

Bill 16
Dr. Brown

BILL 16

2005

BUSINESS CORPORATIONS AMENDMENT ACT, 2005

(Assented to , 2005)

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

Amends RSA 2000 cB-9

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

2 Section 1 is amended

(a) by repealing clause (p) and substituting the following:

(p) “distributing corporation” means a corporation that is a reporting issuer for the purposes of the *Securities Act*;

(b) in clause (z) by adding “, whether or not a professional descriptor is inserted between the words “Professional” and “Corporation”,” before “as the last words”;

(c) by adding the following after clause (jj):

(kk) “unlimited liability corporation” means a corporation whose shareholders have unlimited liability for any liability, act or default of the corporation, as set out in section 15.2.

3 The following is added after section 1:

Application

1.1 Subject to Part 2.1, this Act applies to unlimited liability corporations.

4 Section 6(1) is amended by striking out “Articles” and substituting “Subject to section 15.3, articles”.

5 Section 10 is amended

(a) in subsection (1)

(i) by striking out “The word” and substituting “Subject to section 15.4(1), the word”;

(ii) by striking out “but” and substituting “, and”;

(b) in subsection (2) by adding “, but a professional corporation may add a professional descriptor to its name, and the professional descriptor may be inserted between the words “Professional” and “Corporation” after “section 7(2)”;

(c) by adding the following after subsection (2):

(2.1) For the purposes of subsection (2), a professional descriptor is a term that describes the profession or occupation of the professional corporation, including the terms “Legal”, “Law”, “Medical”, “Dental” or others descriptive of the profession or occupation.

(d) in subsection (3) by striking out “No person” and substituting “Subject to section 15.4(2), no person”;

(e) in subsections (4) and (10) by adding “or section 15.4(2)” after “subsection (3)”.

6 Section 12(1)(b)(i) is amended by striking out “whether in existence or not” and substituting “unless the body corporate has been dissolved for a period of 6 years or more”.

7 Section 13(4) is amended by striking out “other word referred

to in section 10(3)” **and substituting** “word or abbreviation referred to in section 10(1)”.

8 Section 15(2), (4) and (6) are amended by adding “or purports to enter” **after** “enters”.

9 The following is added after section 15:

Part 2.1 Special Rules Respecting Unlimited Liability Corporations

Definition

15.1 For the purposes of this Part, “limited corporation” means a corporation whose shareholders are not, as shareholders, liable for any liability, act or default of the corporation except under section 38(4), 146(7) or 227(4).

Liability

15.2 The liability of each of the shareholders of a corporation incorporated under this Act as an unlimited liability corporation for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.

Articles of incorporation, etc.

15.3 In addition to meeting the requirements of section 6, the articles of incorporation, amalgamation, amendment, continuance or conversion of an unlimited liability corporation shall contain an express statement that the liability of each of the shareholders of the unlimited liability corporation for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.

Corporate name

15.4(1) The name of every unlimited liability corporation shall end with the words “Unlimited Liability Corporation” or the abbreviation “ULC”, and an unlimited liability corporation may use and may be legally designated by either the full or the abbreviated form.

(2) No person other than a body corporate that is an unlimited liability corporation shall carry on business within Alberta under any name or title that contains the words “Unlimited Liability Corporation” or “ULC”.

Continuance of extra-provincial corporation

15.5(1) Section 188 applies to an extra-provincial corporation continued as an unlimited liability corporation under this Act, and in addition,

- (a) the property of the extra-provincial corporation continues to be the property of the unlimited liability corporation,
- (b) if the extra-provincial corporation was incorporated as an unlimited liability corporation as of the date shown on the certificate of continuance, the unlimited liability corporation and the shareholders of the unlimited liability corporation continue to be liable without limit for any liability, act or default of the extra-provincial corporation,
- (c) if the extra-provincial corporation was incorporated as a limited corporation as of the date shown on the certificate of continuance,
 - (i) the unlimited liability corporation continues to be liable for the obligations of the extra-provincial corporation, and
 - (ii) the shareholders of the unlimited liability corporation become liable without limit for any liability, act or default of the extra-provincial corporation that existed as of the date shown on the certificate of continuance and are liable without limit for any liability, act or default of the unlimited liability corporation on and from the date shown on the certificate of continuance,
- (d) an existing cause of action, claim or liability to prosecution of the extra-provincial corporation includes the unlimited liability corporation and the shareholders of the unlimited liability corporation,

- (e) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial corporation may continue to be prosecuted by or against the

unlimited liability corporation or the shareholders of the unlimited liability corporation,

- (f) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial corporation may be enforced against or by the unlimited liability corporation or the shareholders of the unlimited liability corporation.

(2) When an extra-provincial corporation that was incorporated as an unlimited liability corporation is continued as a limited corporation,

- (a) the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance continue to be liable without limit for any liability, act or default of the extra-provincial corporation that existed as of the date shown on the certificate of continuance,
- (b) an existing cause of action, claim or liability to prosecution is unaffected,
- (c) a civil, criminal or administrative action pending by or against the extra-provincial corporation may continue to be prosecuted by or against the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance or by or against the limited corporation, and
- (d) a conviction against, or ruling, order or judgment in favour of or against, the unlimited liability corporation may be enforced against or by the shareholders of the extra-provincial corporation as it existed prior to the date shown on the certificate of continuance or against or by the limited corporation.

