



2016 – Year of the *Societies Act*



Prepared and Presented by:

Bryan Millman

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Overview

- background
- what's new?
 - member funded societies
 - director qualifications
 - AGM timing
- transition methodology

Background

- 1977 - current *Society Act* enacted
- 2004 - minor amendments
- 2008 - BCLI Final Report
- 2009 - Review by Ministry of Finance
- 2011 - Initial Discussion Paper
- 2014 - White Paper
- March 25, 2015 – Bill 24 first reading
- May 15, 2015 – Bill 24 Royal Assent

Societies Act

- comes into force November 28, 2016
 - regulations now available
- applies to all BC societies as of that date
 - a few sections related to directors will not immediately be in force
- Registry preparing for electronic filing
- 2 year transition period follows date of proclamation

General Focus

- modernizes the Act in a number of beneficial ways
- increases governance flexibility
- increased director duties and requirements
- distinguishes between publicly and member funded societies
- greater transparency to public
- increased member rights and participation

Member Funded Societies

- fewer restrictions than “normal” societies
 - no public access to financial statements
 - not required to disclose remuneration
 - can have a single director
 - can have majority+ directors employed/on contract
 - can distribute assets on dissolution to members
 - > although this may be undesirable for tax reasons
 - can convert to business corporation

Member Funded Societies (cont.)

- cannot qualify as member funded society if:
 - **registered charity/qualified donee**
 - receives public donations over prescribed threshold
 - “public donations” means donations, including bequests and gifts to a society other than donations made by
 - > (a) a voting member, director, senior manager or employee of the society,
 - > (b) the spouse of a person referred to in paragraph (a), or
 - > (c) a relative of a person referred to in paragraph (a) or (b)

Member Funded Societies (cont.)

- cannot qualify if receives government funding over prescribed threshold
 - “government funding” means funding by way of a grant, a loan without interest or with interest substantially below the market rate or similar funding, provided by
 - > the government of Canada, British Columbia or another province of Canada,
 - > a municipality in British Columbia or in another province,
 - > the governing body of a first nation in Canada,
 - > an organization that is owned or controlled by, or is an agent of, any of the governments or bodies referred to above, or
 - > a government, body or other organization that is included in this definition by regulation,
 - but does not include funding excluded from this definition by regulation

Improvements

- electronic transition and filings
- clear requirements for record-keeping
- societies continue to be free to determine whether or not they need external financial review
 - and what level is appropriate (audit, review engagement, notice to reader)

Improvements (cont.)

- special resolution threshold lowered to 2/3
 - can be increased to higher threshold by bylaws (up to unanimous consent) – but not recommended
- removes the requirement to obtain a special resolution of members if security required when borrowing and when incorporating a subsidiary
- phases out unalterable provisions

Improvements (cont.)

- modernizes rules for calling and holding members' meetings and voting
 - electronic voting and meetings allowed

Constitution and Bylaws

- different look under new Act
- constitution will include only name, purposes and (if applicable) statement for member funded societies
- everything else must be in bylaws
 - dissolution, member benefit
- no more unalterable provisions
 - moved to bylaws and identified as previously unalterable
 - can be altered by special resolution

Statutory Qualifications for Directors

- 18 years or older
 - unless bylaws permit 16-17 years old
 - majority must always be 18+
- not:
 - found incapable by a court
 - undischarged bankrupt
 - convicted of certain criminal offences in past 5 years without a pardon
- can set out additional qualifications in bylaws
- director who ceases to be qualified must resign
- section does not apply till 2018

Directors Taking Office

- elected or appointed in accordance with the bylaws
 - bylaws must clearly provide how individuals are elected or appointed to the board
 - can include ex-officio or third party appointed directors, if bylaws provide
 - director terms and term limits (or lack thereof) must be clear in bylaws

Consents to Act

- standard for corporate legislation
- directors must confirm they consent to act as a director
- two ways
 - be present at meeting where elected and not refuse the office
 - sign a Consent to Act
- section does not apply till 2018

Director Removal

- to date, requires special resolution
- new legislation will allow special resolution
OR another method provided in the bylaws
(if any)

Conflict of Interest

- expanded rules
- directors with direct or indirect material interest in a contract or transaction with society, or a matter for consideration by the board, must:
 - fully disclose the nature and extent of the interest
 - abstain from voting on resolution
 - leave board meeting when discussed, unless asked to provide information
 - leave board meeting when vote occurs
 - not influence the vote

Senior Manager

- new concept
 - one or more individuals appointed by the directors to exercise the directors' authority to manage the activities or internal affairs of the society as a whole or in respect of a principal unit of the society
- key is appointment by the directors
- could be an employee, contractor or a volunteer
 - CEO, COO, CFO

Senior Manager (cont.)

- same qualifications as for directors
- appointing a senior manager does not create or affect existing contractual rights
- fiduciary duties imposed on senior manager
 - overlap with employment duties (if employee)
- disclosure of conflicting interests in contracts or transactions
 - same process as directors
- access to indemnification provisions, due diligence defence, etc.

