

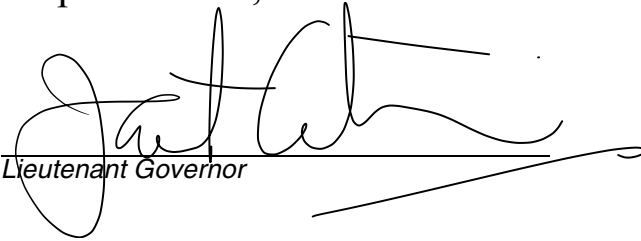
PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 549

, Approved and Ordered

September 20, 2020



Lieutenant Governor

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that

- (a) effective November 30, 2020,
 - (i) the *Land Owner Transparency Act*, S.B.C. 2019, c. 23, is brought into force, except
 - (A) sections 30, 31, 32, 33, 34, 35, 36, 37 and 38,
 - (B) sections 110, 111, 112, 117, 118, 119, 120, 121 and 123,
 - (C) section 125, as it enacts section 19 (1) (e.1) of the *Land Title and Survey Authority Act*, S.B.C. 2004, c. 66, and
 - (D) sections 126 and 127, and
 - (ii) the *Land Owner Transparency Regulation*, except Part 4, is made, as set out in the attached Schedule 1,
- (b) effective November 30, 2020, the *Business Corporations Regulation*, B.C. Reg. 65/2004, is amended as set out in the attached Schedule 2, and
- (c) effective April 30, 2021,
 - (i) sections 30, 31, 32, 33, 34, 35, 36, 37 and 38 of the *Land Owner Transparency Act*, S.B.C. 2019, c. 23, are brought into force, and
 - (ii) Part 4 of the *Land Owner Transparency Regulation* is made, as set out in the attached Schedule 1.



Minister of Finance and Deputy Premier



Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section: *Land Owner Transparency Act*, S.B.C. 2019, c. 23, ss. 97 and 128

Other: OIC 201/2004

R10445710

SCHEDULE 1

LAND OWNER TRANSPARENCY REGULATION

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PART 1 – DEFINITION FOR REGULATION

Definition for regulation

- 1 In this regulation, “**Act**” means the *Land Owner Transparency Act*.

**PART 2 – MEANING OF “INDIRECT CONTROL”
FOR PURPOSES OF ACT**

Division 1 – Definitions for Part 2

Definitions for Part 2

- 2 In this Part:

“**chain of relevant intermediaries**” means a group of 2 or more relevant intermediaries having a hierarchical relationship to each other in which

- (a) the first relevant intermediary in the chain is controlled by an individual who is not a relevant intermediary, and
- (b) each relevant intermediary in the chain controls the relevant intermediary below it;

“**relevant intermediary**” means a person that is one or more of the following and is controlled by another person:

- (a) a relevant corporation;
- (b) a relevant partnership;
- (c) an individual, relevant corporation or relevant partnership that is a trustee of a relevant trust;
- (d) an individual, relevant corporation or trustee of a relevant trust that is an agent;
- (e) an individual, relevant corporation, relevant partnership or trustee of a relevant trust that is a personal or other legal representative.

**Division 2 – Indirect Control of
Shares of Relevant Corporation**

Definition of control for Division 2

- 3 In this Division, “**control**” means control determined in accordance with the rules set out in the following:

- (a) section 7 [*control under Division 2 of relevant corporation, relevant partnership or agent*];
- (b) section 8 [*control under Division 2 of trustee of relevant trust*];
- (c) section 9 [*control under Division 2 of personal or other legal representative*].

Purpose of Division 2

- 4** This Division sets out the meaning of indirect control of one or more of the shares of a relevant corporation for the purposes of section 3 (2) (a) (iii) [*meaning of “corporate interest holder”*] of the Act.

Indirect control of share by individual who is not relevant intermediary

- 5** (1) An individual who is not a relevant intermediary has indirect control of a share of a relevant corporation if the individual controls a relevant intermediary that is the registered owner of the share.
- (2) An individual who is not a relevant intermediary has indirect control of a share of a relevant corporation if
- (a) the individual controls the first relevant intermediary in a chain of relevant intermediaries, and
 - (b) the last relevant intermediary in the chain is the registered owner of the share.

