

British Columbia

The Societies Act: Changes to the previous Society Act

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Preparing for the Societies Act

- Application of the *Act*
- The Transition Process
- Bylaw Amendment- Process
- Bylaw Amendments- Policy Changes to be Aware of

Application of the *Societies Act*

- **Applicable to:**

- Every entity whom is continued or incorporated under current *Society Act*

- **No application to:**

- Federally incorporated not-for-profits operating in BC
- Business corporations
- Community Contribution Companies

The Transition Process

- Comes into force November 28, 2016 – but regulations available now
- Applies to all societies as of November 28, 2016
 - Societies required to “transition” by November 28, 2018
- Any conflict between bylaws and new *Societies Act* after November 28, 2016 will render conflicting provision of bylaws inoperable – even if you have not transitioned yet

The Transition Process: Matters to Address

Constitution

- Constitution should consist of only the Society's name and purposes, as they appear in the Corporate Registry. Any provisions other than these should be moved to the Bylaws.
- Must be in electronic format, and appear exactly as they existed prior to transition application.

Example: Society “A” – Before Transition

Province of British Columbia

Schedule A

Form 3

Society Act

Constitution

1. The name of the Society is “Society A”.
2. The purposes of the Society are:
 - (a) to promote the long term economic, social and environmental sustainability of the greenhouse industry for the benefit of Society A members;
 - (b) to discuss and address issues that impact members and the industry;
 - (c) to develop and disseminate information for the benefit of members of the Society;
 - (d) to perform research and development for the mutual benefit of the members of the Society; and
 - (e) to represent the collective interests of members by providing a public voice for the industry.
3. On the winding up of the society, funds and assets of the Society, remaining after the satisfaction of its debts and liabilities shall be paid, transferred or delivered to members in good standing in an amount proportional to their annual membership fee or other subscription at the time of dissolution of the Society.
4. (deleted 10/6/05)
5. Directors and Officers appointed by the Board of Directors shall be remunerated for being or acting as a Director or Officer, while engaging in the affairs of the Society.
6. Paragraphs 3, 5, and 6 are unalterable.

Example: Society A – After Transition

Province of British Columbia

Schedule A

Form 3

Society Act

Constitution

1. The name of the Society is "Society A".
2. The purposes of the Society are:
 - (a) to promote the long term economic, social and environmental sustainability of the greenhouse industry for the benefit of Society A members;
 - (b) to discuss and address issues that impact members and the industry;
 - (c) to develop and disseminate information for the benefit of members of the Society;
 - (d) to perform research and development for the mutual benefit of the members of the Society; and
 - (e) to represent the collective interests of members by providing a public voice for the industry.

Example: Society A – Last page of Bylaws After Transition

Province of British Columbia

Schedule A

Form 3

Society Act

Bylaws (last page)

14. A proxy is valid for only one meeting or any adjournment thereof.

15. On the winding up of the society, funds and assets of the Society, remaining after the satisfaction of its debts and liabilities shall be paid, transferred or delivered to members in good standing in an amount proportional to their annual membership fee or other subscription at the time of dissolution of the Society.

16. (deleted 10/6/05)

17. Directors and Officers appointed by the Board of Directors shall be remunerated for being or acting as a Director or Officer, while engaging in the affairs of the Society.

18. Paragraphs 15, 16, and 17 are unalterable.

The Transition Process: Before Transitioning

Bylaws

- Should prepare complete set of bylaws consisting of existing bylaws in consolidated form
 - Should include original bylaws, updated to include any amendments.
- Must be in electronic format, and appear exactly as they existed prior to transition application.

Bylaw Amendments

Society may want to adopt new bylaws:

- To take advantage of new Societies Act's flexibility
- To amend bylaws which are incompatible with new Societies Act
- To maintain status quo, where new Act has removed restrictions.

Bylaw Amendments

Bylaws should be reviewed carefully

1. Current bylaws compliant – no changes required (not likely)
2. Amend bylaws before Nov 28, 2016
 - More urgent bylaw changes may require this
3. Amend bylaws at transition
 - Approve before and hold for filing
4. Amend bylaws after transition
 - Any bylaws incompatible with new *Act* will be inoperative

Bylaw Amendments

- **Society which wishes to adopt new bylaws or make changes to bylaws:**
 - must have the new/alterd bylaws approved by “special resolution”
 - If approved before Nov 28, 2016 – 3/4 vote
 - If approved after Nov 28, 2016 - 2/3 vote (or higher threshold set out in bylaws)

Policy Changes to be Aware of

- Member Funded Societies
- Special Resolution Threshold
- Unalterable provisions
- Reporting Societies
- Access to Records
- Investment/Borrowing
- Directorship
- Senior Managers
- Reporting
- Membership
- Annual General Meeting

Member Funded Societies

- On transition, opportunity to designate as a “member funded society”
- To do so, must include statement to that effect in constitution.