Director Remuneration and Employment

- a society must not pay remuneration to directors for serving as director unless its bylaws permit
 - applies to all societies
- subject to bylaws, society can reimburse directors for reasonable expenses incurred in the course of duties
- regulations may limit or place conditions on remuneration or reimbursement
- directors may be employees or provide services under contract, provided that a majority of the board must not be employed or under contract for services
 - member funded exempt
 - NOT a good governance standard to have directors as employees
- section does not apply till 2018

Reporting on Remuneration

- new requirement
- note to annual financial statements that sets out:
 - remuneration paid to directors, if any; and
 - remuneration paid to employees or contractors over \$75,000
- if more than 10 above \$75,000, report top 10
- note does not have to identify payees by name
- member funded societies exempt

Membership

- can have members in accordance with bylaws
 - minors, corporations, non-entities
- can have multiple classes so long as rights and obligations are set out

Inspection of Records

- unless bylaws provide otherwise, members have access to all listed records (including Board minutes, resolutions and detailed accounting records)
- bylaws may restrict member access to certain documents
- concerns arise:
 - privacy
 - employment issues
 - solicitor-client privilege

Register of Members

- members have access to Register of Members
- board can set notice period and inspection times

Member Complaints

- member can commence action if society operated in manner oppressive or unfairly prejudicial to the member
- court can order or prohibit actions by society

AGM Planning Calendar

- starts with fiscal year end
 - preparation of annual financial statements
 - board approval of F/S and preparation for AGM
 - > notice, reports, resolutions, nominations
 - notice to members
 - AGM
 - post-AGM filings
- occurs within first 6 months of fiscal year

Timing of AGM

- must hold AGM
 - in each calendar year
 - within 6 months of fiscal year end
- can obtain permission to hold no later than March 31 of next year
- AGM not required in calendar year of incorporation

Location and Mode of AGM

- AGM can be:
 - physical (all present in person) at a location bylaws provide
 - partially electronic (some participating remotely)
 - wholly electronic (no common physical location – all participants participating remotely via shared technology platform)
- all participants must be able to communicate with each other and any votes must adequately disclose the intentions of the voters

Notice

- every member of a society entitled to notice of general meeting, regardless of voting or non-voting
 - implies that all members are entitled to attend every general meeting, even if not entitled to vote

Notice of AGM - Timing

- not less than 14 days (default) or, if bylaws specify, as short as 7 days
- not more than 60 days before the AGM
- a member can waive notice in any manner
 - > attendance is deemed waiver

Notice of AGM – Method (cont.)

- *Societies Act*
- notice must be “sent” to every member:
 - in the manner agreed on,
 - in the manner provided in the bylaws, or
 - failing both, by mail, delivery or e-mail (if an address has been provided)

Notice of AGM – Method (cont.)

- *Societies Act*
- if more than 250 members and if bylaws so provide, society can give notice by combination of:
 - > e-mail to each member who has provided an e-mail address and
 - > posting in a specified newspaper once for each of the three weeks prior to AGM; or
 - > posting for at least 21 days on website for members

Notice of AGM - Content

- date, time and location of meeting
- must include the text of any special resolution to be presented at the meeting
 - more prescriptive

Member Proposals

- members can make proposals for consideration at a general meeting
 - requires signatures of 5% of voting members, and not less than 2 voting members
 - proposal expressed in 200 words or less
 - received at least 7 days before notice of meeting is sent
- if valid proposal received, board must add to agenda
 - unless same proposal was considered in either of previous 2 calendar years before current
 - no liability for publishing a proposal
- query whether proposal binding even if adopted by meeting

Disposal of “Undertaking”

- modern corporate legislation requires membership approval to dispose of “all or substantially all” of the assets of the corporation
 - not a requirement in the current Act
- now a special resolution will be required
- for societies, a new procedural hurdle on wind down/dissolution

Transition

- two years to transition
 - begins November 28, 2016
- transition completed online
 - type or cut, paste and file:
 - > constitution (new form)
 - > bylaws that contain
 - > pre-transition bylaws
 - > other clauses from constitution, incl. unalterable
 - > reporting society provisions
 - > notice of current directors and registered address

Transition (cont.)

- legislation and new requirements apply immediately as of November 28, 2016
 - except certain sections relative to directors
- member approval not required to transition unless:
 - > seeking member funded society status, or
 - > amending bylaws as part of transition

Transition (cont.)

- current bylaws “of no effect” if non-compliant
 - model bylaws to accompany legislation inadequate for most governance models
- review and update of existing bylaws is essential
- three possibilities
 - > amend bylaws before act comes into force
 - > amend bylaws at transition
 - > amend after transition

Transition Options

- Option A
 - amend Bylaws as much as possible to comply with new Act at 2016 AGM, then transition
 - make further changes at 2017 AGM
- Option B
 - transition
 - update Bylaws at 2017 AGM
- Option C (awaiting confirmation)
 - pass but do not file special resolution to amend Bylaws prior to November
 - transition with amended Bylaws

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Suite 900 – 900 Howe Street
Vancouver, BC
V6Z 2M4

T 604.687.6575
F 604.641.4949
www.bht.com

BHT.COM