(3) Section 188(2) to (6) and (8) to (12) apply to an application under this section.

Conversion from unlimited liability corporation to limited corporation

15.6(1) Sections 173 and 186(c) to (f) apply to an unlimited liability corporation that is converted to a limited corporation by amendment of its articles or by amalgamation, and in addition

- (a) the shareholders of the unlimited liability corporation as it existed prior to the amendment or amalgamation continue to be liable without limit for any liability, act or default of the unlimited liability corporation that existed as of the date shown on the certificate of amendment or amalgamation,
- (b) an existing cause of action, claim or liability to prosecution in unaffected,
- (c) a civil, criminal or administrative action or proceeding pending by or against the unlimited liability corporation may continue to be prosecuted by or against the shareholders of the unlimited liability corporation as it existed prior to the amendment or amalgamation by or against the limited corporation, and
- (d) a conviction against, or ruling, order or judgment in favour of or against, the unlimited liability corporation may be enforced by or against the shareholders of the unlimited liability corporation as it existed prior to the amendment, amalgamation or continuance or by or against the limited corporation.

(2) Section 186(a) to (c) and (g) apply to an amalgamation under this Part, and in addition, if a limited corporation amalgamates with an unlimited liability corporation and the resulting corporation is an unlimited liability corporation,

- (a) the shareholders of the amalgamated unlimited liability corporation are liable for any liability, act or default of the amalgamated unlimited liability corporation, whether it arises before or after the date shown on the certificate of amalgamation,
- (b) an existing cause of action, claim or liability to prosecution pertaining to the amalgamating unlimited

liability corporation or the amalgamating limited corporation as it existed prior to amalgamation includes the shareholders of the amalgamated unlimited liability corporation,

- (c) a civil, criminal or administrative action or proceeding pending by or against the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation may continue to be prosecuted by or against the amalgamated unlimited liability corporation or by or against the shareholders of the amalgamated unlimited liability corporation, and
- (d) a conviction against, or ruling, order or judgment in favour of or against, the amalgamating unlimited liability corporation or the amalgamating limited corporation as it existed prior to amalgamation may be enforced by or against the amalgamated unlimited liability corporation or by or against the shareholders of the amalgamated unlimited liability corporation.

(3) If the articles of a limited corporation are amended to convert it to an unlimited liability corporation,

- (a) the shareholders of the limited corporation as it existed prior to the date shown on the certificate of amendment
 - (i) become liable for any liability, act or default of the limited corporation that existed as of the date shown on the certificate of amendment, and
 - (ii) are liable for any liability, act or default of the unlimited liability corporation on and from the date shown on the certificate of amendment,
- (b) an existing cause of action, claim or liability to prosecution includes the shareholders of the unlimited liability corporation,
- (c) a civil, criminal or administrative action or proceeding pending by or against the limited corporation as of the

date shown on the certificate of amendment may
continue to be prosecuted by or against the unlimited

liability corporation or by or against the shareholders of the unlimited liability corporation, and

- (d) a conviction against, or ruling, order or judgment in favour of or against, the limited corporation as of the date shown on the certificate of amendment, may be enforced by or against the unlimited liability corporation or by or against the shareholders of the unlimited liability corporation.

Continuation of actions after dissolution

15.7 Section 227 applies to a body corporate that before its dissolution was an unlimited liability corporation, and in addition

- (a) the liability of the shareholders for obligations of the unlimited liability corporation arising from actions and proceedings commenced by or against it before its dissolution or within 2 years after its dissolution is unlimited, and
- (b) any shareholder, including a past shareholder, may be held responsible for the full amount of any claim against the unlimited liability corporation that originated before dissolution, regardless of the amount, if any, received by the shareholder on the distribution of the corporation's property at dissolution.

Names of unlisted shareholders

15.8 The listed shareholders of an unlimited liability corporation shall provide to the Registrar on request the names and addresses of all unlisted shareholders of the unlimited liability corporation.

Warning on certificate

15.9(1) An unlimited liability corporation must ensure that each share certificate issued by it displays in a prominent position on the face of the certificate the information that the liability of an owner of the share or shares represented by the certificate for any liability, act or default of the unlimited liability corporation is unlimited in extent and joint and several in nature.

(2) The liability of a shareholder of an unlimited liability corporation is unaffected by any failure of the unlimited liability corporation to comply with subsection (1).

10 Section 21 is amended by adding the following after subsection (8):

(8.1) Notwithstanding subsections (1) and (8), a corporation may keep all or any of its corporate records and accounting records referred to in subsection (1) or (2) at a place outside Alberta only if

- (a) the records are available for examination, by means of a computer terminal or other technology, during regular office hours at the registered office or any other place in Alberta designated by the directors, and
- (b) the corporation provides the technical assistance to facilitate an examination referred to in clause (a).

11 Section 27(5) is repealed and the following is substituted:

(5) For the purposes of this section, “property” does not include a promissory note or promise to pay given by a person buying a share or a person who deals not at arm’s length, within the meaning of that expression in the *Income Tax Act* (Canada), with a person buying a share.

12 The following is added after section 27:

Splitting of shares

27.1(1) Where the only issued shares of a corporation are of one class, the directors may authorize the splitting of the shares by resolution.

