

Bill No. 31 of 1950.

A BILL TO AMEND THE COMPANIES ACT

NOTE.

This Bill amends *The Companies Act*, being chapter 240 of the Revised Statutes of Alberta, 1942.

Section 2 is amended by the addition of a definition of the term "dividend" which is defined as including a bonus or any distribution to shareholders as such.

Section 31(1) is amended for purposes of clarification. The expression "when the minimum subscription has been subscribed" is applicable only to clauses (a) and (c) of subsection (1) and is not applicable to clause (b). The purpose of the amendment is to make this clear.

Section 52 is amended by striking out a portion of subsection (2) and by the addition of three new subsections. Subsection (2) is amended by striking out the general provision that in the case of conversion from a private company to a public company the company shall be required to comply with all the provisions of the Act. This general provision is replaced by specific provisions setting out the items with which such a company is required to comply. Subsection (3) provides that when a private company is converted into a public company it may continue to carry on the business authorized by its memorandum of association after the issue of the certificate of conversion. However, subsection (4) provides that it cannot allot any of its shares or exercise any of its borrowing powers unless it complies with certain conditions which are listed. These conditions are that the company must file a prospectus naming a minimum subscription upon which the directors may proceed to allotment or, if the company doesn't issue any invitation to the public to subscribe for its shares it must file a statement in lieu of prospectus. In the case of a prospectus being filed the minimum subscription must be subscribed and paid to and received by the company. The prospectus or statement in lieu of prospectus is to be accompanied by a statutory declaration by the directors in the Forms which are set out in the Schedule. Subsection (5) provides that when the company has complied with these conditions the Registrar may issue a certificate to the effect that it is entitled to allot its unissued shares and exercise its borrowing powers.

Subsection (6) of section 72 is struck out. The effect of this subsection is to place a restriction on Alberta companies which does not apply to companies incorporated either

under the *Dominion Companies Act* or the *English Companies Act*. It works a hardship on mining, oil and other companies whose assets are of a wasting character by unnecessarily restricting the extent to which they may pay dividends. This subsection is replaced by four new sections relating to the payment of dividends which are similar to section 83 of the *Dominion Companies Act* and which are inserted in this Act immediately after section 82.

Section 73 (4) is amended. Section 73 presently provides for the creation of shares of various classes with special rights or restrictions being attached to the various classes of shares. The purpose of the amendment is to enable the articles of the company to provide that any class of shares shall have the right to select a certain portion of the board of directors.

Four new sections are added immediately after section 82 dealing with the payment of dividends. These sections are similar to the provisions of section 83 of the *Dominion Companies Act*.

Section 82a provides that no dividends shall be declared when the company is insolvent or which renders the company insolvent or which will impair the capital of the company. If the directors declare and pay a dividend contrary to this section they become personally liable to the company and its creditors for the debts of the company to the extent of the dividend so declared. Any director may evade this personal liability by protesting the payment at the board meeting and by reporting his protest to the Registrar of Companies.

The new section 82b provides for the issue of paid up shares in lieu of dividends or for the crediting of dividends or shares issued and not already paid for. The directors may only follow this procedure if authorized to do so by the company's articles or by a special resolution.

Section 82c provides for the payment of dividends by a company whose assets are of a wasting character such as mining and oil companies. Such companies may pay dividends so long as the value of the remaining assets of the company are sufficient to meet all liabilities of the company exclusive of its paid up capital.

The new section 82d enables the directors to deduct from dividends payable to any shareholder such sums of money as are due by the shareholder to the company.

Section 254(1) is amended. The amendment increases the fee payable for obtaining copies of registered documents from ten cents to twenty cents per folio of one hundred words. This fee has not been changed for thirty years and the new fee approximately equals the cost of having the copies prepared.

Form 3 in the Second Schedule is amended to correct an error. The reference to subsection (2) which presently appears should have been a reference to subsection (3).

Two new Forms 7a and 8a are added. These are the statutory declarations required from the directors in the case of conversion from a private company to a public company.

KENNETH A. MCKENZIE,
Acting Legislative Counsel.

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

BILL

No. 31 of 1950.

An Act to amend The Companies Act.

(Assented to _____, 1950.)

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 section 2 by adding immediately after clause (m) the following new clause:

“(ma) ‘dividend’ includes bonus or any distribution to shareholders as such;”.

2. The said Act is further amended as to section 31, subsection (1),—

- (a) by striking out the words “When the minimum subscription has been subscribed,”;
- (b) by adding immediately after the word “Schedule,” where it occurs in clauses (a) and (c) the words “when the minimum subscription has been subscribed,”.