“This society is a member funded society. It is funded primarily by its members to carry on activities for the benefit of its members. On its liquidation or dissolution, this society may distribute its money and other property to its members.”

- Fewer restrictions than other societies.

Member Funded Societies

Member Funded Society	Other societies
<ul style="list-style-type: none">• No restrictions on the distribution of assets upon liquidation or dissolution	<ul style="list-style-type: none">• Assets can only be distributed to certain entities upon winding up or dissolution
<ul style="list-style-type: none">• Can have a single director	<ul style="list-style-type: none">• Required to have at least three directors, one of whom must be ordinarily resident in British Columbia
<ul style="list-style-type: none">• No restrictions on composition of Board of Directors	<ul style="list-style-type: none">• Majority of Board of Directors must not be employed by or be under contract with the society
<ul style="list-style-type: none">• No public right to view financial statements	<ul style="list-style-type: none">• Public has right to obtain copies of financial statements
<ul style="list-style-type: none">• can convert to a business corporation	<ul style="list-style-type: none">• cannot convert to a business corporation
<ul style="list-style-type: none">• Becoming a member funded society may make you ineligible for certain future government funding that other societies (whom cannot distribute to members upon dissolution) may be eligible for.	

Member Funded Societies

Cannot be a member funded society if:

- a registered charity;
- a designated recipient of the Provincial Sales Tax Act, or otherwise entitled to receive taxes, fees or other revenue received by the Government as agent of the society;
- a student society;
- a hospital society;
- in a class of societies prohibited in the regulations from having the statement in their constitution (section 13 of regulations)

Member Funded Societies:

- Additionally, a society does not qualify as a member funded society if it has received external funding above a certain threshold.
- The test to determine whether a society may qualify as a member funded society is as follows:
 - 1) If the amount of external funding (public donations + government funding) is less than \$20,000 in the two financial years immediately preceding the current financial year, the society can designate itself as a member funded society.

Member Funded Societies:

- Additionally, a society does not qualify as a member funded society if it has received external funding above a certain threshold.
- The test to determine whether a society may qualify as a member funded society is as follows:
 - 2) If the amount of external funding (public donations + government funding) is greater than \$20,000 in the two financial years immediately preceding the current financial year, but less than 10% of the Society's gross income, the society can designate itself as a member funded society.

Member Funded Societies:

- Additionally, a society does not qualify as a member funded society if it has received external funding above a certain threshold.
- The test to determine whether a society may qualify as a member funded society is as follows:
 - 3) If the amount of external funding (public donations +government funding) is greater than \$20,000 in the two financial years immediately preceding the current financial year, and greater than 10% of the Society's gross income, the society cannot designate itself as a member funded society.

Member Funded Societies:

Public Donations

- Means donations, including bequests and gifts to a society.
- Excludes donations made by:
 - a) a voting member of the society, director, senior manager or employee of the society;
 - b) the spouse of a person named in (a) above; and
 - c) a relative of a person named in (a) or (b).

Becoming a Member Funded Society

- Decision to become a member funded society needs to be authorized by special resolution and indicated on transition application.
 - If vote occurs prior to Nov 28, 2016 a $\frac{3}{4}$ vote is required (or higher if specified in bylaws)
 - If vote occurs after Nov 28, 2016 a $\frac{2}{3}$ vote is required, unless higher threshold expressly set out in bylaws.
- Adopting member funded status after transitioning requires a court order.

Practical Considerations – Society “A”

- Remember Society “A”?

Practical Considerations – Society “A”

Province of British Columbia

Schedule A

Form 3

Society Act

Bylaws (last page)

14. A proxy is valid for only one meeting or any adjournment thereof.
15. On the winding up of the society, funds and assets of the Society, remaining after the satisfaction of its debts and liabilities shall be paid, transferred or delivered to members in good standing in an amount proportional to their annual membership fee or other subscription at the time of dissolution of the Society.
 - **NEEDS TO BE DESIGNATED AS MEMBER FUNDED TO HAVE ABILITY TO DISTRIBUTE ASSETS TO MEMBERS.**
 - **UNLESS THIS DESIGNATION IS AVAILABLE AND CHOSEN BY THE SOCIETY, THIS PROVISION WILL HAVE NO EFFECT**
16. (deleted 10/6/05)
17. Directors and Officers appointed by the Board of Directors shall be remunerated for being or acting as a Director or Officer, while engaging in the affairs of the Society.
18. Paragraphs 15, 16, and 17 are unalterable.

Becoming a Member Funded Society

QUESTIONS TO CONSIDER:

- 1) Do the benefits of being designated as member funded appeal to the Society?

