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THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 43

THE BUSINESS CORPORATIONS ACT

THE MINISTER OF CONSUMER AND
CORPORATE AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

THE BUSINESS CORPORATIONS ACT

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BILL 43

1981

THE BUSINESS CORPORATIONS ACT

(Assented to _____, 1981)

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

PART 1

INTERPRETATION AND APPLICATION

Definitions

1 In this Act,

(a) "affairs" means the relationships among a corporation, its affiliates and the shareholders, directors and officers of those bodies corporate but does not include the business carried on by those bodies corporate;

(a.1) "affiliate" means an affiliated body corporate within the meaning of section 2(1);

(b) "Alberta company" means a body corporate incorporated and registered under *The Companies Act* or any of its predecessors;

(b.1) "articles" means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement, articles of dissolution and articles of revival and includes an amendment to any of them;

(c) "associate", when used to indicate a relationship with any person, means

(i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the

voting rights under all circumstances or under any circumstances that have occurred and are continuing, or a currently exercisable option or right to purchase those shares or those convertible securities,

(ii) a partner of that person acting on behalf of the partnership of which they are partners,

(iii) a trust or estate in which that person has a substantial interest or in respect of which he serves as a trustee or in a similar capacity,

(iv) a spouse of that person, or

(v) a relative of that person or of his spouse if that relative has the same residence as that person;

(c.1) “auditor” includes a partnership of auditors;

(d) “beneficial interest” means an interest arising out of the beneficial ownership of securities;

(d.1) “beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;

(e) “body corporate” includes a company or other body corporate wherever or however incorporated;

(e.1) “Canada corporation” means a body corporate incorporated by or under an Act of the Parliament of Canada;

(f) “Commission” means the Alberta Securities Commission;

(f.1) “corporation” means a body corporate incorporated or continued under this Act and not discontinued under this Act;

(g) “Court” means the Court of Queen’s Bench of Alberta;

(g.1) “debt obligation” means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation, whether secured or unsecured;

(h) “Director” means the Director or any Deputy Director of the Commission;

(h.1) “director” means a person occupying the position of director by whatever name called and “directors” and “board of directors” includes a single director;

(i) “distributing corporation” means a corporation

(i) any of whose issued shares, or securities which may or might be exchanged for or converted into shares, were part of a distribution to the public, and

- (ii) which has more than 15 shareholders;
- (i.1) “extra-provincial corporation” means a body corporate
 - (i) incorporated otherwise than by or under an Act of the Legislature or an Ordinance of the Northwest Territories, or
 - (ii) incorporated by or under an Ordinance of the Northwest Territories and not subject to the legislative authority of the Province by section 16 of *The Alberta Act*;
- (j) “incorporator” means a person who signs articles of incorporation;
- (j.1) “individual” means a natural person;
- (k) “liability” includes a debt of a corporation arising under section 38, 184(19) or 234(3)(g) or (h);
- (l) “Minister” means the Minister of Consumer and Corporate Affairs;
- (m) “ordinary resolution” means a resolution
 - (i) passed by a majority of the votes cast by the shareholders who voted in respect of that resolution, or
 - (ii) signed by all the shareholders entitled to vote on that resolution;
- (n) “person” includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;
- (o) “prescribed” means prescribed by the regulations;
- (p) “professional corporation” means a corporation that has the words “Professional Corporation” as the last words of its name;
- (q) “redeemable share” means a share issued by a corporation that the corporation, by its articles
 - (i) is required to purchase or redeem at specified time or on the happening of a certain event,
 - (ii) is required to purchase or redeem on the demand of a shareholder, or
 - (iii) may purchase or redeem on demand of the corporation,and includes a share issued by a corporation that is purchased or redeemed by a combination of any of the methods referred to in subclauses (i) to (iii);

(r) “Registrar” means the Registrar of Corporations or a Deputy Registrar of Corporations appointed under section 253;

(s) “Registrar’s periodical” means the periodical referred to in section 253.1;

(t) “resident Albertan” means an individual who is ordinarily resident in Alberta or, if not ordinarily resident in Alberta, is a member of a prescribed class of persons and, in any case,

(i) is a Canadian citizen, or

(ii) has been lawfully admitted to Canada for permanent residence;

(u) “security,” except in Part 6, means a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation;

(v) “security interest” means an interest in or charge on property of a corporation to secure payment of a debt or performance of any other obligation of the corporation;

(w) “send” includes deliver;

(x) “series” means, in relation to shares, a division of a class of shares;

(y) “special resolution” means a resolution passed by a majority of not less than 2/3 of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution;

(z) “unanimous shareholder agreement” means

(i) a written agreement to which all the shareholders of a corporation are or are deemed to be parties, whether or not any other person is also a party, or

(ii) a written declaration by a person who is the beneficial owner of all the issued shares of a corporation,

that provides for any of the matters enumerated in section 140(1).

Relationship of
corporations

2(1) For the purposes of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person, and

(b) if 2 bodies corporate are affiliated with the same body cor-

porate at the same time, they are deemed to be affiliated with each other.

(2) For the purposes of this Act, a body corporate is controlled by a person if

(a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person, and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(3) For the purposes of this Act, a body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

(4) For the purposes of this Act, a body corporate is a subsidiary of another body corporate if

(a) it is controlled by

(i) that other,

(ii) that other and one or more bodies corporate, each of which is controlled by that other, or

(iii) 2 or more bodies corporate, each of which is controlled by that other,

or

(b) it is a subsidiary of a body corporate that is that other's subsidiary.

Distribution to the public

3(1) For the purposes of this Act, securities of a corporation

(a) issued on a conversion of other securities, or

(b) issued in exchange for other securities

are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

(2) Subject to subsection (3), for the purposes of this Act, a security of a body corporate

(a) is part of a distribution to the public if, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada, or

(b) is deemed to be part of a distribution to the public if the security has been issued and a filing referred to in clause (a) would be required if the security were being issued currently.

(3) On the application of a corporation, the Commission may determine that a security of the corporation is not or was not part of a distribution to the public if it is satisfied that its determination would not prejudice any security holder of the corporation.

Execution in counterpart

4 A document or writing required or permitted by this Act may be signed or executed in separate counterparts and the signing or execution of a counterpart shall have the same effect as the signing or execution of the original.

PART 2 INCORPORATION

Incorporation

5 One or more persons may incorporate a corporation by signing articles of incorporation and complying with section 7.

Articles of incorporation

6(1) Articles of incorporation shall be in the prescribed form and shall set out, in respect of the proposed corporation,

(a) the name of the corporation,

(b) the classes and any maximum number of shares that the corporation is authorized to issue, and

(i) if there are 2 or more classes of shares, the special rights, privileges, restrictions and conditions attaching to each class of shares, and

(ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of each series, and the rights, privileges, restrictions and conditions attaching to the shares of each series,

(c) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and either

(i) a statement of the nature of the restrictions, or

(ii) a statement that the nature of the restrictions appears in a unanimous shareholder agreement,

(d) the number of directors or, subject to section 102(a), the minimum and maximum number of directors of the corporation, and

(e) any restrictions on the businesses that the corporation may carry on.

(2) The articles may set out any provision permitted by this Act or by-law to be set out in the by-laws of the corporation.

(3) Subject to subsection (4), if the articles or a unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by the Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

(4) The articles may not require a greater number of votes of shareholders to remove a director than the number required by section 104.

Delivery of articles
of incorporation

7(1) An incorporator shall send to the Registrar

(a) articles of incorporation, and

(b) the documents required by sections 19 and 101.

(2) If the name of the corporation set out in the articles of incorporation contains the words "Professional Corporation", the incorporator shall also send to the Registrar evidence satisfactory to him of the approval of the articles by or on behalf of

(a) the Institute of Chartered Accountants of Alberta,

(b) the Alberta Dental Association,

(c) the College of Physicians and Surgeons of the Province of Alberta, or

(d) the Law Society of Alberta,

as the case may be.

Certificate of
incorporation

8 On receipt of the documents and evidence required under section 7 and the prescribed fees, the Registrar shall issue a certificate of incorporation in accordance with section 255.

Effect of certificate
of incorporation

9(1) A corporation comes into existence on the date shown in the certificate of incorporation.

(2) A certificate of incorporation is conclusive proof for the purposes of this Act and for all other purposes

(a) that the provisions of this Act in respect of incorporation and all requirements precedent and incidental to incorporation have been complied with, and

(b) that the corporation has been incorporated under this Act as of the date shown in the certificate of incorporation.

Corporate name

10(1) The word “Limited”, “Limitee”, “Incorporated”, “Incorporee” or “Corporation” or the abbreviation “Ltd.”, “Ltee”, “Inc.” or “Corp.” shall be the last word of the name of every corporation but a corporation may use and may be legally designated by either the full or the abbreviated form.

(2) Notwithstanding subsection (1), the words “Professional Corporation” shall be the last words of the name of every corporation whose incorporation is approved in accordance with section 7(2).

(3) No person other than a body corporate shall carry on business within Alberta under any name or title that contains the word “Limited”, “Limitee”, “Incorporated”, “Incorporee” or “Corporation” or the abbreviation “Ltd.”, “Ltee”, “Inc.” or “Corp.” or the words “Professional Corporation”.

(4) A person carrying on business in contravention of subsection (3) is guilty of an offence and liable to a fine of not more than \$5000.

(5) A corporation may file a notice in prescribed form with the Registrar designating an additional form or forms of its name in accordance with subsection (6).

(6) Subject to section 12(1), the name of the corporation or an additional form of its name in a notice filed under subsection (5) may be in an English form or a French form or in a combined English and French form and the corporation may use and may be legally designated by any of those forms.

(7) Subject to section 12(1), a corporation may, outside Canada, use and may be legally designated by a name in any language form.

(8) A corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments, and orders for goods or services, issued or made by or on behalf of the corporation.

(9) Subject to subsection (8) and section 12(1) and section 85 of *The Partnership Act*, a corporation may carry on business under or identify itself by a name other than its corporate name.

Reservation of name

11(1) The Registrar may, on request, reserve for 90 days a name for

(a) an intended corporation,

(b) a corporation about to change its name, or

(c) an extra-provincial corporation about to continue as a corporation pursuant to section 181.

(2) If requested to do so by the incorporators, a corporation or an

extra-provincial corporation referred to in subsection (1)(c), the Registrar shall assign to the corporation as its name a designated number determined by him.

Prohibited names

12(1) A corporation shall not be incorporated with, have, carry on business under, identify itself by or change its name to a name that is

- (a) prohibited by the regulations,
- (b) identical to the name of a body corporate incorporated under the laws of Alberta,
- (c) reserved for an intended corporation or a corporation under section 11(1), or
- (d) disapproved by the Registrar pursuant to subsection (2).

(2) The Registrar may disapprove the name or the proposed name of a corporation if, in his opinion, the name

- (a) is objectionable,
- (b) is likely to mislead or confuse, or
- (c) is similar to the name of any other body corporate or to the name of any association, partnership or firm known to the Registrar and the use of that name would be likely to confuse or mislead.

(3) If a body corporate, association, partnership or firm referred to in subsection (2)(c)

- (a) consents in writing to the use of the name in whole or in part, and
- (b) if required by the Registrar, undertakes to dissolve or change its name to a dissimilar name within 6 months after the filing of the articles by which the corporation's name is to be or was acquired,

the Registrar may approve the name.

(4) Notwithstanding anything in this section, a corporation may be incorporated with or change its name to a name similar to that of a corporation or an Alberta company which has been dissolved, liquidated and dissolved or struck from the register, if

- (a) the corporation or Alberta company was dissolved, liquidated and dissolved or struck from the register more than 3 years before such incorporation and has not since been revived or restored to the register,
- (b) the Registrar approves the use of the name, and

(c) the name of the new corporation includes the year in which it is incorporated.

(5) If,

(a) through inadvertence or otherwise, a corporation comes into existence with or acquires a name that contravenes subsection (1), or

(b) the Registrar disapproves a corporation's name after it is acquired by the corporation,

the Registrar may, by notice in writing, giving his reasons, direct the corporation to change its name to one that he approves within 60 days of the date of the notice.

(6) The Registrar may give a notice under subsection (5) on his own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

(7) If a corporation

(a) is directed to change its name under subsection (5), and

(b) does not appeal the request of the Registrar within 60 days of the date of the notice,

the Registrar may revoke the name of the corporation and assign to it a designated number, and until changed in accordance with section 167 the name of the corporation is the designated number so assigned.

(8) If 2 or more corporations amalgamate, the amalgamated corporation may have the name of one of the amalgamating corporations, or, with the prior approval in writing of the Registrar,

(a) a distinctive combination, that is not confusing, of the names of the amalgamating corporations, or

(b) a distinctive new name that complies with subsection (1).

(9) The amalgamating corporations shall be deemed to be bodies corporate for the purposes of this section.

(10) If an application is made to revive a corporation under this Act and, between the date of dissolution of the corporation and the date of its revival, another corporation has come into existence with or has acquired a name that is likely to be confused with the name of the corporation to be revived, the Registrar may require, as a condition of the revival, that the revived corporation does not carry on business or, if it seeks to carry on business, that it change its name to a designated number immediately after it is revived.

(11) If the Registrar is satisfied that a professional corporation has

ceased to be the holder of a subsisting permit as a professional corporation issued under *The Chartered Accountants Act, The Dental Association Act, The Legal Profession Act or The Medical Profession Act, 1975*, he may, on giving notice to the professional corporation of his intention to do so, change the name of the corporation to exclude the words “Professional Corporation” and replace them with the word “Limited” or the abbreviation “Ltd.”.

Certificate of amendment

13(1) When a corporation has had its name revoked and a name assigned to it under section 12(7), the Registrar shall issue a certificate of amendment showing the new name of the corporation.

(2) The articles of the corporation are amended accordingly on the date shown in the certificate of amendment.

Pre-incorporation contracts

14(1) This section applies unless the person referred to in subsection (2) and all parties to the contract referred to in that subsection

(a) believe that the body corporate exists and is incorporated under, or

(b) intend that the body corporate is to be incorporated under

the laws of a jurisdiction other than Alberta.

(2) Except as provided in this section, if a person enters into a written contract in the name of or on behalf of a body corporate before it comes into existence,

(a) that person is deemed to warrant to the other party to the contract

(i) that the body corporate will come into existence within a reasonable time, and

(ii) that the contract will be adopted within a reasonable time after the body corporate comes into existence,

(b) that person is liable to the other party to the contract for damages for a breach of that warranty, and

(c) the measure of damages for that breach of warranty shall be the same as if the body corporate existed when the contract was made, the person who made the contract on behalf of the body corporate had no authority to do so and the body corporate refused to ratify the contract.

(3) A corporation may, within a reasonable time after it comes into existence, by any act or conduct signifying its intention to be bound thereby, adopt a written contract made before it came into existence in its name or on its behalf, and on the adoption

(a) the corporation is bound by the contract and is entitled to the benefits of the contract as if the corporation had been in

existence at the date of the contract and had been a party to it, and

(b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (5), to be liable under subsection (2) in respect of the contract.

(4) If a person enters into a contract in the name of or on behalf of a corporation before it comes into existence and the contract is not adopted by the corporation within a reasonable time after it comes into existence, that person or the other party to the contract may apply to the Court for an order directing the corporation to restore to the applicant, in specie or otherwise, any benefit received by the corporation under the contract.

(5) Except as provided in subsection (6), whether or not a written contract made before the coming into existence of a corporation is adopted by the corporation, a party to the contract may apply to the Court for an order

(a) fixing obligations under the contract as joint or joint and several, or

(b) apportioning liability between or among the corporation and a person who purported to act in the name of or on behalf of the corporation,

and on the application the Court may make any order it thinks fit.

(6) A person who enters into a written contract in the name of or on behalf of a body corporate before it comes into existence is not in any event liable for damages under subsection (2) if the contract expressly provides that he is not to be so liable.

PART 3

CAPACITY AND POWERS

Capacity of a corporation

15(1) A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

(2) A corporation has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Alberta to the extent that the laws of that jurisdiction permit.

Restriction on powers

16(1) It is not necessary for a by-law to be passed in order to confer any particular power on the corporation or its directors.

(2) A corporation shall not carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising, nor shall the corporation exercise any of its powers in a manner contrary to its articles.

(3) No act of a corporation, including any transfer of property to or by a corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

No constructive notice

17 No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed by the Registrar or is available for inspection at an office of the corporation.

Authority of directors, officers and agents

18 A corporation, a guarantor of an obligation of the corporation or a person claiming through the corporation may not assert against a person dealing with the corporation or dealing with any person who has acquired rights from the corporation

(a) that the articles, by-laws or any unanimous shareholder agreement have not been complied with,

(b) that the persons named in the most recent notice filed by the Registrar under section 101 or 108 are not the directors of the corporation,

(c) that the place named as the registered office in the most recent notice filed by the Registrar under section 19 is not the registered office of the corporation,

(c.1) that the post office box designated as the address for service by mail in the most recent notice filed by the Registrar under section 19 is not the address for service by mail of the corporation,

(d) that a person held out by the corporation as a director, an officer or an agent of the corporation

(i) has not been duly appointed, or

(ii) has no authority to exercise a power or perform a duty which the director, officer or agent might reasonably be expected to exercise or perform,

(e) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine, or

(f) that financial assistance referred to in section 42 or a sale, lease or exchange of property referred to in section 183 was not authorized,

unless the person has, or by virtue of his position with or relationship to the corporation ought to have, knowledge of those facts at the relevant time.

**PART 4
REGISTERED OFFICE, RECORDS AND SEAL**

Registered office,
records office,
address for service
by mail

19(1) A corporation shall at all times have a registered office within Alberta.

(2) A notice of

- (a) the registered office,
- (b) a separate records office, if any, and
- (c) the post office box designated as the address for service by mail, if any,

shall be sent to the Registrar in the prescribed form together with the articles of incorporation.

(3) Subject to subsection (4), the directors of the corporation may at any time

- (a) change the address of the registered office within Alberta,
- (b) designate, or revoke or change a designation of, a records office within Alberta, or
- (c) designate, or revoke or change a designation of, a post office box within Alberta as the address for service by mail of the corporation.

(4) If the directors of a corporation designate a post office box as the corporation's address for service by mail, they shall by the same resolution revoke any designation of a records office filed with the Registrar.

(5) A corporation shall send to the Registrar, within 15 days of any change under subsection (3) or (4), a notice of that change in the prescribed form, and the Registrar shall file it.

(6) The corporation shall ensure that its registered office and its records office, if any, are

- (a) accessible to the public during normal business hours, and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (2).

(7) Unless the directors designate a separate records office, the registered office of a corporation is also its records office.

Corporate records

20(1) A corporation shall prepare and maintain at its records office records containing

- (a) the articles and the by-laws, all amendments to the articles

- and by-laws, a copy of any unanimous shareholder agreement and any amendment to a unanimous shareholder agreement,
- (b) minutes of meetings and resolutions of shareholders,
 - (c) copies of all notices required by section 101 or 108,
 - (d) a securities register complying with section 46,
 - (e) copies of the financial statements, reports and information referred to in section 149(1), and
 - (f) a register of disclosures made pursuant to section 115.
- (2) Notwithstanding subsection (1), a central securities register may be maintained at an office in Alberta of a corporation's agent referred to in section 46(2)(a), and a branch securities register may be kept at any place in or out of Alberta designated by the directors.
- (3) If a central securities register is maintained under subsection (2) at a place other than the records office, the corporation shall maintain at its records office a record containing the names and addresses of all agents and offices at which those registers are maintained and descriptions of all those registers.
- (4) A corporation which
- (a) complies with section 22(2), and
 - (b) maintains in Canada a register or record referred to in section 20(3)
- complies with subsection (1).
- (5) In addition to the records described in subsection (1), a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of the directors.
- (6) For the purposes of subsections (1)(b) and (2), if a body corporate is continued under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.
- (7) The records described in subsection (5) shall be kept at the registered office or records office of the corporation or at any other place the directors think fit and shall at all reasonable times be open to examination by the directors.
- (8) If accounting records of a corporation are kept at a place outside Alberta, there shall be kept at the registered office or records office or at any other place in Alberta the directors think fit, accounting records adequate to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly

basis, and those records shall at all reasonable times be open to examination by the directors.

(9) A corporation that, without reasonable cause, contravenes this section is guilty of an offence and liable to a fine not exceeding \$5000.

Access to
corporate records

21(1) The directors and shareholders of a corporation, their agents and legal representatives may examine the records referred to in section 20(1) during the usual business hours of the corporation free of charge.

(2) A shareholder of a corporation is entitled on request and without charge to one copy of the articles and by-laws and of any unanimous shareholder agreement, and amendments to them.

(3) Creditors of a corporation and their agents and legal representatives may examine the records referred to in section 20(1)(a), (c) and (d), other than a unanimous shareholder agreement or an amendment to a unanimous shareholder agreement, during the usual business hours of the corporation on payment of a reasonable fee and may make copies of those records.

(4) Any person may examine the records referred to in section 20(1)(c) and (d) during the usual business hours of the corporation on payment of a reasonable fee and may make copies of those records.

(5) If the corporation is a distributing corporation, any person, on payment of a reasonable fee and on sending to the corporation or its agent the statutory declaration referred to in subsection (9), may on application require the corporation or its agent to furnish within 10 days from the receipt of the statutory declaration a list (in this section referred to as the "basic list") made up to a date not more than 10 days before the date of receipt of the statutory declaration setting out

- (a) the names of the shareholders of the corporation,
- (b) the number of shares owned by each shareholder, and
- (c) the address of each shareholder,

as shown on the records of the corporation.

(6) A person requiring a corporation to supply a basic list may, if he states in the statutory declaration referred to in subsection (5) that he requires supplemental lists, require the corporation or its agent on payment of a reasonable fee to furnish supplemental lists setting out any changes from the basic list in the information provided in it for each business day following the date the basic list is made up to.

(7) The corporation or its agent shall furnish a supplemental list required under subsection (6)

(a) on the date the basic list is furnished, if the information relates to changes that took place prior to that date, and

(b) on the business day following the day to which the supplemental list relates, if the information relates to changes that take place on or after the date the basic list is furnished.

(8) A person requiring a corporation to supply a basic list or a supplemental list may also require the corporation to include in that list the name and address of any known holder of an option or right to acquire shares in the corporation.

(9) The statutory declaration required under subsection (5) shall state

(a) the name and address of the applicant,

(b) the name and address for service of the body corporate if the applicant is a body corporate, and

(c) that the basic list and any supplemental lists obtained pursuant to subsection (6) will not be used except as permitted under subsection (11).

(10) If the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

(11) A list of shareholders obtained under this section shall not be used by any person except in connection with

(a) an effort to influence the voting of shareholders of the corporation,

(b) an offer to acquire shares of the corporation, or

(c) any other matter relating to the affairs of the corporation.

(12) A person who, without reasonable cause, contravenes this section is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Form of records

22(1) All registers and other records required by this Act to be prepared and maintained may be in a bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

(2) If a person is entitled to examine any register or record that is maintained by a corporation in a form other than a written form and makes a request of the corporation to do so, the corporation shall

(a) make available to that person within a reasonable time a

reproduction of the text of the register or record in legible written form, or

(b) provide facilities to enable that person to examine the text of the register or record in an legible written form otherwise than by providing a reproduction of that text,

and shall allow that person to make copies of that register or record.

(3) A corporation and its agents shall take reasonable precautions to

(a) prevent loss or destruction of,

(b) prevent falsification of entries in, and

(c) facilitate detection and correction of inaccuracies in,

the registers and other records required by this Act to be prepared and maintained.

(4) A person who, without reasonable cause, contravenes this section is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or both.

Corporate seal

23(1) A corporation may adopt and change a corporate seal that shall contain the name of the corporation.

(2) A document executed on behalf of a corporation by a director, an officer or an agent of the corporation, is not invalid only because the corporate seal is not affixed to the document.

(3) Share certificates of a corporation may be issued under its corporate seal or a facsimile of that corporate seal.

(4) A document requiring authentication by a corporation may be signed by a director or the secretary or other authorized officer of the corporation and need not be under its corporate seal.

(5) A corporation may adopt a facsimile of its corporate seal for use in any other jurisdiction outside Alberta that complies with the laws of that jurisdiction.

PART 5

CORPORATE FINANCE

Shares and classes of shares

24(1) Shares of a corporation shall be in registered form and shall be without nominal or par value.

(2) If a body corporate is continued under this Act, a share with

nominal or par value issued by the body corporate before it was so continued is, for the purpose of subsection (1), deemed to be a share without nominal or par value.

(3) If a corporation has only one class of shares, the rights of the holders of those shares are equal in all respects and include the rights

- (a) to vote at any meeting of shareholders of the corporation,
- (b) to receive any dividend declared by the corporation, and
- (c) to receive the remaining property of the corporation on dissolution.

(4) The articles may provide for more than one class of shares and, if they so provide,

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the articles, and
- (b) the rights set out in subsection (3) shall be attached to at least one class of shares but all of those rights are not required to be attached to one class.

(5) Subject to section 27, if a corporation has more than one class of shares, the rights of the holders of the shares of any class are equal in all respects.

Issue of shares

25(1) Subject to the articles, the by-laws and any unanimous shareholder agreement and to section 28, shares may be issued at the times and to the persons and for the consideration that the directors determine.

(2) Shares issued by a corporation are non-assessable and the holders are not liable to the corporation or to its creditors in respect of those shares.

(3) A share shall not be issued until the consideration for the share is fully paid in money or in property or past service that is not less in value than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

(4) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the corporation.

(5) For the purposes of this section, “property” does not include a promissory note or promise to pay.

Stated capital
accounts

26(1) A corporation shall maintain a separate stated capital account for each class and series of shares it issues.

(2) A corporation shall add to the appropriate stated capital account the full amount of any consideration it receives for any shares it issues.

(3) Notwithstanding section 25(3) and subsection (2) of this section, if a corporation issues shares

(a) in exchange for

(i) property, other than a promissory note or promise to pay, or

(ii) issued shares of the corporation of a different class or series,

and all the shares issued by the corporation in the exchange are redeemable shares created for that purpose, or shares which the corporation is required to issue pursuant to conversion rights or privileges attached to the shares to be exchanged at the time that they were issued, or

(b) pursuant to

(i) an amalgamation agreement referred to in section 176 or 180.1, or

(ii) an arrangement referred to in section 186(1)(b) or (c)

to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated body corporate,

the corporation may add to the stated capital accounts maintained for the shares of the classes or series issued the whole or any part of the amount of the consideration it received in the exchange.

(4) On the issue of a share a corporation shall not add to a stated capital account in respect of the share it issues an amount greater than the amount of the consideration it received for the share.

(5) If a corporation proposes to add any amount to a stated capital account it maintains in respect of a class or series of shares and

(a) the amount to be added was not received by the corporation as consideration for the issue of shares, and

(b) the corporation has issued any outstanding shares of more than one class or series,

the addition to the stated capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than 2 classes of convertible shares referred to in section 37(5).

(6) When a body corporate is continued under this Act, it may add to a stated capital account any consideration received by it for a share it issued.

(7) A corporation at any time may, subject to subsection (5), add to a stated capital account any amount it credited to a retained earnings or other surplus account.

(8) When a body corporate is continued under this Act, subsection (2) does not apply to the consideration received by it before it was so continued unless the share in respect of which the consideration is received is issued after the corporation is so continued.

(9) When a body corporate is continued under this Act, any amount unpaid in respect of a share issued by the body corporate before it was so continued and paid after it was so continued shall be added to the stated capital account maintained for the shares of that class or series.

(10) For the purposes of sections 32(2), 36(3), 40, 42(1) and 179(2)(a), when a body corporate is continued under this Act, its stated capital is deemed to include the amount that would have been included in the stated capital of the body corporate if it had been incorporated under this Act.

(11) A corporation shall not reduce its stated capital or any stated capital account except in the manner provided in this Act.

(12) Subsections (1) to (11) and any other provisions of this Act relating to stated capital do not apply to an open-end mutual fund.

(13) In subsection (12), "open-end mutual fund" means a corporation that makes a distribution to the public of its shares and that carries on only the business of investing the consideration it receives for the shares it issues, and all or substantially all of those shares are redeemable on the demand of a shareholder.

Shares in series

27(1) The articles may authorize the issue of any class of shares in one or more series and may authorize the directors to fix the number of shares in each series and to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

(2) If any cumulative dividends or amounts payable on return of capital in respect of a series of shares are not paid in full, the shares of all series of the same class participate rateably in respect of accumulated dividends and return of capital.

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer on a series a priority in respect of voting, dividends or return of capital over any other series of shares of the same class that are then outstanding.

(4) Subsection (3) does not apply to a right or privilege to exchange

a share or shares for, or to convert a share or shares into, a share or shares of another class.

(5) Before the issue of shares of a series authorized under this section, the directors shall send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

(6) On receipt of articles of amendment designating a series of shares, the Registrar shall issue a certificate of amendment in accordance with section 255.

(7) The articles of the corporation are amended accordingly on the date shown in the certificate of amendment.

Shareholder's pre-emptive right

28(1) If the articles or a unanimous shareholder agreement so provides, no shares of a class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at the same price and on the same terms as those shares are to be offered to others.