Indirect control of share by trustee or representative in chain of relevant intermediaries

- 6** In addition to any individual who has indirect control under section 5 (2), an individual in a chain of relevant intermediaries has indirect control of a share of a relevant corporation if
- (a) the individual is
 - (i) a trustee of a relevant trust, or
 - (ii) a personal or other legal representative, and
 - (b) the last relevant intermediary in the chain is the registered owner of the share.

Control under Division 2 of relevant corporation, relevant partnership or agent

- 7** (1) For the purposes of this Division, control of a person that is a relevant corporation, a relevant partnership or an agent is determined in accordance with the rules set out in this section.
- (2) A person controls a relevant corporation if the person has the right to elect the majority of the directors of the relevant corporation.
- (3) A person controls a relevant partnership if
- (a) the person is a partner, other than a limited partner, in the relevant partnership, or

- (b) the person is a limited partner in the relevant partnership and
 - (i) is entitled to at least 25% of the profits of the partnership assets,
 - (ii) is entitled on wind up to at least 25% of the assets of the partnership,
 - (iii) has at least 25% of the votes in the partnership management, or
 - (iv) has the right to appoint or remove the majority of the partnership's management.
- (4) A person controls an agent if the person is the principal of the agent.
- (5) Subsection (2) does not apply if a relevant corporation is also an agent.
- (6) The rules set out in this section are subject to the rules set out in
 - (a) section 8 (3) [*control under Division 2 of trustee of relevant trust*], and
 - (b) section 9 (3) [*control under Division 2 of personal or other legal representative*].

Control under Division 2 of trustee of relevant trust

- 8**
- (1) For the purposes of this Division, control of a person that is a trustee of a relevant trust is determined in accordance with the rules set out in this section.
 - (2) A person controls a trustee of a relevant trust if,
 - (a) in the case of a trustee that is the registered owner of a share of a relevant corporation, the person has, under the terms of the relevant trust, the power to direct how the trustee is to exercise any of the rights attached to the share, or
 - (b) in the case of a trustee that controls the relevant intermediary below the trustee, the person has, under the terms of the relevant trust, the power to direct how that trustee is to exercise control over that relevant intermediary.
 - (3) If a trustee of a relevant trust is also a relevant corporation, a relevant partnership or an agent, the rules set out in section 7 (2), (3), (4) and (5) [*control under Division 2 of relevant corporation, relevant partnership or agent*] apply only if no person controls the trustee within the meaning of this section.

Control under Division 2 of personal or other legal representative

- 9**
- (1) For the purposes of this Division, control of a person that is a personal or other legal representative is determined in accordance with the rules set out in this section.
 - (2) A person controls a personal or other legal representative if,
 - (a) in the case of a personal or other legal representative that is the registered owner of a share of a relevant corporation, the person has the legal authority to direct how the representative is to exercise any of the rights attached to the share, or
 - (b) in the case of a personal or other legal representative that controls the relevant intermediary below the representative, the person has the legal

authority to direct how that representative is to exercise control over that relevant intermediary.

- (3) If a personal or other legal representative is also a relevant corporation, a relevant partnership or an agent, the rules set out in section 7 (2), (3), (4) and (5) [*control under Division 2 of relevant corporation, relevant partnership or agent*], apply only if no person controls the representative within the meaning of this section.

Division 3 – Indirect Control of Directors of Relevant Corporation

Definition of control for Division 3

- 10** In this Division, “**control**” means control determined in accordance with the rules set out in the following:
- (a) section 14 [*control under Division 3 of relevant corporation, relevant partnership or agent*];
 - (b) section 15 [*control under Division 3 of trustee of relevant trust*];
 - (c) section 16 [*control under Division 3 of personal or other legal representative*].

Purpose of Division 3

- 11** This Division sets out the meaning of indirect control of the right to elect, appoint or remove one or more of the directors of a relevant corporation for the purposes of section 3 (2) (b) (ii) [*meaning of “corporate interest holder”*] of the Act.

Indirect control of director by individual who is not relevant intermediary

- 12** (1) An individual who is not a relevant intermediary has indirect control of the right to elect, appoint or remove a director of a relevant corporation if the individual controls a relevant intermediary that has that right.
- (2) An individual who is not a relevant intermediary has indirect control of the right to elect, appoint or remove a director of a relevant corporation if
- (a) the individual controls the first relevant intermediary in a chain of relevant intermediaries, and
 - (b) the last relevant intermediary in the chain has the right to elect, appoint or remove the director.

