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While it is generally accepted that the purpose of the officer's certificate is to confirm factual matters, it is also acknowledged that it is impossible to completely remove all legal conclusions from the matters set out in the certificate. The opinion should state clearly that the officer's certificate is being relied upon as to certain matters of fact only. The opinion giver should also be aware that there is a risk associated with reliance upon legal matters included in the certificate, the likelihood and degree of which may vary depending upon the circumstances (such as the type of client, the opinion giver's role and relationship with the client and the sophistication of the certifying officer, etc.).

[CORPORATION]

CERTIFICATE OF OFFICER

TO: [LAW FIRM GIVING OPINION]¹

I, ●, the ●² of ● (the "Corporation") certify, without personal liability,³ [in accordance with section ● of the ●]⁴ that:

1. I have reviewed such books and records of the Corporation and other applicable documents and have made such enquiries and investigations as I have considered necessary and advisable⁵ to verify the matters set out in this certificate.⁶
2. Attached as Exhibit ● are true and complete copies of the certificate and articles of [incorporation] [amalgamation] [continuance] of the Corporation (the "Articles"). Attached as Exhibit ● are true and complete copies of all of the by-laws of the

Corporation (the “By-laws”). The Articles and the By-laws have not been amended and no resolutions have been passed nor have any other actions been taken or notices received to authorize or require any amendments to the Articles or the By-laws.⁷

Attached as Exhibit ● are true and complete copies of certain resolutions (the “Authorizing Resolutions”) of the [board of directors] [sole director] [and] [shareholders] [sole shareholder] of the Corporation authorizing the execution and delivery by the Corporation of agreement[s] described in the Authorizing Resolutions (the “Transaction Agreement/Documents”). The Authorizing Resolutions have been passed by the [directors] [sole director] and [shareholders] [sole shareholder] of the Corporation and have not been amended.⁸

3. [Attached as Exhibit ● is a true, complete and current record of all registered holders of the securities issued by the Corporation.]⁹
4. Neither the Corporation nor the shareholders have taken any steps to terminate or change the Corporation’s existence or to amalgamate or continue into any other jurisdiction, nor has the Corporation received any notice or other communication from any governmental authority or other person indicating that there exists any situation which, unless remedied, could result in the termination of the existence of the Corporation.¹⁰
5. There is in existence no agreement among all the shareholders of the Corporation [OR a written declaration by the sole beneficial owner of all the shares of the Corporation] that restricts in whole or in part the powers of the directors to manage or supervise the management of the business and affairs of the Corporation [other than the ● agreement/declaration].¹¹
6. No acts or proceedings have been taken by or against the Corporation in connection with, the Corporation has not received any notice in respect of, and the Corporation is not in the course of, liquidation, winding-up, dissolution, bankruptcy, receivership or reorganization.¹²
7. The officers and directors identified in Exhibit ● occupy the position or positions set forth opposite their respective names and the directors have been directors of the Corporation since the dates set forth opposite their respective names.¹³

DATED at Toronto this ● day, of ●, ●.¹⁴

Name

Endnotes

¹ This draft certificate has been addressed , in accordance with the suggested practice, to the law firm giving the opinion and not to any other party, including the opinion recipient. There is some argument that the certificate should also be addressed to the opinion recipient and its counsel in order to give the recipient a direct cause of action against the entity on whose behalf the certificate is given. The contrary view is that the purpose of the certificate is to serve the narrow function of confirming certain factual matters that are required in order for the opinion giver to give certain opinions. If the certificate is addressed to the opposing party and its counsel the content should be reviewed to ensure that it does not expand upon what has been negotiated between the parties in the transaction documents. Arguably, any matters that are important to the recipient should be addressed in the appropriate transaction document as a representation or warranty and the certificate should not provide a broader basis for a potential cause of action by the other party than what has been negotiated in the transaction documents.