3. The said Act is further amended as to section 52,—

- (a) by striking out the words “and thereafter the company shall be required to comply with all of the provisions of this Act relating to public companies” where they occur in subsection (2);
- (b) by adding immediately after subsection (2) the following new subsections:

“(3) Subject to subsection (4), upon the issue of the certificate of conversion pursuant to subsection (2), the company may carry on as a public company the business authorized by its memorandum of association.

“(4) A private company converted into a public company shall not allot any of its shares not allotted prior to the date of the certificate issued pursuant to the provisions of subsection (2) or exercise any borrowing powers, unless,—

- “(a) the company has filed with the Registrar a prospectus substantially complying with this Act naming therein an amount in cash as the minimum subscription upon which the direct-

ors may proceed to allotment, or if the company does not issue any invitation to the public to subscribe for its shares, a statement in lieu of prospectus substantially according to Form 5 of the Second Schedule; and

“(b) in the case of a prospectus being filed as provided in clause (a), the minimum subscription named therein has been subscribed and the sum payable on application therefor, which shall not be less than five per cent of the nominal amount of each share, or in the case of shares without nominal or par value, five per cent of the consideration for which each such share is being issued, has been paid to and received by the company; and

“(c) the company has filed with the Registrar a statutory declaration by the directors,—

“(i) according to Form 7a in the Second Schedule, in the case of a company which has filed a statement in lieu of prospectus;

“(ii) according to Form 8a in the Second Schedule in the case of a company which has filed a prospectus.

“(5) When the company has complied with the provisions of subsection (4), the Registrar may issue a certificate that the company is entitled to allot its unissued shares and exercise its borrowing powers.”.

4. The said Act is further amended by striking out subsection (6) of section 72.

5. The said Act is further amended as to section 73, subsection (4) by adding immediately after the words “preference shares” the words “or any other class of shares”.

6. The said Act is further amended by adding immediately after section 82 the following new heading and sections:

“Division (2a)—Dividends

“82a.—(1) No dividend shall be declared,—

“(a) when the company is insolvent; or

“(b) which renders the company insolvent; or

“(c) which will impair the capital of the company.

“(2) In determining the solvency of the company for the purposes of this section no account shall be taken of any increase in the surplus or reserves of the company resulting merely from the writing-up of the value of the assets of the company, unless the writing-up was done more than five years before the date of the declaration of the dividend.

“(3) If the directors of the company declare and pay any dividend,—

“(a) when the company is insolvent; or

“(b) which renders the company insolvent; or

“(c) which impairs the capital of the company;

they shall be jointly and severally liable to the company and to its creditors for the debts of the company then existing or thereafter contracted until repayment of the dividends so declared and paid to the extent that such dividends and interest have not been repaid to the company.

“(4) If any director present, when such dividend is declared, forthwith requests the entry on the minutes of the board of his protest against the same, or if any director then absent, within one week after he becomes aware of such declaration and is able so to do, delivers to the president, secretary or other officer of the company his protest against the same and within eight days thereafter delivers or mails by registered letter a duplicate copy of his protest to the Registrar of Companies, the director may thereby and not otherwise exonerate himself from such liability.

“**82b.** For the amount of any dividend which the directors may lawfully declare payable in money, the directors, if authorized so to do by the company’s articles or by a special resolution, may,—

“(a) issue therefor shares of the company as fully paid; or

“(b) credit the amount of such dividend on the shares of the company already issued but not fully paid and the liability of the holders of such shares thereon shall be reduced by the amount of the dividend.

“**82c.**—(1) Notwithstanding section 82,—

“(a) a company at least seventy-five per cent in value of the assets of which are of a wasting character; or

“(b) a mining company which for the time being carries on as its principal business the business of operating producing mining properties owned or controlled by it;

may declare and pay dividends out of its funds derived from the operations of the company notwithstanding that the paid up capital of the company may be thereby reduced or impaired, if such payment does not reduce the value of its remaining assets so that they will be insufficient to meet all the liabilities of the company then existing exclusive of its paid up capital.

“(2) If a dividend is declared in excess of the amount permitted by subsection (1), the directors are liable for the amount in excess of the amount permitted in the same manner and to the same extent as set out in section 82a, subsection (3).

“**82d.** The directors may deduct from the dividends payable to any shareholder all such sums of money as are due from him to the company on account of calls or otherwise.”.

7. The said Act is further amended as to section 254, subsection (1) by striking out the word “ten” immediately following the word “exceeding”, and by substituting the word “twenty”.

8. The said Act is further amended as to Form 3 in the Second Schedule by striking out the figure “(2)” where it occurs in the third paragraph and by substituting the figure “(3)”.