Indirect control of director by trustee or representative in chain of relevant intermediaries

- 13** In addition to any individual who has indirect control under section 12 (2), an individual in a chain of relevant intermediaries has indirect control of the right to elect, appoint or remove a director of a relevant corporation if
- (a) the individual is
 - (i) a trustee of a relevant trust, or
 - (ii) a personal or other legal representative, and

- (b) the last relevant intermediary in the chain has the right to elect, appoint or remove the director.

Control under Division 3 of relevant corporation, relevant partnership or agent

- 14** (1) For the purposes of this Division, control of a person that is a relevant corporation, a relevant partnership or an agent is determined in accordance with the rules set out in section 7 (2), (3), (4) and (5) [*control under Division 2 of relevant corporation, relevant partnership or agent*].
- (2) The rules referred to in subsection (1) are subject to the rules set out in
- (a) section 15 (3) [*control under Division 3 of trustee of relevant trust*], and
 - (b) section 16 (3) [*control under Division 3 of personal or other legal representative*].

Control under Division 3 of trustee of relevant trust

- 15** (1) For the purposes of this Division, control of a person that is a trustee of a relevant trust is determined in accordance with the rules set out in this section.
- (2) A person controls a trustee of a relevant trust if,
- (a) in the case of a trustee that has the right to elect, appoint or remove a director of a relevant corporation, the person has, under the terms of the relevant trust, the power to direct how the trustee is to exercise that right, or
 - (b) in the case of a trustee that controls the relevant intermediary below the trustee, the person has, under the terms of the relevant trust, the power to direct how that trustee is to exercise control over that relevant intermediary.
- (3) If a trustee of a relevant trust is also a relevant corporation, a relevant partnership or an agent, the rules referred to in section 14 (1) [*control under Division 3 of relevant corporation, relevant partnership or agent*] apply only if no person controls the trustee within the meaning of this section.

Control under Division 3 of personal or other legal representative

- 16** (1) For the purposes of this Division, control of a person that is a personal or other legal representative is determined in accordance with the rules set out in this section.
- (2) A person controls a personal or other legal representative if,
- (a) in the case of a personal or other legal representative that has the right to elect, appoint or remove a director of a relevant corporation, the person has the legal authority to direct how the representative is to exercise that right, or
 - (b) in the case of a personal or other legal representative that controls the relevant intermediary below the representative, the person has the legal authority to direct how that representative is to exercise control over that relevant intermediary.

- (3) If a personal or other legal representative is also a relevant corporation, a relevant partnership or an agent, the rules referred to in section 14 (1) [*control under Division 3 of relevant corporation, relevant partnership or agent*] apply only if no person controls the representative within the meaning of this section.

PART 3 – TRANSPARENCY DECLARATIONS AND TRANSPARENCY REPORTS

Definition for Part 3

- 17** In this Part, “**serial number**” means the serial number referred to in section 153 (1) (b) [*time of application*] of the *Land Title Act*.

Additional information required in transparency declarations

- 18** For the purposes of section 10 (1) (c) [*transparency declaration required with application to register interest in land*] of the Act, a transparency declaration must contain the serial number recorded on the most recent application previously received by the registrar in respect of the interest in land to which the transparency declaration relates.

Due date by which pre-existing owners must file transparency reports

- 19** Transparency reports required to be filed under section 15 (1) [*transparency report required from pre-existing and other owners*] of the Act must be filed on or before November 30, 2021.

Additional information required in transparency reports

- 20** For the purposes of section 18 (h) [*information required in transparency reports*] of the Act, a transparency report must contain the serial number recorded on the most recent application previously received by the registrar in respect of the interest in land to which the transparency report relates.

