

1972 Bill 23

First Session, 17th Legislature, 21 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 23

The Companies Amendment Act, 1972

MR. JAMISON

First Reading

Second Reading

Third Reading

BILL 23

1972

THE COMPANIES AMENDMENT ACT, 1972

(Assented to _____, 1972)

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

1. *The Companies Act is hereby amended.*

2. *Section 70 is amended by adding the following subsection after subsection (2):*

(2.1) Where shares have been redeemed under this section, notice thereof shall be given to the Registrar by the company within 30 days of the redemption date and every company which fails to give notice as required by this subsection is guilty of an offence.

3. *Section 93, subsection (1) is amended by inserting after the words "Every prospectus" the words ", other than a preliminary prospectus,".*

4. *Section 97, subsection (1) is amended by striking out the words "within 60 days after the date of its creation (or within 90 days, if created outside the Province), " and by substituting the words "within 60 days after the date the instrument is fully executed,".*

Explanatory Notes

1. This Bill will amend chapter 60 of the Revised Statutes of Alberta 1970.

2. This amendment provides that the Registrar must be notified when redeemable shares are in fact redeemed.

3. This amendment is to clarify that it is a final prospectus which must be filed. Section 93 (1) presently reads:

93. (1) Every prospectus issued by or on behalf of a company shall be filed with the Registrar
- (a) within 15 days of the date upon which the prospectus is accepted by the Commission pursuant to The Securities Act, or by the equivalent authority in another jurisdiction, or
 - (b) where the prospectus is not required to be filed with the Commission or with an equivalent authority in another jurisdiction, within 15 days of the date of issue of the prospectus.

4. This amendment is to make the time for registration of mortgages, etc. start to run from the date of execution instead of the date of creation. Section 97(1) presently reads:

97. (1) Every mortgage of its property created by a company, and every mortgage of its property situate in the Province created by an extra-provincial company,
- (a) for the purpose of securing any debenture, or
 - (b) on uncalled or unpaid share capital, or
 - (c) as a floating charge on its undertaking or property, or
 - (d) as a mortgage or charge on goodwill, on any patent, or licence under a patent, on any trade mark or on any copyright or licence under a copyright,

shall be registered by filing the instrument (or a true copy thereof) by which the mortgage is created or evidenced with the Registrar within 60 days after the date of its creation (or within 90 days, if created outside the Province), otherwise the mortgage is, so far as any security on the company's property or undertaking is thereby conferred, void against the liquidator, and any assignee, receiver, and creditor of the company, and any subsequent bona fide purchaser or mortgagee for valuable consideration, but without prejudice to any contract or obligation for repayment of the money thereby secured, and when a mortgage becomes void under this section the money secured thereby immediately becomes payable.

5. Section 106, subsection (1) is amended by striking out the words "in the prescribed form".

6. (1) Section 146 is amended by renumbering subsection (1) as subsection (1.1) and by adding prior thereto the following subsection:

146. (1) In this section "anniversary month" means the month in each year which is the same as the month in which the certificate of incorporation of the company was issued or, in the case of an amalgamated company, the month in which its certificate of amalgamation was issued.

(2) Section 146, renumbered subsection (1.1), is amended

(a) by striking out the words "before January 31 in each year," and by substituting the words "each year before the last day of the month immediately following its anniversary month,"

(b) as to clause (a) by striking out the words "on December 31 in the immediately preceding year" and by substituting the words "on the last day of its anniversary month in each year", and

(c) as to clause (g) by striking out the words "at the date of the return" and by substituting the words "as of the last day of the company's anniversary month in each year".

(3) Section 146, subsection (2) is amended

(a) by striking out the words "before January 31 in each year," and by substituting the words "each year before the last day of the month immediately following its anniversary month,"

(b) as to clause (a) by striking out the words "on December 31 in the immediately preceding year" and by substituting the words "on the last day of its anniversary month in each year", and

(c) as to clause (e) by striking out the words "at the date of the return" and by substituting the words "as of the last day of the company's anniversary month in each year".

(4) Section 146 is amended by adding after subsection (4) the following subsection:

(4.1) All returns made under subsection (1.1) or (2) shall be dated and shall be signed by an officer or director of the company on whose behalf the return is made.