- 2) Is the society disqualified by funding or status?
 - Is it likely you will be disqualified later?

- 3) Will your members approve the necessary change to constitution?

Special Resolution Threshold

- Default threshold for special resolution lowered to $2/3$ (previously $3/4$).
- Higher threshold(s) can be set by bylaws
 - Any threshold higher than $2/3$ must be expressly set out, as a number, percentage, or formula, in the bylaws.

Special Resolution Threshold: Considerations

- Society whom wants new lower threshold but whose bylaws currently specify 3/4 vote may want to amend to remove higher threshold.
- Society who does not want 2/3 threshold needs to amend bylaws to set higher threshold, unless bylaws already expressly do so.
- Can customize bylaws to require higher than ordinarily thresholds for amendments of particular bylaws.

Practical Considerations: Society “A”

Society “A” contains the following bylaw:

13. *These Bylaws shall not be altered or added to except by special resolution.*
- Previously the default special resolution threshold was 3/4.
 - Now, all bylaw changes by special resolution will require a 2/3 vote.
 - If Society “A” wants threshold to remain at 3/4 it will need to amend bylaws to set this higher threshold.

Unalterable provisions

- New Act phases out unalterable provisions.
- Cannot change or delete any unalterable provisions in constitution upon transition.
 - Must be added in, without alternation, and identified as “previously unalterable”.
- Once a society has transitioned, it can then alter previously unalterable provisions through bylaw amendment procedures.

Practical Considerations : Society “A”

Province of British Columbia

Schedule A

Form 3

Society Act

Bylaws (last page)

14. A proxy is valid for only one meeting or any adjournment thereof.
15. On the winding up of the society, funds and assets of the Society, remaining after the satisfaction of its debts and liabilities shall be paid, transferred or delivered to members in good standing in an amount proportional to their annual membership fee or other subscription at the time of dissolution of the Society. This provision was previously unalterable.
16. (deleted 10/6/05)
17. Directors and Officers appointed by the Board of Directors shall be remunerated for being or acting as a Director or Officer, while engaging in the affairs of the Society. This provision was previously unalterable.
18. Paragraphs 15, 17, and 18 are unalterable. This provision was previously unalterable.
 - This provision should be removed through bylaw procedure to remove confusion.

Reporting Societies

- Designation disappearing
- Current reporting societies required to put current Reporting Society Provisions into their bylaws on transition.
- Can then remove these provisions by special resolution.

Access to Records/ Record Keeping

New Act requires corporate record keeping:

- Certificate of incorporation, copies (certified) of constitution, bylaws, statement of directors, and addresses.
- Orders regarding the society (court, tribunal, regulatory)
- Register of directors + contact info
- Consents of directors
- Disclosure of interest
- Register of members + contact info
- Minutes of members meetings
- Copies of resolutions in writing
- Financial statements

Access to Records/ Record Keeping

- Members **CANNOT** be restricted from access to any of these records.
- If current bylaws restrict access in this way, they will be of no effect.
- May want to remove, to avoid misleading members.

Access to Records/ Record Keeping

- Also required to keep the following records:
 - Directors' meeting minutes
 - Directors resolutions in writing
 - adequate accounting records for all fiscal years,
 - including record of each transaction materially affecting the financial position of the company.
- These (above) records can be restricted from member access.
- Restriction must be in the bylaws.
- Society can impose reasonable fee and reasonable notice times for inspection.

Reporting on Remuneration

- **New requirements**
 - Annual Financial Statements must include note setting out remuneration paid to directors, listed by position or name
 - Remuneration paid to employees or contractors for services over \$75,000
 - If more than 10 over \$75,000, top ten earners must be reported
 - Can be listed as a pooled amount and number of persons.

MEMBER FUNDED SOCIETIES EXEMPT

Investment / Borrowing Funds

- Society may invest in any prudent investment
 - Can expand or limit this power by bylaw (ban investments of a particular type, or allow permissible investments to include more risky ones)
- Society may borrow funds, but this power may be limited by bylaw
 - If the society wishes to control borrowing by directors, bylaws can impose requirements (ordinary or special resolution), for such borrowing.

Directors- Terms of Office

- **Terms and term limits must be clear in bylaws**
 - If not specified term of office is until end of next AGM after his or her election or appointment (1 year term).
 - Can set out different terms of office in bylaws (2 years, staggered terms etc.)

Directors- Qualifications

- Statutory Qualifications
 - Must be 18 years or older
 - Unless bylaws permit 16-17 years old
 - Majority must always be 18+
 - Cannot be:
 - Found incapable by a court
 - Undischarged bankrupt
 - Convicted of certain criminal offences in past 5 years
- Additional qualifications can be set out in bylaws
- If a director ceases to be qualified – must resign
- Delayed Application Section – does not apply until 2018.

