

BILL

No. 73 of 1930.

An Act to amend The Companies Act, 1929.

(Assented to _____, 1930.)

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

1. This Act may be cited as "*The Companies Act, 1929, Amendment Act, 1930.*"

2. *The Companies Act, 1929*, being chapter 14 of the Statutes of Alberta, 1929, is amended as to section 2 thereof, by striking out paragraph (q) thereof, and substituting therefor the following:

"(q) 'Foreign company' shall mean a company incorporated otherwise than by or under an Act of the Province or an Ordinance of the North-West Territories; provided that companies incorporated by or under an Ordinance of the North-West Territories and not subject to the Legislative authority of the Province by section 16 of *The Alberta Act* shall be foreign companies."

3. Section 19, subsection (1), of the said Act is amended as to paragraph (l) thereof, by adding thereto the words "and to distribute any of the property of the company among the members in specie."

4. Section 25 of the said Act is amended as to subsection (1), by striking out paragraph (e) thereof.

5. Section 29 of the said Act is amended—

(a) as to subsection (1) thereof—

(i) by adding after the word "prospectus" wherever it occurs in clause (i) of paragraph (c) the word "substantially"; and

(ii) by striking out the proviso to clause (i) of paragraph (c) the words "or debentures"; and

(b) by striking out subsection (11) thereof and substituting therefor the following:

"(11) This section shall not apply to an existing company in respect of any act done or omitted before or after the commencement of this Act, except in respect of its first allotment of shares, if made after the said commencement."

6. Section 40 of the said Act is amended by adding after the words "share capital" where they first occur in subsection (1), the words "if authorized by its articles."

7. Section 41 of the said Act is amended by striking out the words "A company having a share capital may by special resolution" and substituting therefor the words "A company having a share capital, if so authorized by its articles, may by special resolution alter the conditions of its memorandum as follows, that is it may."

8. Section 47 of the said Act is amended—

(a) as to subsection (2) thereof, by adding after the words "ordinary resolution" the words "to which this section applies"; and

(b) by adding thereto, as subsection (4) thereof, the following:

"(4) This section shall apply to—

"(a) Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless, as the case may be, they had been passed as special resolutions or as extraordinary resolutions;

"(b) Resolutions or agreements which have been agreed to by all the members of some class of shareholders, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and all resolutions or agreements which effectively bind all the members of any class of shareholders, though not agreed to by all those members."

9. Section 72 of the said Act is amended as to subsection (1) thereof, by striking out the words "with or without preferred shares having a preference as to principal, and where it provides for such preferred shares" and substituting therefor the words "and where it provides for preferred shares having a preference as to principal."

10. Section 73 of the said Act is hereby struck out and the following substituted therefor:

"**73.**—(1) Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with such preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or

otherwise, as the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company, is liable to be redeemed.

“(2) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied with the consent in writing of the holders of three-fourths of the issued shares of that class, or with the sanction of an extraordinary resolution passed at a separate general meeting of the holders of the shares of the class.

“(3) To every such separate general meeting the provisions of these regulations relating to general meetings shall *mutatis mutandis* apply, but so that the necessary quorum shall be two persons at least, holding or representing by proxy one-third of the issued shares of the class, and that any holder of shares of the class present in person or by proxy may demand a poll.

“(4) The articles may provide that the holders of preference shares shall have the right to select a certain portion of the Board of Directors or may give the said holders such other control over the affairs of the company or may so restrict their control, as may be considered expedient.”

11. Section 74 of the said Act is hereby struck out and the following substituted therefor:

“**74.**—(1) No shares which are or at the option of the company are to be liable to be redeemed, shall be redeemed except out of the profits of the company which would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

“(2) No such shares shall be redeemed unless they are fully paid.

“(3) Where any such shares are redeemed otherwise than out of the proceeds of a fresh issue, there shall out of profits which would otherwise have been available for dividend be transferred to a reserve fund, to be called ‘the capital redemption reserve fund,’ a sum equal to the amount applied in redeeming the shares, and the provisions of this Act relating to the reduction of the share capital of a company shall, except as provided in this section, apply as if the capital redemption reserve fund were paid-up share capital of the company.

“(4) Where any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, must have been provided for out of the profits of the company before the shares are redeemed.

“(5) There shall be included in every balance sheet of a company which has issued redeemable preference shares a statement specifying what part of the issued capital of

the company consists of such shares, and the date on or before which those shares are, or are to be, liable to be redeemed.

“(6) If a company fails to comply with the provisions of the immediately preceding subsection, the company, and every officer of the company, who is in default shall be liable to a fine not exceeding five hundred dollars.

“(7) Subject to the provisions of this section, the redemption of preference shares thereunder may be effected on such terms and in such manner as may be provided by the articles of the company.

“(8) Where in pursuance of this section a company has redeemed or is about to redeem any preference shares, it shall have power to issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to fees be deemed to be increased by the issue of shares in pursuance of this subsection:

“Provided that where new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to the payment of fees, be deemed to have been issued in pursuance of this subsection unless the old shares are redeemed within one month after the issue of the new shares.