(2) Notwithstanding that the articles provide the pre-emptive right referred to in subsection (1), shareholders have no pre-emptive right in respect of shares to be issued

(a) for a consideration other than money,

(b) as a share dividend, or

(c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

Options and other rights to acquire securities

29(1) A corporation may issue certificates, warrants or other evidences of conversion privileges, options or rights to acquire securities of the corporation, and shall set out their conditions

(a) in the certificates, warrants or other evidences, or

(b) in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

(2) Conversion privileges, options and rights to purchase securities of a corporation may be made transferable or non-transferable, and options and rights to purchase may be made separable or inseparable from any securities to which they are attached.

(3) If a corporation has granted privileges to convert any securities issued by the corporation into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privileges, options and rights.

Prohibited share holdings

30(1) Except as provided in subsection (2) and sections 31 to 34, a corporation

(a) shall not hold shares in itself or in its holding body corporate, and

(b) shall not permit any of its subsidiary bodies corporate to acquire shares of the corporation.

(2) Not more than 1% of the issued shares of each class of shares of a holding body corporate may be held by all the subsidiaries of the holding body corporate.

(3) Subject to subsections (2) and (4), a corporation shall cause a subsidiary body corporate of the corporation that holds shares of the corporation to sell or otherwise dispose of those shares within 5 years from the date

(a) the body corporate became a subsidiary of the corporation, or

(b) the corporation was continued under this Act.

(4) Subsection (3) does not apply to shares acquired by the subsidiary body corporate before the commencement of this Act.

Exception

31(1) A corporation may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.

(2) A corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

(3) A corporation holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the corporation

(a) holds the shares in the capacity of a legal representative, and

(b) has complied with section 147.

Acquisition by corporation of its own shares

32(1) Subject to subsection (2) and to its articles, a corporation may purchase or otherwise acquire shares issued by it.

(2) A corporation shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

(a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or

(b) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and stated capital of all classes.

(3) Subject to any unanimous shareholder agreement, a corporation that is not a distributing corporation shall, within 30 days of the purchase of any of its issued shares, notify its shareholders in accordance with section 246

(a) of the number of shares it has purchased,

(b) of the names of the shareholders from whom it has purchased the shares,

(c) of the price paid for the shares,

(d) if the consideration was other than cash, of the nature of the consideration given and the value attributed to it, and

(e) of the balance, if any, remaining due to shareholders or shareholders from whom it purchased the shares.

(4) Subject to any unanimous shareholder agreement, a shareholder of a corporation other than a distributing corporation is entitled on request and without charge to a copy of the agreement between the corporation and any of its other shareholders under which the corporation has agreed to purchase, or has purchased, any of its own shares.

Alternative
acquisition by
corporation of its
own shares

33(1) Notwithstanding section 32(2), a corporation may, subject to subsection (3) and to its articles, purchase or otherwise acquire shares issued by it to

(a) settle or compromise a debt or claim asserted by or against the corporation,

(b) eliminate fractional shares, or

(c) fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

(2) Notwithstanding section 32(2), a corporation may purchase or otherwise acquire shares issued by it to

(a) satisfy the claim of a shareholder who dissents under section 184, or

(b) comply with an order under section 234.

(3) A corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

(a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or

(b) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to the holders of the shares to be purchased or acquired.

Redemption of shares

34(1) Notwithstanding section 32(2) or 33(3), a corporation may, subject to subsection (2) and to its articles, purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price of those shares stated in the articles or calculated according to a formula stated in the articles.

(2) A corporation shall not make any payment to purchase or redeem any redeemable shares issued by it if there are reasonable grounds for believing that

(a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or

(b) the realizable value of the corporation's assets would after the payment be less than the aggregate of

(i) its liabilities, and

(ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed.

Donated and escrowed shares

35(1) A corporation may accept from any shareholder a share of the corporation

(a) that is surrendered to it as a gift, or

(b) that has been held in escrow pursuant to an escrow agreement required by the Commission and that is surrendered pursuant to that agreement.

(2) The corporation may not extinguish or reduce a liability in respect of an amount unpaid on a share surrendered under subsection (1)(a) except in accordance with section 36.

Other reduction of stated capital

36(1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital for any purpose including, without limiting the generality of the foregoing, the purpose of

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share,

(b) distributing to the holders of the issued shares of any class

or series of shares an amount not exceeding the stated capital of the class or series, and

(c) declaring its stated capital to be reduced by an amount that is not represented by realizable assets.

(2) A special resolution under this section shall specify the capital account or accounts from which the reduction of stated capital effected by the special resolution is to be deducted.

(3) A corporation shall not reduce its stated capital for any purpose, other than the purpose mentioned in subsection (1)(c), if there are reasonable grounds for believing that

(a) the corporation is, or would after the reduction be, unable to pay its liabilities as they become due, or

(b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

(4) A creditor of a corporation is entitled to apply to the Court for an order compelling a shareholder or other recipient

(a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section, or

(b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

(5) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the action complained of.

(6) This section does not affect any liability that arises under section 113.

Adjustment of
stated capital
account

37(1) On a purchase, redemption or other acquisition by a corporation under section 32, 33, 34, 43, 184 or 234(3)(g) of shares or fractions of shares issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares or fractions of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A corporation shall deduct the amount of a payment made by the corporation to a shareholder under section 234(3)(h) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A corporation shall adjust its stated capital account or accounts in accordance with a special resolution referred to in section 36(2).

(4) On a conversion or a change under section 167, 185, 186 or 234 of issued shares of a corporation into shares of another class or series, the corporation shall

(a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change, and

(b) add the result obtained under clause (a) and any additional consideration pursuant to the conversion or change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

(5) For the purposes of subsection (4) and subject to its articles, if a corporation issues 2 classes of shares and there is attached to each class a right to convert a share of the one class into a share of the other class and a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

(6) Shares or fractions of shares issued by a corporation and purchased, redeemed or otherwise acquired by it shall either be cancelled or restored to the status of authorized but unissued shares.

(7) For the purposes of this section, a corporation holding shares in itself as permitted by section 31(1) and (2) is deemed not to have purchased, redeemed or otherwise acquired those shares.

(8) Shares issued by a corporation and converted pursuant to their terms or changed under section 167, 185, 186 or 234 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been converted or changed.

(9) If issued shares of a class or series have become, pursuant to subsection (8), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the articles of amendment or reorganization otherwise provide, be increased by the number of shares that, pursuant to subsection (8), became shares of another class or series.

Repayment,
acquisition and
reissue of debt
obligations

37.1(1) Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which

the debt obligations are issued, pledged, hypothecated or deposited is repaid.

(2) Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the corporation then existing or thereafter incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

Enforceability of contract against corporation

38(1) A contract with a corporation providing for the purchase by it of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without being in breach of section 32 or 33.

(2) In an action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prevented by section 32 or 33.

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party to that contract retains the status of a claimant and is entitled to be paid as soon as the corporation 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 corporation, but in priority to the rights of the other shareholders.

Commission on sale of shares

39 The directors may authorize the corporation to pay a reasonable commission to any person in consideration of his purchasing or agreeing to purchase shares of the corporation from the corporation or from any other person, or procuring or agreeing to procure purchasers for shares of the corporation.

Dividends

40 A corporation shall not declare or pay a dividend if there are reasonable grounds for believing that

(a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or

(b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

Form of dividend

41(1) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to section 40, a corporation may pay a dividend in money or property.

(2) If shares of a corporation are issued in payment of a dividend, the declared amount of the dividend stated as an amount of money shall be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

Prohibited financial assistance by corporation

42(1) Except as permitted under subsection (2), a corporation shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise

- (a) to a shareholder or director of the corporation or of an affiliated corporation,
- (b) to an associate of a shareholder or director of the corporation or of an affiliated corporation, or
- (c) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or an affiliated corporation,

if there are reasonable grounds for believing that

- (d) the corporation is, or after giving the financial assistance would be, unable to pay its liabilities as they become due, or
- (e) the realizable value of the corporation's assets, excluding the amount of any financial assistance in the form of a loan or in the form of assets pledged or encumbered to secure a guarantee, after giving the financial assistance, would be less than the aggregate of the corporation's liabilities and stated capital of all classes.

(2) A corporation may give financial assistance by means of a loan, guarantee or otherwise

- (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the corporation,
- (b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation,
- (c) to a holding body corporate if the corporation is a wholly owned subsidiary of the holding body corporate,
- (d) to a subsidiary body corporate of the corporation, or
- (e) to employees of the corporation or any of its affiliates
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation, or
 - (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee.

(3) A contract made by a corporation in contravention of this section may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

(4) Unless disclosure is otherwise made by a corporation, a financial

statement referred to in section 149(1)(a) shall contain the following information with respect to each case in which financial assistance is given by the corporation by way of loan, guarantee or otherwise, whether in contravention of this section or not, to any of the persons referred to in subsection (1)(a), (b) or (c), if the financial assistance was given during the financial year or period to which the statement relates or remains outstanding at the end of that financial year or period:

- (a) the identity of the person to whom the financial assistance was given;
- (b) the nature of the financial assistance given;
- (c) the terms on which the financial assistance was given;
- (d) the amount of the financial assistance initially given and the amount, if any, outstanding.

Shareholder
immunity

43(1) The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under section 36(4), 140(7) or 219(4).

(2) Subject to section 45(8), the articles may provide that the corporation has a lien on a share registered in the name of a shareholder or his legal representative for a debt of that shareholder to the corporation, including an amount unpaid in respect of a share issued by a body corporate on the date it was continued under this Act.

(3) A corporation may enforce a lien referred to in subsection (2) in accordance with its by-laws.

PART 6

SECURITY CERTIFICATES, REGISTERS AND TRANSFERS

Interpretation and General

Definitions and
interpretation

44(1) The transfer or transmission of a security shall be governed by this Part.

(2) In this Part,

- (a) “adverse claim” includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security;
- (b) “bearer” means the person in possession of a security payable to bearer or endorsed in blank;
- (c) “bona fide purchaser” means a purchaser for value in good faith and without notice of any adverse claim who takes delivery

of a security in bearer form or order form or of a security in registered form

(i) issued to him, or

(ii) endorsed to him or endorsed in blank by an appropriate person as defined in section 61;

(d) "broker" means a person who is engaged for all or part of his time in the business of buying and selling securities and who, in the transaction concerned, acts for, or buys a security from, or sells a security to, a customer;

(e) "delivery" means voluntary transfer of possession;

(f) "fiduciary" means

(i) a trustee, guardian, committee, curator or tutor,

(ii) an executor, administrator or representative of a deceased person, and

(iii) any other person acting in a fiduciary capacity;

(g) "fungible" means, in relation to securities, securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;

(h) "genuine" means free of forgery or counterfeiting;

(i) "good faith" means honesty in fact in the conduct of the transaction concerned;

(j) "holder" means a person in possession of a security issued or endorsed to him or to bearer or in blank;

(k) "issuer" includes a corporation

(i) that is required by this Act to maintain a securities register, or

(ii) that directly or indirectly creates fractional interests in its rights or property and that issues securities as evidence of those fractional interests;

(l) "overissue" means the issue of securities in excess of any maximum number of securities that the issuer is authorized by its articles or a trust indenture to issue;

(m) "purchaser" means a person who takes by sale, mortgage, hypothec, pledge, issue, reissue, gift or any other voluntary transaction creating an interest in a security;

(n) “security” or “security certificate” means an instrument issued by a corporation that is

(i) in bearer, order or registered form,

(ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,

(iii) one of a class or series or by its terms divisible into a class or series of instruments, and

(iv) evidence of a share, participation or other interest in or obligation of a corporation;

(o) “transfer” includes transmission by operation of law;

(p) “trust indenture” means a trust indenture as defined in section 77;

(q) “unauthorized” in relation to a signature or an endorsement means one made without actual, implied or apparent authority and includes a forgery;

(r) “valid” means issued in accordance with the applicable law and the articles of the issuer or validated under section 48.

(3) A security is a negotiable instrument except when

(a) its transfer is restricted and noted on the security in accordance with section 45(8), or

(b) it is stated conspicuously on the security certificate that it is non-negotiable.

(4) A security is in registered form if

(a) it specifies a person entitled to the security or to the rights it evidences, and

(b) either its transfer is capable of being recorded in a securities register or the security so states.

(5) A debt obligation is in order form if by its terms it is payable to the order or assigns of any person specified in it with reasonable certainty or to him or his order.

(6) A security is in bearer form if it is payable to bearer according to its terms and not by reason of any endorsement.

(7) A guarantor for an issuer is deemed to be an issuer to the extent of his guarantee whether or not his obligation is noted on the security.

Security certificates **45(1)** A security holder is entitled at his option to a security cer-

tificate that complies with this Act or a non-transferable written acknowledgment of his right to obtain a security certificate from a corporation in respect of the securities of that corporation held by him.

(2) A corporation may charge a fee of not more than \$3 for a security certificate issued in respect of a transfer.

(3) A corporation is not required to issue more than one security certificate in respect of securities held jointly by several persons, and delivery of a certificate to one of several joint holders is sufficient delivery to all.

(4) A security certificate shall be signed manually by at least one director or officer of the corporation or by or on behalf of a registrar, transfer agent or branch transfer agent of the corporation, or by a trustee who certifies it in accordance with a trust indenture, and any additional signatures required on a security certificate may be printed or otherwise mechanically reproduced on it.

(5) Notwithstanding subsection (4), a manual signature is not required on

- (a) a security certificate representing
 - (i) a fractional share, or
 - (ii) an option or a right to acquire a security, or
- (b) a scrip certificate.

(6) If a security certificate contains a printed or mechanically reproduced signature of a person, the corporation may issue the security certificate, notwithstanding that the person has ceased to be a director or an officer of the corporation, and the security certificate is as valid as if he were a director or an officer at the date of its issue.

(7) There shall be stated on the face of each share certificate issued by a corporation

- (a) the name of the corporation,
- (b) the words “Incorporated under *The Business Corporations Act*”,
- (c) the name of the person to whom it was issued, and
- (d) the number and class of shares and the designation of any series that the certificate represents.

(8) If a security certificate issued by a corporation or by a body corporate before the body corporate was continued under this Act is or becomes subject to

(a) a restriction on its transfer other than a constraint under section 168, or

(b) a lien in favour of the corporation,

the restriction or lien is ineffective against a transferee of the security who has no actual knowledge of it unless

(c) it or a reference to it is noted conspicuously on the security certificate,

(d) the security certificate contains a conspicuous statement that it is non-negotiable, or

(e) the transferee is not

(i) a bona fide purchaser, or

(ii) a purchaser against whom the owner of the security may not assert the ineffectiveness of an endorsement under section 64.

(9) A distributing corporation shall not restrict the transfer of its shares except by way of a constraint permitted under section 168.

(10) There shall be stated legibly on a share certificate issued by a corporation that is authorized to issue shares of more than one class or series

(a) the rights, privileges, restrictions and conditions attached to the shares of each class and series that exists when the share certificate is issued, or

(b) that the class or series of shares that it represents has rights, privileges, restrictions or conditions attached to it and that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of

(i) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as they have been fixed by the directors, and

(ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

(11) If a share certificate issued by a corporation contains the statement mentioned in subsection (10)(b), the corporation shall furnish to a shareholder on demand and without charge a full copy of the text of

(a) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as they have been fixed by the directors, and

(b) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

(12) A corporation may issue a certificate for a fractional share or may issue in its place scrip certificates in a form that entitles the holder to receive a certificate for a full share by exchanging scrip certificates aggregating a full share.

(13) The directors may attach conditions to any scrip certificates issued by a corporation, including conditions that

(a) the scrip certificates become void if they are not exchanged for a share certificate representing a full share before a specified date, and

(b) any shares for which those scrip certificates are exchangeable may, notwithstanding any pre-emptive right, be issued by the corporation to any person and the proceeds of those shares distributed rateably to the holders of the scrip certificates.

(14) A holder of a fractional share issued by a corporation is not entitled to exercise voting rights or to receive a dividend in respect of the fractional share, unless

(a) the fractional share results from a consolidation of shares, or

(b) the articles of the corporation otherwise provide.

(15) A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend in respect of the scrip certificate.

Securities records

46(1) A corporation shall maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities

(a) the names, alphabetically arranged, and the latest known address of each person who is or has been a security holder,

(b) the number of securities held by each security holder, and

(c) the date and particulars of the issue and transfer of each security.

(2) A corporation may appoint

(a) one or more trust companies registered under *The Trust Companies Act* as its agent or agents to maintain a central securities register or registers, and

(b) an agent or agents to maintain a branch securities register or registers.

(3) Registration of the issue or transfer of a security in the central

securities register or in a branch securities register is complete and valid registration for all purposes.

(4) A branch securities register shall contain particulars of securities issued or transferred at that branch.

(5) Particulars of each issue or transfer of a security registered in a branch securities register shall also be kept in the corresponding central securities register.

(6) Neither a corporation, nor its agent nor a trustee defined in section 77(1) is required to produce

(a) a cancelled security certificate in registered form, an instrument referred to in section 29(1) that is cancelled or a like cancelled instrument in registered form 6 years after the date of its cancellation,

(b) a cancelled security certificate in bearer form or an instrument referred to in section 29(1) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation, or

(c) an instrument referred to in section 29(1) or a like instrument, irrespective of its form, after the date of its expiry.

Dealings with
registered holders
and transmission
on death

47(1) A corporation or a trustee as defined in section 77(1) may, subject to sections 128, 129 and 132, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

(2) Notwithstanding subsection (1), but subject to a unanimous shareholder agreement, a corporation whose articles restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder he represents if that person furnishes evidence as described in section 72(4) to the corporation that he is

(a) the executor, administrator, heir or legal representative of the heirs of the estate of a deceased security holder,

(b) a guardian, committee, trustee, curator or tutor representing a registered security holder who is an infant, an incompetent person or a missing person, or

(c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

(3) If a person on whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof of his authority to exercise rights or privileges in respect of a security of the corporation that is not registered in his

name, the corporation shall treat that person as entitled to exercise those rights or privileges.

(4) A corporation is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a 3rd person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this section, as the owner or registered holder of the securities.

(5) If an infant exercises any rights of ownership in the securities of a corporation, no subsequent repudiation or avoidance is effective against the corporation.

(6) A corporation shall treat as owner of a security the survivors of persons to whom the security was issued if

(a) it receives proof satisfactory to it of the death of any joint holder of the security, and

(b) the security provides that the persons to whom the security was issued are joint holders with right of survivorship.

(7) Subject to any applicable law relating to the collection of taxes, a person referred to in subsection (2)(a) is entitled to become a registered holder or to designate a registered holder, if he deposits with the corporation or its transfer agent

(a) the original grant of probate or of letters of administration, or a copy of it certified to be a true copy by

(i) the court that granted the probate or letters of administration,

(ii) a trust company incorporated under the laws of Canada or a province, or

(iii) a lawyer or notary acting on behalf of the person referred to in subsection (2)(a),

or

(b) in the case of transmission by notarial will in the Province of Quebec, a copy of the will authenticated pursuant to the laws of that province,

together with

(c) an affidavit, statutory declaration or declaration of transmission made by a person referred to in subsection (2)(a), stating the particulars of the transmission, and

(d) the security certificate that was owned by the deceased holder

(i) in the case of a transfer to a person referred to in sub-

section (2)(a), with or without the endorsement of that person, and

(ii) in the case of a transfer to any other person, endorsed in accordance with section 61,

and accompanied by any assurance the corporation may require under section 72.

(8) Notwithstanding subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if he deposits with the corporation or its transfer agent

(a) the security certificate that was owned by the deceased holder, and

(b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the legal representative or the person he designates to become the registered holder.

(9) Deposit of the documents required by subsection (7) or (8) empowers a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in subsection (2)(a) or to any person that the person referred to in subsection (2)(a) may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of the security.

Overissue

48(1) The provisions of this Part that validate a security or compel its issue or reissue do not apply to the extent that validation, issue or reissue would result in overissue, but

(a) if a valid security, similar in all respects to the security involved in the overissue, is reasonably available for purchase, the person entitled to the validation or issue may compel the issuer to purchase and deliver such a security to him against surrender of the security that he holds, or

(b) if a valid security, similar in all respects to the security involved in the overissue, is not reasonably available for purchase, the person entitled to the validation or issue may recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid security.

(2) When an issuer subsequently amends its articles, or a trust indenture to which it is a party, to increase its authorized securities to a number equal to or in excess of the number of securities previously authorized plus the amount of the securities overissued, the securities so overissued are valid from the date of their issue.

(3) Subsection (2) does not apply if the issuer has purchased and delivered a security in accordance with subsection (1)(a) or paid the amount referred to in subsection (1)(b).

(4) A purchase or payment by an issuer under subsection (1) is not a purchase or payment to which section 32, 33, 34 or 37 applies.

Burden of proof in actions

49 In an action on a security,

(a) unless specifically denied in the pleadings, each signature on the security or in a necessary endorsement is admitted,

(b) a signature on the security is presumed to be genuine and authorized but, if the effectiveness of the signature is put in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature,

(c) if a signature is admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defence or a defect going to the validity of the security, and

(d) if the defendant establishes that a defence or defect exists, the plaintiff has the burden of establishing that the defence or defect is ineffective against him or some person under whom he claims.

Securities are fungible

50 Unless otherwise agreed, and subject to any applicable law, regulation or stock exchange rule, a person required to deliver securities may deliver any security of the specified issue in bearer form or registered in the name of the transferee or endorsed to him or in blank.

Issue — Issuer

Notice of defects

51(1) Even against a purchaser for value and without notice of a defect going to the validity of a security, the terms of the security include those stated on the security and those incorporated in it by reference to another instrument, statute, rule, regulation or order to the extent that the terms so referenced do not conflict with the stated terms, but such a reference is not of itself notice to a purchaser for value of a defect going to the validity of the security, notwithstanding that the security expressly states that a person accepting it admits such notice.

(2) A security is valid in the hands of a purchaser for value without notice of any defect going to its validity.

(3) Except as provided in section 53, the fact that a security is not genuine is a complete defence even against a purchaser for value and without notice.

(4) All other defences of an issuer, including non-delivery and conditional delivery of a security, are ineffective against a purchaser for value without notice of the particular defence.

Staleness is notice of defect

52 After an event that creates a right to immediate performance of the principal obligation evidenced by a security, or that sets a date on or after which a security is to be presented or surrendered for redemption or exchange, a purchaser is deemed to have notice of any defect in its issue or of any defence of the issuer,

(a) if the event requires the payment of money or the delivery of securities, or both, on presentation or surrender of the security, and such funds or securities are available on the date set for payment or exchange, and the purchaser takes the security more than one year after that date, or

(b) if the purchaser takes the security more than 2 years after the date set for surrender or presentation or the date on which such performance became due.

Unauthorized signature

53 An unauthorized signature on a security before or in the course of issue is ineffective, except that the signature is effective in favour of a purchaser for value and without notice of the lack of authority, if the signing has been done by

(a) an authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, or of similar securities, or their immediate preparation for signing, or

(b) an employee of the issuer or of a person referred to in clause (a) who in the ordinary course of his duties handles the security.

Completion or alteration

54(1) If a security contains the signatures necessary to its issue or transfer but is incomplete in any other respect,

(a) any person may complete it by filling in the blanks in accordance with his authority, and

(b) notwithstanding that the blanks are incorrectly filled in, the security as completed is enforceable by a purchaser who took it for value and without notice of the incorrectness.

(2) A completed security that has been improperly altered, even if fraudulently altered, remains enforceable, but only according to its original terms.

Warranties of agents

55(1) A person signing a security as authenticating trustee, registrar, transfer agent or other person entrusted by the issuer with the signing of the security, warrants to a purchaser for value without notice that

(a) the security is genuine,

(b) his acts in connection with the issue of the security are within his authority, and

(c) he has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless otherwise agreed, a person referred to in subsection (1) does not assume any further liability for the validity of a security.

Purchase

Title of purchaser **56**(1) On delivery of a security, the purchaser acquires the rights in the security that his transferor had or had authority to convey, except that a purchaser who has been a party to any fraud or illegality affecting the security or who as a prior holder had notice of an adverse claim does not improve his position by taking from a later bona fide purchaser.

(2) A bona fide purchaser, in addition to acquiring the rights of a purchaser, also acquires the security free from any adverse claim.

(3) A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

(4) Nothing in subsection (2) confers any rights on a purchaser unless all necessary endorsements are made by an appropriate person as defined in section 61.

Deemed notice of adverse claims **57**(1) A purchaser of a security, or any broker for a seller or purchaser, is deemed to have notice of all adverse claims if

(a) the security, whether in bearer or registered form, has been endorsed "for collection" or "for surrender" or for some other purpose not involving transfer, or

(b) the security is in bearer form and has on it a statement that it is the property of a person other than the transferor, except that the mere writing of a name on a security is not such a statement.

(2) Notwithstanding that a purchaser or any broker for a seller or purchaser has notice that a security is held for a 3rd person or is registered in the name of or endorsed by a fiduciary, he has no duty to inquire into the rightfulness of the transfer and has no notice of an adverse claim, except that if a purchaser knows that the consideration is to be used for, or that the transaction is for, the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty, the purchaser is deemed to have notice of an adverse claim.

Staleness as notice of adverse claims **58** An event that creates a right to immediate performance of the principal obligation evidenced by a security or that sets a date on or

after which the security is to be presented or surrendered for redemption or exchange is not of itself notice of an adverse claim, except in the case of a purchase

(a) after one year from any date set for such presentation or surrender for redemption or exchange, or

(b) after 6 months from any date set for payment of money against presentation or surrender of the security if funds are available for payment on that date.

Warranties

59(1) A person who presents a security for registration of transfer or for payment or exchange warrants to the issuer that he is entitled to the registration, payment or exchange, except that a purchaser for value without notice of an adverse claim who receives a new, reissued or re-registered security on registration of transfer warrants only that he has no knowledge of any unauthorized signature in a necessary endorsement.

(2) A person by transferring a security to a purchaser for value warrants only that

(a) the transfer is effective and rightful,

(b) the security is genuine and has not been materially altered, and

(c) he knows of nothing that might impair the validity of the security.

(3) If a security is delivered by an intermediary known by the purchaser to be entrusted with delivery of the security on behalf of another or with collection of a draft or other claim to be collected against such delivery, the intermediary by such delivery warrants only his own good faith and authority even if he has purchased or made advances against the draft or other claim to be collected against the delivery.

(4) A pledgee or other holder for purposes of security who redelivers a security received, or after payment and on order of the debtor delivers that security to a 3rd person, gives only the warranties of an intermediary under subsection (3).

(5) A broker gives

(a) to his customer and to a purchaser the warranties provided in subsection (2), and

(b) to the issuer the warranties provided in subsection (1).

(6) A broker has the rights and privileges of a purchaser under this section.

(7) The warranties of and in favour of a broker acting as an agent

are in addition to warranties given by his customer and warranties given in favour of his customer.

Right to compel endorsement

60 If a security in registered form is delivered to a purchaser without a necessary endorsement, he may become a bona fide purchaser only as of the time the endorsement is supplied, but against the transferor the transfer is complete on delivery and the purchaser has a specifically enforceable right to have any necessary endorsement supplied.

Endorsement

61(1) In this section, “appropriate person” means

(a) the person specified by the security or by special endorsement to be entitled to the security,

(b) if a person described in clause (a) is described as a fiduciary but is no longer serving in the described capacity, either that person or his successor,

(c) if the security or endorsement mentioned in clause (a) specifies more than one person as fiduciaries and one or more are no longer serving in the described capacity, the remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified,

(d) if a person described in clause (a) is an individual and is without capacity to act by reason of death, incompetence, minority, or otherwise, his fiduciary,

(e) if the security or endorsement mentioned in clause (a) specifies more than one person with right of survivorship and by reason of death all cannot sign, the survivor or survivors,

(f) a person having power to sign under applicable law or a power of attorney, or

(g) to the extent that a person described in clauses (a) to (f) may act through an agent, his authorized agent.

(2) Whether the person signing is an appropriate person is determined as of the time of signing and an endorsement by such a person does not become unauthorized for the purposes of this Part by reason of any subsequent change of circumstances.

(3) An endorsement of a security in registered form is made when an appropriate person signs, either on the security or on a separate document, an assignment or transfer of the security or a power to assign or transfer it, or when the signature of an appropriate person is written without more on the back of the security.

(4) An endorsement may be special or in blank.

(5) An endorsement in blank includes an endorsement to bearer.

(6) A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it.

(7) A holder may convert an endorsement in blank into a special endorsement.

(8) Unless otherwise agreed, the endorser by his endorsement assumes no obligation that the security will be honoured by the issuer.

(9) An endorsement purporting to be only of part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

(10) Failure of a fiduciary to comply with a controlling instrument or with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of a transfer, does not render his endorsement unauthorized for the purposes of this Part.

Effect of endorsement without delivery

62 An endorsement of a security, whether special or in blank, does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the security and that document.

Endorsement in bearer form

63 An endorsement of a security in bearer form may give notice of an adverse claim under section 57 but does not otherwise affect any right to registration that the holder has.

Effect of unauthorized endorsement

64 Unless the owner has ratified an unauthorized endorsement or is otherwise precluded from asserting its ineffectiveness, he may assert its ineffectiveness against the issuer or any purchaser, other than a purchaser for value and without notice of adverse claims, who has in good faith received a new, reissued or re-registered security on registration of transfer.

