATURE, BUT ARE ESSENTIAL TO THESE  
SECTORS.**

**THE *BUSINESS CORPORATIONS  
ACT* AMENDMENTS IN THIS BILL ARE FOR  
THE MOST PART PURELY HOUSEKEEPING  
IN NATURE, AND SIMPLY CORRECT MINOR  
GRAMMATICAL ERRORS OR ADDRESS  
INCONSISTENT LANGUAGE, IN ORDER TO  
REMOVE AMBIGUITY, ENHANCE CLARITY  
AND ENSURE THAT THE PROVISIONS  
ACTUALLY WORK IN PRACTICE. THE  
*BUSINESS CORPORATIONS ACT*  
AMENDMENTS ALSO**

**A FEW OF THE *BUSINESS  
CORPORATION ACT* AMENDMENTS REFINE  
OR EXPAND THE ORIGINAL POLICY IN  
MINOR WAYS TO IMPROVE THE**

**EFFICIENCY OR UTILITY OF THE ACT. FOR  
EXAMPLE, THERE IS**

**MOST SIGNIFICANTLY, THE BILL**

**MISTER SPEAKER, THIS BILL ALSO  
CONTAINS TECHNICAL AMENDMENTS TO  
THE**

**IN ADDITION, THE**

**MISTER SPEAKER, THIS BILL MAKES  
AMENDMENTS TO THE**

**MISTER SPEAKER, THIS BILL ALSO  
CONTAINS AMENDMENTS TO THE**

**FINALLY, MISTER SPEAKER, THIS BILL  
CONTAINS MINOR TECHNICAL**

**AMENDMENTS TO THE NEW *REAL ESTATE SERVICES ACT*. THE AMENDMENTS WILL**

**I MOVE SECOND READING OF BILL  
NO.XX."**

The Minister sits

BILL DEBATED.

(THE SPEAKER PUTS MOTION AND ANNOUNCES THE RESULT)

(BILL READ A SECOND TIME.)

The Minister rises and states:

**"MISTER SPEAKER, I MOVE THAT THE  
BILL BE REFERRED TO A COMMITTEE OF  
THE WHOLE HOUSE FOR CONSIDERATION  
AT THE NEXT SITTING AFTER TODAY."**

The Minister sits

(MISTER SPEAKER PUTS MOTION.)



Page 1578 to/à Page 1722

Withheld pursuant to/removed as

s.12

Ministry of Finance  
**BUSINESS CORPORATIONS ACT  
AMENDMENTS**

Section Notes

Section #

Text

Section #

Text

Contact: Jill Sinkwich  
387-9092

Date:

**Business Corporations Act**

**Speaking Points**

-

# GOVERNMENT OF BRITISH COLUMBIA REGULATORY REFORM POLICY

(Revised September 2006)

## Definitions

1. The following definitions apply in this policy:

**“government’s regulatory reform commitment”** means the government’s commitment to maintain a zero net increase in regulatory requirements in British Columbia through December 2008;

**“legislation”** means legislation that is drafted for inclusion in a Government Bill;

**“regulation”** means a regulation that must be deposited with the Registrar of Regulations under section 3 of the *Regulations Act*;

**“regulatory authority”** means a person or entity that has authority under a British Columbia statute to enact regulations that are not subject to Executive Council approval;

**“regulatory requirement”** means a compulsion, obligation, demand or prohibition placed by legislation or regulation on an individual, entity or activity;

**“significant compliance burden”** means that members of an industry or economic sector in the province have demonstrated that compliance with the proposed regulatory requirements or the proposed change in regulatory requirements would have a significant adverse effect on the province-wide productivity or competitiveness of that industry or economic sector.

## Purpose

2. This Regulatory Reform Policy (the “policy”) is directed by Executive Council to ensure that legislation, regulations and policy meet regulatory criteria approved by the Executive Council on August 15, 2001.
3. The policy is based on the framework for carrying out the government’s regulatory reform commitment approved by Executive Council on August 15, 2001.

## Application

4. This policy applies to all proposed legislation, regulations and related policy.

## Compliance with Regulatory Criteria Checklist

5. The responsible minister or head of a regulatory authority, as the case may be, must ensure that proposed legislation and regulations are evaluated according to the regulatory criteria set out in the Regulatory Criteria Checklist attached to this policy.

