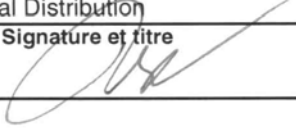
 Industry Canada    Industrie Canada	<b>POLICY STATEMENT</b> <b>ÉNONCÉ DE POLITIQUE</b>
<b>Corporations Canada</b>	<b>Date</b> June 9, 2008
<b>Reference or division - Référence ou division</b> External Distribution	<b>Cancels - Annule</b> November 19, 2003
<b>Signature and title - Signature et titre</b> 	<b>Page</b> 1    of - de    5

## Requests for Correction of CBCA Certificates

### 1. Introduction and Statement of General Principles

- 1.1 Corporations Canada often receives requests for the correction of articles and certificates (collectively, the “certificates”) that have already been filed or issued. This policy sets out the position of the Director as to these corrections only. The correction of notices and other documents that have already been filed is the subject of Policy 2.7.1: Request for Corrections for CBCA Forms 2, 3, 6 and 22.
- 1.2 In order to assist corporations and other interested persons, this policy sets forth certain policy and practice guidelines aimed at facilitating corrections. While this policy and the practice guidelines set out herein do not have the force of law, they do reflect the Director’s understanding of the Director’s role in correcting certificates. The final interpretation of subsection 265(3) of the *Canada Business Corporation Act* (the “Act”) and related provisions is the function of the courts.
- 1.3 The Director considers that, by communicating these guidelines to corporations and other interested persons who are considering corrections to a certificate, the instances of rejected requests and the associated cost and administrative inconvenience can be reduced.
- 1.4 Nothing in this policy is intended to constitute a binding statement of what position the Director will take with respect to any particular request for a corrected certificate. In addition, this policy is not intended to be a substitute for professional legal, accounting or business advice or for the exercise of professional judgment by legal, accounting and business advisors in any particular instance.

### 2. Where the Error is Obvious

- 2.1 In some cases, an error may be obvious. For example, the certificate does not make sense as it stands and it is evident what was intended, (e.g., when a corporate name is misspelled as in “ABC Disbibutors Ltd./Distributeurs ABC Ltée.”).

In these cases, the Director’s intention is to correct the certificate upon receipt of:

- (a) a written request for correction from the corporation or any other interested person;
- (b) the original certificate with the articles replacement pages;
- (c) if the error relates to a corporate name, a statutory declaration of a director or officer stating that, to the best of his or her knowledge after diligent enquiry,

- (i) the corporation has not executed any security agreements or other documents using its incorrect name, and
    - (ii) no filings have been made under any personal property security legislation in Canada, against the incorrect corporate name.
  - (d) the applicable fee, payable to the Receiver General for Canada.
- 2.2 When the error can only be attributed to Corporations Canada staff, please consult section 4 of this policy.

### **3. Where the Error is Not Obvious From the Certificate Itself**

3.1 In these cases, in response to a request for correction, the Director has the sole discretion to correct a certificate. The Director may make the correction only if:

- (a) the correction is approved by the directors of the corporation (or the shareholders acting pursuant to a unanimous shareholder agreement or the incorporators where no directors have yet been appointed); and
- (b) the Director is satisfied that:
  - (i) the correction would not prejudice any of the shareholders or creditors of the corporation; and
  - (ii) the correction reflects the original intention of the corporation or the incorporators, as the case may be.

3.2 In exercising discretion, the Director expects to receive:

- (a) a written request for correction from the corporation or other interested person;
- (b) the original certificate together with the corrected articles replacement pages where applicable;
- (c) a current certified copy of a resolution of the directors (or statutory declaration of the incorporators) which includes recitals or statements of the following:
  - (i) an error was made, and an explanation as to how the error was made;
  - (ii) removal of the error by articles of amendment or other available means would cause undue hardship;
  - (iii) no shareholders or creditors would be adversely affected by the correction and the correction reflects the original intention of the corporation or the incorporators, as the case may be;
  - (iv) if the correction relates to corporate finance, information regarding who the shareholders were before and after issue of the certificate and the number of shares they held before and after; and

