



## CORPORATE STATUS

- ' Is corporation valid, subsisting and in good standing?
- ' Are governmental filings up to date?
- ' Is status as private, "non-reporting" company protected? (If not private, a separate review of the publicly-held company is essential.)
- ' Ensure board of directors meets Canadian residence requirements.
- ' Ensure compliance with extra-provincial registration requirements, licensed as necessary.
- ' Do articles accurately describe the business reality?
- ' Is minute book generally well-organized and up to date? Who has custody of the book and the seal?
- ' Have there been any corporate acquisitions or reorganizations since the last review? If so, is this properly documented?
- ' Is this a holding company, in whole or in part?
- ' Are any of the shares of this company held by another corporation?

## SHARE CAPITAL

- ' Are issued shares properly authorized, accurately described and recorded?
- ' Is there proper evidence that issued shares are fully paid and non-assessable?
- ' Are there any outstanding agreements to issue any shares, options, rights or other securities?
- ' Are there any shares, options or assets held in trust for third parties?
- ' Are there any actual or potential actions to enforce or prevent share transfers or issue?
- ' If the corporation is in or near insolvency, ensure there are no dividends, redemptions or guarantees.
- ' Are all dividends, bonuses or other distributions properly authorized?

## SHAREHOLDERS' AGREEMENTS

- ' Does one exist? Is it up to date, complete, accurate and being applied correctly?

## CONDUCT OF CORPORATE BUSINESS

- ' Are all material transactions approved and recorded?
- ' Are all shareholders' and directors' minutes accurate and complete?
- ' Are directors aware of the "oppression remedies" available to shareholders, security holders, officers and creditors?
- ' Are directors aware of the proper procedure for the conduct of a sale or pledge where all, or substantially all, of the assets of the company are involved?

## DIRECTORS AND OFFICERS

- ' Review D&O and "key man" insurance.
- ' Directors and officers must understand and exercise, "honestly and in good faith", their fiduciary duties.
- ' Understand and assess the personal liabilities of directors and officers for dividends, redemptions, and guarantees where company is at or near insolvency.
- ' Understand and assess the statutory personal liabilities of directors and officers for
  - ' GST/HST
  - ' Obligations to employees such as salaries, commissions and vacation pay.
  - ' Income Tax, CPP, EI, Occupational Health and Safety Act, Workplace Safety and Insurance Act, and other remittances
  - ' Construction Lien trusts
  - ' Environmental Protection Act
  - ' Criminal and quasi-criminal laws

## FAMILY LAW ISSUES

- ' Are domestic contracts in place to deal with possible FLA claims on company shares?
- ' Does the corporation own the "matrimonial home" of one or more of the shareholders, directors, officers, or employees?
- ' Are any "triggering events" under a shareholders' agreement foreseeable? If so, what protective action has been taken?

## SUCCESSION PLANNING

- ' What is the "natural" succession? Is this a likely scenario, and is there early planning which should occur now?
- ' If a "natural" succession is not likely, what is the alternative? Is there a plan in place?
- ' What life, disability and critical illness insurance is in place? How held? When was the last review?

## CORPORATE ASSETS AND LIABILITIES

- ' List and analyze the corporation's encumbrances. Conduct necessary searches.
- ' Consider crystallization risks.
- ' Review loan and banking agreements.
- ' Are there problems with receivables or payables?
- ' Review real estate and lease holdings.
- ' Review major equipment leases.
- ' Review insurance: property, liability and business interruption.
- ' Are there retained earnings? If so, review use or investment of these for tax and earnings efficiency.
- ' Who is the company's dedicated financial advisor?

## **CREDITOR PROOFING**

- ' Analyze property holding patterns to determine exposure to seizure or execution.
- ' Review guarantees and indemnities given by the corporation or by directors, officers, shareholders, spouses and others.
- ' Ensure non-infracture of Fraudulent Conveyances Act and similar legislation.

## **MATERIAL CONTRACTS**

- ' Catalogue and review all material contracts, both upstream and downstream.

## **GENERAL BUSINESS PRACTICES**

- ' Implement a disaster plan
  - ' In writing
  - ' Personnel trained and ready
  - ' "Buddy system" with outside party
  - ' Off-site readiness
  - ' Adequate insurance
  - ' Periodic reviews scheduled and followed
- ' Ensure that all necessary permits, licenses, registrations and authorizations are current and valid.
- ' Are there any outstanding court orders applicable to the business?
- ' Any pending changes in statutes, regulations or local law which may render part or all of the business unlawful or uneconomical?

## **ENVIRONMENTAL ISSUES**

- ' Current or past use or storage (including underground) of hazardous substances?
- ' Is there current use or handling of hazardous materials? Are all procedures legally compliant?
- ' Should an environmental audit or assessment be conducted?

## **EMPLOYMENT LAW MATTERS**

- ' Review collective agreements.
- ' Review contracts with directors, officers and key employees.
- ' Are layoffs or restructuring being considered?
- ' Review general employment contracts.

- ' Review non-competition, non-solicitation, secrecy, and intellectual property policies and agreements.
- ' Are employees' licenses, certifications and bonding in order?
- ' Ensure that good written Workplace Health and Safety compliance policies are in place and that they are understood and enforced.

## **TAXATION**

- ' At least once per year, well in advance of "tax season", the company's tax situation should be reviewed from a planning and strategic perspective.

## **INTELLECTUAL PROPERTY**

- ' Has a full IP audit been conducted? If so, when and by whom? What were the results?
- ' Are systems in place to prevent inappropriate and untimely disclosures?
- ' Are appropriate precautions being taken with respect to copyright?
- ' What vigilance is being exercised with respect to infringement of company's IP?
- ' What practical steps are being taken to protect trade secrets?
- ' Is licensing appropriate? Is it being used? Enforced?
- ' What precautions are being taken to avoid infringement actions against the corporation?

## **COMPUTER, IT, E-BUSINESS AND RELATED**

- ' Review business done online (upstream and downstream). If significant, conduct a comprehensive e-business review.
- ' Ensure relevant Privacy Act compliance.
- ' Review employee internet and computer use policy.
- ' Audit and enforce internet security and data backup.
- ' Review policies and procedures for proper retention of records and evidence.
- ' Ensure lawful use of software, including open source.
- ' Ensure that insurance policies cover e-business and IT.
- ' Conduct a full legal audit of corporate web site and domain names.

The foregoing is a very abbreviated summary of some of the essential matters which should be reviewed regularly by directors and officers of corporations and is intended only to raise awareness of such matters. It is not legal advice. Directors and officers should discuss these and other issues directly with their key legal and financial advisors.

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