



Province of Alberta

BUSINESS CORPORATIONS ACT

Revised Statutes of Alberta 2000
Chapter B-9

Current as of June 13, 2016

Office Consolidation

© Published by Alberta Queen's Printer

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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

Regulations

The following is a list of the regulations made under the *Business Corporations Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Business Corporations Act		
Business Corporations.....	118/2000	231/2000, 191/2001, 206/2001, 251/2001, 83/2005, 218/2005, 35/2007, 68/2008, 104/2009, 31/2012, 105/2012, 170/2012, 125/2013, 46/2015, 115/2017

BUSINESS CORPORATIONS ACT

Chapter B-9

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

Part 1

Interpretation and Application

Definitions

1 In this Act,

- (a) “affairs” means the relationships among a corporation, its affiliates and the shareholders, directors and officers of those bodies corporate, but does not include the business carried on by those bodies corporate;
- (b) “affiliate” means an affiliated body corporate within the meaning of section 2(1);
- (c) “Alberta company” means a body corporate incorporated and registered under the *Companies Act* or any of its predecessors;
- (d) “articles” means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement, articles of dissolution and articles of revival and includes an amendment to any of them;
- (e) “associate”, when used to indicate a relationship with any person, means
 - (i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or under any circumstances that have occurred and are continuing, or a currently exercisable option or right to purchase those shares or those convertible securities,
 - (ii) a partner of that person acting on behalf of the partnership of which they are partners,

- (iii) a trust or estate in which that person has a substantial interest or in respect of which that person serves as a trustee or in a similar capacity,
- (iv) a spouse or adult interdependent partner of that person, or
- (v) a relative of that person or of that person's spouse or adult interdependent partner if that relative has the same residence as that person;
- (f) "auditor" includes a partnership of auditors;
- (g) "beneficial interest" means an interest arising out of the beneficial ownership of securities;
- (h) "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;
- (i) "body corporate" includes a company or other body corporate wherever or however incorporated;
- (j) "Canada corporation" means a body corporate incorporated by or under an Act of the Parliament of Canada;
- (k) "Commission" means the Alberta Securities Commission;
- (l) "corporation" means a body corporate incorporated or continued under this Act and not discontinued under this Act;
- (m) "Court" means the Court of Queen's Bench of Alberta;
- (n) "debt obligation" means a bond, debenture, note or other evidence of indebtedness or guarantee of a corporation, whether secured or unsecured;
- (o) "director" means a person occupying the position of director by whatever name called and "directors" and "board of directors" includes a single director;
- (p) "distributing corporation" means a corporation that is a reporting issuer for the purposes of the *Securities Act*;
- (q) "Executive Director" means the Executive Director of the Commission as defined or otherwise provided for under the *Securities Act*;
- (r) "extra-provincial corporation" means a body corporate

- (i) incorporated otherwise than by or under an Act of the Legislature or an Ordinance of the Northwest Territories, or
- (ii) incorporated by or under an Ordinance of the Northwest Territories and not subject to the legislative authority of the Province by section 16 of the *Alberta Act* (Canada);
- (s) “incorporator” means a person who signs articles of incorporation;
- (t) “individual” means a natural person;
- (u) “liability” includes a debt of a corporation arising under section 41, 191(19) or 242(3)(g) or (h);
- (v) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (w) “ordinary resolution” means a resolution
 - (i) passed by a majority of the votes cast by the shareholders who voted in respect of that resolution, or
 - (ii) signed by all the shareholders entitled to vote on that resolution;
- (x) “person” includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative;
- (y) “prescribed” means prescribed by the regulations;
- (z) “professional corporation” means a corporation that has the words “Professional Corporation”, whether or not a professional descriptor is inserted between the words “Professional” and “Corporation”, as the last words of its name;
- (aa) “redeemable share” means a share issued by a corporation that the corporation, by its articles
 - (i) is required to purchase or redeem at a specified time or on the happening of a certain event,
 - (ii) is required to purchase or redeem on the demand of a shareholder, or
 - (iii) may purchase or redeem on demand of the corporation,

and includes a share issued by a corporation that is purchased or redeemed by a combination of any of the methods referred to in subclauses (i) to (iii);

