

## CORPORATE RECORDS II: MINUTE BOOK DUE DILIGENCE

# Guideline for Corporate Minute Book Review

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## GUIDELINE FOR CORPORATE MINUTE BOOK REVIEW

REVIEW STEPS	COMPLETED
<p><b>A. Preliminary Issues – What Rules Govern the Company?</b></p> <p>Consider the following preliminary issues:</p> <ul style="list-style-type: none"> <li>• what statute governs the company you are reviewing?</li> <li>• if it is a BC company, was it incorporated before or after the <i>British Columbia Business Corporations Act</i> (the “BCBCA”) came into effect?</li> <li>• if the company pre-dated the BCBCA, has it been transitioned under the BCBCA?</li> <li>• if the company has been transitioned, do the pre-existing company provisions of the BCBCA apply or has the company taken steps such that they do not?</li> </ul> <p>Upon determining which statutory provisions apply, ensure that you have copies of the identified statutes on hand as you conduct your review of the corporate records. <b>Note: for BC companies incorporated prior to the BCBCA, you will need not only a copy of the BCBCA, but also a copy of the old BC <i>Company Act</i>.</b></p>	
<p><b>B. Constatng Documents</b></p> <p>Review the company’s original constating documents and all special and other resolutions amending those documents to determine:</p> <ul style="list-style-type: none"> <li>• how the company was formed (incorporation, amalgamation, continuation)</li> <li>• current and all previous names of company and dates of change</li> <li>• original authorized capital for the company and all subsequent changes in authorized capital (including effective dates for all subsequent changes)</li> <li>• any restrictions on the business or powers of the company and whether any power has been removed from the directors and transferred to someone else (e.g., shareholder, management, etc.)</li> <li>• rights and restrictions attached to each class of shares (such as voting, dividend, liquidation, restrictions on ownership, etc.)</li> <li>• what the necessary thresholds are to pass special or other resolutions and whether all required notifications to applicable government agencies in respect of resolutions to amend incorporation documents have been made or filed</li> </ul>	

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<ul style="list-style-type: none"> <li>• quorum for shareholder/directors meetings</li> <li>• any restrictions on conduct of business</li> <li>• who has right to sign documents on behalf of company</li> <li>• if there are any unusual provisions (e.g., casting votes, voting thresholds or requirements beyond those imposed by statute, restrictions on transfer, restrictions on ability to issue shares to more than a fixed number of shareholders, etc.)</li> </ul>	
<p><b>C. Share Capital</b></p> <p>Review constating documents, directors' minutes, shareholders' minutes, any shareholders' agreements, share registers, miscellaneous documents and share certificates to determine:</p> <ul style="list-style-type: none"> <li>• current and historical issued share capital of the company and that all shares have been accounted for (prepare share history/reconciliation if required)</li> <li>• whether the share class or classes existed and the number was sufficient on each date on which shares were issued by the company to permit such issuance</li> <li>• if there are any restrictions or limitations on the directors' general ability to issue shares or approve share transfers (e.g., rights of first refusal, pre-emptive rights (statutory, contractual or pursuant to constating documents), third party consents, maximum number of permitted shareholders, etc.)</li> <li>• if all identified restrictions and limitations have been complied with in respect of each share issuance and share transfer which the company has completed (e.g., subscriptions/applications, waivers or consents, etc.)</li> <li>• that the directors' resolutions authorizing share issuances specify the consideration for which shares are being issued and, where the consideration is not cash, that the cash equivalent value of the consideration has been fixed</li> <li>• that the directors' resolutions documenting share transactions deal with consequential matters including cancellation of shares on a redemption, cancellation/issuance of share certificates, etc.</li> <li>• that the share registers directors' and shareholders' resolutions, share certificates and miscellaneous documents such as applications for allotment or transfer are internally consistent</li> <li>• the location of all outstanding share certificates, if any are pledged or held in escrow, that all certificates are accounted for and that share certificates have been cancelled as required</li> </ul>	

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<ul style="list-style-type: none"> <li>• if there is any information about outstanding rights to acquire securities of the company (e.g., warrants, options, convertible debentures, etc.)</li> <li>• that share registers have been updated to reflect all known name changes, issuances, transfers and other share transactions such as share splits, consolidations, redemptions, etc.</li> </ul>	
<p><b>D. Directors' Resolutions and Meeting Minutes</b></p> <p>In addition to reviewing matters described under "Share Capital" heading, review all directors' resolutions contained in corporate records to determine:</p> <ul style="list-style-type: none"> <li>• where resolutions are passed as consent resolutions, if all consent resolutions have been fully signed by all/correct directors of the company as of the date of each resolution (unless constating documents for a BC company permit consent resolutions to be passed in a different manner)</li> <li>• where resolutions are passed at meetings of directors, if all formalities for meetings have been satisfied including quorum and notice requirements, requirement for any director who is interested in a matter considered by the board to disclose interest and abstain from voting and have the minutes been signed</li> <li>• if names of directors on consent resolutions or meeting minutes conform to information contained in register of directors, notices of directors, annual reports, shareholders' resolutions with respect to each meeting or resolution date</li> <li>• if conditions relating to appointment of directors been met (e.g., required to hold share, nominee of shareholder, BC resident, etc.)</li> <li>• if any resolutions alter or supplement resolutions previously passed by the board</li> <li>• names, titles and dates of appointment or resignation/removal of all officers of the company, that changes been documented and that the officers conform to information contained in register of directors, register of officers, if applicable, and annual reports with respect to each appointment or resignation/removal date</li> <li>• if there are any applicable conditions relating to appointment of officers (e.g., in constating documents or shareholders agreement) that such conditions have been met</li> <li>• if directors' meeting minutes or consent resolutions reflect any significant "due diligence" issues (e.g., directors discussing potential lawsuits, environmental problems, financial irregularities, significant transactions, etc.)</li> </ul>	

