

Bill No. 77 of 1947.

A BILL TO AMEND THE COMPANIES ACT

NOTE.

Section 1 of this Bill repeals sections 32, 33 and 34 of the Act. These sections deal with "the statutory meeting" of the company and prohibit the doing of various things before the statutory meeting. This meeting, a general meeting of the company, must be held within six months from the time when the company is entitled to commence business but may be held immediately after that date. It is considered that this meeting serves no useful purpose and it is therefore proposed to repeal it.

The amendments made by sections 2 and 3 of the Bill merely transfer paragraph (a) from subsection (1) of section 40 to subsection (1) of section 41. Paragraph (a) deals with the authority of a company to increase its share capital. The amendment requires the increase to be authorized by special resolution whereas as the Act now stands it can be done by extraordinary resolution. A special resolution requires twenty-one days' notice of the meeting while an extraordinary resolution requires only the ordinary notice of the meeting.

Section 4 of the Bill consolidates sections 42 and 43 of the Act. The only material changes are,—

- (a) that the power given by subsection (1) of the new section 42 is enlarged by the incorporation of the words "in any way, etc." in paragraph (a) as there may be re-organizations required not covered by the cases specified in paragraph (a); and
- (b) subsection (2) as the Act now stands appeared only in section 42 while it applies now also to what was formerly section 43.

Section 5 of the Bill adds a new subsection (5) to section 44. That section deals with the rights of creditors where there is a proposed reduction of capital which involves diminution of liability in respect of unpaid share capital or the payment to a shareholder of any paid-up share capital. Creditors may object and a list of them is settled by the Court and provision is made for the Court hearing the matter and directing what payment is to be made or security given to the creditors. The new subsection (5) authorizes the Court, in special circumstances, to direct that the section shall not apply as regards any class or classes of creditors. This provision is taken from the Dominion Companies Act.

Section 6 of the Bill strikes out subsections (2) and (3) of section 52 and enacts a new subsection (2) in their place which does away with the necessity of a private company carrying on business for two years before being converted into a public company, and further provides that when the conversion takes place the company must comply with all the provisions of the Act relating to public companies.

Section 84 (1) of the Act now provides that the prospectus of a company shall contain either such information as is required by the Board of Public Utility Commissioners or shall state the matter set out in great detail in the section. The effect of the amendment made by section 7 of the Bill is to require the prospectus to contain everything set out in the section.

Section 8 of the Bill enacts a new subsection (3), replacing the present subsection of section 119 dealing with defaults of companies in filing a return of allotment of shares within one month of allotment. Specific penalties are provided and the Registrar is authorized to file the document if the default does not exceed thirty days in the case of shares allotted for cash. The extra time allowed for filing the return remains at seven days in the case of shares allotted in whole or in part for other than cash.

Section 9 of the Bill amends the Schedule to the Act dealing with fees and it is intended to clarify the provisions fixing fees payable by companies on incorporation.

W. S. GRAY,
Legislative Counsel.

(This note does not form any part of the Bill but is offered in explanation of its provisions.)

BILL

No. 77 of 1947.

An Act to amend The Companies Act.

(Assented to , 1947.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. *The Companies Act*, being chapter 240 of the Revised Statutes of Alberta, 1942, is hereby amended as to sections 32, 33 and 34 by striking out the same.

2. The said Act is further amended as to section 40,—

- (a) by striking out paragraph (a) of subsection (1) thereof;
- (b) by relettering paragraphs (b), (c) and (d) of subsection (1) as paragraphs (a), (b) and (c).

3. The said Act is further amended as to section 41,—

- (a) by adding immediately before paragraph (a) of subsection (1) thereof the following new paragraph:

“(a) increase its share capital by the creation of new shares of such amount or of such number of new shares without nominal or par value as it thinks expedient;”;

- (b) by relettering the present paragraphs (a), (b) and (c) as paragraphs (b), (c) and (d).