## Exemptions from Regulatory Criteria

6. The regulatory criteria contained in Regulatory Criteria Checklist do not apply if the responsible minister or head of a regulatory authority, as the case may be, certifies that, in his or her opinion, the legislation or regulation satisfies one or more of the following conditions:

- (a) is non-regulatory in nature;
- (b) changes fees in respect of a financial year by an annual rate that has been approved by Treasury Board;
- (c) relates only to the procedures or practices of a court or tribunal;
- (d) is required under a national uniform legislation or regulatory scheme, or by federal legislation that has already been assessed against criteria similar to that provided in the Regulatory Criteria Checklist;
- (e) is fundamentally declaratory or machinery in nature, such as housekeeping changes that clarify or correct a provision without changing procedural requirements;
- (f) is consolidated and revised under the revision powers in Part 2 of the Regulations Act Regulation;
- (g) is transitional in nature;
- (h) the special circumstances of the case, as identified by the responsible minister or head of the regulatory authority, make it impracticable to comply with the regulatory criteria.

### **Regulatory Criteria Forms**

7. The responsible minister must include a signed copy of the Regulatory Criteria Checklist or a signed copy of the Regulatory Criteria Exemption Form with:
  - a) legislation that is submitted as a draft for Executive Council review;
  - b) an Order in Council that is being recommended by the responsible minister to the Executive Council to enact a regulation.
8. The head of a regulatory authority must sign a Regulatory Criteria Checklist or a Regulatory Criteria Exemption Form for a regulation that is not subject to Executive Council approval.
9. Copies of the signed Regulatory Criteria Checklists and Regulatory Criteria Exemption Forms completed for legislation, Orders in Council and regulations under sections 7 and 8 must be provided to the Regulatory Reform Office.

### **Regulatory Criteria Checklist Made Public**

10. The responsible minister or head of a regulatory authority, as the case may be, must make the signed Regulatory Criteria Checklist available to the public, upon request, at no charge when the legislation to which the checklist applies is introduced, or the regulation to which the checklist applies is enacted.

**Attachments:** Regulatory Criteria Checklist Including Small Business Lens  
 Regulatory Criteria Checklist Explanation and Guidelines  
 Regulatory Criteria Exemption Form  
 Regulatory Requirement Count Summary

# Regulatory Criteria Checklist

## INCLUDING SMALL BUSINESS LENS

*The purpose of the checklist is to demonstrate that legislative and regulatory changes have been developed according to the regulatory reform policy, while still protecting public health, safety and the environment.*

*Name of authorizing legislation:* Business Corporations Act

*Name of regulation, if applicable:* \_\_\_\_\_

*Purpose:* update, correct errors, and introduce framework for Unlimited Liability Companies

**If the answer is "NO" to any of the below criteria, please attach an explanation.**

Regulatory Criteria	Criteria Met
<b>1. Reverse Onus: Need is Justified</b>	<b>X YES    <input type="checkbox"/> NO</b>
<ul style="list-style-type: none"> <li>- Has the public policy been defined?</li> <li>- Has the scope of the public policy problem been assessed?</li> <li>- Is government intervention necessary to address the problem?</li> <li>- Can a flexible policy be designed to fit different circumstances?</li> <li>- Is there a way compliance can be voluntary?</li> </ul>	
<b>2. Cost-Benefit Analysis</b>	<b>X YES    <input type="checkbox"/> NO</b>
<ul style="list-style-type: none"> <li>- Is the benefit to government or external partners worth the increased cost to business and those who must comply?</li> <li>- If a formal cost-benefit analysis is not required, have the impacts of the requirements been analyzed?</li> </ul>	
<b>3. Competitive Analysis</b>	<b>X YES    <input type="checkbox"/> NO</b>
<ul style="list-style-type: none"> <li>- Has the impact of the requirements on British Columbia's economic competitiveness been assessed?</li> <li>- Have the requirements been compared with other relevant jurisdictions?</li> </ul>	
<b>4. Streamlined Design</b>	<b>X YES    <input type="checkbox"/> NO</b>
<ul style="list-style-type: none"> <li>- Do the requirements avoid or eliminate duplication or overlap with federal or local government requirements, or those of other ministries?</li> <li>- Can they be streamlined, harmonized with or incorporated into existing legislation/regulation/policy?</li> <li>- Has business process mapping been undertaken to streamline the requirements and lessen the time needed to comply?</li> </ul>	
<b>5. Replacement Principle</b>	<b><input type="checkbox"/> YES    X NO</b>
<ul style="list-style-type: none"> <li>- Will one regulatory requirement be eliminated for each new regulatory requirement introduced by the legislation or regulation?</li> </ul>	
<b>6. Results-Based Design</b>	<b><input type="checkbox"/> YES    X NO</b>
<ul style="list-style-type: none"> <li>- Does the design reflect government's commitment to regulatory requirements that are results-based and use scientific evidence?</li> <li>- Have market incentives been considered to achieve compliance and regulatory objectives?</li> </ul>	

