

No. 78

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7 Elizabeth II, 1959  
5th Session, 13th Legislature, Alberta

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## **BILL 78**

A Bill to amend The Companies Act

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HON. MR. HOOKE

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## Explanatory Note

**2.** In order to permit publication of a notice of incorporation (instead of publishing the certificate of incorporation as is now the practice) the wording of clause (b) of section 16 requires revision so that the memorandum will convey the necessary information. The relevant part of section 16 reads as follows:

"16. In the case of a company limited by shares, the memorandum shall, in accordance with Form 1 in the Second Schedule, state  
(b) that the registered office will be situate in Alberta,".

**3.** See note to clause 2 above. The relevant part of section 17, subsection (1) reads as follows:

"17. (1) In the case of a company limited by guarantee the memorandum shall, in accordance with Form 2 in the Second Schedule, state  
(b) that the registered office will be situate in Alberta,".

**4.** See note to clause 2 above. The relevant part of section 18 reads as follows:

"18. In the case of a specially limited company the memorandum shall, in accordance with Form 3 in the Second Schedule, state  
(b) that the registered office will be situate in Alberta,".

**5.** This amendment will permit the Registrar to publish a notice of incorporation setting out all relevant information, instead of simply publishing the certificate of incorporation. (See also note to clause 2.) Section 25, subsection (1) presently reads:

"25. (1) On the registration of the memorandum of a company, the Registrar shall issue a certificate under his seal of office, showing  
(a) that the company is incorporated, and  
(b) in the case of a company limited by shares that the company is limited, or in the case of a specially limited company, that the company is specially limited, or in the case of a company limited by guarantee, that the company is limited by guarantee  
and shall, at the cost of the applicants for incorporation, publish the certificate in The Alberta Gazette."

**6.** This amendment will permit a company to acquire its own shares where (for example) it receives a portion of the assets of another company as a shareholder thereof under a distribution upon the liquidation of that second company, and part of the assets of the second company consists of shares in the first company. Section 46, subsection (1) begins:

"46. (1) A company having a share capital, if authorized by its articles, may by extraordinary resolution".

# BILL

No. 78 of 1959.

An Act to amend The Companies Act

(Assented to \_\_\_\_\_, 1959)

**H**ER 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 53 of the Revised Statutes, is hereby amended.

**2.** Section 16 is amended by striking out clause (b) and by substituting the following:

(b) the place within the Province at which the registered office is to be situated,

**3.** Section 17, subsection (1) is amended by striking out clause (b) and by substituting the following:

(b) the place within the Province at which the registered office is to be situated,

**4.** Section 18 is amended by striking out clause (b) and by substituting the following:

(b) the place within the Province at which the registered office is to be situated,

**5.** Section 25, subsection (1) is amended by striking out the words "the certificate" and by substituting the words "a notice of the incorporation".

**6.** Section 46, subsection (1) is amended

(a) by adding at the end of clause (c) the word "and",  
(b) by adding immediately after clause (c) the following:

(d) cancel paid-up shares that are acquired by a company on a distribution of the assets of an-

**7. New.** This amendment would permit Alberta companies to effect amalgamation consistent with best company law practice in point of taxation.

other company under liquidation proceedings, and, if the resolution so provides, diminish the amount of its share capital by the amount of the shares cancelled, or in the case of shares without nominal or par value, by the number of shares cancelled.

**7.** The following new section is added immediately after section 140:

**140a.**(1) Any two or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

(2) The companies proposing to amalgamate may enter into an amalgamation agreement, which shall prescribe the terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect.

(3) The amalgamation agreement shall further set out

- (a) the name of the amalgamated company,
- (b) the place within the Province at which the registered office of the amalgamated company is to be situated,
- (c) the amount of the authorized capital of the amalgamated company and the division thereof into shares,
- (d) the objects for which the amalgamated company is to be established,
- (e) the names, occupations and places of residence of the first directors of the amalgamated company,
- (f) the date when subsequent directors are to be elected,
- (g) the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company, and
- (h) such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company.

(4) The amalgamation agreement shall be submitted to the shareholders of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and if three-fourths of the votes cast at each meeting are in favour of the amalgamation agreement

- (a) the secretary of each of the amalgamating companies shall certify that fact under the corporate seal thereof, and
- (b) the amalgamation agreement shall be deemed to have been adopted by each of the amalgamating companies.

(5) Where the amalgamation agreement is deemed to have been adopted, the amalgamating companies may apply to the court for an order approving the amalgamation.



(6) Unless the court otherwise directs, each amalgamating company shall notify each of its dissentient shareholders, in such manner as the court may direct, of the time and place when the application for the approving order will be made.