(2) Where a corporation has issued more than one class of shares, each class of shareholder shall vote separately on a special resolution to approve the proposed splitting of the shares of any class.

(3) Where the directors have authorized the splitting of shares under subsection (1), they must notify the shareholders within 60 days in accordance with section 255 of the manner in which the issued shares have been split.

13 Section 29 is amended

(a) by repealing subsection (1) and substituting the following:

Shares in series

29(1) The articles may authorize, subject to any limitations set out in them, the issue of any class of shares in one or more series and may do either or both of the following:

- (a) fix the number of shares in each series and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series;
- (b) authorize the directors to fix the number of shares in each series and to determine the designation, rights, privileges and conditions attaching to the shares of each series at the time the shares are issued.

(b) by repealing subsection (5) and substituting the following:

(5) If the directors exercise their authority under subsection (1)(b), they shall, before the issue of shares of the series, send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

14 Section 32 is amended

(a) in subsection (1) by striking out “subsection (2)” and substituting “subsections (2) and (2.1)”;

(b) by adding the following after subsection (2):

(2.1) A corporation may from time to time hold shares in itself, or a subsidiary of the corporation may from time to time hold shares in the corporation, for a maximum of 30 days.

(2.2) At the expiry of the 30-day period set out in subsection (2.1), the corporation or the subsidiary of the corporation shall

- (a) cancel the shares, on the condition that if the articles of the corporation limit the number of authorized shares, the cancelled shares may be restored to the status of authorized but unissued shares,
- (b) return the consideration received by the corporation or the subsidiary of the corporation to the person or persons who paid it, and
- (c) cancel the entry for the consideration in the stated capital account of the corporation or the subsidiary of the corporation.

(2.3) Subsection (2) does not apply to shares held by a corporation or a subsidiary of a corporation under subsection (2.1).

15 Section 33 is amended by adding the following after subsection (3):

(4) A corporation shall not permit any of its subsidiary bodies corporate holding shares in the corporation to vote those shares or permit those shares to be voted unless the subsidiary body corporate satisfies the requirements of subsection (3).

16 Section 35 is amended by adding the following after subsection (3):

(4) For the purposes of this section and sections 36(2), 38(3), 43, 185(2)(a) and 191(20), “liabilities” does not include the stated capital amount attributed to, or the amount payable on redemption or in liquidation in respect of, any shares of the corporation.

17 Section 44(2) is repealed and the following is substituted:

(2) If shares of a corporation are issued in payment of a dividend, the directors may add all or part of the value of those shares to the

stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend.

18 Section 46(1) is amended by adding “or Part 2.1” after “or 227(4)”.

19 Section 48 is amended

- (a) **in subsection (8) by striking out** “to a lien in favour of the corporation or a restriction on its transfer other than a constraint under section 174, the lien or restriction” **and substituting** “to a lien in favour of the corporation, a restriction on its transfer other than a constraint under section 174, or a charge, agreement or endorsement, the lien, restriction, charge, agreement or endorsement”;
- (b) **in subsection (9) by adding** “whose shares are held by more than one person” **after** “A distributing corporation”.

20 Section 101 is amended

- (a) **in subsection (1) by adding** “or supervise the management of” **after** “shall manage”;
- (b) **in subsection (2) by adding** “whose shares are held by more than one person” **after** “a distributing corporation”.

21 Section 105 is amended

- (a) **in subsection (3) by striking out** “half” **and substituting** “1/4”;
- (b) **by repealing subsection (4).**

22 Section 113 is amended

- (a) **by adding the following after subsection (1):**

(1.1) Within 15 days after a director changes his or her address, the director or the corporation shall send to the Registrar a notice in the prescribed form setting out the change, and the Registrar shall file the notice.

- (b)** in subsection (2) by striking out “to comply with subsection (1)” and substituting “or a director, as the case may be, to comply with this section”.

23 Section 114 is amended

- (a)** by striking out “1/2” wherever it occurs and substituting “1/4”;
- (b)** in subsection (4)(a) by striking out “or by telephone” and substituting “or by electronic means, telephone”;
- (c)** in subsection (9) by striking out “means of telephone” and substituting “electronic means, telephone”.

24 Section 115 is amended

- (a)** in subsection (2) by striking out “1/2” and substituting “1/4”;
- (b)** in subsection (3) by adding the following after clause (b):
- (b.1) appoint additional directors,

25 Section 120 is amended

- (a)** in subsection (1) by striking out “material contract or proposed material contract” wherever it occurs and substituting “material contract or material transaction or proposed material contract or proposed material transaction”;
- (b)** in subsection (2)

- (i) **by striking out** “proposed contract” **wherever it occurs and substituting** “proposed contract or transaction”;
 - (ii) **by striking out** “a contract” **wherever it occurs and substituting** “a contract or transaction”;
- (c) **in subsection (3) by striking out** “proposed contract” **wherever it occurs and substituting** “proposed contract or transaction”;
- (d) **in subsection (4) by striking out** “contract” **wherever it occurs and substituting** “contract or transaction”;
- (e) **in subsection (5)**
 - (i) **by striking out** “material contract or proposed material contract” **and substituting** “material contract or material transaction or proposed material contract or proposed material transaction”;
 - (ii) **by striking out** “contract or proposed contract” **and substituting** “contract or transaction or proposed contract or transaction”;
- (f) **in subsections (6) and (7) by striking out** “contract” **wherever it occurs and substituting** “contract or transaction”;
- (g) **in subsection (8)**
 - (i) **by striking out** “material contract” **and substituting** “material contract or material transaction”;
 - (ii) **by striking out** “the contract” **wherever it occurs and substituting** “the contract or transaction”;
- (h) **by adding the following after subsection (8):**