**7. Transparent Development****X YES** ☐ **NO**

- Are the requirements transparent for ease of access, understanding and compliance?
- Have interested parties had an opportunity to present their views during the development of the requirements?
- Have interested parties had the opportunity to see and comment on the proposed requirements?

**8. Time and Cost of Compliance****X YES** ☐ **NO**

- Has the amount of time needed to comply been reduced?
- Can compliance occur with existing resources (e.g. no additional staff, accountant, lawyer, is required)?
- No additional paperwork is required (costing time and money). If additional paperwork results, can this be incorporated into or streamlined with existing paperwork?
- Can compliance occur without specialized training? If training is needed, is it equally accessible to the rural areas of the province and for persons who do not have access to high speed (broad band) Internet?
- Have government service standards been set (e.g. response or turnaround time)?
- Have steps been considered to ensure that those who administer the requirements will respond in a timely way to those who are affected by the requirements?

**9. Plain Language****X YES** ☐ **NO**

- Have the requirements been drafted in a way that is easy to understand and facilitates compliance?

**10. Simple Communications****X YES** ☐ **NO**

- Will this change be communicated?
- Can it be described in less than one page?
- Can it be added to existing small business information sources such as the Small Business BC website?

**11. Sunset Review/Expiry Principle**☐ **YES** **X NO**

- Has a date been set to review the requirements to ensure continued relevancy, or does the legislation or regulation contain a sunset provision for requirements to expire?

<b>Number of Regulatory Requirements to be added:</b>	<b>36</b>
<b>Number of Regulatory Requirements to be eliminated:</b>	<b>17</b>
<b>NET CHANGE:</b>	<b>+19</b>

---

**Responsible Minister or Head of Regulatory Authority**

---

**Date****Ministry/Agency and Contact: Joann Cain, Director****Financial and Corporate Sector Policy Branch,  
387-9090**





## Regulatory Criteria Exemption Form

Title of Legislation/Regulation\* \_\_\_\_\_

*\*If Regulation, Title of Authorizing Legislation:* \_\_\_\_\_

Purpose of Proposal (One-line Summary): \_\_\_\_\_

***I certify that the proposed legislation or regulation satisfies the following condition or conditions under section 6 of the Regulatory Reform Policy and, therefore, the regulatory criteria do not apply:***

**Check all appropriate boxes:**

- ☐ is non-regulatory in nature;
- ☐ changes fees in respect of a financial year by an annual rate that has been approved by Treasury Board;
- ☐ relates only to the procedures or practices of a court or tribunal;
- ☐ is required under a national uniform legislation or regulatory scheme, or by federal legislation that has already been assessed against criteria similar to that provided in the Regulatory Criteria Checklist;
- ☐ is fundamentally declaratory or machinery in nature, such as housekeeping changes that clarify or correct a provision without changing procedural requirements;
- ☐ is consolidated and revised under the revision powers in Part 2 of the Regulations Act Regulation;
- ☐ is transitional in nature;
- ☐ the special circumstances of the case as identified by the responsible minister or head of the regulatory authority make it impracticable to comply with the Regulatory Criteria. *If special circumstances apply, briefly explain:*

Number of Regulatory Requirements to be added: Number of Regulatory Requirements to be eliminated: <b>NET CHANGE:</b>
---