5. Section 106 (1) reads:

106.(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or such longer period as the Registrar may allow, after the expiration of the period of six months from the date of his appointment, and after the expiration of every subsequent period of six months, and within one month after he ceases to act as receiver or manager, file with the Registrar an abstract in the prescribed form showing his receipts and his payments during that period of six months, or, where he ceases to act as aforesaid, during the period from the end of the period to which the last preceding abstract related up to the date of his so ceasing, and showing the aggregate amount of his receipts and of his payments during all preceding periods since his appointment, and shall also, on ceasing to act as receiver or manager, file with the Registrar notice to that effect and the Registrar shall enter the notice in the register of mortgages and charges.

6. Date for returns changed from a specified date to relate to the anniversary of the company's incorporation or amalgamation. Section 146, subsections (1) and (2) read:

146. (1) Every company having share capital shall, before January 31 in each year, make a return to the Registrar containing

- (a) unless the company is a public company, a list of all persons who were members of the company on December 31 in the immediately preceding year setting out
 - (i) the full name and address of each member,
 - (ii) the number and class of share held by each member at the date of the return, and
 - (iii) the amount called up on each share up to the date of the return,
- (b) the address of the registered office of the company,
- (c) the amount of the authorized share capital of the company, the number and class of shares into which it is divided, and the number of shares issued from the commencement of the company up to the date of the return,
- (d) a summary distinguishing between shares issued for cash and shares issued fully or partly paid-up otherwise than in cash,
- (e) the total amount of share warrants issued and surrendered respectively since the date of the last return or in the case of the first return since the incorporation of the company,
- (g) the full names and addresses and occupations of the persons who at the date of the return are directors of the company, and
- (h) the total amount of debt due from the company at the date of the return in respect of all mortgages that are registered or required to be registered with the Registrar.

(2) Every company that does not have share capital shall, before January 31 in each year, make a return to the Registrar containing

- (a) a list of all persons who were members of the company on December 31 in the immediately preceding year setting out the full name and address of each member,
- (b) the address of the registered office of the company,
- (c) the total amount of capital contributed up to the date of the return,
- (d) the total amount guaranteed,
- (e) the full names, addresses and occupations of the persons who at the date of the return are directors of the company, and
- (f) the total amount of debt due from the company in respect of all mortgages that are registered or required to be registered with the Registrar.

7. Section 160 is struck out and the following section is substituted:

160. (1) Upon an application by the shareholders of a company holding shares representing not less than one-tenth of the issued capital of the company, or upon an application of at least one-tenth of the members of a company without share capital, the court may appoint an inspector to investigate the affairs and management of the company or may appoint a person to audit its books.

(2) The application shall be supported by such evidence as the court requires for the purpose of showing that the applicants have good reason for requiring the investigation or audit, as the case may be.

(3) The court may require the applicants to give security to cover the probable cost of the investigation or audit and may make rules and prescribe the manner in which and the extent to which the investigation or audit is to be conducted.

(4) The inspector or auditor shall report thereon to the court and the expense of the investigation shall, in the discretion of the court, be defrayed by the company or by the applicants or partly by the company and partly by the applicants.

(5) A company may, by resolution passed at an annual meeting or at a general meeting called for that purpose, appoint an inspector to investigate its affairs and management.

(6) The inspector appointed under subsection (5) has the same powers and shall perform the same duties as an inspector appointed under subsection (1) and he shall make his report in such manner and to such persons as the company by resolution directs.

(7) All officers and agents of the company shall produce for the examination of any inspector or auditor appointed under this section all books and records in their custody or power.

(8) Any such inspector or auditor may examine upon oath the officers, agents and employees of the company in relation to its affairs and management.

(9) Every officer or agent who refuses to produce any book or record referred to in subsection (7) and every person so examined who refuses to answer any question relating to the affairs and management of the company is guilty of an offence and on summary conviction is liable to a fine of not more than \$200.

(10) A copy of the report of the inspector or auditor, as the case may be, authenticated by the court or under the seal of the company whose affairs and management he has investigated, is admissible in any legal proceedings as evidence of the opinion of the inspector or auditor in relation to any matter contained in the report.