Directors- Qualifications

- **Consents to Act Form**
 - Directors must confirm they consent to act as a director
 - Can do so by being present at a meeting where elected and not refusing; or
 - Signing a written Consent to Act form
- Delayed application section – Does not apply until 2018.

Directors- Election and Removal

- **Director Election**

- Must clearly provide how individuals are elected or appointed

Director Removal

- Prior to New Act required special resolution
- New Act allows special resolution AND other method if set out in bylaws.
 - Board resolution, ordinary resolution, deemed resignation etc.

Directors- Indemnification and Liability

- **Directors may be legally liable for:**
 - Breach of duty
 - Negligence
 - Improper distributions
- **Due Diligence defense is available**
 - Protection for directors whom are acting based on expert reports
- **Can be indemnified by the society in certain situations, which can be limited by the bylaws.**
 - Indemnification is mandatory in certain circumstances and optional in others
 - Indemnification is prohibited where director not acting in good faith.

Directors- Indemnification and Liability

- **Conflict of Interests**
 - New expanded rules
 - Directors with material interest in a contract or transaction, or a matter for consideration by the board must:
 - Fully disclose the interest
 - Abstain from voting
 - Leave board meeting when it is discussed, unless asked to provide information
 - Leave board meeting when the vote occurs
 - Not take any action to influence the discussion or vote

Directors- Remuneration

- Must not pay remuneration unless permitted by bylaws
- May reimburse for reasonable expenses, unless bylaws restrict.
- Directors may be employees or contractors, provided the majority of the Board is not employed or under a contract for services (Member Funded Societies exempt from above requirement)
- **Delayed Application Section – Does not apply until 2018**

Senior Managers

- **New position authorized under New Act**
 - One or more individuals whom are appointed by the directors
 - Authorized to exercise directors' authority to manage the activities or internal affairs of the society as a whole, or in respect of a principle unit of the society.
- **Must be appointed by the directors, but can be an employee, or a volunteer.**
 - Treated the same as directors under the act (i.e. liability, qualifications, conflicts of interest disclosure, indemnification)

Membership

- Can have members in accordance with by-laws
- Multiple classes of members is permissible so long as rights and obligations are set out
- Admission procedure **must be** included in bylaws
- Members have access to the Register of Members
 - Can limit access by directors' resolution
 - Board can set notice period and inspection times
- Can requisition a special general meeting for a specific purpose
 - Requires certain requirements be met (10% of members signatures)

Annual General Meeting

- **Timing**
 - Must hold AGM in each calendar year
 - Within 6 months of fiscal year end
 - Not required in calendar year of incorporation
 - Can obtain permission to hold AGM no later than March 31 of following fiscal year.

Annual General Meeting

- **Location**
 - Can be held electronically (either wholly or partially)
 - All participants must be able to communicate with each other
 - Society not required to facilitate electronic meetings, but may choose to.

Annual General Meeting

Notice

- All members entitled to notice of general meeting (regardless of voting or non-voting membership)
- **14 days default notice**
 - May be as few as 7 days if specified in bylaws
 - Cannot exceed 60 days
- **Must be sent to every member:**
 - In manner agreed on;
 - In manner provided in bylaws, or
 - If neither – by mail, or email.
- If more than 250 members and bylaws provide can give notice via email, posting on website (21 days), or in a specified newspaper (3 weeks).

Annual General Meeting

Notice

- Must contain date, time, location of meeting
- Must include text of any special resolution to be presented at the meeting

Annual General Meeting

Quorum

- 3 voting members or greater number provided for in bylaws
 - If less than 3 members, all required
- Bylaws can provide for automatic quorum at adjourned meeting if required quorum not met at original + adjourned meeting.

Annual General Meeting

- **Deemed General Meetings**
 - New process – can forgo actual general meeting
 - All voting members sign consent resolutions providing for all business required at an AGM
 - Includes presentation of financial statements

Thank You!

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The information contained within is necessarily of a general nature, does not constitute legal advice and should not be relied upon for legal decision making.

North America: Canada - Mexico - United States

Central & South America: Argentina - Brazil - Chile - Colombia - Panama - Peru - Venezuela

Western Europe: Austria - Belgium - Cyprus - Denmark - Finland - France - Germany - Greece - Ireland - Italy
Luxembourg - Netherlands - Norway - Portugal - Spain - Sweden - Switzerland - United Kingdom

Eastern Europe: Belarus - Czech Republic - Estonia - Hungary - Latvia - Lithuania - Poland - Romania - Russia - Slovakia - Turkey - Ukraine

Middle East & Asia Pacific: China - India - Israel - Japan - Korea, Republic of - New Zealand - Singapore - United Arab Emirates

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