\_\_\_\_\_  
**Responsible Minister or Head of Regulatory Authority**

\_\_\_\_\_  
**Date**

**Ministry/Agency and Contact:** \_\_\_\_\_

# COUNT OF REGULATORY REQUIREMENTS

## SUMMARY

### REGULATORY COUNT DEFINITIONS:

- a) **Act** has the same meaning as in the *Interpretation Act* (and means an Act of the Legislature, whether referred to as a statute, code or by any other name, and, when referring to past legislation, includes an ordinance or proclamation made before 1871, that has the force of law).
- b) **Regulation** means a regulation that must be deposited with the Registrar of Regulations (see *Regulations Act*, section 2).
- c) **Regulatory Authority** means an authority empowered by or under a provincial Act to administer or enforce statutes.
- d) **Policy** means an interpretative policy of general application associated with an Act that is issued by a regulatory authority to assist with administering or enforcing statutes and regulations. While policy “requirements” are not binding, they do contribute to administrative and compliance costs. (Note: do not count policy “requirements” if they simply restate or have been counted as requirements as part of an act or regulation.)
- e) **Regulatory Requirement** means a compulsion, obligation, demand or prohibition placed on an individual, entity or activity by or under the authority of a provincial Act, regulation or related policy. (Note: discretionary powers are not included.)

### GOVERNMENT’S BASELINE COUNT

1. The government’s regulatory count baseline is the total number of **regulatory requirements** imposed by, and under the authority of all **Acts** as of June 5, 2001. This includes regulatory requirements contained in regulations and policies flowing from an Act.

### REGULATORY COUNT UPDATES AND REGULATORY REFORM POLICY REPORTING

2. Ministries update the Regulatory Requirement Database with changes in the number of regulatory requirements imposed by, or under the authority, of all Acts for which their minister is responsible.
3. Under the Regulatory Reform Policy, ministries report regulatory reforms and the changes in the number of regulatory requirements resulting from proposed legislation and regulations.
4. For updating and reporting purposes, a search for words such as “must” or “shall” or “return” may help to identify regulatory requirements.

EXAMPLES: (**bold** indicates requirements)

- A. Section 2(1) of the former *Cattle (Horned) Act*, RSBC 1996, Chapter 375 contained nine regulatory requirements:

A dealer who purchases cattle with horns *must*

- (a) **purchase** them at the current market price for cattle that are polled or that have been dehorned,
- (b) **pay** that price to the vendor, less \$2 per head for each head of cattle with horns purchased, and
- (c) **make** a monthly return to the minister in the prescribed form, setting out
  - (i) **all purchases** of cattle with horns during the previous calendar month,
  - (ii) **the date and place** at which and the **name and address of the person** from whom each purchase was made, and
  - (iii) **the number of cattle** with horns purchased.

- B. Section 27 of the Swimming Pool, Spray Pool and Wading Pool Regulation (BC Reg. 289/72) under the *Health Act* contains four regulatory requirements:

Pool basin finish and surface

27 A swimming pool basin *shall* have a

- (a) **final finish** which is white or light in colour,
- (b) **smooth bottom surface** where the water depth is more than 5 feet, and
- (c) **non-slip surface** which causes no discomfort to bare feet on the **walls** and on the **bottom surfaces** where the water depth is less than 5 feet.

**MINISTRY OF FINANCE  
FINANCIAL AND CORPORATE SECTOR POLICY BRANCH  
Overview Briefing Note**

**Legislation**

*Business Corporations Act*

**Nature of the Amendments**

- 

**Key Amendments**

- 

Contact: Jill Sinkwich  
387-9092

Date:

**NAME OF STATUTE**

**Speaking Points**

-

## ADVICE TO MINISTER

### CONFIDENTIAL ISSUES NOTE

Ministry of Finance

Date:

Minister Responsible: Hon. Carole Taylor

## Business Corporations Act amendments

### KEY FACTS REGARDING THE ISSUE:

The Business Corporations Amendment Act was introduced on {date} as Bill X.

Key amendments under this act will

- Establish a framework to allow the incorporation of unlimited liability companies (ULCs) in British Columbia. The ULC structure is a tax planning and corporate reorganization tool that will help make British Columbia more attractive as a jurisdiction in which to incorporate and invest;
- Allow BC companies to issue uncertificated securities (as opposed to a paper certificate) – this complements provisions of the proposed *Securities Transfer Act*;

Further amendments allow directors to deal effectively with vacancies on a company's board; reduce the number of records that must be time and date-stamped; and clarify how a numbered company may display its name.

#### Unlimited Liability Companies

ULCs, in contrast to limited companies, are corporations whose shareholders are liable for corporate debts. The ability to incorporate unlimited liability companies has been requested by the legal community and others for many years and was the subject of Ministry of Finance consultations in 2005.