Warranties of guarantees of signatures or endorsements

65(1) A person who guarantees a signature of an endorser of a security warrants that at the time of signing

- (a) the signature was genuine,
- (b) the signer was an appropriate person as defined in section 61 to endorse, and
- (c) the signer had legal capacity to sign.

(2) A person who guarantees a signature of an endorser does not otherwise warrant the rightfulness of the particular transfer.

(3) A person who guarantees an endorsement of a security warrants both the signature and the rightfulness of the transfer in all respects, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

(4) The warranties referred to in this section are made to any person

Constructive
delivery and
constructive
ownership

taking or dealing with the security relying on the guarantee and the guarantor is liable to that person for any loss resulting from breach of warranty.

66(1) Delivery to a purchaser occurs when

- (a) he or a person designated by him acquires possession of a security,
- (b) his broker acquires possession of a security specially endorsed to or issued in the name of the purchaser,
- (c) his broker sends him confirmation of the purchase and the broker in his records identifies a specific security as belonging to the purchaser, or
- (d) with respect to an identified security to be delivered while still in the possession of a 3rd person, that person acknowledges that he holds it for the purchaser.

(2) A purchaser is the owner of a security held for him by his broker, but a purchaser is not a holder except in the cases referred to in subsection (1)(b) and (c).

(3) If a security is part of a fungible bulk a purchaser of the security is the owner of a proportionate interest in the fungible bulk.

(4) Notice of an adverse claim received by a broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security in relation to which no notice of an adverse claim has been received.

Delivery of
security

67(1) Unless otherwise agreed, if a sale of a security is made on an exchange or otherwise through brokers,

- (a) the selling customer fulfils his duty to deliver when
 - (i) he delivers the security to the selling broker or to a person designated by the selling broker, or
 - (ii) he causes an acknowledgement to be made to the selling broker that the security is held for him,

and

- (b) the selling broker, including a correspondent broker, acting for a selling customer fulfils his duty to deliver
 - (i) by delivering the security or a like security to the buying broker or to a person designated by the buying broker, or

(ii) by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as otherwise provided in this section and unless otherwise agreed, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until he

(a) delivers the security in negotiable form to a purchaser or to a person designated by the purchaser, or

(b) causes an acknowledgement to be made to the purchaser that the security is held for him.

(3) A sale to a broker purchasing for his own account is subject to subsection (2) and not subsection (1), unless the sale is made on a stock exchange.

Right to reclaim possession of security

68(1) A person against whom the transfer of a security is wrongful for any reason, including his incapacity but not including an unauthorized endorsement, may against any person except a bona fide purchaser reclaim possession of the security or obtain possession of any new security evidencing all or part of the same rights or claim damages.

(2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or obtain possession of a new security even from a purchaser for value and without notice of an adverse claim if the ineffectiveness of the purported endorsement may be asserted against such purchaser under section 64.

(3) The right to reclaim possession of a security may be specifically enforced, its transfer may be restrained and the security may be impounded pending litigation.

Right to requisites of transfer

69(1) Unless otherwise agreed, a transferor shall on demand supply a purchaser with proof of his authority to transfer or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value a transferor need not do so unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

(2) If the transferor fails to comply with a demand under subsection (1) within a reasonable time, the purchaser may reject or rescind the transfer.

Seizure of security

70 No seizure of a security of a distributing corporation or other interest evidenced by a security is effective until the person making the seizure obtains possession of the security.

No conversion if good faith delivery by agent

70.1 An agent or bailee who in good faith, including observance of reasonable commercial standards if he is in the business of buying, selling or otherwise dealing with securities, has received securities and sold, pledged or delivered them according to the instructions of

his principal is not liable for conversion or for participation in breach of fiduciary duty although the principal has no right to dispose of them.

Duty to register transfer

71(1) If a security in registered form is presented for registration of transfer, the issuer shall register the transfer if

- (a) the security is endorsed by an appropriate person, as defined in section 61,
- (b) reasonable assurance is given that that endorsement is genuine and effective,
- (c) the issuer has no duty to inquire into adverse claims or has discharged any such duty,
- (d) any applicable law relating to the collection of taxes has been complied with,
- (e) the transfer is rightful or is to a bona fide purchaser, and
- (f) any fee referred to in section 45(2) has been paid.

(2) If an issuer has a duty to register a transfer of a security, the issuer is liable to the person presenting it for registration for loss resulting from any unreasonable delay in registration or from failure or refusal to register the transfer.

Assurance that endorsement is effective

72(1) An issuer may require an assurance that each necessary endorsement on a security is genuine and effective by requiring a guarantee of the signature of the person endorsing and by requiring

- (a) if the endorsement is by an agent, reasonable assurance of the agent's authority to sign,
- (b) if the endorsement is by a fiduciary, evidence of his appointment or incumbency,
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so, and
- (d) in any other case, assurance that corresponds as closely as practicable to the foregoing.

(2) In subsection (1), "guarantee of the signature" means a guarantee signed by or on behalf of a person reasonably believed by the issuer to be a responsible person.

(3) An issuer may adopt reasonable standards to determine responsible persons for the purpose of subsection (2).

(4) In subsection (1)(b), "evidence of appointment or incumbency" means

(a) in the case of a fiduciary appointed by a court, a copy of the order certified in accordance with section 47(7), and dated not earlier than 60 days before the date a security is presented for transfer, or

(b) in any other case, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

(5) An issuer may adopt reasonable standards with respect to evidence for the purposes of subsection (4)(b).

(6) An issuer is not deemed to have notice of the contents of any document obtained pursuant to subsection (4) except to the extent that the contents relate directly to appointment or incumbency.

(7) If an issuer demands assurance additional to that specified in this section for a purpose other than that specified in subsection (4) and obtains a copy of a will, trust or partnership agreement, by-law or similar document, the issuer is deemed to have notice of all matters contained therein affecting the transfer.

Limited duty of inquiry as to adverse claims

73(1) An issuer to whom a security is presented for registration of transfer has a duty to inquire into adverse claims if

(a) written notice of an adverse claim is received at a time and in a manner that affords the issuer a reasonable opportunity to act on it before the issue of a new, reissued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part, or

(b) the issuer is deemed to have notice of an adverse claim from a document that is obtained under section 72(7).

(2) An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address furnished by him or, if no such address has been furnished, to his residence or regular place of business, that a security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within 30 days from the date of mailing the notice either

(a) the issuer is served with a restraining order or other order of the Court, or

(b) the issuer is provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any registrar, transfer agent or other agent of the issuer from any loss that may be incurred by any of them as a result of complying with the adverse claim.

(3) Unless an issuer is deemed to have notice of an adverse claim from a document that it obtained under section 72(7) or has received

notice of an adverse claim under subsection (1), if a security presented for registration is endorsed by the appropriate person as defined in section 61 the issuer has no duty to inquire into adverse claims, and in particular,

(a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship, and thereafter the issuer may assume without inquiry that the fiduciary is no longer acting as such with respect to the particular security,

(b) an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire whether the transfer is made in compliance with the document or with the law of the jurisdiction governing the fiduciary relationship, and

(c) an issuer is not deemed to have notice of the contents of any court record or any registered document even if the record or document is in the issuer's possession and even if the transfer is made on the endorsement of a fiduciary to the fiduciary himself or to his nominee.

(4) A written notice of adverse claim received by an issuer is effective for 12 months from the date when it was received and thereon ceases to be effective unless the notice is renewed in writing.

(5) An issuer who registers the transfer of a security on an unauthorized endorsement is liable for improper registration.

Limitation of
issuer's liability

74(1) Except as otherwise provided in any applicable law relating to the collection of taxes, the issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if

(a) the necessary endorsements were on or with the security, and

(b) the issuer had no duty to inquire into adverse claims or had discharged any such duty.

(2) If an issuer has registered a transfer of a security to a person not entitled to it, the issuer shall on demand deliver a like security to the owner unless

(a) subsection (1) applies,

(b) the owner is precluded by section 75(1) from asserting any claim, or

(c) the delivery would result in overissue, in which case the issuer's liability is governed by section 48.

Rights and obligations on loss or theft

75(1) If

(a) a security has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the issuer of that fact by giving the issuer written notice of his adverse claim within a reasonable time after he knows of the loss, destruction or taking, and

(b) the issuer has registered a transfer of the security before receiving such notice,

the owner is precluded from asserting against the issuer any claim to a new security.

(2) If the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer shall issue a new security in place of the original security if the owner

(a) so requests before the issuer has notice that the security has been acquired by a bona fide purchaser and before a purchaser described in section 64 has received a new, reissued or re-registered security,

(b) furnishes the issuer with a sufficient indemnity bond, and

(c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new security under subsection (2), a bona fide purchaser of the original security presents the original security for registration of transfer, the issuer shall register the transfer unless registration would result in overissue, in which case the issuer's liability is governed by section 48.

(4) In addition to any rights on an indemnity bond, the issuer may recover a new security issued under subsection (2) from the person to whom it was issued or any person taking under him other than a bona fide purchaser.

Rights, duties, etc. of issuer's agent

76(1) An authenticating trustee, registrar, transfer agent or other agent of an issuer has, in respect of the issue, registration of transfer and cancellation of a security of the issuer,

(a) a duty to the issuer to exercise good faith and reasonable diligence, and

(b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer.

(2) Notice to an authenticating trustee, registrar, transfer agent or other agent of an issuer is notice to the issuer with respect to the functions performed by the agent.

PART 7
CORPORATE BORROWING
Division 1
Trust Indentures

Interpretation and
application

77(1) In this Division,

(a) “event of default” means an event specified in a trust indenture on the occurrence of which

(i) a security interest constituted by the trust indenture becomes enforceable, or

(ii) the principal, interest and other money payable under the trust indenture become or may be declared to be payable before maturity,

but the event is not an event of default until all conditions prescribed by the trust indenture in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

(b) “trustee” means any person appointed as trustee under the terms of a trust indenture to which a corporation is a party and includes any successor trustee;

(c) “trust indenture” means any deed, indenture or other instrument, including any supplement or amendment to it, made by a corporation after its incorporation or continuance under this Act, under which the corporation issues debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued under it.

(2) This Division applies to a trust indenture only if the debt obligations issued or to be issued under the trust indenture are part of a distribution to the public.

Conflict of interest

78(1) No person shall be appointed as trustee if there is a material conflict of interest between his role as trustee and his role in any other capacity.

(2) A trustee shall, within 90 days after he becomes aware that a material conflict of interest exists,

(a) eliminate the conflict of interest, or

(b) resign from office.

(3) A trust indenture, any debt obligations issued under it and a security interest effected by it are valid notwithstanding a material conflict of interest of the trustee.

(4) If a trustee contravenes subsection (1) or (2), any interested person may apply to the Court for an order that the trustee be replaced, and the Court may make an order on any terms it thinks fit.

Qualification of trustee

79 A trustee, or at least one of the trustees if more than one is appointed, shall be a trust company registered under *The Trust Companies Act*.

List of security holders

80(1) A holder of debt obligations issued under a trust indenture may, on payment to the trustee of a reasonable fee, require the trustee to furnish within 15 days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

(a) the names and addresses of the registered holders of the outstanding debt obligations,

(b) the principal amount of outstanding debt obligations owned by each of those holders, and

(c) the aggregate principal amount of debt obligations outstanding, as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to that trustee.

(2) On the demand of a trustee, the issuer of debt obligations shall furnish the trustee with the information required to enable the trustee to comply with subsection (1).

(3) If the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection shall be made by a director or officer of the body corporate.

(4) The statutory declaration required under subsection (1) shall state

(a) the name and address of the person requiring the trustee to furnish the list and, if the person is a body corporate, the address for service of the body corporate, and

(b) that the list will not be used except as permitted under subsection (5).

(5) A list obtained under this section shall not be used by any person except in connection with

(a) an effort to influence the voting of the holders of debt obligations,

(b) an offer to acquire debt obligations, or

(c) any other matter relating to the debt obligations or the affairs of the issuer or guarantor of the debt obligations.

(6) A person who, without reasonable cause, contravenes subsection (5) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Evidence of compliance

81(1) An issuer or a guarantor of debt obligations issued or to be issued under a trust indenture shall before the doing of any act under clause (a), (b) or (c), furnish the trustee with evidence of compliance with the conditions in the trust indenture relating to

- (a) the issue, certification and delivery of debt obligations under the trust indenture,
- (b) the release or release and substitution of property subject to a security interest constituted by the trust indenture, or
- (c) the satisfaction and discharge of the trust indenture.

(2) On the demand of a trustee, the issuer or guarantor of debt obligations issued or to be issued under a trust indenture shall furnish the trustee with evidence of compliance with the trust indenture by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Contents of declaration

82 Evidence of compliance as required by section 81 shall consist of

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with, and
- (b) if the trust indenture requires compliance with conditions that are subject to review
 - (i) by legal counsel, an opinion of legal counsel that those conditions have been complied with, and
 - (ii) by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or any other accountant the trustee may select, that those conditions have been complied with.

Further evidence of compliance

83 The evidence of compliance referred to in section 82 shall include a statement by the person giving the evidence

- (a) declaring that he has read and understands the conditions of the trust indenture described in section 81,
- (b) describing the nature and scope of the examination or investigation on which he based the certificate, statement or opinion, and
- (c) declaring that he has made any examination or investigation that he believes necessary to enable him to make the statements or give the opinions contained or expressed therein.

Trustee may
require evidence of
compliance

84(1) On the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with evidence in any form the trustee may require as to compliance with any condition of the trust indenture relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

(2) At least once in each 12 month period beginning on the date of the trust indenture and at any other time on the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of the failure.

Notice of default

85 The trustee shall, within 30 days after the trustee becomes aware of its occurrence, give to the holders of debt obligations issued under a trust indenture, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs the issuer or guarantor in writing.

Trustee's duty of
care

86 A trustee in exercising his powers and discharging his duties shall

(a) act honestly and in good faith with a view to the best interests of the holders of the debt obligations issued under the trust indenture, and

(b) exercise the care, diligence and skill of a reasonably prudent trustee.

Trustee's reliance
on statements

87 Notwithstanding section 86, a trustee is not liable if he relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

No exculpation of
trustee by
agreement

88 No term of a trust indenture or of any agreement between

(a) a trustee and the holders of debt obligations issued under the trust indenture, or

(b) between the trustee and the issuer or guarantor

shall operate so as to relieve a trustee from the duties imposed on him by section 86.

Division 2

Registration of Debt Obligations

Definitions

88.1 In this Division,

- (a) “debentures” includes debenture stock and bonds;
- (b) “mortgage” includes charge.

Registration of mortgage

88.2(1) Subject to section 88.9, every mortgage of its property situated in Alberta created by a body corporate

- (a) for the purpose of securing any debenture,
- (b) on uncalled or unpaid share capital,
- (c) as a floating charge on its undertaking or property, or
- (d) as a mortgage or charge on goodwill on any patent, licence under a patent, trade mark, copyright or licence under a copyright,

unless the mortgage is registered under this section, is, so far as any security on the body corporate’s property or undertaking is thereby conferred, void against a liquidator, and any assignee, receiver, and creditor of the body corporate, 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.

(2) A mortgage shall be registered by filing the instrument, or a true copy of the instrument, by which the mortgage is created or evidenced, with the Registrar within 60 days after the date the instrument is fully executed.

(3) A mortgage takes effect against such liquidator, assignee, receiver, creditor, purchaser or mortgagee only from the registration of the mortgage.

(4) If a mortgage is not registered within the time referred to in subsection (2), the money secured by it becomes payable immediately on the expiration of that time.

(5) In the case of a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu*, and not covered by a deed creating or defining the security, it is sufficient if there is filed within 60 days after the execution of the first debenture of the series, a true copy of one of the debentures, with a statement setting out

- (a) the total amount secured by the whole series and the amount issued at the date of registration,

- (b) the date or dates of the resolutions authorizing the issue,
- (c) the property charged, and
- (d) the names and addresses of the trustees, if any, for the debenture holders,

but if more than one issue is made of debentures in the series, there shall be filed with the Registrar within 60 days after each issue is made a statement setting out the date and amount of each issue, but an omission to do so does not affect the validity of the debentures issued.

(6) Every corporation and every Alberta company shall keep at its records office a copy of every instrument creating any mortgage requiring registration under this section, but in the case of a series of uniform debentures not covered by a deed creating or defining the security, a copy of one such debenture is sufficient.

(7) No mortgage of land duly registered under *The Land Titles Act* becomes void under subsection (1) by reason of the fact that the mortgage is not registered under this Act.

(8) If the mortgage is created in Alberta but comprises property outside Alberta, the instrument creating or purporting to create the mortgage may be registered notwithstanding that further proceedings may be necessary to make the mortgage valid or effectual according to the law of the jurisdiction in which the property is situate.

(9) The Registrar shall endorse every mortgage registered pursuant to this section with a memorandum of the date of filing and that memorandum is conclusive proof that the requirements of this section as to registration have been complied with.

(10) The Registrar shall keep a register of all mortgages requiring registration under this section, and shall enter in the register the date of the mortgage, the name of the mortgagor and the name of the mortgagee or other person entitled to the charge.

(11) Evidence in writing to the satisfaction of the Registrar that a mortgage registered under this Act or *The Companies Act* has been in whole or in part satisfied, discharged or cancelled may be filed with him, and a memorandum thereof shall be entered on the register.

(12) If any change takes place in the title to the property comprised in a mortgage, or other property is substituted for the property mortgaged, or there is any other change in respect of the mortgage, a notice of the change may be filed with the Registrar.

(13) For the purpose of this section, an assignment of book debts to which *The Assignments of Book Debts Act* applies, and that is required to be registered pursuant to that Act, shall not be deemed to be a mortgage or a floating charge.

Extension of time for registration and rectification of register

88.3(1) Notwithstanding any other provision of this Act, a mortgage not registered within the time prescribed in this Act may be registered at a later date and such registration has the same effect as registration within the prescribed time except that it does not affect rights which have accrued prior to the late registration.

(2) The Court, on being satisfied

(a) that any omission or misstatement in a mortgage or particulars of a mortgage, or in a memorandum of satisfaction,

(i) was accidental or due to inadvertence or to some other sufficient cause, or

(ii) is not of a nature to prejudice the position of creditors or shareholders of the body corporate, or

(b) that on other grounds it is just and equitable to grant relief

may, on the application of the body corporate or any person interested, and on any terms and conditions that seem to the Court just and expedient, order that the omission or misstatement be rectified.

Duty to register

88.4(1) A body corporate shall register every mortgage created by it and requiring registration under this Act, but registration of any such mortgage may be effected on the application of any interested person.

(2) If the registration is effected on the application of a person other than the body corporate, that person may recover from the body corporate the amount of any fees properly paid by him to the Registrar on the registration and on an application to the Court under section 88.3

(3) Every body corporate that makes default in the registration of any mortgage requiring registration under this Division is, without prejudice to any other liability, guilty of an offence and liable to a fine of not more than \$1000.

Corporation's register of mortgages

88.5(1) Every corporation and every Alberta company shall keep at its records office a register of mortgages in which shall be entered all mortgages specifically affecting property of the corporation or Alberta company, giving in each case a short description of the property mortgaged, the amount of the mortgage and, except in the case of securities to bearer, the names of the mortgagees or persons entitled to the mortgages.

(2) Every corporation or Alberta company that contravenes this section is guilty of an offence and liable to a fine of not more than \$1000.

Inspection of register of mortgages

88.6(1) Copies of instruments creating any mortgage requiring reg-

istration or registered under this Act or *The Companies Act*, and the register of mortgages, shall during business hours but subject to any reasonable restrictions that the corporation or Alberta company in general meeting may impose, so that not less than 2 hours in each day be allowed for inspection, be open to the inspection of any creditor or security holder of the corporation or Alberta company without charge, and the register of mortgages shall also be open to the inspection of any other person on payment of a fee of \$3, or any lesser fee the corporation or Alberta company prescribes, for each inspection.

(2) Every corporation or Alberta company that refuses any inspection that is permitted under this section is guilty of an offence and is liable to a fine of not more than \$1000.

(3) If a corporation or Alberta company is convicted under this section, the judge may order that an inspection be allowed within any time that he thinks fit.

Copies of register

88.7(1) Any security holder, creditor or other person may require a copy of the register of mortgages or of any part of the register or of any instrument creating any mortgage registered or requiring registration under this Act or *The Companies Act*, on payment of,

(a) in the case of a printed statement, \$1 or any lesser sum prescribed by the corporation or Alberta company, or

(b) in the case of a copy that is other than a printed statement, 10J for every 100 words required to be copied.

(2) A corporation or Alberta company that, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$1000.

Notice of
appointment of
receiver or
receiver-manager

88.8 On receiving notice of the appointment of a receiver or receiver-manager under section 96(a), the Registrar shall enter a memorandum regarding the appointment in the register of mortgages.

Transitional
registration

88.9(1) Nothing in this Act affects the priority accorded to a mortgage registered under *The Companies Act* before the coming into force of this Act by a company or extra-provincial corporation as defined in *The Companies Act*.

(2) Notwithstanding anything in this Act, a mortgage registered under this Division by an Alberta company or extra-provincial corporation as defined in this Act

(a) within 60 days after the date the mortgage is fully executed as required by section 97(1) of *The Companies Act*, and

(b) within 60 days after the coming into force of this Act

shall, for the purpose of determining its priority, be considered to

have been registered under *The Companies Act* and the provisions of that Act apply in that regard.

PART 8

RECEIVERS AND RECEIVER-MANAGERS

- Functions of receiver **89** A receiver of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property and realize the security interest of those on behalf of whom he is appointed, but, except to the extent permitted by the Court, he may not carry on the business of the corporation.
- Functions of receiver-manager **90** A receiver of a corporation may, if he is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom he is appointed.
- Directors' powers during receivership **91** If a receiver-manager is appointed by the Court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.
- Duty of Court-appointed receiver or receiver-manager **92** A receiver or receiver-manager appointed by the Court shall act in accordance with the directions of the Court.
- Duty under debt obligation **93** A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any direction of the Court made under section 95.
- Duty of care **94** A receiver or receiver-manager of a corporation appointed under an instrument shall
- (a) act honestly and in good faith, and
 - (b) deal with any property of the corporation in his possession or control in a commercially reasonable manner.
- Powers of the Court **95** On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument, or on an application by any interested person, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:
- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving his accounts;
 - (b) an order determining the notice to be given to any person or dispensing with notice to any person;

- (c) an order fixing the remuneration of the receiver or receiver-manager;
- (d) an order
 - (i) requiring the receiver or receiver-manager, or a person by or on behalf of whom he is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation;
 - (ii) relieving any of those persons from any default on any terms the Court thinks fit;
 - (iii) confirming any act of the receiver or receiver-manager;
- (e) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of receiver and receiver-manager

96 A receiver or receiver-manager shall

- (a) immediately notify the Registrar of his appointment or discharge,
- (b) take into his custody and control the property of the corporation in accordance with the Court order or instrument under which he is appointed,
- (c) open and maintain a bank account in his name as receiver or receiver-manager of the corporation for the money of the corporation coming under his control,
- (d) keep detailed accounts of all transactions carried out by him as receiver or receiver-manager,
- (e) keep accounts of his administration that shall be available during usual business hours for inspection by the directors of the corporation,
- (f) prepare at least once in every 6-month period after the date of his appointment financial statements of his administration as far as is practicable in the form required by section 149, and, subject to any order of the Court, file a copy of them with the Registrar within 60 days after the end of each 6-month period, and
- (g) on completion of his duties,
 - (i) render a final account of his administration in the form adopted for interim accounts under clause (f),
 - (ii) send a copy of the final report to the Registrar who shall file it, and

(iii) send a copy of the final report to each director of the corporation.

PART 9

DIRECTORS AND OFFICERS

Directors **97(1)** Subject to any unanimous shareholder agreement, the directors shall manage the business and affairs of a corporation.

(2) A corporation shall have one or more directors but a distributing corporation shall have not fewer than 3 directors, at least 2 of whom are not officers or employees of the corporation or its affiliates.

By-laws **98(1)** Unless the articles, by-laws or a unanimous shareholder agreement otherwise provide, the directors may, by resolution, make, amend or repeal any by-laws that regulate the business or affairs of the corporation.

(2) The directors shall submit a by-law, or an amendment or a repeal of a by-law, made under subsection (1) to the shareholders at the next meeting of shareholders, and the shareholders may, by ordinary resolution, confirm, reject or amend the by-law, amendment or repeal.

(3) A by-law, or an amendment or a repeal of a by-law, is effective from the date of the resolution of the directors under subsection (1) until it is confirmed, confirmed as amended or rejected by the shareholders under subsection (2) or until it ceases to be effective under subsection (4) and, if the by-law is confirmed or confirmed as amended, it continues in effect in the form in which it was so confirmed.

(4) If a by-law, or an amendment or a repeal of a by-law, is rejected by the shareholders, or if the directors do not submit a by-law, or an amendment or a repeal of a by-law, to the shareholders as required under subsection (2), the by-law, amendment or repeal ceases to be effective and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the shareholders.

(5) A shareholder entitled to vote at an annual meeting of shareholders may in accordance with section 131 make a proposal to make, amend or repeal a by-law.

General borrowing powers **98.1(1)** Unless the articles or by-laws of, or a unanimous shareholder agreement relating to, a corporation otherwise provide, the directors of a corporation may, without authorization of the shareholders,

(a) borrow money on the credit of the corporation,

- (b) issue, reissue, sell or pledge debt obligations of the corporation,
- (c) subject to section 42, give a guarantee on behalf of the corporation to secure performance of an obligation of any person, and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation.

(2) Notwithstanding sections 110(3) and 116(a), unless the articles or by-laws of or a unanimous shareholder agreement relating to a corporation otherwise provide, the directors may, by resolution, delegate the powers referred to in subsection (1) to a director, a committee of directors or an officer.

Organization
meeting

99(1) After issue of the certificate of incorporation, a meeting of the directors of the corporation shall be held at which the directors may

- (a) make by-laws,
- (b) adopt forms of security certificates and corporate records,
- (c) authorize the issue of securities,
- (d) appoint officers,
- (e) appoint an auditor to hold office until the first annual meeting of shareholders,
- (f) make banking arrangements, and
- (g) transact any other business.

(2) Subsection (1) does not apply to a body corporate to which a certificate of amalgamation has been issued under section 179 or 180.1 or to which a certificate of continuance has been issued under section 181.

(3) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving not less than 5 days' notice of the meeting to each director, stating the time and the place of the meeting.

(4) A director may waive notice under section 99(3).

Qualifications of
directors

100(1) The following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than 18 years of age;
- (b) anyone who

- (i) is a dependent adult as defined in *The Dependent Adults Act* or is the subject of a certificate of incapacity under that Act,
 - (ii) is a formal patient as defined in *The Mental Health Act, 1972*,
 - (iii) is the subject of an order under *The Mentally Incapacitated Persons Act* appointing a committee of his person or estate or both, or
 - (iv) has been found to be a person of unsound mind by a court elsewhere than in Alberta;
- (c) a person who is not an individual;
 - (d) a person who has the status of bankrupt.
- (2) Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.
- (3) At least half of the directors of a corporation must be resident Albertans.
- (4) Notwithstanding subsection (3), not more than 1/3 of the directors of a holding corporation need be resident Albertans if the holding corporation earns in Alberta, directly or through its subsidiaries, less than 5% of the gross revenues of the holding corporation and all of its subsidiary bodies corporate together as shown in
- (a) the most recent consolidated financial statements of the holding corporation referred to in section 151, or
 - (b) the most recent financial statements of the holding corporation and its subsidiary bodies corporate as at the end of the last completed financial period of the holding corporation.
- (5) A person who is elected or appointed a director is not a director unless
- (a) he was present at the meeting when he was elected or appointed and did not refuse to act as a director, or
 - (b) if he was not present at the meeting when he was elected or appointed,
 - (i) he consented to act as a director in writing before his election or appointment or within 10 days after it, or
 - (ii) he has acted as a director pursuant to the election or appointment.
- (6) For the purpose of subsection (5), a person who is elected or

Election and
appointment of
directors

appointed as a director and refuses under subsection (5)(a) or fails to consent or act under subsection (5)(b) shall be deemed not to have been elected or appointed as a director.

101(1) At the time of sending articles of incorporation, the incorporators shall send to the Registrar a notice of directors in prescribed form and the Registrar shall file the notice.

(2) Each director named in the notice referred to in subsection (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

(3) Subject to section 102, shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the 3rd annual meeting of shareholders following the election.

(4) If the articles so provide, the directors may, between annual general meetings, appoint one or more additional directors of the corporation to serve until the next annual general meeting, but the number of additional directors shall not at any time exceed 1/3 of the number of directors who held office at the expiration of the last annual meeting of the corporation.

(5) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

(6) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his election.

(7) Notwithstanding subsections (2), (3) and (6), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

(8) If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the disqualification or death of any candidate, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

(9) The articles or a unanimous shareholder agreement may provide for the election or appointment of a director or directors

(a) for terms expiring not later than the close of the 3rd annual meeting of shareholders following the election, and

(b) by creditors or employees of the corporation or by a class or classes of those creditors or employees.

