

1983 BILL 16

First Session, 20th Legislature, 32 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 16

COMPANIES AMENDMENT ACT, 1983

~~MR. ALEXANDER~~

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 16
Mr. Alexander

BILL 16

1983

COMPANIES AMENDMENT ACT, 1983

(Assented to _____ *, 1983)*

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

- 1 *The Companies Act is amended by this Act.*
- 2 *Section 1 is amended by adding the following after clause (u):*
 - (u.1) "Registrar's periodical" means the Registrar's periodical established under the *Business Corporations Act*;
- 3 *Section 103 is amended by adding the following after subsection (2):*
 - (3) Sections 96, 97 and 100 do not apply to an insider, an offeror, or an insider or his associate or affiliate, respectively, where the company concerned is a reporting issuer as defined in the *Securities Act*.

Explanatory Notes

1 This section will amend chapter C-20 of the Revised Statutes of Alberta 1980.

2 Definition.

3 Sections 96, 97 and 100 presently read:

96(1) A person who becomes an insider of a company shall, within 10 days after the end of the month in which he becomes an insider, file with the Commission a report as of the day on which he became an insider, of his direct or indirect beneficial ownership of or control or direction over capital securities of the company.

(2) If a person who is an insider of a company, but has no direct or indirect beneficial ownership of or control or direction over capital securities of the company, acquires direct or indirect beneficial ownership of or control or direction over any such securities, he shall, within 10 days after the end of the month in which he acquired that direct or indirect beneficial ownership or that control or direction, file with the Commission a report, as of the date of the acquisition, of his direct or indirect beneficial ownership of or control or direction over capital securities of the company.

(3) A person who has filed or was or is required to file a report under this section and whose direct or indirect beneficial ownership of or control or direction over capital securities of the company changes from that shown or required to be shown in that report or in the last report filed by him under this section shall, within 10 days following the end of the month in which the change takes place, if he was an insider of the company at any time during that month, file with the Commission a report of his direct or indirect beneficial ownership of or his control or direction over capital securities of the company at the end of that month and the change or changes therein that occurred during the month giving the details of each transaction required by the regulations.

97(1) In this section "offeror" means a person, other than an agent, who makes a take-over bid as defined in Part 13 of the Securities Act, and includes 2 or more persons

4 The following is added after section 118:

119(1) If a person obtains an order for the appointment of a receiver or manager of the property of a company or, under any powers contained in any instrument, appoints such a receiver or manager or takes possession of the property of a company, he shall, within 15 days from the date of the order, the appointment or the taking of possession, as the case may be, file with the Registrar a copy of the order or a notice of his having made the appointment or taken possession, and the Registrar shall enter the fact in the register of mortgages.

(2) Every person who defaults in complying with the requirements of this section is guilty of an offence.

120(1) Where either a receiver is appointed on behalf of the holder of any debentures of a company secured by a floating

(a) whose take-over bids are made jointly or in concert, or

(b) who intend to exercise jointly or in concert any voting rights attached to the shares for which a take-over bid is made.

(2) If an offeror becomes an insider under this Division and through purchases effected through the facilities of a stock exchange or in the over-the-counter market becomes the beneficial owner, directly or indirectly, of equity shares of a company carrying 20% or more of the voting rights attached to all equity shares of the company for the time being outstanding, the offeror within 3 days of acquiring that 20% ownership, shall file with the Commission a report as of the day on which he attained that ownership.

(3) An offeror required to file a report under subsection (2) shall, within 3 days of purchasing further equity shares carrying an additional 5% of the voting rights through the facilities of a stock exchange or in the over-the-counter market, file with the Commission a report as of the day on which he attained the additional 5% of the voting rights and thereafter each time he acquires a further 5%.

(4) If the facts required to be reported by this section are identical to those required under section 96, a separate report under section 96 is not required.

100(1) Every insider of a company or associate or affiliate of that insider, who, in connection with a transaction relating to the capital securities of the company, 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 those securities,

(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 ought reasonably to have been known to that person at the time of the transaction, and

(b) is also accountable to the company for any direct benefit or advantage received or receivable by that insider, associate or affiliate, as the case may be, as a result of the transaction.

(2) An action to enforce any right created by subsection (1) may be commenced only within 2 years after the date of completion of the transaction that gave rise to the cause of action.

4 Notice to Registrar, receiver's abstracts.

charge or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the floating charge, then, if the company is not at the time in course of being wound up, the debts that in every winding-up are, under the provisions of Part 10 relating to preferential payments, to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession, in priority to any claim for principal or interest in respect of the debentures.

(2) The periods of time mentioned in the provisions of Part 10 referred to in subsection (1) shall be computed from the date of the appointment of the receiver or of possession being taken, as the case may be.

(3) Any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

121(1) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall, within one month, or any longer period the Registrar may allow, after the expiration of

(a) 6 months from the date of his appointment, and

(b) every subsequent 6-month period,

file with the Registrar an abstract showing his receipts and his payments during those 6-month periods.