The introduction of ULCs will help make B.C. more attractive to investment by providing a flexible tax effective vehicle. Although ULCs are treated like any other corporation under Canadian tax rules, there are advantages for US tax purposes because tax credits, losses and other tax benefits of the ULC may be flowed through to US shareholders.

Both Nova Scotia and Alberta have similar legislation permitting ULCs. British Columbia's provisions are more attractive than either competing jurisdiction, because they combine the less onerous shareholder liability of the Nova Scotia model with the more modern and flexible provisions of the BCA.

#### Uncertificated securities

Further amendments would allow BC companies to issue uncertificated securities, as opposed to paper share certificates. These provisions complement the *Securities Transfer Act*, which contains specific rules for the transfer of both uncertificated and certificated securities. Both Alberta and Ontario have passed securities transfer acts, and Ontario has made amendments to allow uncertificated securities.

## **ADVICE AND RECOMMENDED RESPONSE:**

- ♦ The amendments to the Business Corporations Act respond to requests from the corporate sector and make technical adjustments to refine corporate governance, reduce regulatory burden, clarify the legislation and correct errors.

### **Unlimited Liability Companies**

- ♦ Provisions that allow for unlimited liability companies introduce a corporate structure that will facilitate investment by US business and help keep British Columbia a competitive place to incorporate and invest.
- ♦ Unlimited liability companies are treated like any other corporation under Canadian tax rules. However, the structure provides advantages for US shareholders under US tax laws.

Nova Scotia has offered unlimited liability companies for many years, and Alberta introduced similar legislation in 2005. Allowing for unlimited liability companies to be formed in BC will reduce business costs and delays by eliminating the need to incorporate them in Nova Scotia or Alberta.

- ♦ The legal and business communities have been asking for this change for several years. Consultations held by the Ministry of Finance in 2005 indicated strong support for the proposal.

### **Uncertificated shares**

- ♦ The business world relies increasingly on electronic records to streamline their systems and records. These amendments let B.C. businesses issue paperless (uncertificated) shares, which helps B.C. companies stay competitive and efficient.
- ♦ This matches provisions in the proposed Securities Transfer Act, which is set to be introduced in spring 2007.

Communications Contact:

Program Area Contact:

File Created:

File Updated:

File Location:

Program Area	Comm. Director	Deputy	Minister's Office

## ADVICE TO MINISTER

### Background

Other non-controversial, technical amendments are proposed to address issues raised by an advisory committee (led by lawyer John Lundell), and are intended to:

- Add flexibility and reduce unnecessary regulation by
  - allowing numbered companies to omit any preceding zero in their name;
  - allowing a quorum-less board of directors to call a shareholders' meeting to elect replacements;
  - streamlining the list of corporate documents that must be date-stamped.
- Provide greater certainty by clarifying that
  - s.12
  - a company can have different classes of shares with or without special restrictions;
  - remedies for denial of access apply to dissolved companies' records;
  - 12:01 a.m. is "the beginning of the day" for the purpose of dating registry procedures;
  - capital reductions, if permitted, can be effected in any manner.



Page 1738

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s.14

Page 1739 to/à Page 1828

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s.12

## Regulatory Criteria Checklist

**Title of Legislation/Regulation\*** \_\_\_\_\_

*\*If Regulation, Title of Authorizing Legislation:* \_\_\_\_\_

*Purpose of Proposal (One-Line Summary):* \_\_\_\_\_

**If the answer is "No" for any of the criteria, please attach explanation.**

Regulatory Criteria	Criteria Met	
1. Reverse Onus: Need for Regulation is Justified	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Regulatory Design is Results-Based	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Transparent Development of Regulatory Requirements	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Cost-Benefit Analysis	Formal Cost-Benefit Analysis Completed <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Not Required If Not Required, Impacts have been Analyzed <div style="display: flex; justify-content: space-around;"> <span><input type="checkbox"/> Yes</span> <span><input type="checkbox"/> No</span> </div>	
5. Competitive Analysis Completed	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6. Regulatory Requirements Avoid or Eliminate Duplication with Other Jurisdictions	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Timeliness of Regulatory Response	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Plain Language	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Sunset Review and Expiry Provisions	Sunset Review provision <input type="checkbox"/> Yes <input type="checkbox"/> No Sunset Expiry provision <input type="checkbox"/> Yes <input type="checkbox"/> No	
10. Replacement Principle Applied	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Business Process Map Analysis Completed	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Number of Regulatory Requirements to be added:  
 Number of Regulatory Requirements to be eliminated:  
**NET CHANGE:**