(8.1) Even if the conditions of subsection (8) are not met, a director or officer acting honestly and in good faith is not accountable to the corporation or to its shareholders for any profit realized from a material contract or material transaction for which disclosure is required under subsection (1), and the material contract or material transaction is not void or voidable

by reason only of the interest of the director or officer in the material contract or material transaction, if

- (a) the material contract or material transaction was approved or confirmed by special resolution at a meeting of the shareholders,
- (b) disclosure of the interest was made to the shareholders in a manner sufficient to indicate its nature before the material contract or material transaction was approved or confirmed, and
- (c) the material contract or material transaction was reasonable and fair to the corporation when it was approved or confirmed.

(i) by repealing subsection (9) and substituting the following:

(9) If a director or an officer of a corporation fails to comply with this section, a Court may, on application of the corporation or any of its shareholders, set aside the material contract or material transaction on any terms that it thinks fit, or require the director or officer to account to the corporation for any profit or gain realized on it, or both.

26 Section 123(3) is amended by striking out “or 122 if the director relies” and substituting “, and has complied with the director’s duties under section 122, if the director exercises the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance”.

27 Section 124 is amended by adding the following after subsection (3):

(3.1) A corporation may advance funds to a person in order to defray the costs, charges and expenses of a proceeding referred to in subsection (1) or (2), but if the person does not meet the conditions of subsection (3) he or she shall repay the funds advanced.

28 Section 131 is amended

(a) in subsection (3)

- (i) by striking out** “A shareholder” **and substituting** “Subject to any limitations or requirements set out in the regulations, if any, a shareholder”;
- (ii) by striking out** “means of” **and substituting** “electronic means,”;
- (iii) by adding** “or otherwise communicate with” **after** “hear”;

(b) by adding the following after subsection (3):

(3.1) If the directors or the shareholders of a corporation call a meeting of shareholders, the directors or the shareholders, as the case may be, may determine that the meeting shall be held, in accordance with the regulation, if any, entirely by electronic means, telephone or other communication facility that permits all participants to communicate adequately with each other during the meeting, if the bylaws so provide.

- (c) in subsection (4) by striking out** “at one or more places specified in the articles”.

29 Section 133(2) is amended by adding “or to vote at” **after** “notice of”.

30 Section 136 is amended

(a) in subsection (1)

- (i) by striking out** “shareholder” **wherever it occurs and substituting** “registered shareholder or beneficial owner of shares”;
- (ii) in clause (a) by adding** “related to the business or affairs of the corporation” **after** “any matter”;

(b) by adding the following after subsection (1):

(1.1) To be eligible to make a proposal a person must

- (a) be a registered holder or beneficial owner of the prescribed number of shares for the prescribed period,
- (b) have the prescribed level of support of other registered holders or beneficial owners of shares,
- (c) provide to the corporation his or her name and address and the names and addresses of those registered holders or beneficial owners of shares who support the proposal, and
- (d) continue to hold or own the prescribed number of shares up to and including the day of the meeting at which the proposal is to be made.

(1.2) The information provided under subsection (1.1)(c) does not form part of the proposal or the supporting statement referred to in subsection (3) and is not included for the purposes of the maximum word limit set out in subsection (3).

(c) in subsections (3) and (5)(b) by striking out “shareholder” wherever it occurs and substituting “registered holder or beneficial owner of shares”;

(d) in subsection (5)(c)

(i) by striking out “shareholder’s request” and substituting “request of the registered holder or beneficial owner of shares”;

(ii) by striking out “the shareholder” and substituting “the registered holder or beneficial owner of shares”;

(e) in subsection (5)(d)

(i) by striking out “to shareholders” and substituting “to registered holders or beneficial owners of shares”;

(ii) by striking out “shareholder’s request” and substituting “request of the registered holder or beneficial owner of shares”;

- (f) **in subsection (7) by striking out** “the shareholder” **wherever it occurs and substituting** “the registered holder or beneficial owner of shares”;
- (g) **in subsection (8) by striking out** “shareholder” **and substituting** “registered holder or beneficial owner of shares”.

31 Section 137 is amended

- (a) **in subsection (1) by striking out** “having more than 15 shareholders entitled to vote at a meeting of shareholders”;
- (b) **in subsection (2) by striking out** “a person named in the list prepared under subsection (1)(a) is entitled to vote the shares shown opposite the person’s name” **and substituting** “the corporation shall, no later than 10 days after the record date, prepare a list of shareholders arranged in alphabetical order and showing the number of shares held by each shareholder, and each shareholder is entitled to vote the shares shown opposite the shareholder’s name”.