² To the extent possible, the certificate should be signed by an appropriate officer, such as the general counsel or secretary, who can certify the factual statements contained in the certificate. The opinion giver should generally be able to rely on a statement of any officer who purports to be able to make the statements contained in the certificate, particularly if he or she states that they have made the necessary or advisable investigations.

³ It is generally understood that the phrase “without personal liability” will not protect the officer from personal liability where his or her conduct amounts to fraud or negligent misrepresentation. We have chosen not to include the phrase “for and on behalf of the Corporation” since the officer is providing the certificate in that capacity anyhow and to avoid the conclusion that the certificate gives additional rights to the recipient. Some certificates also include the phrase “intending that the same may be relied upon by you without further enquiry”. Arguably this phrase may not be necessary and may not add any additional protection for the opinion giver.

⁴ This provision in the lead-in language helps to clarify the purpose of the officer’s certificate, both for the certifying officer and for future reference. If the certificate is specifically mentioned in an underlying transaction document the language in square brackets clarifies the purpose and helps to tie-in the transaction document. If the certificate is not contemplated in a transaction document consider an alternative such as the following:

“...for the purposes of the opinion to be given by you today to [other party/ies] in connection with the transactions provided for in [Transaction Agreement/Documents].”

⁵ If it is not reasonable for the officer to know what enquiries and investigations should be made he or she should be advised accordingly by the opinion giver.

⁶ It is not necessary for the officer to have reviewed “all of the books and records” since this will not be practical or realistic in most transactions and is not relevant to the opinion. Earlier conflicting resolutions are generally not of concern as they will normally be superseded by subsequent ones. See note 1 below on “Minute Books” for a more detailed discussion of this issue.

⁷ The phrases that the articles and by-laws “are in full force and effect” or have been “duly passed” have not been included on the basis that they include a legal conclusion (requiring confirmation of matters such as the quorum and residence of directors). To confirm that the by-laws are in full force and effect one would have to verify that they were passed and confirmed in accordance with law. The articles are in full force and effect so long as a certificate is endorsed on the articles and they have not been amended or revoked. The reference in this paragraph to “notices” is to a notice sent by the director under the appropriate corporate statute.

⁸ Depending upon the nature of the transaction a special resolution may be required. The officer should not be required to certify that the resolutions have been passed in accordance with law or that they are in full force and effect as these are legal and not factual conclusions as discussed above. A certification to the effect that the authorizing resolutions are the only resolutions concerning the Transaction Agreement/Documents is not included. Arguably, a statement that there are no other resolutions concerning the subject matter is not required to confirm that the matters that relate to the opinion have been authorized. In some circumstances such a statement may be inappropriate. For example, the board of directors may have considered other options to the transaction and may be bound by confidentiality or other reasons not to disclose them. While in most circumstances the certifying officer will be able to make this statement, the suggested practice is not to include it as the statement will generally not be required to support the opinion.

⁹ This statement is only required in connection with a share purchase or share pledge opinion. The term “securities” has been used to encompass all types of issuances, including warrants and options. There is some question on whether the opinion giver can properly rely on a share register to opine on the outstanding capital. While the share register serves as a record of the registered shareholders it does not necessarily help to determine whether the shares have been validly issued.

¹⁰ This is a customary paragraph although arguably it is not necessary as the opinion relating to corporate existence will not necessarily be wrong if the corporation or directors have made plans to make any changes. These matters will usually be covered by the representations and warranties in the transaction documents and may be included in a bring-down certificate.

¹¹ It is possible that the shareholders are party to an agreement which the officer signing the certificate is not aware of. If the officer is concerned about including this statement consider

modifying the paragraph to indicate “to the officer’s knowledge” or that he or she is “not aware” of the existence of such an agreement/declaration.

¹² The statement that “the Corporation is not insolvent” is not included as there is no compelling reason to require the officer to certify this fact. The utility of such a statement is also questionable given that the officer’s certificate does not identify the solvency test that is used to make this determination. If a specific solvency test must be satisfied it should be dealt with in the representations and warranties in the transaction documents.

