

## Marine Life Magazine

### Legal Desk

#### March 29, 2006 Deadline – *Transition your Company or Suffer the Consequences*

If you own a B.C. company and you have not filed a “transition application” it is critical that you act now. As of March 29, 2006, companies that have not been *transitioned* from the old B.C. *Company Act* to comply with the new B.C. *Corporations Act* will be subject to being struck from the B.C. corporate registry.

Once struck from the provincial corporate registry a company is *dissolved* and ceases to exist. Property cannot be held by a company that doesn't exist, hence vessels, land, equipment, and other assets technically *escheat*, or *fall into the clutches* of the Crown. They do not, surprisingly, go to the owners of the corporation automatically. Although the company can be restored, and assets can be gathered back up, this is a complicated and expensive exercise best avoided by proper maintenance of corporate records and compliance with the new *Corporations Act*.

Aside from the temporary or permanent loss of hard assets, failing to *transition* your company and having it dissolved can lead to some very unfavorable results. Firstly, a dissolved company cannot maintain legal actions and cannot enforce its rights under a contract. For example, it cannot enforce a contract for payment for goods already delivered. The purchaser of goods on payment terms may avoid their obligation after receiving the goods if the company that owns the obligation has been dissolved.

Secondly, a dissolved company cannot pursue or maintain a legal action. For example, a company that owns a vessel and has its vessel arrested has no immediate remedy. The dissolved company does not have standing before the Court to seek the vessel's release, until the company has been restored. The process of restoring a company can take weeks and sometimes months, and this time delay can cause huge expense, loss and other prejudice to the business owner during that period.

Thirdly, most people own a company as a tax reduction tool and to limit the liability of its owners. Because commercial liability insurance can be hard to get and expensive, incorporating can sometimes be the only form of protection a businessperson can afford. This protection is dependant however on its status in the corporate registry. A company may carry on business with a corporate letterhead, issuing company cheques, signing contracts in the name of the company, but this appearance of limited liability offers no true security to the business owner's personal assets if the company has been struck from the registry.

The up-side to transitioning your company is that it will make it easier and less expensive in the future to maintain the corporate records. One of the intents of the new B.C. *Corporations Act* is to move more of the corporate records management into an

electronic form that can be updated on-line. The purpose of the transition application is to ensure that all companies in the corporate registry have, following March 29, 2006, up to date information regarding their directors, officers, registered and records offices, mailing addresses and authorized share structure. "Authorized share structure" however is not the same as "issued share structure". The *issued share structure*, or who owns how many shares, is not filed in the corporate registry and remains only in the hard-copy records book of the company at the company's records office.

Importantly, unless the address for your registered office has been kept up to date in the corporate registry, do not expect another warning that you must transition your company. Although notices will be sent to all companies that have not transitioned by March 29, 2006 before any action is taken by the Crown to dissolved the company, you will not get this notice if your address has not been kept up to date.

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