- (aa.1) “registered form” means registered form as defined in the *Securities Transfer Act*;
- (bb) “Registrar” means the Registrar of Corporations or a Deputy Registrar of Corporations appointed under section 263;
- (cc) “Registrar’s periodical” means the periodical referred to in section 264;
- (dd) “resident Canadian” means an individual who is
 - (i) a Canadian citizen ordinarily resident in Canada,
 - (ii) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
 - (iii) a permanent resident within the meaning of the *Immigration Act* (Canada) and ordinarily resident in Canada;
- (ee) “security” means a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation;
- (ff) “security interest” means an interest in or charge on property of a corporation to secure payment of a debt or performance of any other obligation of the corporation;
- (gg) “send” includes deliver;
- (hh) “series” means, in relation to shares, a division of a class of shares;
 - (ii) “special resolution” means a resolution passed by a majority of not less than $\frac{2}{3}$ of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution;
- (ii.1) “spouse” means the spouse of a married person but does not include a spouse who is living separate and apart from the person if the person and spouse have separated pursuant to a written separation agreement or if their support obligations and family property have been dealt with by a court order;
- (jj) “unanimous shareholder agreement” means

- (i) a written agreement to which all the shareholders of a corporation are or are deemed to be parties, whether or not any other person is also a party, or
- (ii) a written declaration by a person who is the beneficial owner of all the issued shares of a corporation,

that provides for any of the matters enumerated in section 146(1);
- (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.

RSA 2000 cB-9 s1;2002 cA-4.5 s22;2005 c8 s2;
2006 cS-4.5 s106;2014 c8 s17

Application

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

2005 c8 s3

Relationship of corporations

2(1) For the purposes of this Act,

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person, and
- (b) if 2 bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

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

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

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

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

- (a) it is controlled by
 - (i) that other,
 - (ii) that other and one or more bodies corporate, each of which is controlled by that other, or
 - (iii) 2 or more bodies corporate, each of which is controlled by that other,

or

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

1981 cB-15 s2

Distribution to the public

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

- (a) issued on a conversion of other securities, or
- (b) issued in exchange for other securities

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

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

- (a) is part of a distribution to the public if, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada, or
- (b) is deemed to be part of a distribution to the public if the security has been issued and a filing referred to in clause (a) would be required if the security were being issued currently.

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

1981 cB-15 s3;1988 c7 s3;1995 c28 s64

Execution in counterpart

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

1981 cB-15 s4

Part 2 Incorporation

Incorporation

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

1981 cB-15 s5

Articles of incorporation

6(1) Subject to section 15.3, articles of incorporation shall be in the prescribed form and shall set out, in respect of the proposed corporation,

- (a) the name of the corporation,
- (b) the classes and any maximum number of shares that the corporation is authorized to issue, and
 - (i) if there are 2 or more classes of shares, the special rights, privileges, restrictions and conditions attaching to each class of shares, and
 - (ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of each series, and the rights, privileges, restrictions and conditions attaching to the shares of each series,
- (c) if the right to transfer shares of the corporation is to be restricted, a statement that the right to transfer shares is restricted and either
 - (i) a statement of the nature of the restrictions, or
 - (ii) a statement that the nature of the restrictions appears in a unanimous shareholder agreement,
- (d) the number of directors or, subject to section 107(a), the minimum and maximum number of directors of the corporation, and

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

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

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

(4) The articles may not require a greater number of votes of shareholders to remove a director than the number required by section 109.

RSA 2000 cB-9 s6;2005 c8 s4

Delivery of articles of incorporation

7(1) An incorporator shall send to the Registrar

- (a) articles of incorporation, and
- (b) the documents required by sections 12(3), 20 and 106.

(2) If the name of the corporation set out in the articles of incorporation contains the words “Professional Corporation”, the incorporator shall also send to the Registrar evidence satisfactory to the Registrar of an approval of the articles that is less than 2 years old by or on behalf of the governing body of the appropriate profession or occupation.

RSA 2000 cB-9 s7;RSA 2000 cH-7 s136

Certificate of incorporation

8 On receipt of the documents and evidence required under section 7 and the prescribed fees, the Registrar shall issue a certificate of incorporation in accordance with section 267.

1981 cB-15 s8

Effect of certificate of incorporation

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

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

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

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

1981 cB-15 s9

Corporate name

10(1) Subject to section 15.4(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, and 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), 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”.

(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.

(3) Subject to section 15.4(2), 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) or section 15.4(2) is guilty of an offence and liable to a fine of not more than \$5000.