32 Section 140 is amended by adding the following after subsection (2):

- (3) An entry in the minutes of the proceedings that a resolution was carried or defeated is sufficient proof of the results of the vote, and no record need be kept of the number or proportion of votes for or against the resolution.
- (4) Notwithstanding subsection (1), unless the bylaws provide otherwise, any vote referred to in subsection (1) may be held, in accordance with the regulations, if any, entirely by electronic means, telephone or other communication facility, if the telephone corporation makes such a communication facility available.
- (5) Unless the bylaws provide otherwise, any person participating in a meeting of shareholders under section 131(3) and entitled to vote at the meeting may vote, in accordance with

the regulations, if any, by electronic means, telephone or other communication facility that the corporation has made available for that purpose.

33 Section 142 is repealed and the following is substituted:

Meeting on requisition of registered holders or beneficial owners of shares

142(1) The registered holders or beneficial owners 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 in the same form, each signed by one or more registered holders or beneficial owners of shares, 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 133(2) and notice of the record date has been given or waived under section 133(4),
- (b) the directors have called a meeting of shareholders and have given notice of the meeting under section 134, or
- (c) the business of the meeting as stated in the requisition includes matters described in section 136(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 registered holder or beneficial owner of shares 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 bylaws, this Part and Part 12.

(6) Unless the registered holders or beneficial owners of shares resolve otherwise at a meeting called under subsection (4), the corporation shall reimburse the registered holders or beneficial owners of shares for the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

34 Section 146(7) is amended by adding “or any other enactment” after “section 119”.

35 Section 149 is amended

(a) **in subsection (1) by adding “that is not a private issuer within the meaning of the *Securities Act*” after “the management of a corporation”;**

(b) **in subsection (2)**

(i) **by adding “that is not a private issuer within the meaning of the *Securities Act*” after “management of a corporation”;**

(ii) **by repealing clause (a).**

36 Section 156 is amended by adding the following after subsection (2):

(3) The shareholders of the corporation may at any time, by unanimous resolution, waive their right to receive financial statements under section 155(1)(a)(i).

37 Section 158(1) is amended by adding “or a facsimile version of the signature reproduced on the statements” after “more directors”.

38 Section 159 is amended by adding the following after subsection (2):

(3) Notwithstanding subsection (1), the shareholders may, by unanimous resolution, waive their right to receive copies of documents referred to in section 155 in advance of the annual meeting.

39 Section 161 is amended by adding the following after subsection (2):

(2.1) For the purposes of subsection (2), a person's business partner includes a shareholder of that person.

40 Section 168 is amended

(a) by adding the following after subsection (5):

(5.1) In the case of a proposed replacement of an auditor, whether through removal or at the end of the auditor's term, the following rules apply with respect to statements:

- (a) the corporation shall make a statement on the reasons for the proposed replacement;
- (b) the proposed replacement auditor may make a statement in which he or she comments on the reasons referred to in clause (a).

(b) in subsection (6) by striking out "statement referred to in subsection (5), unless the statement is" and substituting "statements referred to in subsections (5) and (5.1), unless the statements are".

41 Section 170 is amended by adding the following after subsection (2):

(3) A person who in good faith makes an oral or written communication under subsection (1) or (2) is not liable in any civil proceeding arising from the making of the communication.

42 Section 173(1) is amended by striking out "or" at the end of clause (m) and by adding the following after clause (m):

- (m.1) add or remove an express statement establishing the unlimited liability of shareholders as set out in section 15.2, or

43 Section 184(1)(b) is amended by striking out “and” at the end of subclause (ii), by adding “and” at the end of subclause (iii) and by adding the following after subclause (iii):

- (iv) the stated capital of the amalgamated corporation shall be the same as the stated capital of the amalgamating holding corporation.

44 Section 186 is amended by striking out “On the date” and substituting “Subject to section 15.6, on the date”.

45 Section 196(1) is amended

- (a) in clause (a) by striking out “more than” and substituting “not less than”;
- (b) in clause (c)
 - (i) by repealing subclause (ii)(B);
 - (ii) by striking out “60 days after the date of the sending of the offeror’s notice” and substituting “20 days after the offeree receives the offeror’s notice”;
- (c) in clause (d) by striking out “and apply to the Court in accordance with clause (c)(ii)”.

46 Section 199 is amended by renumbering it as section 199(1) and by adding the following after subsection (1):

- (2) If an offeror fails to apply to the Court under subsection (1), a dissenting offeree may apply to the Court for the same purpose within a further period of 20 days after the 20-day period referred to in subsection (1) has elapsed.

(3) Where no application is made to the Court under subsection (2) within the 20-day period provided for in that subsection, the dissenting offeree is deemed to have elected to transfer the offeree's shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid.

47 Section 205(d) is amended by striking out "Provincial Treasurer" and substituting "Crown".

48 The following is added before section 207:

Definition

206.1 In this Part, "interested person" means

- (a) a shareholder, a director, an officer, an employee and a creditor of a dissolved corporation,
- (b) a person who has a contractual relationship with a dissolved corporation,
- (c) a trustee in bankruptcy for a dissolved corporation, or
- (d) a person designated as an interested person by an order of the Court.

49 Section 210(1) is amended by adding the following after clause (a):

- (a.1) a body corporate dissolved under this Part,

50 Section 211 is amended by adding the following after subsection (2):

(2.1) A corporation whose liabilities have been fully assumed by its parent corporation may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of each class whether or not they are otherwise entitled to vote, if

- (a) the parent corporation is a Canadian corporation,
- (b) the parent corporation owns not less than 90% of the shares of the corporation, and
- (c) an officer of the parent corporation provides a statutory declaration that the liabilities of the corporation have been fully assumed by the parent corporation.

