

1977 BILL 31

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Third Session, 18th Legislature, 26 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 31

**THE COMPANIES AMENDMENT ACT, 1977**

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THE MINISTER OF CONSUMER AND  
CORPORATE AFFAIRS

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First Reading .....

Second Reading .....

Third Reading .....

*Bill 31*

## **BILL 31**

1977

### **THE COMPANIES AMENDMENT ACT, 1977**

*(Assented to , 1977)*

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. The following Division is added after section 41:*

#### **Division (1.1) - Purchase by a Company of its Own Shares**

**41.1.** (1) Subject to the provisions of this Division, a company may purchase shares issued by it.

(2) Unless its articles otherwise provide, the company shall exercise the power conferred by this section by resolution of the directors.

**41.11.** (1) Where a company purchases any share issued by it of a class with par value, the issued capital is thereby decreased by an amount equal to the par value of the share.

(2) Where a company purchases any share issued by it of a class without par value, the issued capital is thereby decreased by an amount equal to the amount obtained by dividing

(a) the amount of the consideration received by the company from time to time for which the shares of that class were issued less any reduction of capital with respect to those shares effected by the company in accordance with the provisions of this Act,

## **Explanatory Notes**

**1.** This Bill will amend chapter 60 of the Revised Statutes of Alberta 1970. These amendments are based on Report No. 21 of the Institute of Law Research and Reform issued in January, 1977.

**2.** These amendments will permit and govern the purchase by a company of its own shares.

**41.1.** Authority to buy back shares.

**41.11** Decrease in issued capital.

by

(b) the number of issued shares of that class.

(3) Shares which have been issued by a company and purchased by it shall be restored to the status of authorized but unissued shares.

**41.2.** (1) A company shall not make any payment to purchase any share issued by it if the directors have reasonable grounds for believing that

- (a) the company is, or would be after the payment, unable to pay its liabilities as they become due, or
- (b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the paid up capital of the remaining shares of every class or kind.

(2) The provisions of section 89, subsection (2) do not apply with respect to a purchase by a company of any share issued by it.

**41.21.** (1) Any directors of a company who, contrary to the provisions of section 41.2, vote in favour of or consent to a resolution authorizing the company to purchase any share issued by it, are jointly and severally liable to restore to the company any amount so paid and not otherwise recovered by the company.

(2) A director who has satisfied a judgment ordered under this section is entitled to contribution from the other directors who voted in favour of or consented to the resolution.

(3) Where a company has purchased any share in contravention of section 41.2,

- (a) any creditor who was a creditor at the time of the purchase, or
- (b) any shareholder, or
- (c) any director who is liable under subsection (1),

**41.2** Prohibition on purchases which might impair solvency.

**41.21** Liability of directors.

may apply to the court by originating notice for an order compelling the shareholder or former shareholder from whom the share was so purchased to repay to the company an amount equal to the purchase price received for that share.

- (4) The court, upon application under subsection (3), may
  - (a) order the shareholder or former shareholder from whom the share was purchased to pay to the company an amount equal to the purchase price received for the share purchased in contravention of section 41.2;
  - (b) order the company to issue an equivalent number of shares to the shareholder or the former shareholder;
  - (c) make any other order that it thinks appropriate.

(5) An action to enforce a liability under subsection (1) may be commenced only within two years after the date of completion of the purchase.

**41.3.** A private company that purchases shares issued by it shall notify the Registrar, within 30 days of the date of the purchase, of the date, the number and the class or kind of shares that it has purchased.

**41.31.** (1) A public company which under this Division purchases shares issued by it shall be deemed to be an insider for the purposes of Part 6, Division (3).

(2) A private company which under this Division purchases a share issued by it and makes use of any specific confidential information for its own benefit or advantage which, if generally known, might reasonably be expected to affect materially the value of the share, is liable to compensate any shareholder or former shareholder from whom the share was purchased for any direct loss suffered by that person as a result of the purchase, unless the information was known or ought reasonably to have been known to that shareholder or former shareholder at the time of the purchase.

(3) An action to enforce any right created by subsection (2) may be commenced only within two years after the date of completion of the purchase.