“(9) Where new shares have been issued in pursuance of the last foregoing subsection, the capital redemption reserve fund may, notwithstanding anything in this section, be applied by the company, up to an amount equal to the nominal amount of the shares so issued, in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares:

“Provided that nothing in this section contained shall in any way interfere with the discretion of the court to sanction any scheme for reduction of capital under the provisions of section 43, whether such scheme does or does not involve the cancellation, payment or redemption of preference shares.”

12. Section 80*a* is added to the said Act, immediately after section 80 thereof, as follows:

“**80*a*.** The directors of a company shall be jointly and severally liable to the clerks, labourers, servants and apprentices thereof for all debts not exceeding six months' wages due for services performed for the company whilst they are such directors respectively; but no director shall be liable to an action therefor unless the company is sued therefor within one year after the debt becomes due nor unless such director is sued therefor within one year from the time when he ceased to be such director nor unless an execution against the company is returned unsatisfied in whole or in part; and the amount unsatisfied on such execution shall be the amount recoverable with costs from the directors.”

13. Section 95 of the said Act is amended as to subsection (1) thereof, by striking out the number "IX" and substituting therefor the number "X."

14. Section 109 of the said Act is amended as to subsection (2) thereof, by striking out the words "and in particular debts owing to the company from its directors, officers and shareholders respectively."

15. Section 109a is added to the said Act, immediately after section 109, as follows:

"109a.—(1) The accounts which in pursuance of this Act are to be laid before every company in general meeting shall, subject to the provisions of this section, contain particulars showing—

"(a) the amount of any loans which during the period to which the accounts relate have been made either by the company or by any other person under a guarantee from or on a security provided by the company to any director or officer of the company, including any such loans which were repaid during the said period; and

"(b) the amount of any loans made in manner aforesaid to any director or officer at any time before the period aforesaid and outstanding at the expiration thereof; and

"(c) the total of the amount paid to the directors as remuneration for their services, inclusive of all fees, percentages or other emoluments, paid to or receivable by them by or from the company or by or from any subsidiary company.

"(2) The provisions of subsection (1) of this section with respect to loans shall not apply—

"(a) in the case of a company the ordinary business of which includes the lending of money, to a loan made by the company in the ordinary course of its business; or

"(b) to a loan made by the company to any employee of the company if the loan does not exceed ten thousand dollars and is certified by the directors of the company to have been made in accordance with any practice adopted or about to be adopted by the company with respect to loans to its employees.

"(3) The provisions of subsection (1) of this section with respect to the remuneration paid to directors shall not apply in relation to a managing director of the company, and in the case of any other director who holds any salaried employment or office in the company there shall not be required to be included in the said total amount any sums paid to him except sums paid by way of directors' fees.

"(4) If in the case of any such accounts as aforesaid the requirements of this section are not complied with, it shall be the duty of the auditors of the company by whom the accounts are examined to include in their report on the bal-

ance sheet of the company, so far as they are reasonably able to do so, a statement giving the required particulars.

“(5) In this section, the expression ‘emoluments’ includes fees, percentages and other payments made or consideration given, directly or indirectly, to a director as such, and the money value of any allowances or perquisites belonging to his office.”

16. Section 115 of the said Act is amended by striking out subsection (4) thereof.

17. Sections 134(1), (2) and (3), 135(1), 137(1), 144(2) and 148(1) of the said Act are amended by striking out the word “Act” where it occurs therein, and substituting therefor the word “Part.”

18. Section 134 of the said Act is amended as to subsection (1) thereof, by adding after the word “Province” where it occurs for the second time, the words “or if such company began to carry on business in the Province before the thirty-first day of March, one thousand, nine hundred and thirty, within thirty days of that date.”

19. Section 138 of the said Act is amended as to subsection (1) thereof, by adding after the word “company” the words “other than a dominion company.”

20. Section 139 of the said Act is amended by striking out subsection (2) thereof.

21. Section 140 of the said Act is amended by inserting after the word “Act” where it occurs for the second time, the words “and not otherwise empowered so to do.”

22. Sections 141, 142(1) and 145(1) and (2) of the said Act are amended by striking out the words “to which this Part applies” and substituting therefor the words “required to be registered under this Part.”

23. Sections 143, 144(1), 146(1) and 147 of the said Act are amended by striking out the words “registered under this Act” and substituting therefor the words “required to be registered under this Part.”

24. Section 145 of the said Act is amended by adding thereto the following new subsection:

“(3) Nothing in this Act shall apply to any dominion company so as to affect its right to do business in the Province.”

25. Section 149 of the said Act is amended as to subsection (1) thereof, by adding after the word “may” where it occurs for the second time the words “subject to the provisions of subsection (2).”

26. The third schedule to the said Act is amended—

(a) by striking out paragraphs 5, 6, 7 and 8 and substituting therefor the following:

“5. Foreign companies shall pay such fees for registration as may be prescribed by the Lieutenant Governor in Council”; and

(b) by striking out of paragraph 9 thereof the words “or foreign company.”

No. 73

FOURTH SESSION
SIXTH LEGISLATURE
20 GEORGE V
1930

BILL

An Act to amend The Companies
Act, 1929.

Received and read the

First time

Second time.....

Third time.....

HON. MR. LYMBURN

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