7. Appointment of inspectors.

Section 160 presently reads:

160. (1) The Lieutenant Governor in Council may,
- (a) in the case of a company having a share capital, on the application of members holding not less than one-twentieth of the shares issued, or
 - (b) in the case of a company not having a share capital, on the application of not less than one-fifth in number of the persons on the company's register of members,
- appoint one or more competent inspectors to investigate the affairs of the company and to report thereon in such manner as the Lieutenant Governor in Council directs.
- (2) The application shall be supported by such evidence as the Lieutenant Governor in Council may require for the purpose of showing that the applicants have good reason for, and are not actuated by malicious motives in requiring, the investigation, and the Lieutenant Governor in Council may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.
- (3) Every director, manager, officer, and agent of the company shall produce to the inspectors all books and documents in his custody or power.
- (4) An inspector may examine on oath any director, manager, officer, or agent of the company in relation to its business, and may administer an oath accordingly.
- (5) If any director, manager, officer or agent of the company refuses to produce to the inspectors any book or document that it is his duty under this section so to produce, or refuses to answer any question that is put to him by the inspectors with respect to the affairs of the company, the inspectors may certify the refusal under their hand to the court, and the court may thereupon inquire into the case, and after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, punish the offender in like manner as if he had been guilty of contempt of the court.
- (6) On the conclusion of the investigation the inspectors shall report their opinion to the Lieutenant Governor in Council, and copies of the report shall be forwarded by the Minister to the registered office of the company and to the Registrar, and a further copy shall, at the request of the applicants for the investigation, be delivered to them.
- (7) The report shall be written or printed, as the Lieutenant Governor in Council may direct.
- (8) The Lieutenant Governor in Council may make such orders as to the costs and expenses incidental to the investigation as are deemed proper.
- (9) Where the affairs of a company are being investigated under this section or section 161, a person who has, within the two years preceding the appointment of an inspector to investigate the affairs of the company, held the position of director, manager, officer or agent in the company shall be deemed to be a director, manager, officer or agent of the company for the purposes of this section and section 161.

8. *Section 177, subsection (1) is amended by striking out the words “, verified by affidavit,”.*

9. *Section 182 is amended by striking out the words “the corporation known as “The Governor and Company of Adventurers of England trading into Hudson’s Bay” or”.*

10. *Section 188, subsection (1) is amended by striking out the word “registered”.*

11. *Section 189, subsection (2) is amended*

(a) by striking out clause (a) and by substituting the following:

(a) notice of the application shall be given to the Registrar,

(b) by adding the following clause after clause (b):

*(b1) upon receipt of the office copy of the order the Registrar shall cause notice of the restoration of the company to the register to be published in the *Alberta Gazette* and the cost of the advertisement shall be paid to the Registrar by the company,*

12. *Section 271 is amended by striking out the words “extraordinary resolution” wherever they appear and by substituting the words “special resolution”.*

8. The annual statement no longer must be verified by affidavit.

9. Section 182 reads:

182. This Part does not apply to the corporation known as "The Governor and Company of Adventurers of England trading into Hudson's Bay" or an extra-provincial company that is licensed as an insurer under The Alberta Insurance Act or an extra-provincial company that is registered as a trust company under The Trust Companies Act.

The Hudson's Bay Company is now a Canadian company under the Canada Corporations Act.

10. Section 188, subsection (1) reads:

188. (1) Where a company or an extra-provincial company has failed to file any return, notice, or document required to be filed with the Registrar pursuant to this Act or any former Companies Act or Ordinance, for two consecutive years after the return, notice, or document should have been so filed, or the Registrar has reasonable cause to believe that a company is not carrying on business or in operation, or in the case of an extra-provincial company that it has ceased to carry on business in the Province, he shall send to the company by post a registered letter notifying it of its default or inquiring whether the company is carrying on business or in operation.

Notice by ordinary mail now sufficient.

11. Notice of application to restore company to register.

12. Section 271 reads:

271. (1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of as follows, that is to say:

- (a) in the case of a winding-up by the court, in such way as the court directs;
- (b) in the case of a voluntary winding-up, in such way as the company by extraordinary resolution directs.

(2) After two years from the dissolution of the company, or such shorter period, not being less than one year, as may be fixed by the court or by extraordinary resolution under subsection (1), neither the company nor any liquidator nor any person to whom the custody of the books and papers has been committed, has any responsibility by reason of the same not being forthcoming to any person claiming to be interested therein.