Registrants of certain leases exempt from requirement to file transparency report

- 21** (1) In this section:
- “**lease**” means an interest in land described in paragraph (c) of the definition of “interest in land” in section 1 [*definitions*] of the Act;
 - “**remaining term**”, in relation to a lease, does not include any periods for which the lease may be extended or renewed.
- (2) A relevant corporation, trustee of a relevant trust or partner of a relevant partnership is not required to file a transparency report under section 12 (1) [*transparency report required with application to register interest in land*] of the Act if
- (a) an application is made to register a lease in the name of the relevant corporation, trustee of the relevant trust or partner of the relevant partnership, and

- (b) on the date the application is made, the lease has a remaining term of 10 years or less.
- (3) A relevant corporation, trustee of a relevant trust or partner of a relevant partnership is not required to file a transparency report under section 15 (1) [*transparency report required from pre-existing and other owners*] of the Act if
 - (a) the relevant corporation, trustee of the relevant trust or partner of the relevant partnership is a registered owner of a lease, and
 - (b) on November 30, 2020, the lease has a remaining term of 10 years or less.
- (4) A relevant corporation, trustee of a relevant trust or partner of a relevant partnership is not required to file a transparency report under section 15 (4) [*transparency report required from pre-existing and other owners*] of the Act if
 - (a) the relevant corporation, trustee of the relevant trust or partner of the relevant partnership is a registered owner of a lease, and
 - (b) on the date the corporation, trust or partnership became a relevant corporation, relevant trust or relevant partnership, the lease had a remaining term of 10 years or less.

PART 4 – ACCESS TO TRANSPARENCY RECORDS, REPORTED INFORMATION AND PUBLICLY ACCESSIBLE INFORMATION

Inspections and searches for tax-related purposes

- 22** For the purposes of section 32 (1) (a) (ii) [*inspections and searches for tax and related purposes*] of the Act, the following are prescribed:
- (a) the *Home Owner Grant Act*;
 - (b) the *Land Tax Deferment Act*.

Fee exemption for enforcement officer and ministry officials

- 23** The following are exempt from the requirement to pay fees under section 38 [*fees for inspections and searches*] of the Act:
- (a) the enforcement officer;
 - (b) an official or employee of the ministry of the Minister of Finance.

PART 5 – LAWYERS’ RECORDS

Definitions for Part 5

- 24** In this Part:
- “**client**” includes a former client;
 - “**court**” means the Supreme Court of British Columbia;
 - “**custodian**”, in relation to a seized record, means a sheriff or person referred to in section 26 (2) (c) [*seizure of lawyer’s record*] who has custody of the seized record;

“**lawyer’s record**” has the same meaning as in section 100 (1) [*regulations in relation to lawyers’ records*] of the Act;

“**retained**” means retained by a lawyer under section 25 (1) [*inspection of lawyer’s record*];

“**seized**” means seized from a lawyer under section 26 (1) [*seizure of lawyer’s record*].

Inspection of lawyer’s record

- 25** (1) If a lawyer’s record is about to be inspected or removed for the purposes of an inspection under Division 3 [*Inspections and Demands for Information*] of Part 4 [*Administration and Enforcement*] of the Act, the lawyer’s record
- (a) must be retained by the lawyer in accordance with subsection (2) of this section, and
 - (b) may not be inspected or removed by the enforcement officer.
- (2) For the purposes of subsection (1) (a), the lawyer must do the following:
- (a) place the record in a package, together with any other records in respect of which the lawyer at the same time makes the same claim on behalf of the same client;
 - (b) suitably seal and identify the package or, if the enforcement officer and the lawyer agree, allow pages of the record to be initialled and numbered or otherwise suitably identified;
 - (c) retain the package and ensure that the package is preserved until the retained record is dealt with in accordance with
 - (i) sections 29 [*application to determine claim of privilege*] and 30 [*determination of claim of privilege*], or
 - (ii) sections 31 [*application by government to inspect or obtain copy of record*] and 32 [*determination of application by government to inspect or obtain copy of record*].

Seizure of lawyer’s record

- 26** (1) If a lawyer’s record is about to be seized for the purposes of the investigation of an offence under Part 6 [*Offences*] of the Act, the lawyer’s record
- (a) may be seized by the investigator only in accordance with subsection (2) of this section, and
 - (b) must not be inspected or examined by the investigator.
- (2) For the purposes of subsection (1), the investigator must do the following:
- (a) place the record in a package, together with any other records subject to seizure in respect of which the lawyer at the same time makes the same claim on behalf of the same client;
 - (b) suitably seal and identify the package;
 - (c) place the package in the custody of
 - (i) a sheriff, or

- (ii) another person who the lawyer and investigator agree, in writing, to act as custodian of the seized record.
- (3) A custodian must not deliver a seized record to any person except
 - (a) in accordance with an order made under
 - (i) section 27 (1) [*application by lawyer to examine or copy record*],
 - (ii) section 30 [*determination of claim or privilege*], or
 - (iii) section 32 [*determination of application by government to inspect or obtain copy of record*],
 - (b) to the lawyer in accordance with the enforcement officer's or investigator's written consent, or
 - (c) to the enforcement officer or investigator in accordance with a written consent given by the lawyer or the lawyer's client.