**Responsible Minister or Head of Regulatory Authority** \_\_\_\_\_

**Date** \_\_\_\_\_

**Ministry/Agency:** \_\_\_\_\_

## REGULATORY CRITERIA *EXPLANATION AND GUIDELINES*

Regulatory Criteria	Issues to Consider:
1. <b>Reverse Onus: Need for Regulation is Justified</b>	Has the public policy problem been defined? Is government intervention necessary to address the problem? Is it clear that regulation is preferred to other alternatives to address the public policy problem?
2. <b>Regulatory Design is Results-Based</b>	Does the design reflect government's commitment to regulation that is results-based, using scientific evidence and, where feasible, market incentives to achieve compliance and regulatory objectives?
3. <b>Transparent Development of Regulatory Requirements</b>	Have interested parties had an opportunity to present their views during the development of the regulatory requirements?  Is the regulation transparent for ease of access, understanding and compliance?
4. <b>Cost-Benefit Analysis</b>	If the regulatory requirements will impose a <u>significant compliance burden</u> , has a formal cost-benefit analysis of the legislation or regulation been completed?  If a formal cost-benefit analysis is not required, have the impacts of the legislation or regulation been analyzed?
5. <b>Competitive Analysis Completed</b>	Has the impact of the proposed regulatory requirements on British Columbia's economic competitiveness been assessed?  Have the regulatory requirements been compared with equivalent regimes in other relevant jurisdictions (e.g., Alberta, Ontario, Washington State)?
6. <b>Avoid or Eliminate Duplication with Other Jurisdictions</b>	Do the regulatory requirements avoid or eliminate duplication or overlap with requirements imposed by the federal or local governments?
7. <b>Timeliness of Regulatory Response</b>	Have steps been considered to ensure that those who administer the regulatory requirements will respond in a timely way to those who are affected by the requirements?
8. <b>Plain Language</b>	Have the regulatory requirements been drafted in plain language?
9. <b>Sunset Review and Expiry Provisions</b>	Is there a Sunset Review provision (default option) and a Sunset Expiry provision? If not, what are the reasons why either provision cannot or should not apply to the regulatory requirements?
10. <b>Replacement Principle Applied</b>	Will one regulatory requirement be eliminated for every new regulatory requirement to be introduced by the legislation or regulation?
11. <b>Business Process Map Analysis Completed</b>	Have the regulatory requirements been process mapped to simplify and streamline the requirements, and to minimize citizens' time to comply?

## Regulatory Criteria Exemption Form

Title of Legislation/Regulation\* \_\_\_\_\_

*\*If Regulation, Title of Authorizing Legislation:* \_\_\_\_\_

Purpose of Proposal (One-line Summary): \_\_\_\_\_

***I certify that the proposed legislation or regulation satisfies the following condition or conditions under section 6 of the Regulatory Reform Policy and, therefore, the regulatory criteria do not apply:***

**Check all appropriate boxes:**

- ☐ is non-regulatory in nature;
- ☐ changes fees in respect of a financial year by an annual rate that has been approved by Treasury Board;
- ☐ relates only to the procedures or practices of a court or tribunal;
- ☐ is required under a national uniform legislation or regulatory scheme, or by federal legislation that has already been assessed against criteria similar to that provided in the Regulatory Criteria Checklist;
- ☐ is fundamentally declaratory or machinery in nature, such as housekeeping changes that clarify or correct a provision without changing procedural requirements;
- ☐ is consolidated and revised under the revision powers in Part 2 of the Regulations Act Regulation;
- ☐ is transitional in nature;
- ☐ the special circumstances of the case as identified by the responsible minister or head of the regulatory authority make it impracticable to comply with the Regulatory Criteria. *If special circumstances apply, briefly explain:*

Number of Regulatory Requirements to be added: Number of Regulatory Requirements to be eliminated: <b>NET CHANGE:</b>
---

\_\_\_\_\_  
Responsible Minister or Head of Regulatory Authority

\_\_\_\_\_  
Date

Ministry/Agency: \_\_\_\_\_

Page 1832

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s.12

## **Business Corporations Act**

### **Unlimited Liability Companies**

**Q: What is the purpose of allowing ULCs?**

**A: ULCs are used primarily by US-based companies as vehicles for tax planning. Canadian tax authorities treat ULCs the same as limited companies, and Canadian tax revenue will therefore be unaffected. For U.S. tax purposes, however, ULCs are considered "transparent", and U.S. investors can therefore benefit from flow-through provisions for losses, etc. As a result, ULCs have been used for acquisitions, restructurings and divestitures of Canadian assets by US investors.**