4. The said Act is further amended by striking out sections 42 and 43 thereof and by substituting therefor the following:

“42.—(1) A company having a share capital may by special resolution confirmed by an order of the Court,—

- “(a) modify the provisions contained in its memorandum so as to reorganize its share capital in any way, and without prejudice to the generality of the foregoing powers may modify or alter its memorandum so as to,—

“(i) consolidate shares of different classes; or

“(ii) divide its shares into shares of different classes; or

“(iii) vary the rights attached to any class of shares; or

"(iv) subject to section 72 to convert shares of a fixed amount into shares without nominal or par value; or

"(v) convert shares without nominal or par value into shares of a fixed amount;

"Provided that no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class holding three-fourths of the share capital of that class, and every resolution so passed shall bind all shareholders of the class;

"(b) alter its memorandum so as to reduce its share capital in any way, and without prejudice to the generality of the foregoing powers may modify or alter its memorandum so as to,—

"(i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or

"(ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital which is lost or unrepresented by available assets; or

"(iii) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company.

"(2) Where an order is made under this section, an office copy thereof shall be filed with the Registrar within fifteen days from the date of the order or such further time as the Court may allow, and the resolution as confirmed by the order shall not take effect until the copy has been so filed. The Registrar shall issue under his seal of office a certificate showing the alteration effected by the resolution as so confirmed."

5. The said Act is further amended as to section 44 by adding immediately at the end thereof the following new subsection:

"(5) Where a proposed reduction of capital involves either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, the Court, if having regard to any special circumstances of the case it thinks proper so to do, may direct that this section shall not apply as regards any class or any classes of creditors."

6. The said Act is further amended as to section 52 by striking out subsection (2) and (3) thereof, and by substituting therefor the following:

"(2) The resolution shall be filed with the Registrar but shall not take effect until he issues under his seal of office a certificate that the company has been converted from a

private company to a public company and thereafter the company shall be required to comply with all of the provisions of this Act relating to public companies."

7. The said Act is further amended as to section 84 by striking out the words "either such information as is required by the Board of Public Utility Commissioners, or" where the same occur in the third and fourth lines of subsection (1) thereof.

8. The said Act is further amended as to section 119 by striking out subsection (3) thereof and by substituting therefor the following:

"(3) Every company which makes default in complying with the requirements of this section shall be guilty of an offence against this Act and shall be liable on summary conviction to a penalty not exceeding twenty-five dollars for each day during which the default continues:

"Provided that,—

"(a) where the default in filing any document as required by this section does not exceed thirty days in the case of a document required to be filed pursuant to paragraph (a) of subsection (1), or seven days in the case of any other document required by this section to be filed, and such default is, in the opinion of the Registrar, accidental or due to inadvertence, or to the fact that the document requires to be rectified, the Registrar may file the document, and the company shall be deemed to have complied with the requirements that the document be filed within one month after allotment; or

"(b) the company or any person liable for the default, may apply on summary application to a judge for relief, and the judge if satisfied that the omission to file the document was accidental or due to inadvertence or that upon other grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the judge may think proper."

9. The said Act is further amended as to the Third Schedule thereof,—

(a) by adding immediately after the words "maximum price or consideration", where the same occur in the fifth line of the proviso to section 3 thereof, the words "or by twenty-five cents, whichever is the greater";

(b) by adding immediately at the end of the proviso to section 3 thereof the following additional proviso:

"Provided that where the memorandum or articles state an aggregate amount as the maximum price or consideration at or for which all the shares of the company shall be issued and do not state a maximum

price or consideration at or for which each share shall be issued, such aggregate amount or an amount calculated by multiplying the number of such shares by twenty-five cents, whichever amount is the greater shall for the purposes of this table be the authorized capital of the company."

10. This Act shall come into force on the day upon which it is assented to.

No. 77

FOURTH SESSION
TENTH LEGISLATURE

11 GEORGE VI

1947

BILL

An Act to amend The Companies Act.

Received and read the

First time.....

Second time.....

Third time.....

HON. MR. HOOKE.

EDMONTON:
A. Shnitka, King's Printer
1947