(2) Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument shall

(a) within one month after he ceases to act as a receiver or manager pursuant to the appointment, file with the Registrar an abstract showing his receipts and payments during the period from the end of the 6-month period to which the last abstract under subsection (2) related up to the date of his so ceasing, and

(b) on ceasing to act as a receiver or manager pursuant to the appointment, file a notice to that effect with the Registrar, and the Registrar shall enter the notice in the register of mortgages and charges.

⁵ *Section 154 is amended by adding the following after subsection (1):*

(1.1) Sections 156, 157 and 159 do not apply to the management of a company, a solicitation or a vote, respectively, where the company concerned is a reporting issuer as defined in the *Securities Act*.

5 Sections 156, 157 and 159 presently read:

156(1) Subject to section 154, the management of a company shall, concurrently with or prior to giving notice of a meeting of shareholders of the company, send by prepaid mail to each shareholder who is entitled to vote at the meeting at his last address as shown on the books of the company a form of proxy for use at the meeting that complies with section 158.

(2) If the management of a company fails to comply with subsection (1), the company is guilty of an offence and is liable to a fine of not more than \$1000, and every director or officer of the company who authorized, per-

mitted or acquiesced in the failure is also guilty of an offence and is liable to a like fine.

157(1) Subject to subsection (2) and section 154, no person shall solicit proxies unless,

(a) in the case of a solicitation by or on behalf of the management of a company, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the company whose proxy is solicited at his last address as shown on the books of the company, or

(b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the company whose proxy is solicited.

(2) Subsection (1) does not apply to

(a) any solicitation, otherwise than by or on behalf of the management of a company, where the total number of shareholders whose proxies are solicited is not more than 15, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder,

(b) any solicitation by a person made pursuant to section 79 of the Securities Act, and

(c) any solicitation by a person in respect of shares of which he is the beneficial owner.

(3) A person who fails to comply with subsection (1) is guilty of an offence and is liable to a fine of not more than \$1000, and if that person is a company, every director or officer of the company who authorized, permitted or acquiesced in the failure is also guilty of an offence and is liable to a like fine.

(4) A person who effects a solicitation that is subject to this section by means of a form of proxy, information circular or other communication that contains an untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained therein not misleading in the light of the circumstances in which it was made is guilty of an offence and is liable to a fine of not more than \$1000, and, if that person is a company, every director or officer of the company who authorized, permitted or acquiesced in the offence is also guilty of an offence and is liable to a like fine.

(5) No person is guilty of an offence under subsection (4) in respect of an untrue statement of a material fact or omission to state a material fact in a form of proxy or information circular, if the untruth of the statement or the fact of the omission was not known to the person who effected the solicitation and in the exercise of reasonable diligence could not have been known to that person.

159 If the aggregate number of shares represented at a meeting by proxies required to be voted against a particular matter or group of matters carries, to the knowledge of the chairman of the meeting, less than 5% of the voting rights attached to the shares entitled to vote and represented at the meeting, the chairman of the meeting has the right not to conduct a vote by way of ballot on any such matter or group of matters unless a poll is demanded at the meeting.

6 *Section 270(7) is repealed and the following is substituted:*

(7) If a share of property or money to which subsection (6) refers is not claimed as provided in that subsection, it vests in the Crown, and if the person formerly beneficially entitled thereto at any time thereafter establishes to the satisfaction of

(a) the Provincial Treasurer, in a case where the value of the share of property or the amount of money is \$2000 or less, or

(b) the Lieutenant Governor in Council, in a case where the value of the share of property or the amount of money is more than \$2000,

the Provincial Treasurer shall, of his own volition in a case to which clause (a) applies, or on the order of the Lieutenant Governor in Council in a case to which clause (b) applies, return the property or money to the Public Trustee to be delivered, conveyed or paid to the person formerly beneficially entitled to it.

7 *Section 281(2) is amended by striking out “223” and substituting “240”.*

8 *In the following provisions “or the Registrar’s periodical” is added after “The Alberta Gazette” wherever it occurs:*

section 32(2)(c);
section 34(2) and (8);
section 172(10)(b);
section 173(12)(d);
section 205(2), (3) and (4);
section 206(2)(c).

*In accordance with section 4(1) of the Interpretation Act,
this Bill comes into force on the date it receives Royal
Assent.*

6 Section 270(7) presently reads:

(7) If a share of property or money to which subsection (6) refers is not claimed as provided in that subsection, it vests in the Crown, and if the person formerly beneficially entitled thereto at any time thereafter establishes to the satisfaction of the Lieutenant Governor in Council the fact that he was so beneficially entitled, the Provincial Treasurer, in the absolute discretion and on the order of the Lieutenant Governor in Council, may return the property or money so vested to the Public Trustee to be delivered, conveyed or paid to the person formerly beneficially entitled thereto.

7 Corrects error in reference.

8 Permits publication of notices etc. in the Registrar's periodical instead of the Gazette.