Cumulative voting

102 If the articles provide for cumulative voting,

(a) the articles shall require a fixed number and not a minimum and maximum number of directors,

(b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him multiplied by the number of directors to be elected, and he may cast all those votes in favour of one candidate or distribute them among the candidates in any manner,

(c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 2 or more candidates to be elected by a single resolution,

(d) if a shareholder votes for more than one candidate without specifying the distribution of his votes among the candidates, he is deemed to have distributed his votes equally among the candidates for whom he voted,

(e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled,

(f) each director ceases to hold office at the close of the first annual meeting of shareholders following his election,

(g) a director may not be removed from office if the votes cast against his removal would be sufficient to elect him and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected, and

(h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director, and those votes could be voted cumulatively, at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Ceasing to hold office

103(1) A director of a corporation ceases to hold office when

- (a) he dies or resigns,
- (b) he is removed in accordance with section 104, or
- (c) he becomes disqualified under section 100(1).

(2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

Removal of
directors

104(1) Subject to section 102(g) or a unanimous shareholder agreement, the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

(2) If the holders of any class or series of shares of a corporation have an exclusive right to elect one or more directors, a director so elected may only be removed by an ordinary resolution at a meeting of the shareholders of that class or series.

(3) Subject to section 102(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 106.

(4) A director elected or appointed under section 101(9) may be removed only by those persons having the power to elect or appoint that director.

Attendance at
meetings

105(1) A director of a corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders.

(2) A director who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him from office, or

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his resignation or removal or because his term of office has expired or is about to expire,

is entitled to submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(3) A corporation shall forthwith send a copy of the statement referred to in subsection (2)

(a) to every shareholder entitled to receive notice of any meeting referred to in subsection (1) and,

(b) if the corporation is a distributing corporation, to the Director

unless the statement is included in or attached to a management proxy circular required by section 144.

(4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling vacancies

106(1) Notwithstanding section 109(3), a quorum of directors may,

subject to subsections (3) and (4), fill a vacancy among the directors, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles.

(2) If there is not a quorum of directors, or if there has been a failure to elect the number or minimum number of directors required by the articles, the directors then in office shall forthwith call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

(3) If the holders of any class or series of shares of a corporation or any other class of persons have an exclusive right to elect one or more directors and a vacancy occurs among those directors,

(a) subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series, or

(b) if there are no such remaining directors, any holder of shares of that class or series or any member of that other class of persons, as the case may be, may call a meeting of those shareholders or those persons for the purpose of filling the vacancy.

(4) The articles or a unanimous shareholder agreement may provide that a vacancy among the directors shall only be filled by

(a) a vote of the shareholders,

(b) a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series, or

(c) the vote of any class of persons having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class of persons.

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his predecessor.

Change in number
of directors

107(1) The shareholders of a corporation may amend the articles to increase or, subject to section 102(h), to decrease the number of directors or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

(2) If the shareholders adopt an amendment to the articles of a corporation to increase the number or minimum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect an additional number of directors authorized by the amendment, and for that purpose, notwithstanding sections 173(1) and 255(3), on the issue of a certificate of amendment the articles

are deemed to be amended as of the date the shareholders adopt the amendment to the articles.

Notice of change
of directors

108(1) Within 15 days after a change is made among the directors, a corporation shall send to the Registrar a notice in prescribed form setting out the change and the Registrar shall file the notice.

(2) Any interested person, or the Registrar, may apply to the Court for an order to require a corporation to comply with subsection (1), and the Court may so order and make any further order it thinks fit.

Meetings of
directors

109(1) Unless the articles otherwise provide, the directors may meet at any place and on any notice the by-laws require.

(2) Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) Directors, other than directors of a corporation referred to in section 100(4), shall not transact business at a meeting of directors unless at least half of the directors present are resident Albertans.

(4) Notwithstanding subsection (3), directors may transact business at a meeting of directors when less than half of the directors present are resident Albertans if

(a) a resident Albertan director who is unable to be present approves in writing or by telephone or other communications facilities the business transacted at the meeting, and

(b) the number of resident Albertan directors present at the meeting, together with any resident Albertan director who gives his approval under clause (a), totals at least half of the directors present at the meeting.

(5) A notice of a meeting of directors shall specify any matter referred to in section 110(3) that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not specify the purpose or the business to be transacted at the meeting.

(6) A director may in any manner waive a notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except when a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(7) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

(8) If a corporation has only one director, that director may constitute a meeting.

(9) A director may participate in a meeting of directors or of a committee of directors by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other if

- (a) the by-laws so provide, or
- (b) subject to the by-laws, all the directors of the corporation consent,

and a director participating in a meeting by those means is deemed for the purposes of this Act to be present at that meeting.

Delegation to
managing director
or committee

110(1) Directors of a corporation may appoint from their number a managing director, who must be a resident Albertan, or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) If the directors of a corporation, other than a corporation referred to in section 100(4), appoint a committee of directors, at least half of the members of the committee must be resident Albertans.

(3) Notwithstanding subsection (1), no managing director and no committee of directors has authority to

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders,
- (b) fill a vacancy among the directors or in the office of auditor,
- (c) issue securities except in the manner and on the terms authorized by the directors,
- (d) declare dividends,
- (e) purchase, redeem or otherwise acquire shares issued by the corporation, except in the manner and on the terms authorized by the directors,
- (f) pay a commission referred to in section 39,
- (g) approve a management proxy circular referred to in Part 12,
- (h) approve any financial statements referred to in section 149, or
- (i) adopt, amend or repeal by-laws.

Validity of acts of
directors, officers
and committees

111(1) An act of a director or officer is valid notwithstanding an irregularity in his election or appointment or a defect in his qualification.

(2) An act of the directors or a committee of directors is valid

notwithstanding non-compliance with section 100(3) or (4), 109(3) or 110(2).

Resolution in lieu
of meeting

112(1) Subject to the articles, the by-laws or a unanimous shareholder agreement, a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or committee of directors.

Liability of
directors and
others

113(1) Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 25 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

(2) Subsection (1) does not apply if the shares, on allotment, are held in escrow pursuant to an escrow agreement required by the Commission and are surrendered for cancellation pursuant to that agreement.

(3) Directors of a corporation who vote for or consent to a resolution authorizing

(a) a purchase, redemption or other acquisition of shares contrary to section 32, 33 or 34,

(b) a commission on a sale of shares not provided for in section 39,

(c) a payment of a dividend contrary to section 40,

(d) financial assistance contrary to section 42,

(e) a payment of an indemnity contrary to section 119, or

(f) a payment to a shareholder contrary to section 184 or 234,

are jointly and severally liable to restore to the corporation any amounts so paid and the value of any property so distributed, and not otherwise recovered by the corporation.

(4) A director who has satisfied a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

(5) If money or property of a corporation was paid or distributed to a shareholder or other recipient contrary to section 32, 33, 34,

39, 40, 42, 119, 184 or 234, the corporation, any director or shareholder of the corporation, or any person who was a creditor of the corporation at the time of the payment or distribution, is entitled to apply to the Court for an order under subsection (6).

(6) On an application under subsection (5), the Court may, if it is satisfied that it is equitable to do so, do any or all of the following:

- (a) order a shareholder or other recipient to restore to the corporation any money or property that was paid or distributed to him contrary to section 32, 33, 34, 39, 40, 42, 119, 184 or 234;
- (b) order the corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares;
- (c) make any further order it thinks fit.

(7) A director is not liable under subsection (1) if he proves that he did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

(8) A director is not liable under subsection (3)(d) if he proves that he did not know and could not reasonably have known that the financial assistance was given contrary to section 42.

(9) An action to enforce a liability imposed by this section may not be commenced after 2 years from the date of the resolution authorizing the action complained of.

Directors' liability
for wages

114(1) Directors of a corporation are jointly and severally liable to employees of the corporation for all debts not exceeding 6 months wages payable to each employee for services performed for the corporation while they are directors respectively.

(2) Subsection (1) does not render a director liable for debts for wages

- (a) if he believes on reasonable grounds that the corporation can pay the debts as they become due, or
- (b) if the debts are payable to employees for services performed while the property of the corporation is under the control of a receiver, receiver-manager or liquidator.

(3) A director is not liable under subsection (1) unless

- (a) the corporation has been sued for the debt within 6 months after it has become due and execution has been returned unsatisfied in whole or in part,
- (b) the corporation has commenced liquidation and dissolution

proceedings or has been dissolved and a claim for the debt has been proved within 6 months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution, or

(c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy Act* (Canada) and a claim for the debt has been proved within 6 months after the date of the assignment or receiving order.

(4) No action may be brought against a director under this section more than 2 years after the date he ceased to be a director.

(5) If execution referred to in subsection (3)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

(6) If a director pays a debt referred to in subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings, he is entitled to any preference that the employee would have been entitled to, and if a judgment has been obtained, he is entitled to an assignment of the judgment.

(7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Disclosure by
directors and
officers in relation
to contracts

115(1) A director or officer of a corporation who

(a) is a party to a material contract or proposed material contract with the corporation, or

(b) is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his interest.

(2) The disclosure required by subsection (1) shall be made, in the case of a director,

(a) at the meeting at which a proposed contract is first considered,

(b) if the director was not interested in a proposed contract at the time of the meeting referred to in clause (a), at the first meeting after he becomes so interested,

(c) if the director becomes interested after a contract is made, at the first meeting after he becomes so interested, or

(d) if a person who is interested in a contract later becomes a director, at the first meeting after he becomes a director.

(3) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

(a) forthwith after he becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors,

(b) if the officer becomes interested after a contract is made, forthwith after he becomes so interested, or

(c) if a person who is interested in a contract later becomes an officer, forthwith after he becomes an officer.

(4) If a material contract or proposed material contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, a director or officer shall disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors, the nature and extent of his interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(5) A director referred to in subsection (1) shall not vote on any resolution to approve the contract unless the contract is

(a) an arrangement by way of security for money lent to or obligations undertaken by him, or by a body corporate in which he has an interest, for the benefit of the corporation or an affiliate,

(b) a contract relating primarily to his remuneration as a director, officer, employee or agent of the corporation or an affiliate,

(c) a contract for indemnity or insurance under section 119, or

(d) a contract with an affiliate.

(6) For the purpose of this section, a general notice to the directors by a director or officer is a sufficient disclosure of interest in relation to any contract made between the corporation and a person in which the director has a material interest or of which he is a director or officer if

(a) the notice declares he is a director or officer of or has a material interest in the person and is to be regarded as interested in any contract made or to be made by the corporation with that person, and states the nature and extent of his interest,

(b) at the time disclosure would otherwise be required under subsection (2), (3) or (4), as the case may be, the extent of his interest in that person is not greater than that stated in the notice, and

(c) the notice is given within the 12 month period immediately preceding the time at which disclosure would otherwise be required under subsection (2), (3) or (4), as the case may be.

(7) If a material contract is made between a corporation and one or more of its directors or officers, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which he has a material interest,

(a) the contract is neither void nor voidable by reason only of that relationship, or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract, and

(b) a director or officer or former director or officer of the corporation to whom a profit accrues as a result of the making of the contract is not liable to account to the corporation for that profit by reason only of holding office as a director or officer,

if the director or officer disclosed his interest in accordance with subsection (2), (3), (4) or (6), as the case may be, and the contract was approved by the directors or the shareholders and it was reasonable and fair to the corporation at the time it was approved.

(8) If a director or officer of a corporation fails to disclose his interest in a material contract in accordance with this section, the Court may, on the application of the corporation or a shareholder of the corporation, set aside the contract on any terms it thinks fit.

(9) This section is subject to any unanimous shareholder agreement.

Officers

116 Subject to the articles, the by-laws or any unanimous shareholder agreement,

(a) the directors may designate the offices of the corporation, appoint as officers individuals of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in section 110(3),

(b) a director may be appointed to any office of the corporation, and

(c) 2 or more offices of the corporation may be held by the same person.

Duty of care of directors and officers

117(1) Every director and officer of a corporation in exercising his powers and discharging his duties shall

(a) act honestly and in good faith with a view to the best interests of the corporation, and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a corporation shall comply with

this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

(3) Subject to section 140(7), no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him from liability for a breach of that duty.

(4) In determining whether a particular transaction or course of action is in the best interests of the corporation, a director, if he is elected or appointed by the holders of a class or series of shares or by employees or creditors or a class of employees or creditors, may give special, but not exclusive, consideration to the interests of those who elected or appointed him.

Dissent by director

118(1) A director who is present at a meeting of directors or committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless

(a) he requests that his abstention or dissent be, or his abstention or dissent is, entered in the minutes of the meeting,

(b) he sends his written dissent to the secretary of the meeting before the meeting is adjourned,

(c) he sends his dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned, or

(d) he otherwise proves that he did not consent to the resolution or action.

(2) A director who votes for or consents to a resolution or action is not entitled to dissent under subsection (1).

(3) A director is not liable under section 113 or 117 if he relies in good faith on

(a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation, or

(b) an opinion or report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him.

Indemnification by corporation

119(1) Except in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, a corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor, and his heirs and legal representatives, against all costs, charges and

expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by him in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of that corporation or body corporate, if

(a) he acted honestly and in good faith with a view to the best interests of the corporation, and

(b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he had reasonable grounds for believing that his conduct was lawful.

(2) A corporation may with the approval of the Court indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which he is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by him in connection with the action if he fulfils the conditions set out in subsections (1)(a) and (b).

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by him in connection with the defence of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity

(a) was substantially successful on the merits in his defence of the action or proceeding,

(b) fulfils the conditions set out in subsection (1)(a) and (b), and

(c) is fairly and reasonably entitled to indemnity.

(4) A corporation may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by him

(a) in his capacity as a director or officer of the corporation, **except** when the liability relates to his failure to act honestly and **in** good faith with a view to the best interests of the corporation, **or**

(b) in his capacity as a director or officer of another body corporate if he acts or acted in that capacity at the corporation's request, **except** when the liability relates to his failure to act honestly and in good faith with a view to the best interests of the body corporate.

(5) A corporation or a person referred to in subsection (1) may apply

to the Court for an order approving an indemnity under this section and the Court may so order and make any further order it thinks fit.

(6) On an application under subsection (5), the Court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel.

Remuneration

120(1) Subject to the articles, the by-laws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

(2) Disclosure of the aggregate remuneration of directors, the aggregate remuneration of officers and the aggregate remuneration of employees shall be made as prescribed.

PART 10

INSIDER TRADING

Definitions

121 In this Part,

- (a) “corporation” does not include a distributing corporation;
- (b) “insider” means, with respect to a corporation,
 - (i) the corporation, in respect of the purchase or other acquisition by it of shares issued by it or any of its affiliates,
 - (ii) a director or officer of the corporation,
 - (iii) a person who, with respect to at least 10% of the voting rights attached to the voting shares of the corporation,
 - (A) beneficially owns, directly or indirectly, voting shares carrying those voting rights,
 - (B) exercises control or direction over those voting rights, or
 - (C) beneficially owns, directly or indirectly, voting shares carrying some of those voting rights and exercises control or direction over the remainder of those voting rights,
 - (iv) a person employed by the corporation or retained by it on a professional or consulting basis,
 - (v) an affiliate of the corporation,
 - (vi) a person who receives specific confidential information from a person described in this clause or in section 123 and

who has knowledge that the person giving the information is a person described in this clause or in section 123, and

(vii) a person who receives specific confidential information from the first mentioned person in subclause (vi) and who has knowledge that that person received that knowledge in the manner described in that subclause;

(c) “voting share” means an issued and outstanding share carrying voting rights under all circumstances or under any circumstances that have occurred and are continuing.

Deemed insiders **122** For the purposes of this Part,

(a) a director or an officer of a body corporate that is an insider of a corporation is deemed to be an insider of the corporation,

(b) a director or an officer of a body corporate that is a subsidiary is deemed to be an insider of its holding corporation,

(c) a person is deemed to own beneficially shares beneficially owned by a body corporate controlled by him directly or indirectly, and

(d) a body corporate is deemed to own beneficially shares beneficially owned by its affiliates.

Deemed insiders **123** For the purposes of this Part,

(a) if a body corporate becomes an insider of a corporation or enters into a business combination with a corporation, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous 6 months or for any shorter period during which he was a director or officer of the body corporate, and

(b) if a corporation becomes an insider of a body corporate or enters into a business combination with a body corporate, a director or an officer of the body corporate is deemed to have been an insider of the corporation for the previous 6 months or for any shorter period during which he was a director or officer of the body corporate.

Business combination defined **124** In section 123, “business combination” means an acquisition of all or substantially all the property of one body corporate by another or an amalgamation of 2 or more bodies corporate.

Civil liability of insiders **125(1)** An insider who sells to or purchases from a shareholder of the corporation or any of its affiliates a security of the corporation or any of its affiliates and in connection with such sale or purchase makes use of any specific confidential information for his own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security

(a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction, and

(b) is accountable to the corporation for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

(2) An action to enforce a right created by this section may be commenced only within 2 years after the date of completion of the transaction that gave rise to the cause of action.

PART 11

SHAREHOLDERS

Place of
shareholders'
meetings

126(1) Meetings of shareholders of a corporation shall be held at the place within Alberta provided in the by-laws or, in the absence of such provision, at the place within Alberta that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a corporation may be held outside Alberta if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends a meeting of shareholders held outside Alberta is deemed to have so agreed except when he attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

(3) A shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other if

(a) the by-laws so provide, or

(b) subject to the by-laws, all the shareholders entitled to vote at the meeting consent,

and a person participating in such a meeting by those means is deemed for the purposes of this Act to be present at the meeting.

(4) Notwithstanding subsections (1) and (2), if the articles so provide, meetings of shareholders may be held outside Alberta at one or more places specified in the articles.

Calling meetings

127(1) The directors of a corporation

(a) shall call an annual meeting of shareholders to be held not later than 18 months after

- (i) the date of its incorporation, or
- (ii) the date of its certificate of amalgamation, in the case of an amalgamated corporation,

and subsequently not later than 15 months after holding the last preceding annual meeting, and

- (b) may at any time call a special meeting of shareholders.

(2) Notwithstanding subsection (1), the corporation may apply to the Court for an order extending the time in which the first or the next annual meeting of the corporation shall be held.

(3) Notice of any application under subsection (2) by a distributing corporation shall be filed with the Commission.

(4) If, on an application under subsection (2), the Court is satisfied that it is in the best interests of the corporation, the Court may extend the time in which the first or the next annual meeting of the corporation shall be held, in any manner and on any terms it thinks fit.

Record dates

128(1) For the purpose of determining shareholders

- (a) entitled to receive payment of a dividend,
- (b) entitled to participate in a liquidation distribution, or
- (c) for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for that determination of shareholders, but the record date shall not precede by more than 50 days the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

(3) If no record date is fixed,

- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be
 - (i) at the close of business on the last business day preceding the day on which the notice is sent, or,
 - (ii) if no notice is sent, the day on which the meeting is held,

and

(b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote, shall be at the close of business on the day on which the directors pass the resolution relating to that purpose.

(4) If the directors of a distributing corporation fix a record date then, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fixed the record date, notice of the record date shall be given not less than 7 days before the date so fixed

(a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded, and

(b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

Notice of meeting,
adjournment,
business and notice
of business

129(1) Notice of the time and place of a meeting of shareholders shall be sent not less than 21 days and not more than 50 days before the meeting,

(a) to each shareholder entitled to vote at the meeting,

(b) to each director, and

(c) to the auditor of the corporation.

(2) Notwithstanding section 246(3), a notice of a meeting of shareholders sent by mail to a shareholder, director or auditor in accordance with section 246(1) is deemed to be sent to the shareholder on the day on which it is deposited in the mail.

(3) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under section 128(2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of less than 30 days it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the time of an adjournment.

(5) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, section 143(1) does not apply.

(6) All business transacted at a special meeting of shareholders and

all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor's report, election of directors and reappointment of the incumbent auditor, is deemed to be special business.

(7) Notice of a meeting of shareholders at which special business is to be transacted shall state

(a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment on that business, and

(b) the text of any special resolution to be submitted to the meeting.

(8) The text of a special resolution may be amended at a meeting of shareholders if the amendments correct manifest errors or are not material.

Waiver of notice

130 A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders, and attendance of the shareholder or other person at a meeting of shareholders is a waiver of notice of the meeting, except when he attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Shareholder proposals

131(1) A shareholder entitled to vote at an annual meeting of shareholders may

(a) submit to the corporation notice of any matter that he proposes to raise at the meeting, in this section referred to as a "proposal", and

(b) discuss at the meeting any matter in respect of which he would have been entitled to submit a proposal.

(2) A corporation that solicits proxies shall set out the proposal in the management proxy circular required by section 144 or attach the proposal to it.

(3) If so requested by the shareholder, the corporation shall include in the management proxy circular or attach to it a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than 5% of the shares or 5% of the shares of a class of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations made at a meeting of shareholders.

(5) A corporation is not required to comply with subsections (2) and (3) if

(a) the proposal is not submitted to the corporation at least 90 days before the anniversary date of the previous annual meeting of shareholders,

(b) it clearly appears that the proposal has been submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation, its directors, officers or security holders or any of them, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes,

(c) the corporation, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of the request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting,

(d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within 2 years preceding the receipt of the shareholder's request and the proposal was defeated, or

(e) the rights being conferred by this section are being abused to secure publicity.

(6) No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

(7) If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular and send to him a statement of the reasons for the refusal.

(8) On the application of a shareholder claiming to be aggrieved by a corporation's refusal under subsection (7), the Court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

(9) The corporation or any person claiming to be aggrieved by a proposal may apply to the Court for an order permitting the corporation to omit the proposal from the management proxy circular, and the Court, if it is satisfied that subsection (5) applies, may make any order it thinks fit.

Shareholder list

132(1) A corporation having more than 15 shareholders entitled to vote at a meeting of shareholders shall prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder,

- (a) if a record date is fixed under section 128(2), not later than 10 days after that date, or
 - (b) if no record date is fixed,
 - (i) at the close of business on the last business day preceding the day on which the notice is given, or
 - (ii) if no notice is given, on the day on which the meeting is held.
- (2) If a corporation fixes a record date under section 128(2), a person named in the list prepared under subsection (1)(a) is entitled to vote the shares shown opposite his name at the meeting to which the list relates, except to the extent that

- (a) the person has transferred the ownership of any of his shares after the record date, and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that he owns the shares,

and demands, not later than 10 days before the meeting, or any shorter period before the meeting that the by-laws of the corporation may provide, that his name be included in the list before the meeting,

in which case the transferee is entitled to vote his shares at the meeting.

- (3) If a corporation does not fix a record date under section 128(2), a person named in a list prepared under subsection (1)(b)(i) is entitled to vote the shares shown opposite his name at the meeting to which the list relates except to the extent that

- (a) the person has transferred the ownership of any of his shares after the date on which a list referred to in subsection (1)(b)(i) is prepared, and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that he owns the shares,

and demands, not later than 10 days before the meeting or any shorter period before the meeting that the by-laws of the corporation may provide, that his name be included in the list before the meeting,

in which case the transferee is entitled to vote his shares at the meeting.

(4) A shareholder may examine the list of shareholders

(a) during usual business hours at the records office of the corporation or at the place where its central securities register is maintained, and

(b) at the meeting of shareholders for which the list was prepared.

Quorum

133(1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holder or holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) If a corporation has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

Right to vote

134(1) Unless the articles otherwise provide, each share of a corporation entitles the holder of it to one vote at a meeting of shareholders.

(2) If a body corporate or association is a shareholder of a corporation, the corporation shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the corporation.

(3) An individual authorized under subsection (2) may exercise on behalf of the body corporate or association he represents all the powers it could exercise if it were an individual shareholder.

(4) Unless the by-laws otherwise provide, if 2 or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if 2 or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

Voting

135(1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by show of hands except when a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

(2) A shareholder or proxyholder may demand a ballot either before or on the declaration of the result of any vote by show of hands.

Resolution in lieu
of meetings

136(1) A resolution in writing signed by all the shareholders entitled to vote on that resolution is as valid as if it had been passed at a meeting of the shareholders.

(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(3) A copy of every resolution referred to in subsection (1) or (2) shall be kept with the minutes of the meetings of shareholders.

Meeting on
requisition of
shareholders

137(1) The holders of not less than 5% of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the corporation.

(3) On receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless

(a) a record date has been fixed under section 128(2) and notice of the record date has been given under section 128(4),

(b) the directors have called a meeting of shareholders and have given notice of the meeting under section 129, or

(c) the business of the meeting as stated in the requisition includes matters described in section 131(5)(b) to (e).

(4) If the directors do not within 21 days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Part and Part 12.

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation shall reimburse the shareholders the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called by
Court

138(1) If for any reason it is impracticable to call a meeting of

shareholders of a corporation in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the manner prescribed by the by-laws and this Act, or if for any other reason the Court thinks fit, the Court, on the application of a director, a shareholder entitled to vote at the meeting or, if the corporation is a distributing corporation the Director, may order a meeting to be called, held and conducted in the manner the Court directs.

(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

Court review of election

139(1) A corporation or a shareholder or director may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

(2) On an application under this section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

(a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) an order declaring the result of the disputed election or appointment;

(c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made;

(d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Pooling agreement

139.1 A written agreement between 2 or more shareholders may provide that in exercising voting rights the shares held by them shall be voted as provided in the agreement.

Unanimous shareholder agreement

140(1) A unanimous shareholder agreement may provide for any or all of the following:

(a) the regulation of the rights and liabilities of the shareholders, as shareholders, among themselves or between themselves and any other party to the agreement;

(b) the regulation of the election of directors;

(c) the management of the business and affairs of the corpora-

tion, including the restriction or abrogation, in whole or in part, of the powers of the directors;

(d) any other matter that may be contained in a unanimous shareholder agreement pursuant to any other provision of this Act.

(2) If a unanimous shareholder agreement is in effect at the time a share is issued by a corporation to a person other than an existing shareholder,

(a) that person is deemed to be a party to the agreement whether or not he had actual knowledge of it when the share certificate was issued,

(b) the issue of the share certificate does not operate to terminate the agreement, and

(c) if he is a bona fide purchaser without actual knowledge of the unanimous shareholder agreement, that person may rescind the contract under which the shares were acquired by giving a notice to that effect to the corporation within a reasonable time after the person receives actual knowledge of the unanimous shareholder agreement.

(3) Notwithstanding section 45(8), if a unanimous shareholder agreement is in effect when a person who is not a party to the agreement acquires a share of a corporation, other than under subsection (2),

(a) the person who acquired the share is deemed to be a party to the agreement whether or not he had actual knowledge of it when he acquired the share, and

(b) neither the acquisition of the share nor the registration of that person as a shareholder operates to terminate the agreement.

(4) If

(a) a person referred to in subsection (3) is a bona fide purchaser as defined in section 44(2) and did not have actual knowledge of the unanimous shareholder agreement, and

(b) his transferor's share certificate did not contain a reference to the unanimous shareholder agreement,

that person may, within 30 days after he acquires actual knowledge of the existence of the agreement, send to the corporation a notice of objection to the agreement.

(5) If a person sends a notice of objection under subsection (4),

(a) he is entitled to be paid by the corporation the fair value of the shares held by him, determined as of the close of business on the day on which he became a shareholder, and

(b) section 184(4) and (6) to (20) applies, with the necessary changes, as if the notice of objection under subsection (4) were a written objection sent to the corporation under section 184(5).

(6) A transferee who is entitled to be paid the fair value of his shares under subsection (5) also has the right to recover from the transferor by action the amount by which the value of the consideration paid for his shares exceeds the fair value of those shares.

(7) A shareholder who is a party or is deemed to be a party to a unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the corporation to which the agreement relates to the extent that the agreement restricts the powers of the directors to manage the business and affairs of the corporation, and the directors are thereby relieved of their duties and liabilities, including any liabilities under section 114, to the same extent.

(8) A unanimous shareholder agreement may not be amended without the written consent of all those who are shareholders at the effective date of the amendment.

(9) A unanimous shareholder agreement may exclude the application to the agreement of all but not part of this section.

PART 12

PROXIES

Definitions

141 In this Part,

(a) “form of proxy” means a written or printed form that, on completion and execution by or on behalf of a shareholder, becomes a proxy;

(b) “proxy” means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on his behalf at a meeting of shareholders;

(c) “registrant” means a person required to be registered to trade or deal in securities under the laws of any jurisdiction;

(d) “solicit” or “solicitation” includes

(i) a request for a proxy whether or not accompanied by or included in a form of proxy,

(ii) a request to execute or not to execute a form of proxy or to revoke a proxy,

(iii) the sending of a form of proxy or other communication

to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and

(iv) the sending of a form of proxy to a shareholder under section 143,

but does not include

(v) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,

(vi) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,

(vii) the sending by a registrant of the documents referred to in section 147, or

(viii) a solicitation by a person in respect of shares of which he is the beneficial owner;

(e) "solicitation by or on behalf of the management of a corporation" means a solicitation by any person pursuant to a resolution or the instructions of, or with the acquiescence of, the directors or a committee of the directors.

