

2000 BILL 15

Fourth Session, 24th Legislature, 49 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 15

**BUSINESS CORPORATIONS
AMENDMENT ACT, 2000.**

MR. MELCHIN

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 15

2000

BUSINESS CORPORATIONS AMENDMENT ACT, 2000

(Assented to _____, 2000)

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

Amends SA
1981 cB-15

1 The *Business Corporations Act* is amended by this Act.

2 Section 42 is repealed and the following is substituted:

Financial
assistance

42(1) In this section, “financial assistance” means financial assistance by means of a loan, guarantee or otherwise.

(2) A corporation may give financial assistance to any person for any purpose if it is in the best interest of the corporation to do so.

(3) Subject to subsection (4), a corporation must disclose to its shareholders, in accordance with the regulations, financial assistance that the corporation gives to

- (a) a shareholder or director of the corporation or of an affiliated corporation,
- (b) an associate of a shareholder or director of the corporation or of an affiliated corporation, or
- (c) 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.

(4) A corporation is not required to disclose to its shareholders financial assistance that it gives

Explanatory Notes

1 Amends chapter B-15 of the Statutes of Alberta, 1981.

2 Section 42 presently reads:

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.

- (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,
- (e) to employees of the corporation or any of its affiliates
 - (i) to enable them to purchase or erect or to assist them in purchasing or erecting 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,

or

- (f) to any person if all the shareholders have consented to giving the financial assistance.

(5) 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.

3 Section 113 is amended in subsections (3)(d), (5), (6)(a) and (8) by striking out “42” and substituting “42(2)”.

(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.*

3 Section 113 presently reads:

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 Executive Director 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.*

4 Section 231(b) is repealed and the following is substituted:

(b) “complainant” means

(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,

(ii) a director or an officer or a former director or officer of a corporation or of any of its affiliates,

(iii) a creditor

(A) in respect of an application under section 232, or

(B) in respect of an application under section 234, if the Court exercises its discretion under subclause (iv),

or

(iv) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.

5 Section 254(1) is amended by adding the following after clause (o):

(p) respecting the disclosure of financial assistance for the purpose of section 42(3).

6 This Act comes into force on Proclamation.

(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.

4 Section 231(b) presently reads:

231 In this Part,

(b) "complainant" means

- (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,*
- (ii) a director or an officer or a former director or officer of a corporation or of any of its affiliates, or*
- (iii) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.*

5 Section 254(1) presently reads in part:

254(1) The Lieutenant Governor in Council may make regulations

6 Coming into force.