13. *The following section is added after section 286 and prior to the heading "Division (2)—Fees":*

286.1 Where a document submitted for registration to the office of the Registrar

- (a) is not in all respects legible, or
 - (b) is for any reason, in the opinion of the Registrar, not capable of being copied by microfilm, mechanical duplicating or other similar process, or
 - (c) is in any manner insufficient in the opinion of the Registrar for the purpose of registration,
- the Registrar may refuse to register the document.

14. *The First Schedule, Table A is amended by striking out articles 49, 50 and 51 and by substituting the following:*

49. The proxy appointing a nominee shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorized.

50. The proxy appointing a nominee and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited with the company, or an agent thereof, **within the period of time preceding any meeting or adjourned meeting fixed by the directors and not exceeding 48 hours, excluding Saturdays and holidays, and which is specified in the notice calling the meeting or in the information circular relating thereto.**

15. *The First Schedule, Table A is amended by striking out article 58 and by substituting the following:*

58. The management and directors shall duly comply with **the provisions of *The Companies Act*, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of mortgages and to keeping registers of directors and members and to mailing of forms of proxy and information circulars, and to filing with the Registrar an annual report, and copies of special and other resolutions, and of any change in the registered office or of directors.**

16. *The First Schedule, Table A, article 85 is amended*

- (a) *as to clause (a) by striking out the word "expended" and by substituting the word "disbursed", and*
- (b) *by inserting the word "and" at the end of clause (c) and by adding the following clause after clause (c):*
- (d) all other transactions affecting the financial position of the company.

13. Registrar may refuse to register documents which may not be readily reproduced.

14. This amendment brings the articles into conformity with sections 139 and 142 of the Act. It also remedies an ambiguity in the use of the word "proxy". Articles 49 and 50 read:

49. The instrument appointing a proxy shall be in writing under the hand of the appointor or of his attorney duly authorized in writing, or, if the appointor is a corporation, either under the common seal or under the hand of an officer or attorney so authorized. No person shall act as a proxy unless he is entitled on his own behalf to be present and vote at the meeting at which he acts as proxy, or he has been appointed to act at that meeting as proxy for a corporation.

50. The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited at the registered office of the Company not less than 48 hours before the time for holding the meeting at which the person named in the instrument proposes to vote, and in default the instrument of proxy shall not be treated as valid.

15. Reference to filing returns of allotments of shares no longer required. Mailing of proxy forms and information circulars added and management included.

16. This amendment brings the article into conformity with section 119 (1) of the Act which reads:

119. (1) Every company shall cause to be kept proper books of account and accounting records in respect of all financial and other transactions of the company and, without limiting the generality of the foregoing, records of

- (a) all sums of money received and disbursed by the company and the matters in respect of which receipt and disbursement take place,
- (b) all sales and purchases by the company,
- (c) all assets and liabilities of the company, and
- (d) all other transactions affecting the financial position of the company.

17. The First Schedule, Table A, article 86 is amended by striking out the words "think fit" and by substituting the words "determine by resolution".

18. The First Schedule, Table A is amended by striking out articles 88, 89 and 90 and by substituting the following:

88. Once at least in every year the directors shall lay before the company at its annual general meeting a financial statement for the period since the preceding statement, or, in the case of the first financial statement, since the incorporation of the company, made up to a date not more than six months before the meeting.

89. The financial statement shall be accompanied by the report of the auditors and by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

90. A copy of the financial statement and report shall, not less than 10 days before the meeting, be sent to all persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

19. (1) This Act, except section 6, comes into force on the day upon which it is assented to.

(2) Section 6 comes into force on July 1, 1972.

17. This amendment brings the article into conformity with section 119 (5) of the Act. Article 86 reads:

86. The books of account shall be kept at the registered office of the Company, or at such other place as the directors think fit, and shall always be open to inspection by the directors.

18. These amendments bring these articles into conformity with Part 6, Division (7) of the Act. These articles read:

88. Once at least in every year the directors shall lay before the Company at its annual general meeting a profit and loss account for the period since the preceding account or, in the case of the first account, since the incorporation of the Company, made up to a date not more than four months before such meeting.

89. A balance sheet shall be made out in every year and laid before the Company at its annual general meeting made up to the same date as the profit and loss account. The balance sheet shall be accompanied by the report of the auditors and by a report of the directors as to the state of the Company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

90. A copy of the balance sheet and report shall, not less than seven days before the meeting, be sent to all persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.