51 Section 222 is amended by renumbering it as section 222(1) and by adding the following after subsection (1):

(2) A liquidator is not liable if the liquidator exercises the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances, including reliance in good faith on

- (a) financial statements of the corporation represented to the liquidator 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) a report of a person whose profession lends credibility to a statement made by the professional person.

52 Section 227(2) is amended by striking out “Notwithstanding” and substituting “Subject to section 15.7, notwithstanding”.

53 Section 228 is amended

- (a) **in subsection (1) by striking out “Provincial Treasurer” and substituting “Crown”;**
- (b) **in subsection (3)**
 - (i) **by striking out “money paid to the Provincial Treasurer” and substituting “money paid to the Crown”;**
 - (ii) **by striking out “the Provincial Treasurer shall pay” and substituting “the Minister of Finance shall pay”.**

54 Section 240 is amended by adding the following after subsection (2):

(3) Notwithstanding subsection (2), when all the directors of the corporation or its subsidiary have been named as defendants, notice to the directors under subsection (2)(a) of the complainant’s intention to apply to the Court is not required.

55 Section 247(1) is amended by adding the following after clause (a):

- (a.1) to issue, or to refuse to issue, a certificate of revival under section 208, or to impose terms on a revival,

- (a.2) to correct, or to refuse to correct, a certificate, a notice, articles or another document under section 270,

56 Section 255 is amended

- (a) in subsection (4) by striking out “three” and substituting “2”;

- (b) by adding the following after subsection (4):

(5) A notice or document required to be sent or delivered under this section or section 256 or 257 may be sent by electronic

means in accordance with the provisions of the *Electronic Transactions Act*.

57 Section 256 is amended

- (a) in subsection (3) by striking out “or a notice sent by ordinary mail to the corporation in accordance with subsection (2)”;

- (b) by adding the following after subsection (3):

(4) A notice of intent to dissolve a corporation sent by ordinary mail to the corporation in accordance with subsection (2) is deemed to have been received or served at the time it would be delivered in the ordinary course of mail despite the fact that it is returned as undeliverable.

58 Section 258 is amended by renumbering it as section 258(1) and by adding the following after subsection (1):

(2) The consent of a person entitled to waive the requirement for the sending of a notice or document or to waive or abridge the time for the notice or the document under subsection (1) may be sent by electronic means in accordance with the provisions of the *Electronic Transactions Act*.

59 Section 266 is amended

(a) by adding the following after clause (c):

- (c.1) prescribing requirements for the purposes of section 131(3) and (3.1);

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

- (q) respecting unlimited liability corporations including, without limitation, regulations
 - (i) requiring or authorizing the filing with the Registrar of articles, amendments to articles and other documents by an unlimited liability corporation, and
 - (ii) prescribing the fees that may be charged by the Registrar in respect of the filing, examination or copying of any document of an unlimited liability corporation, or in respect of any action that the Registrar is required or authorized to take under this Act with regard to an unlimited liability corporation.

60 Section 270 is amended

(a) in subsection (1)

- (i) **by striking out** “If a certificate containing an error is issued to a corporation by the Registrar” **and substituting** “If there is an error in a certificate, notice, articles or another document”;
- (ii) **by striking out** “, and the Registrar may demand the surrender of the certificate and issue a corrected certificate” **and substituting** “so that the Registrar may correct the document”;

(b) in subsections (2) and (3) by striking out “certificate” **wherever it occurs and substituting** “certificate, notice, articles or another document”;

(c) by adding the following after subsection (3):

- (4) If the Registrar, the corporation or any interested person is of the opinion that shareholders or creditors would be prejudiced by a correction to a certificate, notice, articles or

other document, the Registrar, the corporation or an interested person may apply to the Court for an order determining the rights of the shareholders or creditors, and the Court may by order authorize the correction if it thinks fit, and may include in the order any conditions or directions pertaining to the correction that it considers appropriate.

61 The *Interpretation Act* is amended in section 16(d) by striking out “individual members of the corporation” and substituting “individual members of a corporation that is not an unlimited liability corporation as defined in the *Business Corporations Act*”.**62 The *Business Corporations Amendment Act, RSA 2000 c8(Supp)*, is repealed.**

63 This Act comes into force on Proclamation.

Explanatory Notes

1 Amends chapter B-9 of the Revised Statutes of Alberta 2000.

2 Definitions.

3 Application.

4 Section 6(1) presently reads in part:

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

5 Section 10 presently reads in part:

10(1) The word “Limited”, “Limitée”, “Incorporated”, “Incorporée” or “Corporation” or the abbreviation “Ltd.”, “Ltée”, “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”, “Limitée”, “Incorporated”, “Incorporée” or “Corporation” or the abbreviation “Ltd.”, “Ltée”, “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.

(10) Where a corporation carries on business or identifies itself by a name other than its corporate name, the name shall not contain a word referred to in subsection (3).

6 Section 12(1) presently reads in part:

12(1) A corporation shall not have a name

(b)subject to the circumstances and conditions prescribed by the regulations, that is identical

- (i) a body corporate incorporated under the laws of Alberta, whether in existence or not,*
- (ii) an extra-provincial corporation registered in Alberta, or*
- (iii) a Canada corporation,*

7 Section 13(4) presently reads:

(4) 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 an Act governing a profession or occupation, the Registrar may, on giving notice to the professional corporation of the Registrar's intention to do so, change the name of the corporation to exclude the words "Professional Corporation" and replace them with any other word referred to in section 10(3).