Application by lawyer to examine or copy record

- 27** (1) At any time while a seized record is in the possession of a custodian, the lawyer from whom the record was seized may apply to the court, without giving notice to any other person, for an order authorizing the lawyer to examine the record, or to make a copy of the record, in the presence of the custodian or a judge of the court.
- (2) An order under subsection (1) may include provisions that the court considers necessary to ensure that the record is repackaged and the package is resealed without alteration or damage.

Lawyer must inform client of claim of privilege

- 28** (1) If a record is retained by or seized from a lawyer, the lawyer must take reasonable steps to inform the lawyer's client that a claim of solicitor-client privilege has been made in respect of the record.
- (2) After taking reasonable steps under subsection (1), the lawyer must advise the enforcement officer or investigator, as applicable,
 - (a) as to whether the lawyer was able to inform the client of the claim of solicitor-client privilege, and
 - (b) if the lawyer was able to inform the client, as to whether the client has waived the claim of solicitor-client privilege.

Application to determine claim of privilege

- 29** (1) If a record is retained by or seized from a lawyer, the lawyer or the lawyer's client may apply to the court for a determination as to whether the client has solicitor-client privilege with respect to the record.
- (2) Unless the court orders otherwise, an application under this section
 - (a) must be filed within 14 days after the date on which the record was retained or seized,
 - (b) must designate the government as "Her Majesty the Queen in right of the Province of British Columbia", and

- (c) must be served on the government, in accordance with section 8 [*service on government*] of the *Crown Proceeding Act*, within 7 days of being filed with the court.
- (3) If an application relates to a seized record, the lawyer or client who filed the application must pay to the custodian, on or before the date on which notice of the hearing is required to be served, the estimated expenses of
 - (a) transporting the record to and from the place of hearing, and
 - (b) safeguarding the record.

Determination of claim of privilege

- 30**
- (1) On hearing an application that relates to a record retained by a lawyer, the court may by order do the following:
 - (a) if the court decides that the lawyer's client has solicitor-client privilege with respect to the record or a part of the record, require the record or part to remain in the possession of the lawyer or client;
 - (b) if the court decides that the lawyer's client does not have solicitor-client privilege with respect to the record or a part of the record, require the lawyer to make the record or part available for inspection by the enforcement officer.
 - (2) On hearing an application that relates to a record seized from a lawyer, the court may by order do the following:
 - (a) if the court decides that the lawyer's client has solicitor-client privilege with respect to the record or a part of the record, require the custodian of the seized record to return the record or part to the lawyer or client;
 - (b) if the court decides that the lawyer's client does not have solicitor-client privilege with respect to the record or a part of the record, require the custodian to deliver the record or part to the enforcement officer or investigator.
 - (3) If the court inspects a record for the purposes of making a decision under subsection (1) or (2), the court, after completing the inspection,
 - (a) must ensure that the record is repackaged,
 - (b) must ensure that the package is resealed, and
 - (c) must not, in the reasons for judgment, divulge any details about the record.

**Application by government
to inspect or obtain copy of record**

- 31**
- (1) The government may apply to the court for an order under section 32 [*determination of application by government to inspect or obtain copy of record*] if a record has been retained by or seized from a lawyer and either of the following applies:
 - (a) an application has not been filed and served in accordance with section 29 (2) [*application to determine claim of privilege*];
 - (b) an application has been filed and served in accordance with section 29 (2) but the application has not been set down for hearing within

- (i) 30 days of being filed, or
 - (ii) a later period agreed to by the government or specified by order of the court.
- (2) The government must give notice of an application under this section to the following:
 - (a) the lawyer;
 - (b) if the identity of the lawyer's client is known to the government, the lawyer's client.
- (3) If the identity of the lawyer's client is not known to the government, the lawyer must, after being given notice under subsection (2) (a),
 - (a) take reasonable steps to give notice of the application to the lawyer's client, and
 - (b) advise the court as to whether the lawyer was able to give notice of the application to the lawyer's client.
- (4) If the lawyer was able to give notice of the application to the lawyer's client, the client is deemed to have been given notice by the government.