- (v) if the correction relates to a corporate name or effective date only, no use has been made of the incorrect name or effective date or, if it has, appending documentary consent to the correction from anyone dealing with the corporation on the basis of the corporate name or effective date;
- (d) if the error relates to the corporate name, a statutory declaration of a director or officer stating that, to the best of his or her knowledge after diligent enquiry,
  - (i) the corporation has not executed any security agreements or other documents using its incorrect name, and
  - (ii) no filings have been made under any personal property security legislation in Canada, against the incorrect corporate name.
- (e) if the certificate to be corrected was issued over two years prior to the request for correction and only if deemed necessary by the Director, a resolution of shareholders authorizing the correction;
- (f) a certified copy of the original resolution which authorized the intended amendment or other fundamental change incorrectly reflected in the certificate;
- (g) if deemed necessary by the Director, additional documentation providing assurance that the correction will not prejudice any of the shareholders or creditors of the corporation, and that the correction reflects the original intention of the corporation or the incorporators, as the case may be;
- (h) if the error was made, not by the corporation itself but by its representative to whom it had given correct instructions, the Director may, at the Director's sole discretion, correct the document upon receipt of all documents noted in paragraph 3.2 (a) - (f) above, and:
  - (i) a statutory declaration of the representative indicating the instructions received and the reasons why those instructions were not reflected in the certificate; or
  - (ii) a statutory declaration of an officer of the corporation explaining why it is not possible to obtain (i) above, the instructions given to the representative and why instructions were not reflected in the certificate; and
- (i) the applicable fee payable to the Receiver General for Canada.

3.3 The Director will review documentation referred to in paragraph 3.2 with a view to determining that neither shareholders nor creditors will be adversely affected by the retroactive correction and that the correction reflects the original intention of the corporation or the incorporators, as the case may be. The Director will not correct errors in judgment.

#### **4. Error that can only be attributed to Corporations Canada staff**

4.1 An error that can only be attributed to Corporations Canada staff is an error that was committed by Corporations Canada staff while handling a request (e.g., a typo on a certificate or an error in the certificate effective date.)

When the error can only be attributed to Corporations Canada staff, the applicant should send a correction request in writing, indicating the type of error and the applicant's contact information. There is no payment required.

- 4.2 Even if the error can be attributed to Corporations Canada staff, at the Director's discretion the applicant may be asked to submit other documentation in addition to the written request mentioned above. In this case, Corporations Canada will contact the applicant concerning the documents to be provided. If the applicant refuses to provide the requested documentation, Corporations Canada will consider the correction request withdrawn by the applicant.

## **5. Correction requested by the Director**

- 5.1 The Director can also initiate corrections to certificates. The Director may ask directors or shareholders to adopt the necessary resolutions, to send any documentation required to support the correction and to undertake any other necessary actions to correct the certificate.
- 5.2 Where the Director requests a correction, a letter will be sent to the corporation explaining the nature of the change requested as well as a list of documentation to be provided.

## **6. Payment**

- 6.1 Payment of the \$200 fee may be made by credit card (Visa® or MasterCard® or American Express®), by cheque payable to the Receiver General for Canada, or by a deposit account maintained within Corporations Canada at the time of filing.

## **7. Date of Corrected Certificate**

- 7.1 A corrected Certificate shall bear the date of the document it replaces. However, if a correction is made with respect to the date of the document, the document shall bear the corrected date.

## **8. Application to Court and Appeal**

- 8.1 If the Director is not satisfied that a correction will not prejudice any of the shareholders or creditors, the Director, the corporation or any interested person may apply to the court for an order that the certificate be corrected and an order determining the rights of the shareholders or creditors.
- 8.2 An interested person who feels aggrieved by a decision of the Director to correct or a refusal to correct a certificate under section 265, may, pursuant to paragraph 246(f.1) of the Act, appeal the decision to a court. The court has the power to order a change in the Director's decision.

## **9. Notice**

- 9.1 If a corrected certificate materially amends the terms of the original certificate, the Director will, without delay, give a notice of this correction on Corporations Canada's Website at [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca).

**10. Additional Information and How to reach Corporations Canada**

For additional information on Corporations Canada's products and services, please visit the Corporations Canada website at [www.corporationscanada.ic.gc.ca](http://www.corporationscanada.ic.gc.ca) or call our toll free number 1-866-333-5556.

Client Services Section  
Corporations Canada  
Industry Canada  
9th floor, Jean Edmonds Tower South  
Ottawa, Ontario K1A 0C8  
Toll free: 1-866-333-5556  
Fax: 613-941-0601