**Q: Do any other jurisdictions allow them?**

**A: Yes. Nova Scotia has had ULCs for over 100 years. Alberta has permitted the incorporation of ULCs since 2005, and Ontario is currently consulting on similar amendments to their corporate legislation.**

**Allowing ULCs to be formed under BC's more modern and flexible BCA will give this province a competitive edge.**

**Q: Do ULCs have any implications for the Corporate Registry?**

**A: Yes. Changes to the computer system (Corporate OnLine) will be required to accommodate ULCs. The Registry will recover these costs through increased filing fees for ULCs (e.g. it would cost \$1000 to incorporate a ULC compared to \$350 for an ordinary limited company.) A Ministry of Finance budget submission seeking a \$1,000 incorporation fee for ULCs has recently been approved by Cabinet**

**Q: Are there any risks to shareholders in allowing for these entities to be created?**

**A: Yes. Shareholders will face potentially greater liability for the company's debts than they would in a normal limited company. However, as in Nova Scotia, this liability would only arise on winding up, and not while the company is being operated as a going concern.**

**Shareholders will be forewarned, in that the company's Notice of Articles and share certificates will be required to have printed on them a statement of this increased liability. As well, it is anticipated that the**

higher incorporation filing costs will deter people from inadvertently incorporating a ULC.

### **Technical Amendments**

**Q: Why are further amendments to the BCA needed?**

**A: The BCA is a progressive piece of legislation, and generally it works very well. However, it is also a lengthy and complex Act, that has only been in force for 2 ½ years. As lawyers and other corporate advisors work through the provisions, the need for certain refinements and adjustments has come to light.**

**I also understand that the government committed to ensuring that the Act stays up-to-date. Addressing these relatively minor, housekeeping matters on a regular basis is part of that process.**

**Q: Why are we going to allow companies to issue uncertificated shares?**

**These amendments complement the new securities transfer provisions contained in the proposed Securities Transfer Act (STA).**

**The legislation on transferring shares in BC companies is currently found in the BCA, and deals only with certificated shares. STA provides a comprehensive, modern framework for transfer of both certificated and uncertificated shares, thus enabling companies to move to using uncertificated shares. Relieving companies of the obligation to provide share certificates will enable them to access the modern, efficient transfer rules contained in the STA.**

**This amendment would not affect existing shareholders who have already received a paper certificate. As well, the ability to move to uncertificated shares can be curtailed by a company's articles.**

**Q: How will the amendments reduce the regulatory burden?**

**A: The amendments will**

- enhance flexibility for companies, for example, by giving them more options respecting the use of their corporate name, the procedures for filing vacancies on boards of directors and the type of shares that can be issued; and**



- **reduce red tape by eliminating unnecessary records office procedures.**

**Q: Does any other province allow for uncertificated shares?**

**A: Yes. Ontario has already made the necessary changes, and I understand that Alberta is considering similar changes to complement its STA.**

Page 1836 to/à Page 1857

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s.12;s.14

**Qs and As**

**Statute**

**Q:**

**A:**

**NAME OF STATUTE**

**Qs & As**

**Q:**

**A:**

Page 1860 to/à Page 1872

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s.12

Page 1873 to/à Page 1885

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s.12;s.14



RECEIVED  
MAY 29 2007  
REGISTRAR OF COMPANIES

Jim - FYI.

TB Mtg. Date October 24, 2006  
Cab. Ratified December 12, 2006  
170455

Confidential

Honourable Carole Taylor  
Minister of Finance  
Room 153 Parliament Buildings  
Victoria BC V8V 1X4

→ Ron Townsend.

Dear Colleague:

Re: Ministry Fee Proposals

I am writing to confirm that Treasury Board has approved your ministry's proposed introduction of a new \$1,000 filing fee to establish an Unlimited Liability Company under the Business Corporations Act.

I trust this is satisfactory.

Sincerely,

Rick Thorpe  
Vice Chair

pc: ✓ Tamara Vrooman  
Deputy Minister  
Ministry of Finance

Tara Faganello  
A/Assistant Deputy Minister, Corporate and Ministry Support Services  
Ministry of Finance