(7) Unless the court otherwise directs, notice of the time and place of the application for the approving order shall be given to the creditors of an amalgamating company in such manner as the court may direct.

(8) Upon the application, the court shall hear and determine the matter and may approve the amalgamation agreement as presented or may approve it subject to compliance with such terms and conditions as it thinks fit, having regard to the rights and interests of all parties including the dissentient shareholders and creditors.

(9) The amalgamation agreement and the approving order shall be filed with the Registrar, together with proof of compliance with any terms and conditions that may have been imposed by the court in the approving order.

(10) On receipt of the amalgamation agreement, approving order and such other documents as may be required pursuant to subsection (9), the Registrar shall issue a certificate of amalgamation under his seal of office and certifying that the amalgamating companies have amalgamated.

(11) On and from the date of the certificate of amalgamation, the amalgamating companies are amalgamated and are continued as one company hereinafter called the "amalgamated company", under the name and having the authorized capital and objects specified in the amalgamation agreement.

(12) The amalgamated company thereafter possesses all the property, rights, privileges and franchises and is subject to all the liabilities, contracts and debts of each of the amalgamating companies, and all the provisions of the amalgamation agreement respecting the name of the amalgamated company, its registered office, capital and objects shall be deemed to constitute the memorandum of association of the amalgamated company.

(13) Where the amalgamation agreement does not provide for the adoption of the articles of one of the amalgamating companies, or for the adoption of new articles, as articles of association for the amalgamated company, the shareholders of the amalgamated company, at a general meeting thereof called for the purpose may, if approved by three-fourths of the votes cast thereat, adopt and agree upon articles of association for the amalgamated company.

(14) Where new articles of association are adopted for the amalgamated company, the articles may be filed with the Registrar at the same time as the amalgamation agreement or subsequently if the articles are certified

(a) by each secretary of each amalgamating company, where the articles were adopted and agreed upon as a provision of the amalgamation agreement, or

**8. (a) Subsection (1) of section 149 presently reads:**

"149. (1) Upon receipt of the statement and other documents prescribed and of the proper fees, the Registrar shall register the company and issue under his seal of office a certificate of registration, which shall set forth

(a) the corporate name of the company, and

(b) where the liability of shareholders in the company is limited, that the company is limited, or where under its charter the name of the company has "non-personal liability" as the last words, and its objects and powers do not extend beyond the objects and powers of a specially limited company, and the liability of its shareholders does not exceed the liability of shareholders in a specially limited company, that the company is specially limited."

(b) This amendment will permit publication of a notice of registration of an extra-provincial company instead of, as at present, publishing the certificate. Subsection (2) of section 149 presently reads:

"(2) The Registrar shall publish the certificate at the cost of the company in The Alberta Gazette."



(b) by the secretary of the amalgamated company, where the articles were adopted and agreed upon by the shareholders of the amalgamated company.

(15) Where articles of an amalgamating company are not adopted by the amalgamation agreement as the articles of the amalgamated company, and new articles are not filed with the Registrar pursuant to subsection (14), the articles contained in Table A in the First Schedule apply as the articles of the amalgamated company.

(16) Notwithstanding that articles have been adopted by the amalgamation agreement or filed as articles of the amalgamated company, the articles contained in Table A in the First Schedule, in so far as the articles of the amalgamated company do not exclude or modify them, apply in the same manner and to the same extent as if these articles were contained in the articles adopted and agreed upon for the amalgamated company.

(17) For the purpose of this section, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(18) For the purpose of this section, a company shall be deemed to be a subsidiary of another company if, but only if,

- (a) it is controlled by
  - (i) that other,
  - (ii) that other and one or more companies each of which is controlled by that other, or
  - (iii) two or more companies each of which is controlled by that other,
- or
- (b) it is a subsidiary of a company that is that other's subsidiary.

(19) An amalgamated company shall, for the purposes of the other provisions of this Act, be deemed to be a company incorporated under this Act within the meaning of clause (g) of section 2, so far as the nature of an amalgamated company will permit.

#### **8.** Section 149 is amended

- (a) as to subsection (1) by striking out the words "shall register" and by substituting the words "may, in his discretion, register",
- (b) as to subsection (2) by striking out the words "the certificate" and by substituting the words "a notice of the registration".

**9.** This Act comes into force on the day upon which it is assented to except section 5 and clause (b) of section 8, which come into force on the first day of July, 1959.

No. 78

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FIFTH SESSION

THIRTEENTH LEGISLATURE

7 ELIZABETH II

1959

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**BILL**

An Act to amend The Companies Act

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Received and read the

First time.....

Second time.....

Third time.....

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HON. MR. HOOKE

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