Appointing
proxyholder

142(1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder and one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed by the shareholder or by his attorney authorized in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

(4) A shareholder may revoke a proxy

(a) by depositing an instrument in writing executed by him or by his attorney authorized in writing

(i) at the registered office of the corporation at any time up to and including the last business day preceding the day of the meeting, or an adjournment of that meeting, at which the proxy is to be used, or

(ii) with the chairman of the meeting on the day of the meeting or an adjournment of the meeting, or

(b) in any other manner permitted by law.

(5) The directors may specify in a notice calling a meeting of share-

holders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting must be deposited with the corporation or its agent.

Mandatory
solicitation

143(1) Subject to subsection (2), the management of a corporation shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy in prescribed form to each shareholder who is entitled to receive notice of the meeting.

(2) The management of a corporation is not required to send a form of proxy under subsection (1)

(a) if the corporation has not more than 15 shareholders entitled to vote at a meeting of shareholders, 2 or more joint shareholders being counted as 1 shareholder, or

(b) if all of the shareholders entitled to vote at a meeting of shareholders have agreed in writing to waive the application of subsection (1).

(3) A shareholder may revoke a waiver given under subsection (2)(b) in respect of any meeting of shareholders by sending to the corporation a notice in writing to that effect not less than 40 days before the date of the meeting in respect of which the waiver was given.

(4) If the management of a corporation, without reasonable cause, contravenes subsection (1), the corporation is guilty of an offence and liable to a fine of not more than \$5000.

(5) If a corporation contravenes subsection (1), then, whether or not the corporation has been prosecuted or convicted in respect of that contravention, any director or officer of the corporation who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Soliciting proxies

144(1) A person shall not solicit proxies unless

(a) in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular in prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting, or

(b) in the case of any other solicitation, a dissident's proxy circular in prescribed form stating the purposes of the solicitation

is sent to the auditor of the corporation, to each shareholder whose proxy is solicited and, if clause (b) applies, to the corporation.

(2) Subsection (1) does not apply to a corporation that has 15 or fewer shareholders entitled to vote at meetings of shareholders.

(3) A person required to send a management proxy circular or dis-

sident's proxy circular under subsection (1) shall, if the corporation is a distributing corporation, file concurrently a copy of it with the Commission, together with a copy of the notice of the meeting, form of proxy and any other documents for use in connection with the meeting.

(4) A person who contravenes subsection (1) or (3) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(5) If the person who contravenes subsection (3) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Exemption orders

145 On the application of an interested person,

(a) the Commission, if the corporation is a distributing corporation, or

(b) the Court, if the corporation is not a distributing corporation,

may make an order on any terms it considers appropriate exempting that person from the application of section 143 or 144(1), and the order may have retrospective effect.

Rights and duties of proxyholder

146(1) A person who solicits a proxy and is appointed as a proxyholder shall attend in person or cause an alternate proxyholder to attend the meeting in respect of which the proxy is given and comply with the directions of the shareholder who appointed him.

(2) A proxyholder or an alternate proxyholder has the same rights as the shareholder who appointed him to speak at a meeting of shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at such a meeting in respect of any matter by way of any show of hands.

(3) Notwithstanding subsections (1) and (2), if the chairman of a meeting of shareholders declares to the meeting that, if a ballot is conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what to his knowledge will be the decision of the meeting in relation to any matter or group of matters is less than 5% of the votes attached to the shares entitled to vote and represented at the meeting on that ballot, then, unless a shareholder or proxyholder demands a ballot,

(a) the chairman may conduct the vote in respect of that matter or group of matters by a show of hands, and

(b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by a show of hands.

(4) A proxyholder or alternate proxyholder who without reasonable cause fails to comply with the directions of a shareholder under this section is guilty of an offence and liable to a fine of not more than \$5000 dollars or to imprisonment for a term of not more than 6 months or to both.

Duties of registrant

147(1) Shares of a corporation that are registered in the name of a registrant or his nominee and not beneficially owned by the registrant shall not be voted unless the registrant, forthwith after receipt of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy sent to shareholders by or on behalf of any person for use in connection with the meeting, sends a copy of those documents to the beneficial owner and, except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant shall not vote or appoint a proxyholder to vote shares registered in his name or in the name of his nominee that he does not beneficially own unless he receives voting instructions from the beneficial owner.

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in subsection (1) other than copies of the document requesting voting instructions.

(4) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner, a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

(6) The contravention of this section by a registrant does not render void any meeting of shareholders or any action taken at a meeting of shareholders.

(7) Nothing in this section gives a registrant the right to vote shares that he is otherwise prohibited from voting.

(8) A registrant who knowingly contravenes this section is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(9) If the registrant who contravenes this section is a body corporate, then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine

of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Court orders

148 If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made, an interested person or, if the corporation is a distributing corporation the Commission, may apply to the Court and the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order restraining the solicitation, the holding of the meeting or any person from implementing or acting on any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation;
- (c) an order adjourning the meeting.

PART 13

FINANCIAL DISCLOSURE

Annual financial statements

149(1) Subject to section 150, the directors of a corporation shall place before the shareholders at every annual meeting

- (a) the following financial statements as prescribed:
 - (i) if the corporation has not completed a financial period and the meeting is held after the end of the first 6-month period of that financial period, a financial statement for the period that began on the date the corporation came into existence and ended on a date occurring not earlier than 6 months before the annual meeting;
 - (ii) if the corporation has completed only one financial period, a financial statement for that year;
 - (iii) if the corporation has completed 2 or more financial periods, comparative financial statements for the last 2 completed financial periods;
 - (iv) if the corporation has completed one or more financial periods but the annual meeting is held after 6 months has expired in its current financial period, a financial statement for the period that
 - (A) began at the commencement of its current financial period, and

(B) ended on a date that occurred not earlier than 6 months before the annual meeting,

in addition to any statements required under subclause (ii) or (iii),

(b) the report of the auditor, if any, and

(c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

(2) Notwithstanding subsection (1)(a)(iii), the financial statements for the earlier of the 2 financial periods referred to in that subclause may be omitted if the reason for the omission is set out in the financial statements, or in a note to them, to be placed before the shareholders at the annual meeting.

Exemption

150(1) Section 149 does not apply to a corporation that is subject to and complies with the provisions of *The Securities Act, 1981* relating to the financial statements to be placed before the shareholders at every annual meeting.

(2) A distributing corporation may apply to the Commission for an order authorizing the corporation to omit from its financial statements any item prescribed, or to dispense with the publication of any financial statement prescribed, and the Commission may, if it reasonably believes that the disclosure of the item or statement would be detrimental to the corporation, make the order on any reasonable conditions it thinks fit.

Consolidated statements

151(1) A corporation shall keep at its records office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

(2) Shareholders of a corporation and their agents and legal representatives may on request examine the statements referred to in subsection (1) during the usual business hours of the corporation, and may make extracts from them, free of charge.

(3) A corporation may, within 15 days of a request to examine under subsection (2), apply to the Court for an order barring the right of any person to so examine, and the Court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar that right and make any further order it thinks fit.

(4) A corporation shall give notice of an application under subsection (3) to the person making a request under subsection (2), and that person may appear and be heard in person or by counsel.

Approval of financial statements

152(1) The directors of a corporation shall approve the financial

statements referred to in section 149 and the approval shall be evidenced by the signature of one or more directors.

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 149 unless the financial statements are

- (a) approved and signed in accordance with subsection (1), and
- (b) accompanied by the report of the auditor of the corporation, if any.

Copies to
shareholders

153(1) A corporation shall, not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under section 136(2) in lieu of the annual meeting, send a copy of the documents referred to in section 149 to each shareholder, except to a shareholder who has informed the corporation in writing that he does not want a copy of those documents.

(2) A corporation that, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$5000.

Copies to Director

154(1) A distributing corporation shall, not less than 21 days before each annual meeting of shareholders or forthwith after the signing of a resolution under section 136(2) in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of the meeting should have been signed, file a copy of the documents referred to in section 149 with the Commission.

(2) If a distributing corporation

- (a) sends to its shareholders, or
- (b) is required to file with or send to a public authority or a stock exchange

interim financial statements or related documents, the corporation shall forthwith file copies of them with the Commission.

(3) A subsidiary corporation is not required to comply with this section if

- (a) the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary, and
- (b) the consolidated or combined financial statements of the holding corporation are included in the documents filed with the Commission by the holding corporation in compliance with this section.

(4) A corporation that contravenes this section is guilty of an offence and liable to a fine of not more than \$5000.

Qualification of the auditor

155(1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation if he is not independent of the corporation and its affiliates and the directors and officers of the corporation and its affiliates.

(2) For the purposes of this section,

(a) independence is a question of fact, and

(b) a person is deemed not to be independent if he or his business partner

(i) is a business partner, a director, an officer or an employee of the corporation or any of its affiliates, or a business partner of any director, officer or employee of the corporation or any of its affiliates,

(ii) beneficially owns or controls, directly or indirectly, an interest in the securities of the corporation or any of its affiliates, or

(iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within 2 years of his proposed appointment as auditor of the corporation.

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of his disqualification.

(4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) An interested person may apply to the Court for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on any terms it thinks fit, which order may have retrospective effect.

Auditor's appointment and remuneration

156(1) Subject to section 157, shareholders of a corporation shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 99 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until his successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, may be fixed by the directors.

Dispensing with auditor

157(1) The shareholders of a corporation other than a distributing corporation may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

Auditor ceasing to hold office

158(1) An auditor of a corporation ceases to hold office when

(a) he dies or resigns, or

(b) he is removed pursuant to section 159.

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

Removal of auditor

159(1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor, other than an auditor appointed by the Court under section 161.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 160.

Filling vacancy

160(1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a corporation may provide that a vacancy in the office of auditor shall only be filled by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his predecessor.

(5) Subsections (1) and (2) do not apply if the shareholders have resolved under section 157 not to appoint an auditor.

Court-appointed auditor

161(1) If a corporation does not have an auditor, the Court may, on the application of a shareholder or, if the corporation is a distributing corporation the Director, appoint and fix the remuneration

of an auditor who holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 157 not to appoint an auditor.

162(1) The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard at every meeting on matters relating to his duties as auditor.

(2) If a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice to the auditor or a former auditor of the corporation not less than 10 days before a meeting of shareholders, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to his duties as auditor.

(3) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the corporation.

(4) An auditor or former auditor of a corporation who without reasonable cause contravenes subsection (2) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(5) An auditor who

(a) resigns,

(b) receives a notice or otherwise learns of a meeting of directors or shareholders called for the purpose of removing him from office,

(c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of resignation or removal of the incumbent auditor or because his term of office has expired or is about to expire, or

(d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 157 is to be proposed,

is entitled to submit to the corporation a written statement giving the reasons for his resignation or the reasons why he opposes any proposed action or resolution.

(6) The corporation shall forthwith

(a) send to every shareholder entitled to receive notice of any meeting referred to in subsection (1), and

(b) file with the Commission, if the corporation is a distributing corporation,

a copy of the statement referred to in subsection (5), unless the statement is included in or attached to a management proxy circular required by section 144.

(7) No person shall accept an appointment as or consent to be appointed as auditor of a corporation if he is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until he has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he is to be replaced.

(8) Notwithstanding subsection (7), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within 15 days after making the request referred to in that subsection, he does not receive a reply.

Auditor's duty to examine

163(1) An auditor of a corporation shall make the examination that is in his opinion necessary to enable him to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except those financial statements or parts of those statements that relate to the earlier of the 2 financial years referred to in section 149(1)(a)(iii).

(2) Notwithstanding section 164, an auditor of a corporation may reasonably rely on the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported on by the auditor are in consolidated form.

Auditor's right to information

164(1) On the demand of the auditor of a corporation, the present or former directors, officers, employees or agents of the corporation and the former auditors of the corporation shall furnish any

(a) information and explanations, and

(b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries

that are, in the opinion of the auditor, necessary to enable him to make the examination and report required under section 163 and that the directors, officers, employees, agents or former auditors are reasonably able to furnish.

(2) On the demand of the auditor of a corporation, the directors of the corporation shall

(a) to the extent they are reasonably able to do so, obtain from the present or former directors, officers, employees, agents or auditors of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees, agents or auditors are reasonably able to furnish and that are, in the opinion of the corporation's auditor, necessary to enable him to make the examination and report required under section 163, and

(b) furnish the information and explanations so obtained to the corporation's auditor.

Audit committee

165(1) Subject to subsection (3), a distributing corporation shall, and any other corporation may, have an audit committee.

(2) The audit committee of a distributing corporation shall be composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates.

(3) A distributing corporation may apply to the Commission for an order authorizing the corporation to dispense with an audit committee, and the Commission may, if it is satisfied that the shareholders will not be prejudiced by such an order, permit the corporation to dispense with an audit committee on any reasonable conditions that it thinks fit.

(4) An audit committee shall review the financial statements of the corporation before they are approved under section 152.

(5) The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard at the meeting, and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(6) The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

(7) A director or an officer of a corporation shall forthwith notify the audit committee and the auditor of any error or misstatement of which he becomes aware in a financial statement that the auditor or a former auditor has reported on.

(8) If the auditor or a former auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement on which he has reported, and if in his opinion the error or misstatement is material, he shall inform each director accordingly.

(9) When under subsection (8) the auditor or a former auditor informs the directors of an error or misstatement in a financial statement,

(a) the directors shall prepare and issue revised financial statements or otherwise inform the shareholders, and

(b) if the corporation is a distributing corporation, the corporation shall file the revised financial statements with the Commission or inform the Commission of the error or misstatement in the same manner that the shareholders were informed of it.

(10) Every director or officer of a corporation who knowingly contravenes subsection (7) or (9) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Qualified privilege **166** Any oral or written statement or report made under this Act by the auditor or a former auditor of a corporation has qualified privilege.

PART 14 FUNDAMENTAL CHANGES

Amendment of articles **167(1)** Subject to sections 170 and 171, the articles of a corporation may by special resolution be amended to

(a) change its name, subject to section 12,

(b) add, change or remove any restriction on the business or businesses that the corporation may carry on,

(c) change any maximum number of shares that the corporation is authorized to issue,

(d) create new classes of shares,

(e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued,

(f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,

(g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,

(h) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,

(i) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series,

(j) revoke, diminish or enlarge any authority conferred under clauses (h) and (i),

(k) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 102 and 107,

(l) subject to section 45(8), add, change or remove restrictions on the transfer of shares, or

(m) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

(3) Notwithstanding subsection (1), but subject to section 12, where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

Constrained shares **168**(1) In this section “resident Canadian” means an individual who is

(a) a Canadian citizen ordinarily resident in Canada,

(b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or

(c) a permanent resident within the meaning of the *Immigration Act, 1976* (Canada) and ordinarily resident in Canada, except a permanent resident who has been ordinarily resident in Canada for more than one year after the time at which he first became eligible to apply for Canadian citizenship.

(2) Subject to sections 170 and 171, a distributing corporation may by special resolution amend its articles in accordance with the regulations to constrain the issue or transfer of its shares

(a) to persons who are not resident Canadians, or

(b) to enable the corporation or any of its affiliates to qualify under any law of Canada or any province of Canada referred to in the regulations

(i) to obtain a licence to carry on any business,

(ii) to become a publisher of a Canadian newspaper or periodical, or

(iii) to acquire shares of a financial intermediary as defined in the regulations.

(3) A corporation referred to in subsection (2) may by special resolution amend its articles to remove any constraint on the issue or transfer of its shares.

(4) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under subsection (2), revoke the resolution before it is acted on without further approval of the shareholders.

(5) Subject to sections 254(2) and (3), the Lieutenant Governor in Council may make regulations with respect to a corporation that constrains the issue or transfer of its shares prescribing

(a) the disclosure required of the constraints in documents issued or published by the corporation,

(b) the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation,

(c) the limitations on voting rights of any shares held contrary to the articles of the corporation,

(d) the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the right of the corporation and its directors, employees and agents to rely on such disclosure and the effects of such reliance, and

(e) the rights of any person owning shares of the corporation at the time of an amendment to its articles constraining share issues or transfers.

(6) An issue or a transfer of a share or an act of a corporation is valid notwithstanding any contravention of this section or the regulations.

Proposal for amendment

169(1) Subject to subsection (2), a director or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 131, make a proposal to amend the articles.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered shall set out the proposed amendment and, if applicable, shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184, but failure to make that statement does not invalidate an amendment.

Class votes

170(1) The holders of shares of a class or, subject to subsection (2), of a series are entitled to vote separately as a class or series on a proposal to amend the articles to

(a) increase or decrease any maximum number of authorized

shares of that class, or increase the maximum number of authorized shares of a class having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,

(b) effect an exchange, reclassification or cancellation of all or part of the shares of that class,

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,

(i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,

(ii) add, remove or change prejudicially redemption rights,

(iii) reduce or remove a dividend preference or a liquidation preference, or

(iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire securities of a corporation or sinking fund provisions,

(d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,

(e) create a new class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,

(f) make the rights or privileges of any class of shares having rights or privileges inferior to the rights or privileges of the shares of that class equal or superior to the rights or privileges of the shares of that class,

(g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class, or

(h) constrain the issue or transfer of the shares of that class or extend or remove that constraint.

(2) The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection

(1) is adopted when the holders of the shares of each class or series entitled to vote separately on the amendment as a class or series have approved the amendment by a special resolution.

Delivery of articles of amendment

171(1) Subject to any revocation under section 167(2) or 168(3), after an amendment has been adopted under section 167, 168 or 170, articles of amendment in prescribed form shall be sent to the Registrar.

(2) If an amendment effects or requires a reduction of stated capital, section 36(3) and (4) applies.

Certificate of amendment

172 On receipt of articles of amendment, the Registrar shall issue a certificate of amendment in accordance with section 255.

Effect of certificate

173(1) An amendment becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

(2) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or any of its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or any of its directors or officers is a party.

Restated articles of incorporation

174(1) A corporation may at any time, and shall when reasonably so directed by the Registrar, restate by special resolution the articles of incorporation as amended.

(2) Restated articles of incorporation in prescribed form shall be sent to the Registrar.

(3) On receipt of restated articles of incorporation, the Registrar shall issue a certificate of registration of restated articles in accordance with section 255.

(4) Restated articles of incorporation are effective on the date shown in the certificate of registration of restated articles and supersede the original articles of incorporation and all amendments to them.

Amalgamation

175(1) Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

(2) Subsection (1) does not apply if one or more of the corporations is a professional corporation.

Amalgamation agreement

176(1) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

(a) the provisions that are required to be included in articles of incorporation under section 6,

(b) the name and address of each proposed director of the amalgamated corporation,

(c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation,

(d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate that the holders of those shares are to receive in addition to or instead of securities of the amalgamated corporation,

(e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation,

(f) whether the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed by-laws, and

(g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares, and no provision shall be made in the agreement for the conversion of those shares into shares of the amalgamated corporation.

Shareholder
approval of
amalgamation
agreement

177(1) The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of the holders of shares of the amalgamating corporation of which they are directors and, subject to subsection (4), to the holders of each class or series of those shares.

(2) A notice of a meeting of shareholders complying with section 129 shall be sent in accordance with that section to each shareholder of each amalgamating corporation and shall

(a) include or be accompanied by a copy or summary of the amalgamation agreement, and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184, but failure to make that statement does not invalidate an amalgamation.

(3) Each share of an amalgamating corporation carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amal-

gaming corporation are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 170.

(5) Subject to subsection (4), an amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by special resolutions.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating corporations.

Vertical and
horizontal short
form amalgamation

178(1) A holding corporation and one or more of its wholly-owned subsidiary corporations may amalgamate and continue as one corporation without complying with sections 176 and 177 if

(a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and

(b) the resolutions provide that

(i) the shares of each amalgamating subsidiary corporation shall be cancelled without any repayment of capital in respect of those shares,

(ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding corporation, and

(iii) no securities shall be issued by the amalgamated corporation in connection with the amalgamation.

(2) Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 176 and 177 if

(a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and

(b) the resolutions provide that

(i) the shares of all but one of the amalgamating subsidiary corporations shall be cancelled without any repayment of capital in respect of those shares,

(ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary corporation whose shares are not cancelled, and

(iii) the stated capital of the amalgamating subsidiary corporations whose shares are cancelled shall be added to the stated capital of the amalgamating subsidiary corporation whose shares are not cancelled.

Delivery of articles
of amalgamation
and statutory
declaration to
Registrar

179(1) Subject to section 177(6), after an amalgamation agreement has been adopted under section 177 or an amalgamation has been approved under section 178, articles of amalgamation in prescribed form shall be sent to the Registrar together with the documents required by sections 19 and 101.

(2) The articles of amalgamation shall have attached to them the amalgamation agreement, if any, and a statutory declaration of a director or an officer of each amalgamating corporation that establishes to the satisfaction of the Registrar that

(a) there are reasonable grounds for believing that

(i) each amalgamating corporation is and the amalgamated corporation will be able to pay its liabilities as they become due, and

(ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes, and

(b) there are reasonable grounds for believing that

(i) no creditor will be prejudiced by the amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given if

(a) a notice of the proposed amalgamation in writing is sent to each known creditor having a claim against the corporation that exceeds \$1000,

(b) a notice of the proposed amalgamation is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice of the proposed amalgamation is given in each province in Canada where the corporation carries on business, and

(c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act unless a creditor of the corporation objects to the amalgamation within 30 days from the date of the notice.

(4) On receipt of articles of amalgamation and the other documents required by subsections (1) and (2), and on receipt of the prescribed

fees, the Registrar shall issue a certificate of amalgamation in accordance with section 255.

Effect of certificate of amalgamation

180 On the date shown in a certificate of amalgamation

- (a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective,
- (b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation,
- (c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation,
- (d) an existing cause of action, claim or liability to prosecution is unaffected,
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation,
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation, and
- (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

Amalgamation of Alberta corporation and extra-provincial corporation where one is wholly-owned subsidiary of the other

180.1(1) A corporation may amalgamate with an extra-provincial corporation and continue as one corporation under this Act if

- (a) the extra-provincial corporation is authorized to amalgamate with the corporation by the laws of the jurisdiction in which the extra-provincial corporation is incorporated, and
 - (b) one is the wholly-owned subsidiary of the other.
- (2) Subsection (1) does not apply if the corporation is a professional corporation.
- (3) A corporation and an extra-provincial corporation proposing to amalgamate shall enter into an amalgamation agreement setting out the terms and means of effecting the amalgamation and, in particular,
- (a) providing for the matters enumerated in section 176(1)(a), (b) and (g),
 - (b) providing that the shares of the wholly-owned subsidiary shall be cancelled without any repayment of capital in respect of those shares, and

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

(4) An amalgamation under this section is adopted when

(a) the agreement is approved by the directors of the corporation,

(b) the agreement is approved by the directors or comparable governing body of, or the members of, the extra-provincial corporation, whichever body is required under the laws of the jurisdiction of incorporation of the extra-provincial corporation to approve it, and

(c) the extra-provincial corporation has otherwise complied with the law of the jurisdiction in which it is incorporated.

(5) An amalgamation agreement under this section may provide that at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of the corporation or the directors or comparable governing body of the extra-provincial corporation, notwithstanding any previous approval of the agreement.

(6) Sections 179 and 180 apply to an amalgamation under this section as if both of the amalgamating bodies corporate were corporations except that the notice referred to in section 179(3)(b) shall also be published or distributed in each jurisdiction outside Canada where either body corporate carries on business.

Continuance of an
extra-provincial
corporation as an
Alberta corporation

181(1) An extra-provincial corporation may, if so authorized by the laws of the jurisdiction where it is incorporated, apply to the Registrar for a certificate of continuance.

(2) The provisions of the articles of continuance of an extra-provincial corporation may, without so stating, vary from the provisions of the extra-provincial corporation's act of incorporation, articles, letters patent or memorandum or articles of association, if the variation is one which a corporation incorporated under this Act could effect by way of amendment to its articles.

(3) Articles of continuance in prescribed form shall be sent to the Registrar together with the documents required by sections 19 and 101.

(4) On receipt of articles of continuance and the documents required by sections 19 and 101, the Registrar shall issue a certificate of continuance in accordance with section 255.

(5) On the date shown in the certificate of continuance

(a) the extra-provincial corporation becomes a corporation to which this Act applies as if it had been incorporated under this Act.

- (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation, and
 - (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation.
- (6) The Registrar shall forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.
- (7) When an extra-provincial corporation is continued as a corporation under this Act,
- (a) the property of the extra-provincial corporation continues to be the property of the corporation,
 - (b) the corporation continues to be liable for the obligations of the extra-provincial corporation,
 - (c) an existing cause of action, claim or liability to prosecution is unaffected,
 - (d) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial corporation may be continued to be prosecuted by or against the corporation, and
 - (e) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial corporation may be enforced by or against the corporation.
- (8) Subject to section 45(8), a share of an extra-provincial corporation issued before the extra-provincial corporation was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and continuance under this section does not deprive a holder of any right or privilege that he claims under, or relieve him of any liability in respect of, an issued share.
- (9) Notwithstanding section 24(1), if a corporation continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to a share certificate in favour of bearer, the corporation may, if a holder of such a share certificate exercises the conversion privilege attached to it, issue a share certificate in favour of bearer for the same number of shares to the holder.
- (10) For the purposes of subsections (8) and (9), “share” includes an instrument referred to in section 29(1), a share warrant or a like instrument.
- (11) If the Registrar determines on the application of an extra-pro-

vincial corporation, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that it was authorized to issue before it was continued under this Act, the Registrar may, notwithstanding section 24(1), permit the extra-provincial corporation to continue to refer in its articles to those shares, whether issued or unissued, as shares having a nominal or par value.

(12) A corporation shall set out in its articles the maximum number of shares of a class or series referred to in subsection (11) and may not amend its articles to increase that maximum number of shares or to change the nominal or par value of those shares.

Continuance of an
Alberta corporation
into another
jurisdiction

182(1) Subject to subsection (9), a corporation may, if

(a) it is authorized by the shareholders in accordance with this section, and

(b) the Registrar approves the proposed continuance in another jurisdiction on being satisfied that the continuance will not adversely affect creditors or shareholders of the corporation,

apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) A notice of a meeting of shareholders complying with section 129 shall be sent in accordance with that section to each shareholder and shall state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184, but failure to make that statement does not invalidate a discontinuance under this Act.

(3) Each share of the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

(4) An application for continuance becomes authorized when the shareholders voting on it have approved of the continuance by a special resolution.

(5) The directors of a corporation may, if authorized by the shareholders at the time of approving an application for continuance under this section, abandon the application without further approval of the shareholders.

(6) On receipt of notice satisfactory to him that the corporation has been continued under the laws of another jurisdiction, and on giving his approval under subsection (1), the Registrar shall file the notice and issue a certificate of discontinuance.

(7) Section 255 applies with the necessary changes to the notice filed under subsection (6) as though the notice were articles that conform to law.

(8) This Act ceases to apply to the corporation on the date shown in the certificate of discontinuance.

(9) A corporation shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that

(a) the property of the corporation continues to be the property of the body corporate,

(b) the body corporate continues to be liable for the obligations of the corporation,

(c) an existing cause of action, claim or liability to prosecution is unaffected,

(d) a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate, and

(e) a conviction against, or ruling, order or judgment in favour of or against the corporation may be enforced by or against the body corporate.

Extraordinary sale,
lease or exchange

183(1) A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (2) to (6).

(2) A notice of meeting of shareholders complying with section 129 shall be sent in accordance with that section to each shareholder and shall

(a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange, and

(b) state that a dissenting shareholder is entitled to be paid the fair value of his shares in accordance with section 184, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (1).

(3) At the meeting referred to in subsection (2) the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of its terms and conditions.

(4) Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1) whether or not it otherwise carries the right to vote.

(5) The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if that class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the holders of each class or series entitled to vote on it have approved of the sale, lease or exchange by a special resolution.

(7) The directors of a corporation may, if authorized by the shareholders approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the shareholders.

Shareholder's right
to dissent

184(1) Subject to sections 185 and 234, a holder of shares of any class of a corporation may dissent if the corporation resolves to

(a) amend its articles under section 167 or 168 to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class,

(b) amend its articles under section 167 to add, change or remove any restrictions on the business or businesses that the corporation may carry on,

(c) amalgamate with another corporation, otherwise than under section 178 or 180.1,

(d) be continued under the laws of another jurisdiction under section 182, or

(e) sell, lease or exchange all or substantially all its property under section 183.

(2) A holder of shares of any class or series of shares entitled to vote under section 170 may dissent if the corporation resolves to amend its articles in a manner described in that section.

(3) In addition to any other right he may have, but subject to subsection (20), a shareholder entitled to dissent under this section and who complies with this section is entitled to be paid by the corporation the fair value of the shares held by him in respect of which he dissents, determined as of the close of business on the last business day before the day on which the resolution from which he dissents was adopted.

(4) A dissenting shareholder may only claim under this section with respect to all the shares of a class held by him or on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

(5) A dissenting shareholder shall send to the corporation a written objection to a resolution referred to in subsection (1) or (2)

(a) at or before any meeting of shareholders at which the resolution is to be voted on, or

(b) if the corporation did not send notice to the shareholder of

the purpose of the meeting or of his right to dissent, within a reasonable time after he learns that the resolution was adopted and of his right to dissent.