**41.3** Reporting of purchase by a private company.

**41.31** Application of insider trading rules.

**41.4.** (1) Unless all of the shareholders at the date of the purchase have unanimously agreed in writing to the proposed purchase, a company that proposes to purchase shares issued by it shall

- (a) make its offer to purchase to every shareholder resident in Canada who holds shares of the class or kind to be purchased,
- (b) deliver or mail, in the manner prescribed in the articles of the company for sending a notice of a meeting of the shareholders, a copy of the offering circular in the prescribed form to each shareholder of record at the time of the offer who is resident in Canada, stating the number and the class or kind of shares which the company proposes to purchase,
- (c) in the case of a private company, file a copy of the offering circular with the Registrar within 15 days of the date that it is first delivered or mailed to the shareholders of the company, and
- (d) in the case of a public company, file a copy of the offering circular with the Commission within five days of the date that it is first delivered or mailed to the shareholders resident in Canada.

(2) For the purposes of this section, a shareholder is deemed to be resident in Canada if his latest address shown on the register of members of the company is an address within Canada.

(3) Where, in response to the offer contained in the offering circular, the shareholders agree to sell a greater number of shares than the company offered to buy, the company shall make its purchase from all of the shareholders who offered to sell as nearly as possible on a pro rata basis, disregarding fractions.

(4) Notwithstanding subsection (1), clause (a), a company may make its offer to purchase shares issued by it to every shareholder who holds shares of the class or kind to be purchased, wherever resident, in which case the provisions of subsection (1), clauses (b) to (d) apply with all necessary modifications.



**41.4** Offer to purchase.

**41.41.** A public company whose shares are listed on a Canadian stock exchange, or traded in the over-the-counter market in Canada, is not required to comply with the provisions of section 41.4 if

- (a) the shares it proposes to purchase are bought through the facilities of a stock exchange or in the over-the-counter market,
- (b) there has been no solicitation of the shareholders by the company, and
- (c) its purchases do not exceed in any single month more than 1 per cent of the class or kind of shares which were issued and outstanding on the first day of that month.

**41.5.** A public company that has not obtained the unanimous agreement of all of its shareholders to the proposed purchase of any of its issued shares may apply to the Commission for an order declaring the proposed purchase to be exempt from the provisions of section 41.4, subsection (1), clauses (b) and (d) and the Commission may order the proposed offer to be exempt upon any terms or conditions that it may impose.

**41.6.** Where, in connection with an offer by a company to purchase shares issued by it, the company or its directors do not comply with this Act or the regulations, any member of the Commission or any interested person may apply to the court by way of originating notice and upon such application the court may make an order

- (a) approving the contents of the offering circular with or without variation and requiring distribution of the corrected document to each shareholder entitled to receive it, or
- (b) restraining the distribution of the offering circular, or
- (c) requiring any person to comply with this Act or the regulations, or
- (d) rescinding the offer.

**41.7.** (1) An action for specific performance lies against a company with respect to a contract with the company providing for the purchase of shares issued by it except to the extent that the company is unable to perform the contract without contravening the provisions of section 41.2.

**41.41** Exception.

**41.5** Application to Commission for exemption order.

**41.6** Noncompliance with the Act or regulations.

**41.7** Enforceability of contract.

(2) In an action brought on a contract referred to in subsection (1), the onus is on the company to prove that performance thereof would contravene the provisions of section 41.2.

(3) Until the company has fully performed a contract referred to in subsection (1), the shareholder who contracted to sell a share thereunder retains the status of a claimant and is entitled to be paid as soon as the company is lawfully able to do so or, in liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class of shareholders whose rights were in priority to the rights given to the class of shares which he contracted to sell to the company, but in priority to the rights of the other shareholders.

**41.8.** (1) Upon the commencement of this Division, a subsidiary company may not acquire any shares of its holding or affiliated company in excess of 1 per cent of the number of issued shares of the holding or affiliated company.

(2) A subsidiary company that acquires any shares of its holding or affiliated company pursuant to this section is not entitled to receive any notice of, or to vote at, any meeting of the shareholders of the holding or affiliated company with respect to those shares.

**41.9.** An application to the court under this Division shall be heard by a judge of the Supreme Court of Alberta designated by the Chief Justice of the Trial Division.

*3. Section 288 is amended*

*(a) by striking out the word “and” at the end of clause (a.1) and by adding the word “and” at the end of clause (b), and*

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

*(c) prescribing the form and content of offering circulars to be used pursuant to Part 4, Division (1.1).*

*4. This Act comes into force on a date to be fixed by Proclamation.*

**41.8** Purchase of shares by subsidiary company.

**41.9** Applications to the court.

**3.** Consequential amendment to the regulation-making section.