8 Section 15 presently reads in part:

(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.

(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.

(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 the person is not to be so liable.

9 Special rules respecting unlimited liability corporations.

10 Electronic inspection of records.

11 Section 27(5) presently reads:

(5) For the purposes of this section, "property" does not include a promissory note or promise to pay given by the allottee.

12 Splitting of shares.

13 Section 29 presently reads in part:

29(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.

(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.

14 Corporation holding shares in itself.

15 When subsidiary bodies corporate may vote shares in the corporation.

16 Section 35 presently reads in part:

(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.

17 Addition of all or part of the value of shares issued to stated capital account.

18 Section 46 presently reads in part:

46(1) The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under section 38(4), 146(7) or 227(4).

19 Section 48 presently reads in part:

(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 lien in favour of the corporation or a restriction on its transfer other than a constraint under section 174, the lien or restriction is ineffective against a transferee of the security who has no actual knowledge of it unless

- (a) it or a reference to it is noted conspicuously on the security certificate,*
- (b) the security certificate contains a conspicuous statement that it is non-negotiable, or*
- (c) 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 67.*

(9) A distributing corporation shall not restrict the transfer of its shares except by way of a constraint permitted under section 174.

20 Section 101 presently reads:

101(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.

21 Section 105 presently reads in part:

(3) At least half of the directors of a corporation must be resident Canadians.

(4) Notwithstanding subsection (3), not more than 1/3 of the directors of a holding corporation need be resident Canadians if the holding corporation earns in Canada, 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 157, 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.*

22 Section 113 presently reads:

113(1) Within 15 days after a change is made among the directors, a corporation shall send to the Registrar a notice in the 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.

23 Section 114 presently reads in part:

(3) Directors, other than directors of a corporation referred to in section 105(4), shall not transact business at a meeting of directors unless at least 1/2 of the directors present are resident Canadians.

(4) Notwithstanding subsection (3), directors may transact business at a meeting of directors when fewer than 1/2 of the directors present are resident Canadians if

- (a) a resident Canadian director who is unable to be present approves in writing or by telephone or other communication device the business transacted at the meeting, and*
- (b) the number of resident Canadian directors present at the meeting, together with any resident Canadian director who gives that director's approval under clause (a), totals at least 1/2 of the directors present at the 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 bylaws so provide, or*
- (b) subject to the bylaws, 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.

24 Section 115 presently reads in part:

(2) If the directors of a corporation, other than a corporation referred to in section 105(4), appoint a committee of directors, at least 1/2 of the members of the committee must be resident Canadians.

(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 42,*
- (g) approve a management proxy circular referred to in Part 12,*
- (h) approve any financial statements referred to in section 155, or*
- (i) adopt, amend or repeal bylaws.*

25 Section 120 presently reads:

120(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 the director's or officer's interest.

(2) Subject to subsection (3), 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 the director becomes so interested,

(c) if the director becomes interested after a contract is made, at the first meeting after the director becomes so interested, or

(d) if a person who is interested in a contract later becomes a director, at the first meeting after the director becomes a director.

(3) Where a proposed contract is dealt with by resolution under section 117 instead of at a meeting, the disclosure that would otherwise be required to be made in accordance with subsection (2)(a) or (b) shall be made

(a) forthwith on receipt of the resolution, or

(b) if the director was not interested in the proposed contract at the time of receipt of the resolution, at the first meeting after the director becomes so interested.

(4) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

(a) forthwith after the officer 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 the officer becomes so interested, or

(c) if a person who is interested in a contract later becomes an officer, forthwith after the officer becomes an officer.

(5) 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 the director's or officer's interest forthwith after the director or officer becomes aware of the contract or proposed contract.

(6) 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 the director, or by a body corporate in which the director has an interest, for the benefit of the corporation or an affiliate,*
- (b) a contract relating primarily to the director's remuneration as a director, officer, employee or agent of the corporation or an affiliate,*
- (c) a contract for indemnity or insurance under section 124, or*
- (d) a contract with an affiliate.*

(7) 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 the director is a director or officer if

- (a) the notice declares the director 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 the director's interest,*
- (b) at the time disclosure would otherwise be required under subsection (2), (3), (4) or (5), as the case may be, the extent of the director's 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), (4) or (5), as the case may be.*

(8) 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 the director or officer 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 the director's or officer's interest in accordance with subsection (2), (3), (4), (5) or (7), 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.

(9) If a director or officer of a corporation fails to disclose the director's or officer's 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.

(10) This section is subject to any unanimous shareholder agreement.

26 Section 123(3) presently reads:

(3) A director is not liable under section 118 or 122 if the director relies in good faith on

(a) financial statements of the corporation represented to the director 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 or report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by that person.

27 Conditions for corporation advancing funds.

28 Section 131 presently reads in part:

(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 bylaws so provide, or

(b) subject to the bylaws, all the shareholders entitled to vote at the meeting consent,

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

29 Section 133 presently reads in part:

(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.

