

1978 BILL 75

Fourth Session, 18th Legislature, 27 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 75

THE COMPANIES AMENDMENT ACT, 1978

THE MINISTER OF CONSUMER AND CORPORATE
AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

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1978

THE COMPANIES AMENDMENT ACT, 1978

(Assented to , 1978)

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

1 *The Companies Act is amended by this Act.*

2 *The following is added after section 156:*

156.1 (1) In this section,

(a) “Alberta company” means a company but does not include a company to which Part 9 applies or a company that has been continued under section 158 as if it had been incorporated under the laws of another jurisdiction;

(b) “wholly-owned subsidiary” means

(i) an Alberta company, all of whose outstanding shares are beneficially owned by an extra-provincial company, or

(ii) an extra-provincial company, all of whose outstanding shares are beneficially owned by an Alberta company.

(2) An Alberta company may amalgamate with an extra-provincial company if the extra-provincial company is authorized to amalgamate with an Alberta company by the laws of the jurisdiction in which the extra-provincial company is incorporated and either is the wholly-owned subsidiary of the other.

(3) An Alberta company and an extra-provincial company proposing to amalgamate shall enter into an amalgamation agreement prescribing the terms and conditions of the amalgamation.

(4) The amalgamation agreement shall

Explanatory Notes

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

2 This section provides for the amalgamation of an Alberta company with an extra-provincial company where one is the wholly-owned subsidiary of the other. The resultant amalgamated company is an Alberta company.

(a) comply with section 156(3),

(b) provide that the shares of the wholly-owned subsidiary shall be cancelled without repayment of issued capital in respect of those shares, and

(c) provide that no securities shall be issued by the amalgamated company in connection with the amalgamation.

(5) The amalgamation agreement shall be approved by a resolution of the board of directors of the Alberta company and of the board of directors or comparable governing body of the extra-provincial company.

(6) The Alberta company and the extra-provincial company shall file with the Registrar

(a) certified copies of the resolutions referred to in subsection (5),

(b) the amalgamation agreement,

(c) declarations under oath of a director of the Alberta company and a director of the extra-provincial company that

(i) the Alberta company and the extra-provincial company are able to pay their liabilities as they become due,

(ii) the market value of the amalgamated company's assets will not be less than the aggregate of its liabilities and the issued capital of all classes of its shares,

(iii) no creditor of the Alberta company or the extra-provincial company will be prejudiced by the amalgamation,

(iv) notice has been given to all creditors of the Alberta company and the extra-provincial company has complied with the laws of the jurisdiction in which it was incorporated with respect to creditors, and

(v) no creditor objects to the amalgamation,

and

(d) if the Alberta company is a public company or the extra-provincial company has distributed any of its securities to the public, the approval of the proposed amalgamation by the Commission.

(7) If a creditor objects to the amalgamation, the Registrar shall refuse to issue a certificate of amalgamation under this section.

(8) If the Registrar refuses under subsection (7) to issue a certificate of amalgamation under this section, the Alberta company or the extra-provincial company may apply by originating notice to the court for an order directing the Registrar to issue the certificate.

(9) The court on an application under subsection (8) may order the Registrar to issue the certificate of amalgamation if, in the opinion of the court, no creditor will be prejudiced by the amalgamation.

(10) If the Alberta company is a public company or the extra-provincial company has distributed any of its securities to the public, the documents referred to in subsection (6)(a), (b), and (c) shall be submitted to the Commission and, if the Commission is satisfied that no creditor or shareholder will be prejudiced by the amalgamation, the Commission shall approve the amalgamation in writing.

(11) For the purposes of this section, adequate notice is given to a creditor of an Alberta company if notice that the Alberta company intends to amalgamate with an extra-provincial company in accordance with this Act and that a creditor may object to the amalgamation in writing by mailing by registered mail or delivering the objection to the registered office of the Alberta company within 30 days of the last date on which the notice of intention to amalgamate is

(a) sent by registered mail to each creditor having a claim against the Alberta company that exceeds \$1000, and

(b) published once in a newspaper published or distributed in the place in Alberta where the Alberta company has its registered office.

(12) After receiving the documents referred to under subsection (6), and

(a) being satisfied that no creditor objects to the amalgamation, or

(b) receiving a certified copy of an order under subsection (9),

the Registrar shall

(c) issue a certificate of amalgamation under his seal of office certifying that the Alberta company and the extra-provincial company have amalgamated, and

(d) publish in the Alberta Gazette, at the expense of the applicants for amalgamation, a notice of the amalgamation setting out

(i) the names of the Alberta company and the extra-provincial company that are amalgamated,

(ii) the name of the amalgamated company,

(iii) the authorized capital and principal objects of the amalgamated company,

(iv) the address of the registered office of the amalgamated company, and

(v) any other information the Registrar considers necessary.

(13) An amalgamation agreement may provide that at any time before the issuance of a certificate of amalgamation by the Registrar, the amalgamation agreement may be terminated by the board of directors of the Alberta company or the board of directors or comparable governing body of the extra-provincial company proposing to amalgamate.

(14) When a certificate of amalgamation is issued by the Registrar under subsection (12), the amalgamated company is a company incorporated under this Act.

(15) On and from the date shown on the certificate of amalgamation

(a) the Alberta company and the extra-provincial company continue as the amalgamated company,

(b) the amalgamated company has the memorandum and articles of association set out in the amalgamation agreement,

(c) the registered office of the amalgamated company is the registered office of the former Alberta company until changed pursuant to section 33,

(d) the property of the former Alberta company and the former extra-provincial company continues to be the property of the amalgamated company,

(e) the amalgamated company continues to be liable for the obligations of both the former Alberta company and the former extra-provincial company,

(f) an existing cause of action, claim or liability to prosecution in favour of or against the former Alberta company or the former extra-provincial company con-

tinues in favour of or against the amalgamated company,

(g) a civil, criminal or administrative action or proceeding pending by or against the former Alberta company or the former extra-provincial company may be continued to be prosecuted by or against the amalgamated company, and

(h) a conviction against, or ruling, order or judgment in favour of or against the former Alberta company or the former extra-provincial company may be enforced by or against the amalgamated company.

3 This Act comes into force on the day upon which it is assented to.