(6) An application may be made to the Court by originating notice after the adoption of a resolution referred to in subsection (1) or (2),

(a) by the corporation, or

(b) by a shareholder if he has sent an objection to the corporation under subsection (5),

to fix the fair value in accordance with subsection (3) of the shares of a shareholder who dissents under this section.

(7) If an application is made under subsection (6), the corporation shall, unless the Court otherwise orders, send to each dissenting shareholder a written offer to pay him an amount considered by the directors to be the fair value of the shares.

(8) Unless the Court otherwise orders, an offer referred to in subsection (7) shall be sent to each dissenting shareholder

(a) at least 10 days before the date on which the application is returnable, if the corporation is the applicant, or

(b) within 10 days after the corporation is served with a copy of the originating notice, if a shareholder is the applicant.

(9) Every offer made under subsection (7) shall

(a) be made on the same terms, and

(b) contain or be accompanied by a statement showing how the fair value was determined.

(10) A dissenting shareholder may make an agreement with the corporation for the purchase of his shares by the corporation, in the amount of the corporation's offer under subsection (7) or otherwise, at any time before the Court pronounces an order fixing the fair value of the shares.

(11) A dissenting shareholder

(a) is not required to give security for costs in respect of an application under subsection (6), and

(b) except in special circumstances shall not be required to pay the costs of the application or appraisal.

(12) In connection with an application under subsection (6), the Court may give directions for

(a) joining as parties all dissenting shareholders whose shares

have not been purchased by the corporation and for the representation of dissenting shareholders who, in the opinion of the Court, are in need of representation,

(b) the trial of issues and interlocutory matters, including pleadings and examinations for discovery,

(c) the payment to the shareholder of all or part of the sum offered by the corporation for the shares,

(d) the deposit of the share certificates with the Court or with the corporation or its transfer agent,

(e) the appointment and payment of independent appraisers, and the procedures to be followed by them,

(f) the service of documents, and

(g) the burden of proof on the parties.

(13) On an application under subsection (6), the Court shall make an order

(a) fixing the fair value of the shares in accordance with subsection (3) of all dissenting shareholders who are parties to the application,

(b) giving judgment in that amount against the corporation and in favour of each of those dissenting shareholders, and

(c) fixing the time within which the corporation must pay that amount to a shareholder.

(14) On

(a) the action approved by the resolution from which the shareholder dissents becoming effective,

(b) the making of an agreement under subsection (10) between the corporation and the dissenting shareholder as to the payment to be made by the corporation for his shares, whether by the acceptance of the corporation's offer under subsection (7) or otherwise, or

(c) the pronouncement of an order under subsection (13),

whichever first occurs, the shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of his shares in the amount agreed to between the corporation and the shareholder or in the amount of the judgment, as the case may be.

(15) Subsection (14)(a) does not apply to a shareholder referred to in subsection (5)(b).

(16) Until one of the events mentioned in subsection (14) occurs,

- (a) the shareholder may withdraw his dissent, or
- (b) the corporation may rescind the resolution,

and in either event proceedings under this section shall be discontinued.

(17) The Court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date on which the shareholder ceases to have any rights as a shareholder by reason of subsection (14) until the date of payment.

(18) If subsection (20) applies, the corporation shall, within 10 days after

- (a) the pronouncement of an order under subsection (13), or
- (b) the making of an agreement between the shareholder and the corporation as to the payment to be made for his shares,

notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(19) Notwithstanding that a judgment has been given in favour of a dissenting shareholder under subsection (13)(b), if subsection (20) applies, the dissenting shareholder, by written notice delivered to the corporation within 30 days after receiving the notice under subsection (18), may withdraw his notice of objection, in which case the corporation is deemed to consent to the withdrawal and the shareholder is reinstated to his full rights as a shareholder, failing which he retains a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

(20) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that

- (a) the corporation is or would after the payment be unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

PART 15

CORPORATE REORGANIZATION AND ARRANGEMENTS

Articles of
reorganization
resulting from
Court Order

185(1) In this section, "order for reorganization" means an order of the Court made under

- (a) section 234,
- (b) the *Bankruptcy Act* (Canada) approving a proposal, or
- (c) any other Act of the Parliament of Canada or an Act of the Legislature that affects the rights among the corporation, its shareholders and creditors.

(2) If a corporation is subject to an order for reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 167.

(3) If the Court makes an order for reorganization, the Court may also

- (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms of those debt obligations, and

- (b) appoint directors in place of or in addition to all or any of the directors then in office.

(4) After an order for reorganization has been made, articles of reorganization in prescribed form shall be sent to the Registrar together with the documents required by sections 19 and 108, if applicable.

(5) On receipt of articles of reorganization, the Registrar shall issue a certificate of amendment in accordance with section 255.

(6) An order for reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

(7) A shareholder is not entitled to dissent under section 184 if an amendment to the articles of incorporation is effected under this section.

Court-approved
arrangements

186(1) In this section, “arrangement” includes, but is not restricted to

- (a) an amendment to the articles of a corporation,
- (b) an amalgamation of 2 or more corporations,
- (c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act,
- (d) a division of the business carried on by a corporation,
- (e) a transfer of all or substantially all the property of a cor-

poration to another body corporate in exchange for property, money or securities of the body corporate,

(f) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid as defined in section 187,

(g) a liquidation and dissolution of a corporation,

(h) a compromise between a corporation and its creditors or any class of its creditors or between a corporation and the holders of its shares or debt obligations or any class of those holders, or

(i) any combination of the foregoing.

(2) An application may be made to the Court by a corporation or a security holder or creditor of a corporation for an order approving an arrangement in respect of the corporation.

(3) If an arrangement can be effected under any other provision of this Act, an application may not be made under this section unless it is impracticable to effect the arrangement under that other provision.

(4) In connection with an application under this section, the Court, unless it dismisses the application,

(a) shall order the holding of a meeting of shareholders or a class or classes of shareholders to vote on the proposed arrangement,

(b) shall order a meeting of persons who are creditors or holders of debt obligations of the corporation or of options or rights to acquire securities of the corporation, or any class of those persons, if the Court considers that those persons or that class of persons are affected by the proposed arrangement,

(c) may, with respect to any meeting referred to in clause (a) or (b), give any directions in the order respecting

(i) the calling of and the giving of notice of the meeting,

(ii) the conduct of the meeting,

(iii) subject to subsection (6), the majority required to pass a resolution at the meeting, and

(iv) any other matter it thinks fit,

and

(d) may make an order appointing counsel to represent, at the

expense of the corporation, the interests of the shareholders or any of them.

(5) The notice of a meeting referred to in subsection (4)(a) or (b) shall contain or be accompanied by

- (a) a statement explaining the effect of the arrangement, and
- (b) if the application is made by the corporation, a statement of any material interests of the directors of the corporation, whether as directors, security holders or creditors, and the effect of the arrangement on those interests.

(6) An order made under subsection (4)(c)(iii) in respect of any meeting may not provide for any majority that is less than the following:

- (a) in the case of a vote of the shareholders or a class of shareholders, a majority of at least $\frac{2}{3}$ of the votes cast by the shareholders voting on the resolution;
- (b) in the case of a vote of creditors or a class of creditors, a majority in number representing at least $\frac{2}{3}$ of the amount of their claims;
- (c) in the case of a vote of the holders of debt obligations or a class of those holders, a majority in number representing at least $\frac{2}{3}$ of the amount of their claims;
- (d) in the case of a vote of holders of options or rights to acquire securities, the majority that would be required under clause (a) or (c) if those holders had acquired ownership of the securities.

(7) Notwithstanding anything in subsections (4) to (6), if a resolution required to be voted on pursuant to the order under subsection (4) is in writing and signed by all the persons entitled to vote on the resolution,

- (a) the meeting required to be held by the order need not be held, and
- (b) the resolution is as valid as if it had been passed at a meeting.

(8) If the application is in respect of a distributing corporation, the applicant shall give the Commission notice of the application and the Commission is entitled to appear and be heard in person or by counsel.

(9) After the holding of the meetings required by an order under subsection (4) or the submission to it of written resolutions that comply with subsection (7), the Court shall hear the application and may in its discretion

(a) approve the arrangement as proposed by the applicant or as amended by the Court, or

(b) refuse to approve the arrangement,

and make any further order it thinks fit.

(10) After an order referred to in subsection (9)(a) has been made, the corporation shall send to the Registrar

(a) a copy of the order,

(b) articles of arrangement in prescribed form,

(c) articles of amalgamation or a statement of intent to dissolve pursuant to section 204 in prescribed form, if applicable, and

(d) the documents required by sections 19 and 108, if applicable,

and the Registrar shall file them.

(11) On filing any documents referred to in subsections (10)(b) and (c), the Registrar shall issue the appropriate certificate in accordance with section 255.

(12) An arrangement becomes effective

(a) on the date shown in the certificate issued pursuant to subsection (11), or

(b) if no certificate is required to be issued pursuant to subsection (11), on the date the documents are filed pursuant to subsection (10).

(13) An arrangement as approved by the Court is binding on the corporation and all other persons.

PART 16

TAKE-OVER BIDS — COMPULSORY PURCHASE

Definitions

187 In this Part,

(a) “dissenting offeree” means an offeree who does not accept a take-over bid and a person who acquires from an offeree a share for which a take-over bid is made;

(b) “offer” includes an invitation to make an offer;

(c) “offeree” means a person to whom a take-over bid is made;

(d) “offeree corporation” means a corporation whose shares are the object of a take-over bid;

(e) “offeror” means a person, other than an agent, who makes a take-over bid, and includes 2 or more persons who, directly or indirectly,

(i) make take-over bids jointly or in concert, or

(ii) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made;

(f) “share” means a share with or without voting rights and includes

(i) a security currently convertible into such a share, and

(ii) currently exercisable options and rights to acquire such a share or such a convertible security;

(g) “take-over bid” means an offer made by an offeror to shareholders to acquire all of the shares of any class of shares of an offeree corporation not already owned by the offeror, and includes every take-over bid by a corporation to repurchase all of the shares of any class of its shares which leaves outstanding voting shares of the corporation.

Compulsory
acquisition of
shares of
dissenting offeree

188(1) A take-over bid is deemed to be dated as of the date on which it is sent.

(2) If within the time limited in a take-over bid for its acceptance or within 120 days after the date of a take-over bid, whichever period is the shorter, the bid is accepted by the holders of not less than 90% of the shares of any class of shares to which the take-over bid relates, other than shares of that class held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on the bid being so accepted and on complying with this section, to acquire the shares of that class held by the dissenting offerees.

(3) The rights of an offeror and offeree under this section are subject to any unanimous shareholder agreement.

Offeror's notices

189(1) An offeror may acquire shares held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid, an offeror's notice to each dissenting offeree stating that

(a) the offerees holding more than 90% of the shares to which the bid relates have accepted the take-over bid,

(b) the offeror is bound to take up and pay for or has taken up

and paid for the shares of the offerees who accepted the take-over bid,

(c) a dissenting offeree is required to elect

(i) to transfer his shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or

(ii) to demand payment of the fair value of his shares

(A) by notifying the offeror, and

(B) by applying to the Court to fix the fair value of the shares of the dissenting offeree,

within 60 days after the date of the sending of the offeror's notice,

(d) a dissenting offeree who does not notify the offeror and apply to the Court in accordance with clause (c)(ii) is deemed to have elected to transfer his shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid, and

(e) a dissenting offeree shall send the share certificates of the class of shares to which the take-over bid relates to the offeree corporation within 20 days after he receives the offeror's notice.

(2) Concurrently with sending the offeror's notice under subsection (1), the offeror shall send or deliver to the offeree corporation a notice of adverse claim in accordance with section 73 with respect to each share held by a dissenting offeree.

Surrender of share certificate and payment of money

190(1) A dissenting offeree to whom an offeror's notice is sent under section 189(1) shall, within 20 days after he receives that notice, send his share certificates of the class of shares to which the take-over bid relates to the offeree corporation.

(2) Within 20 days after the offeror sends an offeror's notice under section 189(1), the offeror shall pay or transfer to the offeree corporation the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under section 189(1)(c)(i).

Offeree corporation's obligations

191(1) The offeree corporation is deemed to hold in trust for the dissenting offerees the money or other consideration it receives under section 190(2), and the offeree corporation shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.

(2) Within 30 days after the offeror sends an offeror's notice under section 189(1), the offeree corporation shall, if the offeror has paid or transferred to the offeree corporation the money or other consideration referred to in section 190(2),

(a) issue to the offeror a share certificate in respect of the shares that were held by dissenting offerees,

(b) give to each dissenting offeree who elects to accept the take-over bid terms under section 189(1)(c)(i) and who sends or delivers his share certificates as required under section 190(1), the money or other consideration to which he is entitled, disregarding fractional shares, which may be paid for in money, and

(c) send to each dissenting shareholder who has not sent his share certificates as required under section 190(1) a notice stating that

(i) his shares have been cancelled,

(ii) the offeree corporation or some designated person holds in trust for him the money or other consideration to which he is entitled as payment for or in exchange for his shares, and

(iii) the offeree corporation will, subject to sections 192 to 198, send that money or other consideration to him forthwith after receiving his shares.

Offeror's right to apply

192 If a dissenting offeree has elected to demand payment of the fair value of his shares under section 189(1)(c), the offeror may, within 20 days after it has paid the money or transferred the other consideration under section 190(2), apply to the Court to fix the fair value of the shares of that dissenting offeree.

No security for costs

193 A dissenting offeree is not required to give security for costs in an application made under this Part.

Procedure on application

194 If more than one application is made under sections 189 and 192, the offeror or a dissenting offeree may apply to have the applications heard together.

Court to fix fair value

195 On an application under this Part, the Court shall fix a fair value for the shares of each dissenting offeree who is a party to the application.

Power of Court

196 The Court may in its discretion appoint one or more appraisers to assist the Court to fix a fair value for the shares of a dissenting offeree.

Final order

197 The final order of the Court shall be made against the offeror in favour of each dissenting offeree who has elected to demand payment of the fair value of his shares for the fair value of his shares as fixed by the Court.

Additional powers
of Court

198 In connection with proceedings under this Part, the Court may make any order it thinks fit and, without limiting the generality of the foregoing, it may do any or all of the following:

- (a) fix the amount of money or other consideration that is required to be held in trust under section 191(1);
- (b) order that that money or other consideration be held in trust by a person other than the offeree corporation;
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he sends or delivers his share certificates under section 190(1) until the date of payment;
- (d) order that any money payable to a shareholder who cannot be found be paid to the Provincial Treasurer and section 220(3) applies in respect of money so paid.

Corporation's offer
to repurchase its
own shares

199(1) If the take-over bid is an offer by a corporation to repurchase its own shares section 189(2) does not apply, and section 190(2) does not apply, but the corporation shall comply with section 191(1) within 20 days after it sends an offeror's notice under section 189(1).

(2) If

- (a) the take-over bid is an offer by a corporation to repurchase its own shares, and
- (b) the corporation is prohibited by section 32
 - (i) from depositing or placing the consideration for the shares pursuant to section 191(1), or
 - (ii) paying the amount for the shares fixed by the Court pursuant to section 195

the corporation

- (c) shall re-issue to the dissenting offeree the shares for which the corporation is not allowed to pay, and
- (d) is entitled to use for its own benefit any money or consideration deposited or placed under section 191(1), and

the dissenting offeree is reinstated to his full rights, as a shareholder.

PART 17
LIQUIDATION AND DISSOLUTION

Staying
proceedings

200 Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found to be insolvent within the meaning of the *Bankruptcy Act* (Canada).

Revival

201(1) If a corporation is dissolved under this Part any interested person may apply to the Registrar to have the corporation revived.

(2) Articles of revival in prescribed form shall be sent to the Registrar.

(3) On receipt of articles of revival, the Registrar shall issue a certificate of revival in accordance with section 255.

(4) A corporation is revived on the date shown on the certificate of revival, and thereafter the corporation, subject to any reasonable terms that may be imposed by the Registrar and to the rights acquired by any person after its dissolution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

Revival

202(1) Any interested person may apply to the Court for an order reviving

(a) a body corporate dissolved under section 262,

(b) a body corporate that was dissolved under *The Companies Act* or its predecessors before or after the coming into force of this Act and that was not at the time of its dissolution a not-for-profit company as defined in section 261(1), or

(c) a body corporate that was dissolved by reason of the operation of subsection (6).

(2) An applicant under subsection (1) shall give notice of the application to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

(3) An order under subsection (1) may revive the body corporate for a limited period

(a) for the purpose of enabling it to apply for continuance under section 262, or

(b) for the purpose of carrying out particular acts specified in the order.

(4) In an order under subsection (1) the Court may

(a) give directions as to the holding of meetings of shareholders, the appointment of directors and meetings of directors,

(b) in the case of a body corporate revived for the purpose of enabling it to apply for continuance under section 261, give directions regarding any matter that the shareholders are required or authorized to provide for pursuant to subsections (4) and (6) of that section,

(c) specify any provisions of *The Companies Act* that are not to apply to the body corporate during the period of its revival, or declare that any provisions of *The Companies Act* are to apply to the body corporate with the variations prescribed by the order,

(d) change the name of the body corporate to a number designated or name approved by the Registrar, and

(e) give any other directions the Court thinks fit.

(5) Subject to subsection (4)(c), *The Companies Act* applies to a body corporate revived under this section.

(6) A body corporate revived by an order under this section is dissolved on the expiration of the time limited by the order unless it is sooner continued as a corporation under section 261.

(7) If an order is made under this section, the applicant shall forthwith send a certified copy of the order to the Registrar who shall file it and restore the body corporate to the register under *The Companies Act*.

(8) On the making of an order under this section, the body corporate, subject to the order and to the rights acquired by any person after its dissolution, has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

Dissolution by
directors or
shareholders in
special cases

203(1) A corporation that has not issued any shares and that has no property and no liabilities may be dissolved at any time by resolution of all the directors.

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

(3) A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

(a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute all property and discharge all liabilities, and

(b) the corporation has distributed all property and discharged all liabilities before it sends articles of dissolution to the Registrar pursuant to subsection (4).

(4) Articles of dissolution in prescribed form shall be sent to the Registrar.

(5) On receipt of articles of dissolution, the Registrar shall issue a certificate of dissolution in accordance with section 255.

(6) The corporation ceases to exist on the date shown in the certificate of dissolution.

Voluntary
liquidation and
dissolution

204(1) The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 131, make a proposal for the voluntary liquidation and dissolution of a corporation.

(2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms of the liquidation and dissolution.

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, if the corporation has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote.

(4) A statement of intent to dissolve in prescribed form shall be sent to the Registrar.

(5) On receipt of a statement of intent to dissolve, the Registrar shall issue a certificate of intent to dissolve in accordance with section 255.

(6) On issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Registrar issues a certificate of dissolution.

(7) After issue of a certificate of intent to dissolve, the corporation shall

(a) immediately cause notice of the issue of the certificate to be sent or delivered to each known creditor of the corporation,

(b) forthwith publish notice of the issue of the certificate

(i) in the Registrar's periodical, and

(ii) once in a newspaper published or distributed in the place where the corporation has its registered office,

and take reasonable steps to give notice of the issue of the certificate in every jurisdiction where the corporation was carrying

on business at the time it sent the statement of intent to dissolve to the Registrar,

(c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business, and

(d) after giving the notice required under clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind among its shareholders according to their respective rights.

(8) The Registrar or any interested person may, at any time during the liquidation of a corporation, apply to the Court for an order that the liquidation be continued under the supervision of the Court as provided in this Part, and on the application the Court may so order and make any further order it thinks fit.

(9) An applicant under this section shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

(10) At any time after the issue of a certificate of intent to dissolve and before the issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked

(a) by sending to the Registrar a statement of revocation of intent to dissolve in prescribed form and approved in the same manner as the resolution under subsection (3), and

(b) by publishing the statement in the Registrar's periodical.

(11) On receipt of a statement of revocation of intent to dissolve, the Registrar shall issue a certificate of revocation of intent to dissolve in accordance with section 255.

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business or businesses.

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution.

(14) Articles of dissolution in prescribed form shall be sent to the Registrar.

(15) On receipt of articles of dissolution, the Registrar shall issue a certificate of dissolution in accordance with section 255.

(16) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution by
Registrar

205(1) Subject to subsections (2) and (3), if a corporation

- (a) has not commenced business within 3 years after the date shown in its certificate of incorporation,
- (b) has not carried on its business for 3 consecutive years, or
- (c) is in default for a period of one year in sending to the Registrar any notice or document required by this Act,

the Registrar may dissolve the corporation by issuing a certificate of dissolution under this section or he may apply to the Court for an order dissolving the corporation, in which case section 210 applies.

(2) The Registrar shall not dissolve a corporation under this section until he has

- (a) given 120 days notice of his decision to dissolve the corporation to the corporation and to each director of the corporation, and
- (b) published notice of his decision to dissolve the corporation in the Registrar's periodical.

(3) Unless cause to the contrary has been shown or an order has been made by the Court under section 239, the Registrar may, after expiry of the period referred to in subsection (2), issue a certificate of dissolution in prescribed form.

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution by
court order

206(1) The Registrar or any interested person may apply to the Court for an order dissolving a corporation if the corporation has

- (a) failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders,
- (b) contravened section 16(2), 21, 151 or 153, or
- (c) procured any certificate under this Act by misrepresentation.

(2) An applicant under this section, other than the Registrar, shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

(3) On an application under this section or section 205, the Court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it thinks fit.

(4) On receipt of an order under this section, section 205 or section 207, the Registrar shall

(a) if the order is to dissolve the corporation, issue a certificate of dissolution in prescribed form, or

(b) if the order is to liquidate and dissolve the corporation under the supervision of the Court, issue a certificate of intent to dissolve in prescribed form and publish notice of the order in the Registrar's periodical.

(5) The corporation ceases to exist on the date shown in the certificate of dissolution.

Other grounds for liquidation and dissolution pursuant to court order

207(1) The Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

(a) if the Court is satisfied that in respect of a corporation or any of its affiliates

(i) any act or omission of the corporation or any of its affiliates effects a result,

(ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, or

(b) if the Court is satisfied that

(i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or

(ii) it is just and equitable that the corporation should be liquidated and dissolved.

(2) On an application under this section, the Court may make any order under this section or section 234 it thinks fit.

(3) Section 235 applies to an application under this section.

Application for court supervision

208(1) An application to the Court to supervise a voluntary liquidation and dissolution under section 204(8) shall state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation and dissolution.

(2) If the Court makes an order applied for under section 204(8), the liquidation and dissolution of the corporation shall continue under the supervision of the Court in accordance with this Act.

Show cause order

209(1) An application to the Court under section 207(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

(2) On the application under section 207(1), the Court may make an order requiring the corporation and any person having an interest in the corporation or a claim against it to show cause, at a time and place specified in the order but not less than 4 weeks after the date of the order, why the corporation should not be liquidated and dissolved.

(3) On an application under section 207(1), the Court may order the directors and officers of the corporation to furnish to the Court all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the corporation,
- (b) the name and address of each shareholder of the corporation, and
- (c) the name and address of each creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

(4) A copy of an order made under subsection (2) shall be

- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office, and
- (b) served on the Registrar and each person named in the order.

(5) Publication and service of an order under this section shall be effected by the corporation or by any other person and in any manner the Court may order.

Powers of the Court

210 In connection with the dissolution or the liquidation and dissolution of a corporation, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing his remuneration or replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their

powers, fixing their remuneration or replacing inspectors or referees;

(d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

(e) an order determining the validity of any claims made against the corporation;

(f) an order at any stage of the proceedings, restraining the directors and officers from

(i) exercising any of their powers, or

(ii) collecting or receiving any debt or other property of the corporation, or from paying out or transferring any property of the corporation, except as permitted by the Court;

(g) an order determining and enforcing the duty or liability of any director, officer or shareholder

(i) to the corporation, or

(ii) for an obligation of the corporation;

(h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for that purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

(i) an order disposing of or destroying the documents and records of the corporation;

(j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;

(k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on any terms the Court thinks fit or confirming any act of the liquidator;

(l) subject to section 216, an order approving any proposed interim or final distribution to shareholders in money or in property;

(m) an order disposing of any property belonging to creditors or shareholders who cannot be found;

(n) on the application of any director, officer, security holder, creditor or the liquidator,

(i) an order staying the liquidation on any terms and conditions the Court thinks fit,

(ii) an order continuing or discontinuing the liquidation proceedings, or

(iii) an order to the liquidator to restore to the corporation all its remaining property;

(o) after the liquidator has rendered his final account to the Court, an order dissolving the corporation.

Commencement of liquidation **211** If the Court makes an order for the liquidation of a corporation, the liquidation commences when the order is made.

Effect of liquidation order **212**(1) If the Court makes an order for liquidation of a corporation,
(a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation, and

(b) the powers of the directors and shareholders cease and vest in the liquidator, except as specifically authorized by the Court.

(2) The liquidator may delegate any of the powers vested in him by subsection (1)(b) to the directors or shareholders.

Appointment of liquidator **213**(1) When making an order for the liquidation of a corporation or at any later time, the Court may appoint any person, including a director, an officer or a shareholder of the corporation or any other body corporate, as liquidator of the corporation.

(2) If an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the Court until the office of liquidator is filled.

Duties of liquidator **214** A liquidator shall

(a) forthwith after his appointment give notice of his appointment to the Registrar and to each claimant and creditor known to the liquidator,

(b) forthwith publish notice in the Registrar's periodical and once a week for 2 consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice in each province in Canada where the corporation carries on business, stating the fact of his appointment and requiring any person

(i) indebted to the corporation, to provide a statement of account respecting the indebtedness and to pay to the liquidator at the time and place specified any amount owing,

(ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and

(iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice,

(c) take into his custody and control the property of the corporation,

(d) open and maintain a trust account for the money of the corporation,

(e) keep accounts of the money of the corporation received and paid out by him,

(f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation,

(g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions,

(h) deliver to the Court and to the Registrar, at least once in every 12 month period after his appointment or more often as the Court may require, financial statements of the corporation in the form required by section 149 or in any other form the liquidator thinks proper or as the Court may require, and

(i) after his final accounts are approved by the Court, distribute any remaining property of the corporation among the shareholders according to their respective rights.

Powers of liquidator

215(1) A liquidator may

(a) retain lawyers, accountants, engineers, appraisers and other professional advisers,

(b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation,

(c) carry on the business of the corporation as required for an orderly liquidation,

(d) sell property of the corporation publicly or privately,

(e) do all acts and execute any documents in the name and on behalf of the corporation,

(f) borrow money on the security of the property of the corporation,

(g) settle or compromise any claims by or against the corporation, and

(h) do all other things for the liquidation of the corporation and distribution of its property.

(2) A liquidator is not liable if he relies in good faith on

(a) financial statements of the corporation represented to him by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation, or

(b) an opinion, a report or a statement of a lawyer, accountant, engineer, appraiser or other professional adviser retained by the liquidator.

(3) If a liquidator has reason to believe that any person has in his possession or under his control, or has concealed, withheld or misappropriated any property of the corporation, he may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has in his possession or under his control or has concealed, withheld or misappropriated property of the corporation, the Court may order that person to restore it or pay compensation to the liquidator.

Final accounts and
discharge of
liquidator

216(1) A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.

(2) Within one year after his appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the Court

(a) for approval of his final accounts and for an order permitting him to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights, or

(b) for an extension of time, setting out the reasons for the extension.

(3) If a liquidator fails to make the application required by subsection (2), a shareholder or creditor of the corporation may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(4) A liquidator shall give notice of his intention to make an application under subsection (2) to the Registrar, each inspector appointed under section 210, each shareholder, each creditor known to him and any person who provided a security or fidelity bond for the liquidator.

(5) If the Court approves the final accounts rendered by a liquidator, the Court shall make an order

- (a) directing the Registrar to issue a certificate of dissolution,
- (b) directing the custody or disposal of the documents and records of the corporation, and
- (c) subject to subsection (6), discharging the liquidator.

(6) The liquidator shall forthwith send or deliver a certified copy of the order referred to in subsection (5) to the Registrar.

(7) On receipt of the order referred to in subsection (5), the Registrar shall issue a certificate of dissolution in accordance with section 255.

(8) The corporation ceases to exist on the date shown in the certificate of dissolution.

Shareholder's right
to distribution in
money

217(1) If in the course of liquidation of a corporation the shareholders resolve or the liquidator proposes to

- (a) exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or
- (b) distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the Court for an order requiring the distribution of the property of the corporation to be in money.

(2) On an application under subsection (1), the Court may order that

- (a) all the property of the corporation be converted into and distributed in money, or
- (b) the applicant be paid the fair value of his shares, in which case the Court
 - (i) may determine whether any other shareholder is opposed to the proposal and if so, join that shareholder as a party,
 - (ii) may appoint one or more appraisers to assist the Court to fix the fair value of the shares,
 - (iii) shall fix the fair value of the shares of the applicant and the other shareholders joined as parties as of a date determined by the Court,
 - (iv) shall give judgment in the amount of the fair value against the corporation and in favour of each of the shareholders who are parties to the application, and

(v) fix the time within which the liquidator must pay that amount to a shareholder after delivery of his shares to the liquidator, if his share certificate has not been delivered to the Court or to the liquidator at the time the order is pronounced.