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<ul style="list-style-type: none"> <li>• names of directors or others appointed to any committees of the board (e.g., audit committee or corporate governance committee) and any information about powers and duties of each committee</li> <li>• with respect to the audit committee, confirm company complies with applicable statutory requirements for composition of committee (e.g., Section 224 and 225 of the BCBCA or Section 171 of the <i>Canada Business Corporations Act</i>, if applicable)</li> <li>• confirm that forms of share certificates have been approved and conform with issued certificates</li> <li>• determine general signing authority, other signing authorities and conditions under which corporate seal may be affixed to documents</li> </ul>	
<p><b>E. Shareholders' Resolutions and Meeting Minutes</b></p> <p>In addition to reviewing matters described under "Share Capital" heading, review all shareholders' resolutions contained in corporate records to determine:</p> <ul style="list-style-type: none"> <li>• where resolutions are passed as consent resolutions, if all consent resolutions have been fully signed by all/correct shareholders of the company as of the date of each resolution (unless constating documents for a BC company permit consent resolutions to be passed in a different manner)</li> <li>• where resolutions are passed at meetings of shareholders, if all formalities for meetings have been satisfied including quorum and notice requirements and minutes have been signed</li> <li>• if names of shareholders on consent resolutions or meeting minutes conform to information contained in share registers and directors' resolutions with respect to each meeting or resolution date</li> <li>• if all necessary annual meetings or resolutions have been held or passed within correct time frame and that all matters to be dealt with, including appointment of auditor (or waiver of appointment) and election of directors have been dealt with</li> <li>• if register of directors, notices of directors, and annual reports conform with information in shareholders' minutes or consent resolutions and resignations/consents signed by directors</li> <li>• if any special resolutions have been passed by shareholders where necessary filings with applicable government agency have not been made (e.g., share split, consolidation, name change, amendment to incorporation documents, etc.) and is there consistency between special resolutions and certified resolution filed</li> </ul>	

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<ul style="list-style-type: none"> <li>• for federal companies, if shareholders have approved by-laws of company and all amendments thereto</li> <li>• if any resolutions alter or supplement resolutions previously passed by the shareholders</li> <li>• if shareholders have approved by special resolution any events requiring their approval such as a sale of all or substantially all of the company's assets, an interested director, continuation, etc.</li> </ul>	
<p><b>F. Annual Reports/Notices of Directors</b></p> <p>Review any annual reports and notices of directors filed with applicable government agencies to determine:</p> <ul style="list-style-type: none"> <li>• if company is up to date with respect to filing annual reports and date on which next annual report is due to be filed</li> <li>• if information contained in annual reports with respect to directors and officers conforms with information contained in directors' resolutions, shareholders' resolutions, resignations or consents and register of directors</li> <li>• if all required notices of directors have been filed and if the information is consistent with information contained in directors' resolutions, shareholders' resolutions, resignations or consents and register of directors</li> </ul>	
<p><b>G. Registered and Records Office</b></p> <p>Review directors' resolutions, annual reports and any notices filed with applicable government agencies to determine:</p> <ul style="list-style-type: none"> <li>• location of registered and records office and that all documents are internally consistent</li> <li>• records located at registered and records office contain all information required to be maintained by applicable corporate statute (e.g., Section 42 of the BCBCA or Section 20(1) of the <i>Canada Business Corporations Act</i>)</li> </ul>	
<p><b>H. Extra-Provincial Registration</b></p> <p>Review directors' resolutions and other records to determine:</p> <ul style="list-style-type: none"> <li>• in which jurisdictions the company may be carrying on business and whether the company has registered to carry on business in each such jurisdiction</li> <li>• the date of the last annual report filed in each jurisdiction and the date on which the next annual report will be due in each jurisdiction</li> </ul>	

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<ul style="list-style-type: none"> <li>• whether all information contained in annual reports filed in other jurisdictions conforms to information contained in annual reports filed in home jurisdiction, directors' resolutions, register of directors, etc.</li> <li>• have all required filings been made in other jurisdictions such as changes to the charter documents and changes in directors</li> </ul>	
<p><b>I. Miscellaneous</b></p> <p>Review copies of all documents approved by directors to understand terms and determine if any are relevant for your review. In particular:</p> <ul style="list-style-type: none"> <li>• review any agreements evidencing tax reorganizations conducted by company or shareholders (e.g., "rollover" agreements under Sections 85 or 86 of the <i>Income Tax Act</i> (Canada))</li> <li>• review any shareholders' agreements to determine if there are any restrictions on company's ability to carry on business, super-majority voting requirements, veto rights granted to individual shareholders over major transactions, etc.</li> <li>• review terms of any employee stock option plans, warrants, options, convertible debentures, etc.</li> </ul>	
<p><b>J. Other</b></p> <p>Confirm that all information you have obtained from corporate records conform to information contained in:</p> <ul style="list-style-type: none"> <li>• database searches of records of relevant government agency</li> <li>• disclosure documents prepared by company in connection with securities offerings or shareholder meetings</li> </ul>	