Taking Stock:
Share Structure of a British Columbia Corporation

By Scott T. Johnston

In previous articles, I have discussed various aspects of a British Columbia corporation (also known as a company), including choosing an appropriate business name, its formation as an incorporated entity under the *Business Corporations Act* of British Columbia, and how it must act through individuals (known as “directors”), who are the mind and management of the corporation.

Now we should examine likely the most important attribute of a corporation: the fact that someone has to “own” it. You may well have encountered that gregarious guest at a dinner party or that boastful blowhard at your local pub who claimed to be the “owner” of this or that business. But, what does that mean? If the entrepreneur is carrying on business through the separate and distinct legal entity known as a corporation, then it means that he or she owns “shares”. By its very nature, a corporation is a form of business organization that is wholly owned by individuals (or corporations or other entities) known as “shareholders”.

Shares are more than simply a fancy paper share certificate with your name and some obligatory ornate calligraphy scribbled on it. Shares are a “bundle” of legal and contractual rights which represent the proportionate interest of a shareholder in the net asset value of the corporation. They are the embodiment of your ownership; a concrete representation of your proprietary rights in the capital. So, when a braggart tells you that they are a 10% “owner” of a corporation, it means that he or she (either as an individual or through the name of another corporation wholly owned by them), owns 10% of all of the issued and outstanding shares in the authorized share structure of the enterprise.

If we consider shares to be a “bundle” of legal rights, then we should canvass what rights are commonly included. All corporations must be incorporated with one or more “classes” of shares. The aggregate of all of these classes of shares is known as the “authorized share structure” of the corporation. For example, a corporation may be incorporated with an unlimited number of Common shares and an unlimited number of Preferred shares in its authorized share structure. The legal rights and restrictions attached to particular types of shares of a corporation are set out and described in a public document known as the “Articles”. The Articles are essentially like an instruction manual for the management of the affairs of the corporation. A section of the Articles usually referred to as the “Special Rights and Restrictions” will enunciate what legal rights attach to each class of shares.

So, what rights and restrictions generally attach to the shares of a corporation?

Right to Vote. Unless the Articles indicate otherwise, each holder of a share is entitled to vote at general meetings of the corporation. There is a presumption that one share equals one vote. Voting rights are important if the shareholder wishes to direct and influence the affairs of the corporation. For example, the right to vote would appeal to a shareholder who wants to be able to elect which individuals will be the directors (and therefore management) of the corporation, and who wish to control the ultimate governance and direction of its operations. The shareholders with the right to vote have the power to elect and appoint individuals to act on their behalf as the directors of the corporation. By contrast, “Preferred” shares generally are issued as non-voting shares and are attractive to “silent” investors who do not want to be involved in the routine affairs of the venture.

Right to Participate in Dividends. If a corporation makes money, the profits are often paid out to the shareholders by way of a “dividend”, which is a specified payment by the corporation at a price per share to all of the shareholders holding that class of shares. To illustrate, if there are retained earnings in the corporation’s bank account of $300 and the total amount of issued and outstanding shares in the authorized share structure is 100 Common shares, the directors may declare a dividend at a price of $3 per Common share, then a shareholder who owns 50 Common shares would receive a cheque for $150 from the corporation. Unless the Articles specify that a class of shares is non-participating with respect to dividends, each holder of a share is entitled to their proportionate amount of the aggregate dividend declared.

Right to Proceeds of Dissolution. When a corporation is wound-up or dissolved, there are often some assets owned by the corporation which are left over. For example, who gets the business telephone number or the website for the business that the corporation purchased (and paid for) when the entity no longer exists? Share rights and restrictions also often set out the priority of different classes of shares as to the entitlement of shareholders to keep such assets after the corporation has been dissolved.

Before you incorporate a British Columbia corporation, you should consider the ownership structure of the business. What will the authorized share structure of the corporation look like? Will you have multiple classes of shares? Or, will all of the shares have identical special rights and restrictions and share equally in all aspects of the business? Will all of the shareholders be actively involved in the management of the enterprise? Or, will some of the shareholders be merely “silent” investors making an investment in the operation with only the expectation of a favourable return?

In my last article, I employed the example of Ricky and Julian who incorporated a British Columbia corporation under the corporate name “420 Holdings Ltd.” for the purposes of carrying on a wholesale pre-owned discount barbeque sales and repair business. Due to a conviction in connection with an illicit Christmas light redistribution racket, Julian was disqualified from acting as one of the directors of this corporation. However, Julian decides that he still wishes to make an investment in this business (as he recently has received a windfall from a lucrative driveway-paving gig). Julian wants to be a “silent” investor with a fixed return on his contribution and wishes to have Ricky be responsible for the day to day operation of the barbeque sales and repair venture.

An option may be to have the authorized share structure of 420 Holdings Ltd. comprise of an unlimited number of Common shares and an unlimited number of Preferred shares. The Articles of the corporation would detail the special rights and restrictions attached to each of these classes of shares. The Preferred shares would be issued to Julian only (as the “silent” investor), would be non-voting, would have a “preference” as to dividends (i.e. Julian would be paid from the profits before Ricky was paid), and, upon dissolution of the corporation, Julian would be restricted to receiving only the amount he paid for the Preferred shares.

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