30 Section 136 presently reads:

136(1) A shareholder entitled to vote at an annual meeting of shareholders may

(a) submit to the corporation notice of any matter that the shareholder proposes to raise at the meeting, referred to in this section as a “proposal”, and

(b) discuss at the meeting any matter in respect of which the shareholder 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 150 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 the shareholder 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 may, if it is satisfied that subsection (5) applies, make any order it thinks fit.

31 Section 137 presently reads in part:

137(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 133(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 133(2), a person named in the list prepared under subsection (1)(a) is entitled to vote the shares shown opposite the person's name at the meeting to which the list relates, except to the extent that*

(a) *the person has transferred the ownership of any of the person's shares after the record date, and*

(b) *the transferee of those shares*

(i) *produces properly endorsed share certificates, or*

(ii) *otherwise establishes that the transferee owns the shares,*

and demands, not later than 10 days before the meeting, or any shorter period before the meeting that the bylaws of the corporation may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote the transferee's shares at the meeting.

32 No record need be kept of votes for or against a resolution.

33 Section 142 presently reads:

142(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 133(2) and notice of the record date has been given under section 133(4),*

(b) *the directors have called a meeting of shareholders and have given notice of the meeting under section 134, or*

(c) *the business of the meeting as stated in the requisition includes matters described in section 136(5)(b) to (e).*

Explanatory Notes

(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 bylaws, 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.

34 Section 146(7) presently reads:

(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 119, to the same extent.

35 Section 149 presently reads in part:

149(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 the 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 one 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).*

36 Shareholders may waive their right to receive financial statements.

37 Section 158(1) presently reads:

158(1) The directors of a corporation shall approve the financial statements referred to in section 155 and the approval shall be evidenced by the signature of one or more directors.

38 Shareholders may waive their right to receive copies of documents.

39 Section 161 presently reads in part:

161(1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation if the person 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 the person or the person's 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 the person's proposed appointment as auditor of the corporation.

40 Section 168 presently reads in part:

(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 the auditor 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 the incumbent auditor's term of office has expired or is about to expire,*
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 163 is to be proposed,*

is entitled to submit to the corporation a written statement giving the reasons for the auditor's resignation or the reasons why the auditor 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 Executive Director, 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 150.

41 Protection from liability for persons who report to auditor.

42 Section 173(1) presently reads in part:

173(1) Subject to sections 176 and 177, the articles of a corporation may by special resolution be amended to

- (m) *subject to section 48(8), add, change or remove restrictions on the transfer of shares, or*

43 Section 184(1) presently reads in part:

184(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 182 and 183 if

- (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.*

44 Section 186 presently reads:

186 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.*

45 Section 196(1) presently reads in part:

196(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,*
- (c) *a dissenting offeree is required to elect*
 - (i) *to transfer the offeree's 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 the offeree's 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 the offeree's shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid, and*

46 Section 199 presently reads:

199 If a dissenting offeree has elected to demand payment of the fair value of the offeree's shares under section 196(1)(c), the offeror may, within 20 days after the offeror has paid the money or transferred the other consideration under section 197(2), apply to the Court to fix the fair value of the shares of that dissenting offeree.

47 Section 205(d) presently reads:

205 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:

(d) *order that any money payable to a shareholder who cannot be found be paid to the Provincial Treasurer and section 228(3) applies in respect of money so paid.*

48 Definition of "interested person".

49 Section 210(1) presently reads in part:

210(1) Any interested person may apply to the Court for an order reviving

- (a) a body corporate dissolved under section 273,*
- (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 273(1), or*
- (c) a body corporate that was dissolved by reason of the operation of subsection (7).*

50 Shareholders may dissolve a corporation whose liabilities have been assumed by its parent corporation if the parent is a Canadian corporation.

51 Responsibilities of liquidator.

52 Section 227(2) presently reads:

(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.*

53 Section 228 presently reads:

228(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 must 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 the person is entitled to any money paid to the Provincial Treasurer under this Act, the Provincial Treasurer shall pay an equivalent amount to the person out of the General Revenue Fund.

54 Notice may be dispensed with.

55 Section 247(1) presently reads:

247(1) A person who feels aggrieved by a decision of the Registrar

- (a) to refuse to file in the form submitted to the Registrar any articles or other document required by this Act to be filed by the Registrar,*
- (b) to approve, change or revoke a name or to refuse to approve, change or revoke a name under this Act,*
- (c) to refuse under section 188(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 189,*
- (e) *to refuse to revive a corporation under section 208,*
- (f) *to dissolve a corporation under section 213,*
- (g) *to refuse an exemption under section 277(2),*
or
- (h) *to cancel the registration of an extra-provincial corporation under section 285,*

may apply to the Court for an order requiring the Registrar to change that decision, and on the application the Court may so order and make any further order it thinks fit.

56 Section 255(4) presently reads:

(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 the shareholder informs the corporation in writing of the shareholder's new address.

57 Section 256 presently reads in part:

(3) A notice or document sent by registered mail to the corporation in accordance with subsection (1)(b) or a notice sent by ordinary mail to the corporation in accordance with subsection (2) 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.

58 Section 258 presently reads:

258 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.

59 Regulations.

60 Section 270 presently reads:

270(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 the Registrar 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.

61 Consequential amendment.

62 Repeals chapter 8(Supp) of the Revised Statutes of Alberta 2000.

63 Coming into force.

Explanatory Notes