9. The said Act is further amended by adding immediately after Form 7 in the Second Schedule the following new Form:

“FORM 7a.

“THE COMPANIES ACT.

“(Section 52.)

“STATUTORY DECLARATION FOR CERTIFICATE TO ALLOT
UNISSUED SHARES AND TO EXERCISE BORROWING POWERS.

<p>“CANADA PROVINCE OF ALBERTA. “To WIT:</p>	}	<p>“In the Matter of <i>The Companies</i> Act, and..... Limited.</p>
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“We,....., of....., and.....,
of.....hereby solemnly declare as follows:

“(1) We are duly appointed directors of the.....
Limited (hereinafter referred to as ‘the Company’).

“(2) The company has filed with the Registrar a state-
ment in lieu of prospectus in which no minimum subscrip-
tion was named because the company does not propose to
issue an invitation to the public to subscribe for its shares.

“(3) A copy of the last balance sheet of the company
signed by us was filed with the statement aforesaid.

“(4) No allotment of any share of the company has
been made and no debenture has been issued since the date
of the issue of a certificate converting the company from a
private company to a public company.

“(5) Each of us has paid to the company (on each of the
qualification shares) (in respect of the qualification) which
a director of the company is required to (take) (have) a
proportion equal to the proportion paid on application for
(each share (debenture)) (membership) as aforesaid.

“(6) No prospectus (offering any shares (debentures)
of the company for subscription) (inviting any persons to
apply for membership) has been issued, and the company
does not intend to issue any prospectus.

“And we severally make this solemn declaration con-
scientiously believing it to be true, and knowing that it is
of the same force and effect as if made under oath and
by virtue of the *Canada Evidence Act*.

“Severally declared by each of the
 above named declarants at.....
 this..... day of....., 19.....
 before me—

“(Note—This form must be altered depending on whether the company has or has not a share capital, and subscription or applications for shares, debentures, or membership have been taken.)”.

10. The said Act is further amended by adding immediately after Form 8 in the Second Schedule the following new Form:

“FORM 8a.

“THE COMPANIES ACT.

“(Section 52.)

“STATUTORY DECLARATION FOR CERTIFICATE TO ALLOT
 UNISSUED SHARES AND TO EXERCISE BORROWING POWERS.

“CANADA } “In the Matter of *The Companies*
 PROVINCE OF ALBERTA. } *Act*, and.....
 “To WIT: } Limited.

“We,....., of....., and.....,
 of..... hereby solemnly declare as follows:

“(1) We are duly appointed directors of the.....
 Limited (hereinafter referred to as ‘the Company’).

“(2) The company has filed with the Registrar a prospectus in which the amount of dollars in cash was named as the minimum subscription upon which the directors might proceed to allotment of its unissued shares.

“(3) The amount of..... dollars payable in cash exclusively has been subscribed for unissued shares.

“(4) The amounts paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure, the minimum subscription are respectively as follows: Paid, \$.....; payable, \$.....

“(5) The amounts allowed or to be allowed as discount in respect to shares* (debentures) are respectively as follows: Allowed, \$.....; to be allowed, \$.....

*Only in the case of a specially limited company.

“(6) The sum payable on application (for each share (debenture) was..... per cent of the nominal amount of each share (debenture)) (for membership by

each new member was.....dollars) and has been paid to and received by the company.

“(7) All money so paid to and received by the company was deposited to the credit of the company as trustee in the branch of the Bank, situated at.....

“(8) A copy of the prospectus filed as aforesaid was furnished to every person who (subscribed for any share (debenture) offered) (applied for any membership invited) by the prospectus.

“(9) No allotment of any share of the company has been made and no debenture has been issued since the date of the issue of a certificate converting the company from a private company to a public company.

“(10) Each of us has paid to the company (on each of the qualification shares) (in respect of the qualification) which a director of the company is required to (take) (have) a proportion equal to the proportion paid on application for (each (share) debenture) (membership) as aforesaid.

“And we severally make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath and by virtue of the *Canada Evidence Act*.

“Severally declared by each of the
above named declarants at.....
this..... day of....., 19.....
before me—
.....

“(Note—This form must be altered depending on whether the company has or has not a share capital, and subscription or applications for shares, debentures, or membership have been taken.)”.

11. This Act shall come into force on the first day of July, 1950.

No. 31

FIRST SESSION
TWELFTH LEGISLATURE

14 GEORGE VI

1950

BILL

An Act to amend The Companies
Act.

Received and read the

First time

Second time

Third time

HON. MR. GERHART.