**Determination of application by government
to inspect or obtain copy of record**

- 32** On hearing an application under section 31 [*application by government to inspect or obtain copy of record*], the court may by order
- (a) if the application relates to a record retained by a lawyer, require the lawyer to make the record or a part of the record available for inspection by the enforcement officer, or
 - (b) if the application relates to a record seized from a lawyer, require the custodian to deliver the record or a part of the record to the enforcement officer.

PART 6 – HOW DOCUMENTS MUST BE GIVEN

**How administrator, enforcement officer
and minister must give documents**

- 33** For the purposes of sections 90 (1) [*how administrator must give documents*] and 91 (1) [*how enforcement officer and minister must give documents*] of the Act, a request, notice or other document or record required or authorized to be given to a person must be given as follows:
- (a) if the person is an individual and is not a partner of a partnership, in one of the ways described in section 34 [*giving documents to individuals*] of this regulation;
 - (b) if the person is not an individual or a partner of a partnership, in one of the ways described in section 35 [*giving documents to persons who are not individuals or partners*] of this regulation;
 - (c) if the person is a partner of a partnership, in one of the ways described in section 36 [*giving documents to partners*] of this regulation.

Giving documents to individuals

- 34** For the purposes of section 33 (a), a document or record may be given to an individual by
- (a) leaving the document or record with the individual,
 - (b) leaving the document or record at the individual's residence with an adult who apparently resides with the individual,
 - (c) sending the document or record by ordinary mail, by registered mail or by courier to
 - (i) the address at which the individual resides, or
 - (ii) a forwarding address provided by the individual,
 - (d) leaving the document or record in a mailbox or mail slot for the address at which the individual resides,
 - (e) sending the document or record by email to the email address provided by the individual, or
 - (f) transmitting the document or record to a fax number provided by the individual.

Giving documents to persons who are not individuals or partners

- 35** For the purposes of section 33 (b) [*how administrator, enforcement officer and minister must give documents*], a document or record may be given to a person who is not an individual or a partner of a partnership by
- (a) leaving the document or record with an agent, officer, director, liquidator or receiver manager of the person,
 - (b) if the person is an extraprovincial corporation, leaving the document or record with
 - (i) a person referred to in paragraph (a) of this section, or
 - (ii) an attorney for the extraprovincial corporation,
 - (c) sending the document or record by ordinary mail, by registered mail or by courier to the person's registered office or the address at which the person carries on business,
 - (d) sending the document or record by email to the email address provided by the person, or
 - (e) transmitting the document or record to a fax number provided by the person.

Giving documents to partners

- 36** For the purposes of section 33 (c) [*how administrator, enforcement officer and minister must give documents*], a document or record may be given to a partner of a partnership by
- (a) leaving the document or record with the partner, or with another partner of the partnership,
 - (b) sending the document or record by ordinary mail, by registered mail or by courier to the partnership's business office,

- (c) sending the document or record by email to the email address provided by the partnership, or
- (d) transmitting the document or record to a fax number provided by the partnership.

Deemed receipt of documents

37 For the purposes of sections 90 (2) [*how administrator must give documents*] and 91 (2) [*how enforcement officer and minister must give documents*] of the Act, a document or record given in accordance with this Part is conclusively deemed to be received at the following times:

- (a) if given by leaving the document or record with an individual, at the beginning of the day on which it is left;
- (b) if given by sending the document or record by ordinary mail, by registered mail or by courier, at the beginning of the 5th day after it is mailed or received by the courier;
- (c) if given by leaving the document or record in a mailbox or mail slot, at the beginning of the 3rd day after it is left;
- (d) if given by sending the document or record by email, at the beginning of the 3rd day after it is sent;
- (e) if given by transmitting the document or record to a fax number, at the beginning of the 3rd day after it is transmitted.

SCHEDULE 2

1 *Section 51 of the Business Corporations Regulation, B.C. Reg. 65/2004, is amended*

(a) in subsection (1) by striking out “Subject to subsections (2) and (3)” and substituting “Subject to subsections (1.1), (2) and (3)”, and

(b) by adding the following subsection:

(1.1) Subsection (1) (a) does not apply if the corporation is also an agent.