Custody of records
after dissolution

218(1) A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for 6 years following the date of its dissolution or until the expiry of any shorter period that may be ordered under section 216(5).

(2) A person who, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

Continuation of
actions after
dissolution

219(1) In this section, “shareholder” includes the legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a body corporate under this Act,

(a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved,

(b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within 2 years after its dissolution as if the body corporate had not been dissolved, and

(c) any property that would have been available to satisfy any judgment or order if the body corporate had not been dissolved remains available for that purpose.

(3) Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 101 or 108.

(4) Notwithstanding the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed in the liquidation is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on the distribution, and an action to enforce that liability may be brought within 2 years after the date of the dissolution of the body corporate.

(5) The Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to any conditions the Court thinks fit and, if the plaintiff establishes his claim, the Court may refer the proceedings to a referee or other officer of the Court who may

(a) add as a party to the proceedings before him each person who was a shareholder found by the plaintiff,

(b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim, and

(c) direct payment of the amounts so determined.

Unknown claimants

220(1) On the dissolution of a body corporate under this Act, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Provincial Treasurer.

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor or shareholder.

(3) If at any time a person establishes that he is entitled to any money paid to the Provincial Treasurer under this Act, the Provincial Treasurer shall pay an equivalent amount to him out of the General Revenue Fund.

Property not disposed of

221(1) Subject to sections 219(2) and 220, property of a body corporate that has not been disposed of at the date of its dissolution under this Act vests in Her Majesty in right of Alberta.

(2) If a body corporate is revived as a corporation under section 201 or section 202, any property, other than money that vested in Her Majesty pursuant to subsection (1), that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the General Revenue Fund

(a) an amount equal to any money received by Her Majesty pursuant to subsection (1), and

(b) if property other than money vested in Her Majesty pursuant to subsection (1) and that property has been disposed of, an amount equal to the lesser of

(i) the value of that property at the date it vested in Her Majesty, and

(ii) the amount realized by Her Majesty from the disposition of that property.

PART 18 INVESTIGATION

Definition

222 In this Part, "affiliated corporation" with reference to a corporation includes an Alberta company affiliated with that corporation.

Court order for investigation

223(1) A security holder may apply to the Court, *ex parte* or on any notice that the Court may require, for an order directing an

investigation to be made of the corporation and any of its affiliated corporations.

(2) If, on an application under subsection (1), it appears to the Court that there are sufficient grounds to conduct an investigation to determine whether

(a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person,

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder,

(c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or

(d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in connection therewith acted fraudulently or dishonestly,

the Court may order an investigation to be made of the corporation and any of its affiliated corporations.

(3) An applicant under this section or section 223 is not required to give security for costs.

(4) An application under this section or section 223 shall be heard in camera unless the Court otherwise orders.

(5) No person may publish anything relating to proceedings under this section or section 223 except with the authorization of the Court or the written consent of the corporation being investigated.

(6) Documents in the possession of the Court relating to an application under this section or section 223 are confidential unless the Court otherwise orders.

(7) Subsections (5) and (6) do not apply to an order of the Court under this section or section 224.

Powers of the
Court

224(1) On an application under section 223 or on a subsequent application, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

(a) an order appointing an inspector, fixing the remuneration of an inspector, or replacing an inspector;

(b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;

- (c) an order authorizing an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine any thing and make copies of any document or record found on the premises;
 - (d) an order requiring any person to produce documents or records to the inspector;
 - (e) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
 - (f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
 - (g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
 - (h) an order requiring an inspector to make an interim or final report to the Court;
 - (i) an order determining whether a report of an inspector should be published and, if so, designating the persons to whom all or part of the report should be sent;
 - (j) an order requiring an inspector to discontinue an investigation;
 - (k) an order requiring any person other than the corporation to pay all or part of the costs of the investigation.
- (2) Unless the Court otherwise orders, an inspector shall send a copy of his report to the corporation.
- (3) Unless the Court otherwise orders, the corporation shall pay the costs of the investigation.
- (4) Any interested person may apply to the Court for directions on any matter arising in the investigation.
- 225(1)** An inspector under this Part has the powers set out in the order appointing him.
- (2) In addition to the powers set out in the order appointing him, an inspector appointed to investigate a corporation may furnish to, or exchange information and otherwise cooperate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in section 223(2).
- (3) An inspector shall on request produce to an interested person a copy of any order made under section 223 or 224(1).

Hearings by inspector	<p>226(1) A hearing conducted by an inspector shall be heard in camera unless the Court otherwise orders.</p> <p>(2) An individual who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel during the examination.</p>
Compelling evidence	<p>227 A person shall not be excused from attending and giving evidence and producing books, papers, documents or records to an inspector under this Part on the grounds that the oral evidence or documents required of him may tend to criminate him or subject him to any proceeding or penalty, but no such oral evidence so required shall be used or is receivable against him in any proceedings thereafter instituted against him under any Act of Alberta.</p>
Absolute privilege	<p>228 Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.</p>
Solicitor-client privilege	<p>229 Nothing in this Part affects the privilege that exists in respect of a solicitor and his client.</p>
Inspector's report as evidence	<p>230 A copy of the report of an inspector under section 223, certified as a true copy by the inspector, is admissible as evidence of the facts stated in it without proof of the inspector's appointment or of his signature.</p>

PART 19

REMEDIES, OFFENCES AND PENALTIES

Definitions	<p>231 In this Part,</p> <p>(a) "action" means an action under this Act or any other law</p> <p>(b) "complainant" means</p> <p style="padding-left: 40px;">(i) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,</p> <p style="padding-left: 40px;">(ii) a director or an officer or a former director or officer of a corporation or of any of its affiliates, or</p> <p style="padding-left: 40px;">(iii) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.</p>
Commencing derivative action	<p>232(1) Subject to subsection (2), a complainant may apply to the Court for leave to</p>

(a) bring an action in the name and on behalf of a corporation or any of its subsidiaries, or

(b) intervene in an action to which a corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation or subsidiary.

(2) No leave may be granted under subsection (1) unless the Court is satisfied that

(a) the complainant has given reasonable notice to the directors of the corporation or its subsidiary of his intention to apply to the Court under subsection (1) if the directors of the corporation or its subsidiary do not bring, diligently prosecute, defend or discontinue the action,

(b) the complainant is acting in good faith, and

(c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Powers of the Court

233 In connection with an action brought or intervened in under section 232 or 234(3)(q), the Court may at any time make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

(a) an order authorizing the complainant or any other person to control the conduct of the action;

(b) an order giving directions for the conduct of the action;

(c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary;

(d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Relief by Court on the ground of oppression or unfairness

234(1) A complainant may apply to the Court for an order under this section.

(2) If, on an application under subsection (1), the Court is satisfied that in respect of a corporation or any of its affiliates

(a) any act or omission of the corporation or any of its affiliates effects a result,

(b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

(c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the Court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a corporation's affairs by amending the articles or by-laws;
- (d) an order declaring that any amendment made to the articles or by-laws pursuant to clause (c) operates notwithstanding any unanimous shareholder agreement made before or after the date of the order, until the Court otherwise orders;
- (e) an order directing an issue or exchange of securities;
- (f) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (g) an order directing a corporation, subject to section 32(2), or any other person, to purchase securities of a security holder;
- (h) an order directing a corporation or any other person to pay to a security holder any part of the money paid by him for securities;
- (i) an order directing a corporation, subject to section 40, to pay a dividend to its shareholders or a class of its shareholders;
- (j) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (k) an order requiring a corporation, within a time specified by the Court, to produce to the Court or an interested person financial statements in the form required by section 149 or an accounting in any other form the Court may determine;
- (l) an order compensating an aggrieved person;
- (m) an order directing rectification of the registers or other records of a corporation under section 236;
- (n) an order for the liquidation and dissolution of the corporation;

- (o) an order directing an investigation under Part 18 to be made;
- (p) an order requiring the trial of any issue;
- (q) an order granting leave to the applicant to
 - (i) bring an action in the name and on behalf of the corporation or any of its subsidiaries, or
 - (ii) intervene in an action to which the corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing an action on behalf of the corporation or any of its subsidiaries.

(4) This section does not confer on the Court power to revoke a certificate of amalgamation.

(5) If an order made under this section directs an amendment of the articles or by-laws of a corporation, no other amendment to the articles or by-laws shall be made without the consent of the Court, until the Court otherwise orders.

(6) If an order made under this section directs an amendment of the articles of a corporation, the directors shall send articles of reorganization in prescribed form to the Registrar together with the documents required by sections 19 and 108, if applicable.

(7) A shareholder is not entitled to dissent under section 184 if an amendment to the articles is effected under this section.

(8) An applicant under this section may apply in the alternative under section 207(1)(a) for an order for the liquidation and dissolution of the corporation.

Court approval of stay, dismissal, discontinuance or settlement

235(1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or may be approved by the shareholders of the corporation or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 207, 233 or 234.

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on any terms the Court thinks fit and, if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

(4) In an application made or an action brought or intervened in

under this Part, the Court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.

Court order to rectify records

236(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

(2) If the corporation is a distributing corporation, an applicant under this section shall file notice of the application with the Commission.

(3) In connection with an application under this section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

(a) an order requiring the registers or other records of the corporation to be rectified;

(b) an order restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before the rectification;

(c) an order determining the right of a party to the proceedings to have his name entered or retained in, or deleted or omitted from, the registers or records of the corporation, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders;

(d) an order compensating a party who has incurred a loss.

Court order for directions

237 The Director, the Commission or the Registrar may apply to the Court for directions in respect of any matter concerning his or its duties under this Act, and on the application the Court may give any directions and make any further order as it thinks fit.

Refusal by Registrar to file

238(1) If the Registrar refuses to file any articles or other document required by this Act to be filed by him before the articles or other document become effective, he shall, within 20 days after its receipt by him or 20 days after he receives any approval that may be required under any other Act, whichever is the later, give written notice of his refusal to the person who sent the articles or document, giving reasons for his refusal.

(2) If the Registrar does not file or give written notice of his refusal to file any articles or document within the time limited in subsection (1), he is deemed for the purposes of section 239 to have refused to file the articles or document.

Appeal from decision of Registrar or Director

239(1) A person who feels aggrieved by a decision of the Registrar

- (a) to refuse to file in the form submitted to him any articles or other document required by this Act to be filed by him,
- (b) to approve a name, to change, revoke or disapprove a name, or to refuse to reserve, accept, change or revoke a name under section 12 or 269,
- (c) to refuse under section 181(11) to permit a continued reference to shares having a nominal or par value,
- (d) to refuse to issue a certificate of discontinuance under section 182,
- (e) to refuse to revive a corporation under section 201,
- (f) to dissolve a corporation under section 205,
- (g) to refuse an exemption under section 264(2), or
- (h) to cancel the registration of an extra-provincial corporation under section 272,

may apply to the Court for an order requiring the Registrar to change his decision, and on the application the Court may so order and make any further order it thinks fit.

(2) A person who feels aggrieved by a decision of the Commission to refuse to grant an exemption under section 3(3), 145(1), 150(2) or 165(3) may appeal the decision to the Court of Appeal, and section 26 of *The Securities Act, 1981* applies to such an appeal.

Compliance or restraining order

240 If a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation contravenes this Act, the regulations, the articles or by-laws or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right he has, apply to the Court for an order directing that person to comply with, or restraining that person from contravening any of those things, and on the application the Court may so order and make any further order it thinks fit.

Summary application to Court

241 When this Act states that a person may apply to the Court, the application may be made in a summary manner in accordance with the rules of the Court by originating notice, petition or otherwise as the rules provide, and subject to any order respecting notice to interested parties, or any other order the Court thinks fit.

Appeals from court orders

242 An appeal lies from an order of the Provincial Court of Alberta under section 245(1) to the Court of Queen's Bench.

Offences relating to reports, returns, etc.

243(1) A person who makes or assists in making a report, return,

notice or other document required by this Act or the regulations to be sent to the Registrar, the Director or any other person or filed with the Commission that

- (a) contains an untrue statement of a material fact, or
- (b) omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(2) If a body corporate contravenes subsection (1), then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention of subsection (1) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(3) No person is guilty of an offence under subsection (1) or (2) if the untrue statement or omission was unknown to him and in the exercise of reasonable diligence could not have been known to him.

General offence

244 Every person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided is guilty of an offence and liable to

- (a) in the case of a body corporate, a fine of not more than \$1000, and
- (b) in the case of an individual, a fine of not more than \$1000 or to imprisonment for a term of not more than one month, or to both.

Order to comply

245(1) If a person is found guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which he has been found guilty.

(2) A prosecution for an offence under this Act may be instituted at any time within 2 years from the time when the subject matter of the complaint arose, but not thereafter.

(3) No civil remedy for an act or omission is suspended or affected by reason that the Act or omission is an offence under this Act.

Security for costs

245.1 In any action or other legal proceeding in which the plaintiff is a body corporate, if it appears to the court on the application of a defendant that the body corporate will be unable to pay the costs of a successful defendant, the court may order the body corporate to furnish security for costs on any terms it thinks fit.

PART 20
GENERAL

Sending of notices
and documents to
shareholders and
directors

246(1) A notice or document required by this Act, the regulations, the articles or the by-laws to be sent to a shareholder or director of a corporation may be sent by mail addressed to, or may be delivered personally to,

(a) the shareholder at his latest address as shown in the records of the corporation or its transfer agent, and

(b) the director at his latest address as shown in the records of the corporation or in the last notice filed under section 101 or 108.

(2) For the purpose of the service of a notice or document, a director named in a notice sent by a corporation to the Registrar under section 101 or 108 and filed by the Registrar is presumed to be a director of the corporation referred to in the notice.

(3) A notice or document sent by mail in accordance with subsection (1) to a shareholder or director of a corporation is deemed to be received by him at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or document at the time or at all.

(4) If a corporation sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the corporation is not required to send any further notices or documents to the shareholder until he informs the corporation in writing of his new address.

Notice to and
service on a
corporation

247(1) A notice or document required or permitted to be sent to or served on a corporation may be

(a) delivered to its registered office, or

(b) sent by registered mail to

(i) its registered office, or

(ii) the post office box designated as its address for service by mail,

as shown in the last notice filed under section 19.

(2) A notice or document sent by registered mail to the corporation in accordance with subsection (1)(b) is deemed to be received or

served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the corporation did not receive the notice or document at that time or at all.

Notice to and
service on Director

247.1 A notice or document required or permitted to be sent to the Director or filed with the Commission may be sent or filed by leaving it in an office of the Commission during the Commission's business hours or by mailing it by registered mail addressed to an office of the Commission, and if sent or filed by registered mail, is deemed to be received at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the Director or the Commission did not receive the notice or document at that time or at all.

Waiver of notice

248 If a notice or document is required by this Act or the regulations to be sent, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive it.

Certificate of
Registrar and
evidence

249(1) When this Act requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate shall be signed by the Registrar or by an individual authorized by the Registrar.

(2) Except in a proceeding under section 206 to dissolve a corporation, a certificate referred to in subsection (1) or a certified copy of it, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Certificate of
corporation as
evidence

250(1) A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, a unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the corporation is a party, may be signed by a director, an officer or a transfer agent of the corporation.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a fact stated in a certificate referred to in subsection (1),
- (b) a certified extract from a securities register of a corporation, or
- (c) a certified copy of minutes or extract from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(3) An entry in a securities register of, or a security certificate issued by, a corporation is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is owner of the securities described in the register or in the certificate.

Copies

251 If a notice or document is required to be sent to the Director or Registrar or filed with the Commission under this Act, the Director, Registrar or Commission may accept a photostated or photographic copy of the notice or document.

Proof required by Registrar

252 The Registrar may require that a document or a fact stated in a document required by this Act or the regulations to be sent to him shall be verified under oath or by statutory declaration.

Appointment of Registrar, service

253(1) In accordance with *The Public Service Act* there may be appointed a Registrar of Corporations and one or more Deputy Registrars of Corporations and any other employees as may be necessary to administer this Act.

(2) The Minister may prescribe a seal for use by the Registrar in the performance of his duties.

(3) A notice or document may be sent or served on the Registrar by leaving it at an office of the Registrar or by mailing it by registered mail addressed to the Registrar at an office of the Registrar and if sent by registered mail is deemed to be received or served at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the Registrar did not receive the notice or document at that time or at all.

Registrar's publication

253.1 The Registrar shall publish, at the times specified by the Minister but not less frequently than once a month, a periodical containing

(a) the information required by this Act or the regulations to be published in the Registrar's periodical, and

(b) any other information relating to the administration of this Act that the Registrar considers will be useful to the public.

Agreements regarding payment of fees

253.2(1) If he considers it appropriate to do so, the Registrar may enter into an agreement with a person under which the fees and other charges payable by that person to the Registrar under this Act or the regulations will be charged to the credit of that person on a continuing basis and on the conditions that the Registrar considers necessary, and in that case the amounts so charged shall, except for the purposes of subsection (4), be deemed to have been paid in accordance with this Act or the regulations.

(2) If any amount charged to the credit of a person under subsection (1) is not paid within 15 days, or within any other period that the Registrar may require, of a request for payment by the Registrar, no further amounts may be charged to the account of that person until all amounts owing are paid in full.

(3) The Registrar may terminate an agreement under subsection (1) with any person on 7 days' notice in writing sent by registered mail to the person at his last address known to the Registrar.

(4) Notwithstanding anything in this Act, if a person has not paid the fees required to be paid by this Act or the regulations and has been requested by the Registrar to do so, the Registrar shall not perform any service or issue any certificate or file any document at the request of or for the benefit of that person, unless, in the opinion of the Registrar, exceptional circumstances exist that warrant the performance of those services.

Regulations,
publication of
proposed
regulation

254(1) Subject to subsection (2) and (3), the Lieutenant Governor in Council may make regulations

(a) prescribing any matter required or authorized by this Act to be prescribed;

(b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount of the fee;

(c) prescribing the format and contents of annual returns, notices and other documents required to be sent to the Registrar or to be issued by him;

(d) prescribing rules with respect to exemptions permitted by this Act;

(e) declaring that, for the purpose of section 149(1)(a), the standards as they exist from time to time, of any accounting body named in the regulations shall be in force in Alberta, in whole or in part or with any revisions, variations or modifications that are specified by the regulations.

(2) Subject to subsection (3), the Minister shall publish in the Registrar's periodical at least 60 days before its proposed effective date a copy of every regulation that the Lieutenant Governor in Council proposes to make under this Act and a reasonable opportunity shall be afforded to interested persons to make representations with respect to it.

(3) The Minister is not required to publish a proposed regulation if the proposed regulation

(a) grants an exemption or relieves a restriction,

(b) establishes or amends a fee,

(c) has already been published pursuant to subsection (2), whether or not it has been amended as a result of representations made by interested persons as provided in that subsection, or

(d) makes no material substantive change in an existing regulation.

255(1) In this section, “statement” means a statement of intent to dissolve and a statement of revocation of intent to dissolve referred to in section 204.

(2) When this Act requires that articles or a statement relating to a corporation shall be sent to the Registrar then, unless otherwise specifically provided,

(a) 2 copies (in this section called “duplicate originals”) of the articles or the statement shall be signed by a director or an officer of the corporation or, in the case of articles of incorporation, by an incorporator, and

(b) on receiving duplicate originals of any articles or statement that conform to law, any other required documents and the prescribed fees, the Registrar shall

(i) endorse on each of the duplicate originals the word “Filed” and the date of the filing,

(ii) issue in duplicate the appropriate certificate and attach to each certificate one of the duplicate originals of the articles or statement,

(iii) file a copy of the certificate and attached articles or statement, and

(iv) send to the corporation or its representative the original certificate and attached articles or statement.

(3) A certificate referred to in subsection (2) issued by the Registrar may be dated as of the day he receives the articles, statement or Court order pursuant to which the certificate is issued or as of any later day specified by the Court or person who signed the articles or statement.

(4) A signature required on a certificate referred to in subsection (2) or section 256 may be printed or otherwise mechanically reproduced on the certificate.

(5) Notwithstanding subsection (3), a certificate of discontinuance may be dated as of the day a corporation is continued under the laws of another jurisdiction.

256(1) Every corporation shall, on the prescribed date, send to the Registrar an annual return in prescribed form and the Registrar shall file it.

(2) The Registrar may furnish any person with a certificate that a corporation has filed with the Registrar a document required to be sent to him under this Act.

(3) On the payment of the prescribed fee, the Registrar may issue a certificate stating that, according to his records, the body corporate named in the certificate

(a) is or is not an existing corporation on the date of issue of the certificate, or

(b) was or was not an existing corporation on the day or during the period specified in the certificate.

Alteration of documents

257 The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorized in writing by the person who sent the document or by his representative.

Errors in certificates

258(1) If a certificate containing an error is issued to a corporation by the Registrar, the directors or shareholders of the corporation shall, on the request of the Registrar, pass the resolutions and send to him the documents required to comply with this Act, and take any other steps the Registrar may reasonably require, and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces.

(3) The issue of a corrected certificate under this section does not affect the rights of a person who acts in good faith and for value in reliance on the certificate containing the error.

Inspection and copies

259(1) A person who has paid the prescribed fee is entitled during usual business hours to examine a document required by this Act or the regulations to be sent to the Registrar, and to make copies of or extracts from that document.

(2) The Registrar shall furnish any person who has paid the prescribed fee with a copy or a certified copy of a document required by this Act or the regulations to be sent to the Registrar.

Records of Registrar

260(1) Records required by this Act to be prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

(2) If records maintained by the Registrar are prepared and maintained other than in written form,

(a) the Registrar shall furnish any copy required to be furnished under section 259(2) in legible written form, and

(b) a reproduction of the text of those records, if it is certified

by the Registrar, is admissible in evidence to the same extent as the original written records would have been.

261(1) In this section and section 262

- (a) “Alberta company” does not include
- (i) a not-for-profit company,
 - (ii) a revived company, or
 - (iii) a trust company incorporated under a predecessor of *The Companies Act*;
- (b) “anniversary month” with reference to an Alberta company means the month in each year that is the same as
- (i) the month in which its certificate of incorporation was issued,
 - (ii) in the case of an amalgamated Alberta company, the month in which its certificate of amalgamation was issued, or
 - (iii) in the case of an Alberta company in respect of which a certificate of registration is issued under section 157 of *The Companies Act*, the month in which it was incorporated in the jurisdiction other than Alberta;
- (c) “not-for-profit company” means a body corporate registered under *The Companies Act*
- (i) that does not have the word “limited” as part of its name by reason of a direction or authorization of the Registrar of Companies under Part 9 of that Act, or
 - (ii) that by its memorandum of association or articles of association prohibits the payment to its members of any dividend;

but does not include a municipal housing company limited by shares incorporated under *The Companies Act* and having as its object the development, provision and operation, or any of them, of housing and accommodation;

(d) “revived company” means a body corporate described in section 202(1) that is revived under that section for the purpose of enabling it to apply for continuance as a corporation under this section.

(2) An Alberta company shall apply to the Registrar for a certificate of continuance in accordance with this section.

(3) Section 181(3) to (5) and (7) to (12) applies with the necessary

changes to an application for a certificate of continuance under this section as if the Alberta company were an extra-provincial corporation.

(4) The shareholders of the Alberta company entitled to vote at meetings of members

- (a) shall adopt articles of continuance,
- (b) shall authorize the directors to provide for
 - (i) the execution of the articles of continuance, and
 - (ii) the making of the application under this section,

and

(c) may adopt by-laws to become effective on the issue of the certificate of continuance.

(5) By-laws under subsection (4)(c) may authorize the directors to require a member to surrender his share certificate for the purpose of having it cancelled and replaced by a new share certificate that complies with section 45.

(6) The shareholders of an Alberta company shall act under subsection (4)

(a) by a special resolution as defined in section 2(1) of *The Companies Act*, or

(b) if its memorandum of association provides that a special resolution to alter the articles of association must be passed by a majority greater than 3/4 of the votes cast in person or by proxy, by a resolution passed by that greater majority.

(7) Except with the written consent of all shareholders entitled to vote thereon under section 170(1), the articles of continuance shall not contain anything that would result in a change from the Alberta company's memorandum of association or articles of association, if the change is of a kind referred to in that subsection.

(8) A shareholder is not entitled to dissent under section 184 in respect of the adoption of articles of continuance under subsection (4).

(9) If, on the application of a member of an Alberta company, the Court is satisfied that the articles of continuance adopted or proposed to be adopted would, if the company were continued as a corporation, effect a result that is oppressive or unfairly prejudicial to or unfairly disregards the interests of that member, the Court may

(a) restrain the Alberta company from adopting the proposed articles of continuance or proceeding with the application for a certificate of continuance, and

(b) change the provisions of the articles of continuance before they are filed by the Registrar.

(10) If the required majority cannot be obtained under subsection (6), the Court may, on application by the Alberta company or a member,

(a) settle the terms of the articles of continuance and the by-laws, and

(b) give directions respecting the application for a certificate of continuance.

(11) In exercising its powers under subsection (9)(b) or subsection (10)(a) with respect to an Alberta company with share capital, the Court shall make as little change as practicable in the rights of shareholders and in the relative rights of classes and series of shareholders.

(12) An application by an Alberta company for a certificate of continuance shall be made

(a) within 3 years after the last day of the anniversary month of the company first occurring after the commencement of this Act, or

(b) within any extension of that period granted under subsection (13).

(13) In case of hardship, the Court may, on application by the company made within the period prescribed in subsection (12)(a) and with notice to the Registrar, extend that period for any additional period not exceeding one year.

(14) An Alberta company that obtains an order under subsection (13) shall send a copy of the order to the Registrar and the Registrar shall file it.

(15) An Alberta company that does not, within the time mentioned in subsection (12) make an application for a certificate of continuance that is sufficient to require the Registrar to issue the certificate, is dissolved on the expiry of that time.

Continuance of
revived Alberta
companies

262 A revived company may apply to the Registrar for a certificate of continuance and for that purpose

(a) section 181(3) to (5) and (7) to (12) apply to the application as if the revived company were an extra-provincial corporation, and

(b) section 261(4) to (11) apply to the application as if the revived company were an Alberta company.

PART 21

EXTRA-PROVINCIAL CORPORATIONS

Definitions

263 In this Part,

- (a) “anniversary month”, with reference to an extra-provincial corporation, means the month in each year that is the same as the month in which its certificate of registration was issued;
- (b) “attorney for service” or “attorney” means, with reference to an extra-provincial corporation, the individual who, according to the Registrar’s records, is appointed under this Part as that extra-provincial corporation’s attorney for service;
- (c) “charter” includes
 - (i) a statute, ordinance or other law incorporating an extra-provincial corporation, as amended from time to time,
 - (ii) letters patent of incorporation and any letters patent supplementary to them,
 - (iii) a memorandum of association, as amended from time to time,
 - (iv) any other instrument of incorporation, as amended from time to time, and
 - (v) any certificate, licence or other instrument evidencing incorporation;
- (d) “internal regulations” includes by-laws, articles of association, rules or regulations relating to the management of the business and affairs of an extra-provincial corporation, by whatever name they are called, if they are made by the members or a class of members of, or the board of directors, board of management or other governing body of, the extra-provincial corporation;
- (e) “registered” means registered under this Part.

Carrying on
business in Alberta

264(1) For the purposes of this Part, an extra-provincial corporation carries on business in Alberta if

- (a) its name, or any name under which it carries on business, is listed in a telephone directory for any part of Alberta,
- (b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in Alberta is given for the extra-provincial corporation,

- (c) it has a resident agent or representative or a warehouse, office or place of business in Alberta,
- (d) it solicits business in Alberta,
- (e) it is the owner of any estate or interest in land in Alberta,
- (f) it is licensed or registered or required to be licensed or registered under any Act of Alberta entitling it to do business,
- (g) it is, in respect of a public vehicle as defined in *The Motor Transport Act*, the holder of a certificate of registration under *The Motor Vehicle Administration Act*, unless it neither picks up nor delivers goods or passengers in Alberta,
- (h) it is the holder of a certificate issued by the Alberta Motor Transport Board, unless it neither picks up nor delivers goods or passengers in Alberta, or
- (i) it otherwise carries on business in Alberta.

(2) The Registrar may exempt an extra-provincial corporation from the payment of fees under this Part if he is satisfied that it does not carry on business for the purpose of gain.

Application

265(1) This Part does not apply to

- (a) an extra-provincial corporation required to be licensed as an insurer under *The Alberta Insurance Act*,
- (b) an extra-provincial corporation required to be registered under *The Trust Companies Act*, or
- (c) an extra-provincial association as defined in Part 2 of *The Co-operative Associations Act*.

(2) This Part does not apply to a Canada corporation so as to affect its right to carry on business in Alberta.

Division 1

Registration

Requirement to register

266(1) Subject to subsection (2), every extra-provincial corporation shall be registered under this Part before or within 30 days after it commences carrying on business in Alberta.

(2) An extra-provincial corporation registered under Part 8 of *The Companies Act* immediately before the coming into force of this Act is deemed to be registered under this Part.

Application for registration

267(1) An extra-provincial corporation shall apply for registration by sending to the Registrar a statement in prescribed form.

(2) The statement shall be accompanied by

(a) a copy of the charter of the extra-provincial corporation verified in a manner satisfactory to the Registrar, and

(b) the appointment of its attorney for service, in prescribed form.