¹³ Combined with the execution authority set out in an authorizing resolution, this opinion allows the opinion giver to confirm that the transaction documents have been executed as required. This statement should not be obtained from an officer if a full minute book review is done. The dates referred to in this paragraph should correspond to the earliest date on which any transaction document was signed by any of these individuals.

¹⁴ Certain paragraphs not included in the Officer’s Certificate:

1. Minute books

Whether a full minute book review is required and/or desirable will vary depending upon the client and type of transaction. In some circumstances clients may not want the law firm to review all of the minutes as it is a time intensive and expensive process which may add little to the opinion. In other circumstances (i.e. newly incorporated companies, share purchase transactions, etc.) a full minute book review may be appropriate and necessary. In either case, the opinion should state clearly whether or not a minute book review has been conducted by the opinion giver. The following confirmation should only be obtained from the officer if a minute book review has been conducted:

“The minute books of the Corporation that have been made available to ● LLP contain all records of proceedings of the [shareholders] [sole shareholder] and [board of directors] [sole director] of the Corporation [from ● to this date] which, to my knowledge are [true and complete/the only] records of the Corporation relating to such proceedings. “

2. No Breach of Agreements.

This paragraph has not been included in the certificate as it should only be required in rare situations. If an opinion as to no breach of contracts, etc., is required, the opinion giver should base it on an identified list of contracts only. Typically if the material contracts are identified in a transaction document the opinion recipient should satisfy itself or the opinion giver can review the contracts to make this determination. The following is a sample paragraph for use where the contracts are not identified in a transaction document:

“The execution and delivery by the Corporation of the Transaction Agreements/Documents and the performance of its obligations under the Transaction Agreement/Documents is not and will not result in a breach or violation of, or default under, any provision of the [material] agreements listed in ● [or any judgement, order or decree by which the Corporation is bound].”

The by-laws and articles are not included in this statement as they have already been certified as complete and accurate and can be reviewed by the opinion giver to confirm that there is no violation, breach or default. In the event that the law firm is asked for an a general opinion that the transaction will not result in “a breach of [material] contracts” the certificate could refer to “any material contract to which the Corporation is a party” or, in the alternative, consider the following:

“...the Corporation is not party to any [material] agreement nor is it bound by any judgment, order or decree [that will be breached, violated or rendered in default on account of] OR [is relevant to] any of the matters contemplated by the Transaction Agreement/Documents.”

However, such a certification may be of little benefit as determining whether there is a breach of an agreement or judgment, etc. is a legal conclusion, or at best a combined legal and factual conclusion. As most opinions state that the officer’s certificate is relied upon only with respect to “certain matters of fact” it is questionable whether the certification of such matters by the officer provides any greater protection to the opinion giver.

3. Filings.

The statement that the Corporation has complied with all applicable or necessary corporate and regulatory filings or approvals has been intentionally omitted. The opinion giver should not rely upon the officer but should be in a position to determine what approvals or filings are required. If not identified in a transaction document through the representations and warranties, the filings can be identified in the certificate as follows:

“As at this date the Corporation has made [IDENTIFY SPECIFIC FILINGS OR APPROVALS REQUIRED].”

4. Conflicts.

In some transactions the opinion giver may be concerned about the existence and/or disclosure of conflicts on the part of the directors and officers. If this is a concern, consider adding the following certification:

“No director or officer of the Corporation is a director or officer of, or has a material interest in the [other party/ies] [subject matter] to/of the Transaction Agreement/Documents] [,except as disclosed [in [the Authorizing Resolutions]] in

accordance with section 132 of the Business Corporations Act/section 120 of the Canada Business Corporations Act].”

Some certificates include a further statement about the transaction being fair and reasonable to the Corporation, however, these additional statements have not been included as they are arguably better dealt with in the authorizing resolutions.