(3) If all or any part of the charter is not in the English language, the Registrar may require the submission to him of a translation of the charter or that part of the charter, verified in a manner satisfactory to him, before he registers the extra-provincial corporation.

Reservation of name

268 The Registrar may, on request, reserve for 90 days a name for an extra-provincial corporation that

(a) intends to become registered,

(b) is about to change its name, or

(c) is intended to result from an amalgamation of 2 or more bodies corporate.

Name of extra-provincial corporation

269(1) An extra-provincial corporation shall not be registered with or, within Alberta, have, carry on business under or identify itself by, a name that is

(a) prohibited by the regulations,

(b) identical to the name of a body corporate incorporated under the laws of Alberta,

(c) reserved for an intended corporation or a corporation under section 11(1),

(d) reserved for an extra-provincial corporation or an intended extra-provincial corporation under section 268, or

(e) disapproved by the Registrar pursuant to subsection (2).

(2) The Registrar may disapprove the name of an extra-provincial corporation if, in his opinion, the name

(a) is objectionable,

(b) is likely to mislead or confuse, or

(c) is similar to the name of any other body corporate or to the name of any association, partnership or firm known to the Registrar and the use of that name would be likely to confuse or mislead.

(3) If a body corporate, association, partnership or firm referred to in subsection (2)(c)

(a) consents in writing to the use of the name in whole or in part, and

(b) if required by the Registrar, undertakes to dissolve or change its name to a dissimilar name within 6 months after the date of registration of the extra-provincial corporation under this Part,

the Registrar may approve the name.

(4) If

(a) through inadvertence or otherwise, an extra-provincial corporation is registered with or later acquires a name that contravenes subsection (1), or

(b) the Registrar disapproves an extra-provincial corporation's name after it is registered under this Part,

the Registrar may, by notice in writing, giving his reasons, direct the extra-provincial corporation to change its name to one that he approves within 90 days after the date of the notice.

(5) The Registrar may give a notice under subsection (4) on his own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

(6) This section does not apply to a Canada corporation.

Registration by
pseudonym

270(1) Notwithstanding section 269, an extra-provincial corporation the name of which contravenes section 269 may, with approval of the Registrar

(a) be registered with its own name, and

(b) carry on business in Alberta under an assumed name the use of which is approved by the Registrar and which does not contravene section 269.

(2) The extra-provincial corporation

(a) shall acquire all property and rights in Alberta under its assumed name, and

(b) is entitled to all property and rights acquired and subject to all obligations and liabilities incurred under its assumed name as if the same had been acquired and incurred under its own name.

(3) The extra-provincial corporation may sue or be sued in its own name, its assumed name, or both.

Certificate of
registration

271(1) Subject to section 269, on receipt of the statement and other documents required by section 267 and of the prescribed fees, the Registrar shall

- (a) file the statement and documents,
- (b) register the extra-provincial corporation, and
- (c) issue a certificate of registration in prescribed form in accordance with section 255.

(2) A certificate of registration issued under this section to an extra-provincial corporation is conclusive proof for the purposes of this Act and for all other purposes that the provisions of this Act in respect of registration of the extra-provincial corporation and all requirements precedent and incidental to registration have been complied with, and that the extra-provincial corporation has been registered under this Part as of the date shown in the certificate of registration.

Cancellation of
registration

272(1) Subject to subsection (2), the Registrar may cancel the registration of an extra-provincial corporation if

- (a) the extra-provincial corporation is in default for a period of one year in sending to the Registrar any fee, notice or document required by this Part,
- (b) the extra-provincial corporation has sent a notice to the Registrar under subsection (4) or the Registrar has reasonable grounds to believe that the extra-provincial corporation has ceased to carry on business in Alberta,
- (c) the extra-provincial corporation is dissolved,
- (d) the extra-provincial corporation does not carry out an undertaking given under section 269(3),
- (e) the extra-provincial corporation does not comply with a direction of the Registrar under section 269(4), or
- (f) the extra-provincial corporation has otherwise contravened this Part.

(2) The Registrar shall not cancel the registration of an extra-provincial corporation under subsection (1) until

- (a) he has given at least 120 days notice of the proposed cancellation with his reasons for it,
 - (i) to the extra-provincial corporation by registered mail addressed to its head office, and
 - (ii) to its attorney for service in accordance with section 275,

(b) he has published a notice of the proposed cancellation in the Registrar's periodical, and

(c) either no appeal is commenced under section 239 or, if an appeal has been commenced, it has been discontinued or the Registrar's decision is confirmed on the appeal.

(3) The Registrar may reinstate the registration of an extra-provincial corporation that was cancelled under subsection (1)(a) on the receipt by the Registrar of the fees, notices and documents required to be sent to him and of the prescribed reinstatement fee.

(4) An extra-provincial corporation that ceases to carry on business in Alberta shall send a notice to that effect to the Registrar.

New certificate of registration

273(1) Subject to section 269, on the reinstatement of the registration of an extra-provincial corporation pursuant to section 272(3), the Registrar shall issue a new certificate of registration in prescribed form.

(2) The cancellation of the registration of an extra-provincial corporation does not affect its liability for its obligations.

Division 2

Information

Use of corporate name

274 An extra-provincial corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments, orders for goods or services issued or made by or on behalf of the extra-provincial corporation in the course of carrying on business in Alberta.

Attorney for service of an extra-provincial corporation

275(1) If an attorney of an extra-provincial corporation dies or resigns or his appointment is revoked, the extra-provincial corporation shall forthwith send to the Registrar an appointment in prescribed form of an individual as its attorney for service and the Registrar shall file the appointment.

(2) An extra-provincial corporation may in prescribed form appoint an individual as its alternative attorney if that individual is

(a) a member of a partnership of which the attorney is also a member, or

(b) an assistant manager of the extra-provincial corporation and the attorney is the manager for Alberta of the extra-provincial corporation.

(3) An extra-provincial corporation shall send to the Registrar

- (a) each appointment by it of an alternative attorney, and
 - (b) if the alternative attorney dies or resigns or his appointment is revoked, a notice to that effect,
- and the Registrar shall file the appointment or notice, as the case may be.
- (4) An attorney for an extra-provincial corporation who intends to resign shall
- (a) give not less than 60 days notice to the extra-provincial corporation at its head office, and
 - (b) send a copy of the notice to the Registrar who shall file it.
- (5) An attorney shall forthwith send the Registrar a notice in prescribed form of any change of the attorney's address and the Registrar shall file the notice.
- (6) An extra-provincial corporation shall ensure that the address of its attorney is an office which is
- (a) accessible to the public during normal business hours, and
 - (b) readily identifiable from the address or other description given in the notice referred to in subsection (5) or the appointment referred to in section 267(2)(b).
- (7) A notice or document required or permitted by law to be sent or served in Alberta on an extra-provincial corporation may be
- (a) delivered to its attorney or to an individual who is its alternative attorney according to the Registrar's records,
 - (b) delivered to the address, according to the Registrar's records, of its attorney, or
 - (c) sent by registered mail to that address.
- (8) A notice or document sent by registered mail to the attorney's address in accordance with subsection (7)(c) shall be deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the attorney did not receive the notice or document at that time or at all.
- (9) An individual whose appointment as an attorney or alternative attorney of an extra-provincial corporation is filed with the Registrar of Companies immediately before the commencement of this Act is deemed to be its attorney or an alternative attorney, as the case may be, on the commencement of this Act.

Changes in charter,
head office,
directors

276(1) A registered extra-provincial corporation shall send to the Registrar

(a) a copy of each amendment to its charter within one month after the effective date of the amendment, verified in a manner satisfactory to the Registrar, and

(b) a notice in prescribed form of any change in

(i) the address of its head office in or outside Alberta, or

(ii) the membership of its board of directors, board of management or other governing body,

within one month after the effective date of the change,

and the Registrar shall file the copy or the notice, as the case may be.

(2) A notice sent to the Registrar pursuant to subsection (1)(b)(ii) shall contain the address and occupation of each new member of the board of directors or governing body.

(3) An extra-provincial corporation is not required to send a notice under subsection (1)(b) if

(a) the effective date of the change occurs in its anniversary month or the month following, and

(b) the change is reflected in the annual return required to be filed under section 279(1).

(4) If the amendment to its charter effects a change in the name under which an extra-provincial corporation is registered, the Registrar, on filing the copy of the amendment under subsection (1)(a), shall issue a new certificate of amendment of registration in prescribed form and change his records accordingly.

Filing of
instrument of
amalgamation

277(1) A registered extra-provincial corporation shall send to the Registrar

(a) a copy of any instrument effecting an amalgamation of the extra-provincial corporation with one or more other extra-provincial corporations,

(b) a copy of the amalgamation agreement, if any, and

(c) a statement in prescribed form relating to the amalgamated extra-provincial corporation and the documents referred to in section 267(2),

within one month after the effective date of the amalgamation.

(2) On receiving the documents referred to in subsection (1), the

Registrar shall file them and issue a new certificate of registration of the amalgamated extra-provincial corporation.

Notices and returns
respecting
liquidation

278(1) If liquidation proceedings are commenced in respect of a registered extra-provincial corporation, the extra-provincial corporation, or, if a liquidator is appointed, the liquidator,

(a) shall send to the Registrar forthwith after the commencement of those proceedings a notice showing that the proceedings have commenced and the address of the liquidator if one is appointed, and

(b) shall send to the Registrar forthwith after the completion of those proceedings a return relating to the liquidation.

(2) The Registrar shall

(a) on receiving a notice under subsection (1)(a), file it and publish a notice respecting the liquidation in the Registrar's periodical, and

(b) on receiving a return under subsection (1)(b), file it and cancel the registration of the extra-provincial corporation forthwith after the expiration of 3 months following the date of filing of the return.

(3) The liquidator of a registered extra-provincial corporation shall send to the Registrar a notice of any change in his address within one month after the effective date of the change, and the Registrar shall file the notice.

Annual and other
returns

279(1) A registered extra-provincial corporation shall, in each year on or before the last day of the month immediately following its anniversary month, send to the Registrar a return in prescribed form and the Registrar shall file it.

(2) A registered extra-provincial corporation shall, at the request of the Registrar, send to the Registrar a return containing any further or other information that the Registrar may reasonably require.

Certificate of
compliance

280(1) The Registrar may furnish any person with a certificate that an extra-provincial corporation has sent to the Registrar a document required to be sent to him under this Act.

(2) A certificate purporting to be signed by the Registrar and stating that a named extra-provincial corporation was or was not registered on a specified day or during a specified period, is admissible in evidence as prima facie proof of the facts stated in it without proof of the Registrar's appointment or signature.

Division 3

Capacity, Disabilities and Penalties

Validity of acts

281 No act of an extra-provincial corporation, including any transfer of property to or by an extra-provincial corporation, is invalid by reason only

(a) that the act or transfer is contrary to or not authorized by its charter or internal regulations or any law of the jurisdiction in which it is incorporated, or

(b) that the extra-provincial corporation was not then registered.

Capacity to commence and maintain legal proceedings

282(1) An extra-provincial corporation while unregistered is not capable of commencing or maintaining any action or other proceeding in any court in Alberta in respect of any contract made in the course of carrying on business in Alberta while it was unregistered.

(2) If an extra-provincial corporation was not registered at the time it commenced an action or proceeding referred to in subsection (1) but becomes registered afterward, the action or proceeding may be maintained as if it had been registered before the commencement of the action or proceeding.

General penalty

283 A person who contravenes this Part is guilty of an offence and liable to a fine of not more than \$5000.

PART 22

CONSEQUENTIAL AND COMMENCEMENT

Consequential
amendments

284(1) *The Cemeteries Act is amended*

(a) *by repealing section 20 and substituting the following:*

20(1) In this section and sections 20 to 23, “cemetery company” means a corporation that is incorporated under *The Companies Act* or *The Cemetery Companies Act*, or incorporated or continued under *The Business Corporations Act*, and is the owner of a cemetery.

(2) Notwithstanding anything in *The Companies Act*, *The Business Corporations Act* or *The Cemetery Companies Act*, a cemetery company may be wound up only by the Court of Queen’s Bench and for that purpose

(a) Part 17 of *The Business Corporations Act* applies to the winding up of a cemetery company incorporated under *The Cemetery Companies Act* as if it were a corporation being dissolved or liquidated and dissolved under *The Business Corporations Act*, and

(b) subject to subsection (3), the securities commission has, in respect of the cemetery company,

(i) the same status as the cemetery company itself to make a petition under section 198 of *The Companies Act* to have a company wound up by the court, and

(ii) the same status as a person has under *The Business Corporations Act* to apply to the court for an order dissolving or liquidating and dissolving a corporation by reason of a contravention of section 205(1) or 206(1)(a) of that Act or under section 207(1)(b)(ii) of that Act.

(3) The securities commission may make a petition or application to have a cemetery company wound up, dissolved or liquidated and dissolved by the court only if it is directed to do so by the Minister of Consumer and Corporate Affairs and the court shall grant the petition or application by the commission if it is satisfied, on the basis of the material filed with the petition or application and the evidence adduced, that

(a) the cemetery company is inactive or unable financially to provide endowment care for the cemetery and

either there are not endowment care funds for the cemetery or its endowment care funds are inadequate,

(b) the cemetery company is not maintaining the cemetery properly,

(c) the cemetery company is not meeting its financial obligations in the operation of the cemetery,

(d) there is found, on a passing of accounts, a shortage in the endowment care funds required to be set aside by this Act, or

(e) the cemetery company has failed to establish and maintain a pre-need assurance fund as required under Part 4 in respect of contracts for the sale of cemetery supplies and cemetery services.

(b) in section 21 by adding “or application” after “petition”;

(c) in section 22 by adding “, *The Business Corporations Act*” after “*The Companies Act*”;

(d) in section 61(1) by adding “or is incorporated or continued under *The Business Corporations Act*” after “*The Cemetery Companies Act*”.

(2) *The Cemetery Companies Act is amended*

(a) in section 2 by repealing clause (b) and substituting the following:

(b) “Registrar” means Registrar as defined in *The Business Corporations Act*;

(b) by repealing section 4(4) and substituting the following:

(4) Section 167(1)(a) of *The Business Corporations Act* applies to a company incorporated under this Act.

(3) *The Chartered Accountants Act is amended*

(a) in section 53(3)(c) by adding “or that it is in good standing with the Registrar as defined in *The Business Corporations Act*, as the case may be” after “*The Companies Act*”;

(b) in section 55(1) by adding “or *The Business Corporations Act*” after “*The Companies Act*”.

(4) *The Collection Practices Act* is amended in section 3(1)(b) by adding “*The Business Corporations Act*,” after “*The Companies Act*,”.

(5) *The Companies Act* is amended

(a) by adding the following after section 2:

2.1 Notwithstanding anything in this Act, on the coming into force of *The Business Corporations Act*

(a) no company shall

(i) be incorporated or registered under this Act except under Part 9,

(ii) be continued into Alberta under section 157, or

(iii) be continued out of Alberta under section 158, and

(b) no extra-provincial company shall be registered under this Act.

(b) by adding the following after section 3:

3.1 This Act does not apply to a corporation as defined in *The Business Corporations Act*.

(c) by repealing section 7;

(d) by adding the following after section 50:

50.1 If at the coming into force of *The Business Corporations Act* a company by its memorandum or articles prohibits the payment of dividends to its members, no amendment may thereafter be made to the memorandum or articles to remove or qualify that prohibition.

(e) by repealing sections 97 to 102 and 104 to 106;

(f) by repealing Part 8;

(g) by adding the following after section 185:

185.1 The Registrar shall not revoke any direction or authorization given by him under section 183, 184 or 185.

(h) *by repealing section 186.*

(6) *The Co-operative Associations Act is amended*

(a) *in section 2 by repealing clause (h) and substituting the following:*

(h) “Registrar” means Registrar as defined in *The Business Corporations Act*;

(b) *in section 12(1)(e) by striking out “under The Companies Act of the Province or under the Companies Act of Canada” and substituting “incorporated or continued under The Companies Act, The Business Corporations Act or the Canada Business Corporations Act”;*

(c) *by repealing section 14 and substituting the following:*

14 Sections 88.1 to 88.9 of *The Business Corporations Act* apply to co-operative associations

(a) as if “corporation” as used in those provisions included an association, and

(b) as if “extra provincial corporation” as used in those provisions included an extra-provincial association as defined in Part 2 of this Act.

(7) *The Credit Union Act is amended*

(a) *in section 5 by striking out “of Companies” and substituting “as defined in The Business Corporations Act”;*

(b) *in section 19(3)(b) by adding the following after clause (b):*

(b1) a corporation that is registered, incorporated or continued under *The Business Corporations Act*,

(c) *in section 64.1 by striking out “section 146 of The Companies Act” and substituting “section 256 of The Business Corporations Act”;*

(d) *in section 80(1)(b) by striking out “The Companies Act as*

an extra-provincial company” and substituting “*The Business Corporations Act* as an extra-provincial corporation”.

(8) *The Dental Associations Act* is amended

(a) in section 70(3)(c) by adding “or that it is in good standing with the Registrar as defined in *The Business Corporations Act*, as the case may be,” after “*The Companies Act*”;

(b) in section 72(1) by adding “or *The Business Corporations Act*” after “*The Companies Act*”.

(9) *The Franchises Act* is amended in section 54(5) by adding “, *The Business Corporations Act*” after “*The Companies Act*”.

(10) *The Hydro and Electric Energy Act* is amended in section 18 by adding the following after clause (a):

(a1) registered, incorporated or continued under *The Business Corporations Act*, or

(11) *The Alberta Insurance Act* is amended in section 177 by striking out “on an application for a change of name under *The Companies Act*” and substituting “in connection with a special resolution effecting a change of name under *The Business Corporations Act*”.

(12) *The Investment Contracts Act* is amended by repealing sections 36.5 and 36.6 and substituting the following:

36.5 Neither Divisions (3) to (7) of Part 10 of *The Companies Act* nor Part 17 of *The Business Corporations Act* applies to an issuer except to the extent that the Lieutenant Governor in Council provides otherwise in regulations under section 36.6.

36.6 The Lieutenant Governor in Council may make regulations respecting the winding up of an issuer that is a provincial company, and those regulations may make applicable any of the provisions referred to in section 36.5, may make applicable any of those provisions as varied or may make other provisions in their place.

(13) *The Irrigation Act* is amended

(a) in section 31(2) by adding the following after clause (g):

(g1) is dissolved or liquidated and dissolved under Part 17 of *The Business Corporations Act* or has its registration cancelled under Part 21 of that Act;

(b) in section 33 by adding the following after subsection (1):

(1.1) In this section,

(a) “private company” means a private company as defined in *The Companies Act* and a corporation as defined in *The Business Corporations Act* that is not a distributing corporation as defined in that Act;

(b) “public company” means a public company as defined in *The Companies Act* and a distributing corporation as defined in *The Business Corporations Act*.

(14) *The Land Titles Act* is amended in section 30

(a) in subsection (1) by adding the following after clause (a):

(a1) registered, incorporated or continued under *The Business Corporations Act*, or

(b) in subsection (2)

(i) by striking out “clause (a), (b), (c), (d), (e) or (f)” and substituting “any of clauses (a) to (f)”;

(ii) by adding the following after clause (a):

(a1) the Registrar as defined in *The Business Corporations Act* that a corporation is registered, incorporated or continued under that Act, or

(iii) by adding “the Registrar as defined in *The Business Corporations Act*,” after “informed by the Registrar of Companies,”;

(c) in subsection (3)

(i) by adding “the Registrar as defined in *The Business Corporations Act*,” after “Registrar of Companies,”;

(ii) by adding “being dissolved or liquidated and dissolved or” after “certificates”.

(15) *The Landlord and Tenant Act, 1979* is amended in section 48(6) by adding “or section 247 of *The Business Corporations Act*, as the case may be,” after “*The Companies Act*”.

(16) *The Legal Profession Act is amended*

(a) in section 113(3)(c) by adding “or that it is in good standing with the Registrar as defined in *The Business Corporations Act*” after “*The Companies Act*”;

(b) in section 115(1) by adding “or *The Business Corporations Act*” after “*The Companies Act*”.

(17) *The Medical Profession Act is amended*

(a) in section 87(3)(c) by adding “or that it is in good standing with the Registrar as defined in *The Business Corporations Act*” after “*The Companies Act*”;

(b) in section 89(1) by adding “or *The Business Corporations Act*” after “*The Companies Act*”.

(18) *The Mines and Minerals Act is amended*

(a) in section 44(1) by adding the following after clause (a):

(a1) registered, incorporated or continued under *The Business Corporations Act*, or

(b) by repealing section 48.1 and substituting the following:

48.1(1) If

(a) a corporation that is registered under *The Companies Act* is struck off the register of companies under that Act, or

(b) a corporation that is registered, incorporated or continued under *The Business Corporations Act* has its registration cancelled or is dissolved or liquidated and dissolved under that Act

and the corporation is then the sole lessee of an agreement, the Minister may cancel the agreement after giving 60 days’ notice of his intention to do so in *The Alberta Gazette*, unless before the expiration of that 60 day period the corporation

(c) is restored to the register under *The Companies Act*, or

(d) has its registration reinstated or is revived under *The Business Corporations Act*.

(2) If a corporation, other than a corporation registered under *The Companies Act* or registered, incorporated or continued under *The Business Corporations Act*, is wound up, dissolved

or liquidated and dissolved and is then the sole lessee of an agreement, the Minister may cancel the agreement.

(3) If a corporation

(a) is struck off the register of companies under *The Companies Act*, or is wound up or dissolved, or

(b) has its registration cancelled or is dissolved or liquidated and dissolved under *The Business Corporations Act*

and the corporation is then a lessee having a specified undivided interest in an agreement according to the records of the Department, the Minister may cancel that interest and transfer it to any person, in any manner and on any conditions the Minister considers just in the circumstances.

(c) in section 192 by repealing clause (b) and substituting the following:

(b) being a corporation

(i) is struck off the register of companies under *The Companies Act* or is wound up or dissolved, or

(ii) has its registration cancelled or is dissolved or liquidated and dissolved under *The Business Corporations Act*,

(19) *The Mortgage Brokers Regulation Act* is amended by adding “or *The Business Corporations Act*, as the case may be,” after “*The Companies Act*” wherever it occurs in the following provisions:

section 14;
section 20(1).

(20) *The Motor Vehicle Administration Act* is amended in section 36(3)(b) by adding the following after subclause (i):

(i.1) registered under *The Business Corporations Act*, or

(21) *The Municipal Government Act* is amended

(a) in section 30 by adding the following after subsection (1):

(1.1) In this section,

(a) “private company” means a private company as defined in *The Companies Act* and a corporation as defined in *The Business Corporations Act* that is not a distributing corporation as defined in that Act;

(b) “public company” means a public company as defined in *The Companies Act* and a distributing corporation as defined in *The Business Corporations Act*.

(b) in section 128.2

(i) in subsection (1) by adding “or a corporation incorporated under *The Business Corporations Act* whose business is restricted in its articles of incorporation to the development, provision and operation, or any of them, of housing and accommodation” after “accommodation”;

(ii) in subsection (4) by adding “or *The Business Corporations Act*, as the case may be” after “*The Companies Act*”;

(iii) in subsection (5) by adding “or articles of incorporation, as the case may be,” after “association”;

(c) in section 244 by repealing clause (f) and substituting the following:

(f) apply for the incorporation of a corporation, pursuant to *The Business Corporations Act*, to be known as “The Minerals Rights Development Corporation Limited” or by any other name the council chooses, to carry out any or all of the powers or purposes referred to in this section.

(22) *The Names of Homes Act* is amended in section 10.1(1) by adding the following after clause (a):

(a1) the same as or similar to the name of a corporation that is registered, incorporated or continued under *The Business Corporations Act*, or

(23) *The Oil and Gas Conservation Act* is amended in section 27 by adding the following after clause (a):

(a1) registered, incorporated or continued under *The Business Corporations Act*, or

(24) *The Pipeline Act, 1975* is amended in section 27(1) by adding the following after clause (a):

(a1) registered, incorporated or continued under *The Business Corporations Act*, or

(25) *The Alberta Property Tax Reduction Act* is amended

(a) in section 3(1)(a)(i) by striking out “private company” and substituting “corporation”;

(b) in section 8(5) by striking out “private company” wherever it occurs and substituting “corporation”.

(26) *The Religious Societies Lands Act* is amended

(a) by repealing section 1 and substituting the following:

1 In this Act “Registrar” means Registrar as defined in *The Business Corporations Act*.

(b) by striking out “of Companies” wherever it occurs in the following provisions:

section 15(1), (4) and (5);
section 18(2);
section 19(1);

(c) in section 26(1) by striking out “*The Companies Act*” and substituting “*The Business Corporations Act*”;

(d) by repealing sections 27 and 28 and substituting the following:

27(1) On the application of any interested person a judge of the Court of Queen’s Bench may order the winding up of any congregation incorporated under this Act for cause or on any grounds for which a corporation might be dissolved or liquidated and dissolved by the Court under Part 17 of *The Business Corporations Act*.

(2) In considering an application under this section the judge may direct that notice be given in any manner and to any persons that he considers appropriate.

(3) On hearing the application the judge may

(a) appoint a person to liquidate the congregation and pay creditors and claimants thereof who are entitled thereto, and provide for the remuneration of that person and the payment of his expenses and other costs incidental to the liquidation, out of the assets of the congregation or otherwise as he sees fit, or

(b) proceed in like manner as if an application had been made under *The Business Corporations Act* for an order for dissolution or liquidation and dissolution, and Part 17 of that Act applies.

(4) A person appointed under subsection (3)(a) may at any time apply to a judge of the Court of Queen’s Bench for directions or for the determination of any question arising with respect to his duties or for the exercise as respects any matter, of all or any of the powers that the Court might

exercise if the congregation were a corporation being dissolved or liquidated and dissolved by the Court, and the judge may give any directions, determine any question or make any order he thinks just.

(5) If there is a surplus of assets after all the liabilities of the former corporation and liquidation expenses have been paid in the winding up of a congregation incorporated under this Act, the liquidator or the person appointed under subsection (3)(a)

(a) shall, on reasonable notice, which may include advertising in a newspaper having circulation in the general geographical area inhabited by the members of the congregation, call a meeting of the persons who were members of the congregation at the time the application was presented, and that meeting may, by resolution, direct the person to distribute the surplus to one or more religious or charitable organizations named in the resolution, or

(b) may, if no resolution is passed pursuant to and in accordance with clause (a), apply by originating notice to the Court of Queen's Bench for an order governing the disposition of the surplus and the judge hearing the application may make any order he considers just, including an order directing that the surplus be vested in the ultimate heir under *The Ultimate Heir Act*.

(6) An order under subsection (5)(b) directing that the surplus be vested in the ultimate heir vests all the estate and interest in the surplus assets in the ultimate heir as if the property had been received under *The Ultimate Heir Act*, and that Act applies thereafter with all necessary modifications.

28 Sections 201 and 205 of *The Business Corporations Act* apply to congregations incorporated under this Act.

(27) *The Securities Act, 1981* is amended

(a) in section 37(1)(h) by adding “, *The Business Corporations Act*” after “*The Companies Act*”;

(b) in section 65(1)(a)(v) by adding “, *The Business Corporations Act*” after “*The Companies Act*”.

(28) *The Societies Act* is amended

(a) by repealing section 2(c) and substituting the following:

(c) “Registrar” means Registrar as defined in *The Business Corporations Act*;

(b) by repealing sections 33, 34 and 35 and substituting the following:

33 Part 17 of *The Business Corporations Act* applies to a society under this Act as if it were a corporation.

(c) in section 37 by striking out “registered under the provisions of *The Companies Act*” and substituting “incorporated under *The Business Corporations Act*”.

(29) *The Trust Companies Act* is amended by repealing sections 181, 182 and 183 and substituting the following:

181 Subject to sections 180(2) to (5) and 183, where a winding up order is made pursuant to section 180(1)(a), the provisions of Part 17 of *The Business Corporations Act* that apply to voluntary dissolution or voluntary liquidation and dissolution of a corporation incorporated under that Act apply to the winding up of a provincial company as though the order of the Lieutenant Governor in Council were a special resolution under section 203(3) or 204(3) of that Act.

182 Subject to sections 180(2) to (5) and 183, where a winding up order is made pursuant to section 180(1)(b) or (c), the provisions of Part 17 of *The Business Corporations Act* that apply to the liquidation and dissolution pursuant to an order of the Court of Queen’s Bench of a corporation incorporated under that Act apply to the winding up of a provincial company as though the order of the Lieutenant Governor in Council under section 180 were an order of the Court for the liquidation and dissolution of a corporation under that Act.

183 The Lieutenant Governor in Council may make regulations respecting the winding up of a provincial company

(a) making any provisions of Part 17 of *The Business Corporations Act* inapplicable to the winding up of a provincial company, and

(b) respecting other provisions in respect of the winding up of a provincial company, and those provisions

(i) may be in lieu of a provision of *The Business Corporations Act* made inapplicable under clause (a), and

(ii) may provide for any matter that is not provided for in Part 17 of *The Business Corporations Act*, were it applicable, or meet any special circumstances that may arise and for which no provision is made in this Act or in *The Business Corporations Act*, were it applicable.

Coming into force **285** This Act comes into force on Proclamation.