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

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

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

(8) A corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments, and orders for

goods or services, issued or made by or on behalf of the corporation.

(9) Subject to subsections (8) and (10) and section 12(1) and to section 110 of the *Partnership Act*, a corporation may carry on business under or identify itself by a name other than its corporate name.

(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) or section 15.4(2).

RSA 2000 cB-9 s10;2005 c8 s5

Assignment of name

11 If requested to do so by the incorporators or by an extra-provincial corporation about to continue as a corporation pursuant to section 188, the Registrar shall assign to the corporation as its name a designated number determined by the Registrar.

1981 cB-15 s11;1984 c12 s1

Prohibited names

12(1) A corporation shall not have a name

- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations,
- (b) subject to the circumstances and conditions prescribed by the regulations, that is identical to the name of
 - (i) a body corporate incorporated under the laws of Alberta, unless the body corporate has been dissolved for a period of 6 years or more,
 - (ii) an extra-provincial corporation registered in Alberta, or
 - (iii) a Canada corporation,
- (c) subject to the circumstances and conditions prescribed by the regulations, that is similar to the name of
 - (i) a body corporate incorporated under the laws of Alberta,
 - (ii) an extra-provincial corporation registered in Alberta, or
 - (iii) a Canada corporation,if the use of that name is confusing or misleading, or

(d) that does not meet the requirements prescribed by the regulations.

(2) Where a body corporate incorporated under the laws of Alberta gives an undertaking to dissolve or change its name and the undertaking is not carried out within the time specified, the Registrar may, by notice in writing, giving the Registrar's reasons, direct the body corporate to change its name to one that the Registrar approves within 60 days after the date of the notice.

(3) There shall be sent to the Registrar documents relating to corporate names that are prescribed by the regulations.

RSA 2000 cB-9 s12;2005 c8 s6

Direction to change corporate name

13(1) If, through inadvertence or otherwise, a corporation comes into existence with or acquires a name that contravenes section 10 or 12, the Registrar may, by notice in writing, giving the Registrar's reasons, direct the corporation to change its name to one that the Registrar approves within 60 days after the date of the notice.

(2) The Registrar may give a notice under subsection (1) on the Registrar's own initiative or at the request of a person who feels aggrieved by the name that contravenes section 10 or 12, as the case may be.

(3) If a corporation

(a) is directed to change its name under section 12(2) or subsection (1) of this section, and

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

the Registrar may revoke the name of the corporation and assign to it a number designated or a name approved by the Registrar and, until changed in accordance with section 173, the name of the corporation is the number or name so assigned.

(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 word or abbreviation referred to in section 10(1).

RSA 2000 cB-9 s13;2005 c8 s7

Certificate of amendment

14(1) When a corporation has had its name revoked and a name assigned to it under section 13(3), the Registrar shall issue a certificate of amendment showing the new name of the corporation.

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

1981 cB-15 s13;1984 c12 s1

Pre-incorporation contracts

15(1) This section applies unless the person referred to in subsection (2) and all parties to the contract referred to in that subsection

- (a) believe that the body corporate exists and is incorporated under, or
- (b) intend that the body corporate is to be incorporated under

the laws of a jurisdiction other than Alberta.

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

- (a) that person is deemed to warrant to the other party to the contract
 - (i) that the body corporate will come into existence within a reasonable time, and
 - (ii) that the contract will be adopted within a reasonable time after the body corporate comes into existence,
- (b) that person is liable to the other party to the contract for damages for a breach of that warranty, and
- (c) the measure of damages for that breach of warranty shall be the same as if the body corporate existed when the contract was made, the person who made the contract on behalf of the body corporate had no authority to do so and the body corporate refused to ratify the contract.

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

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

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

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

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

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

- (a) fixing obligations under the contract as joint or joint and several, or
- (b) apportioning liability between or among the corporation and a person who purported to act in the name of or on behalf of the corporation,

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

(6) A person who enters or purports to enter 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.

RSA 2000 cB-9 s15;2005 c8 s8

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).

2005 c8 s9

Liability

15.2(1) 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.

(2) Notwithstanding subsection (1), but subject to any immunity from liability otherwise available on pleading the *Limitations Act* as a defence, a former shareholder of an unlimited liability corporation is not liable for any liability, act or default of the unlimited liability corporation unless an action to enforce a claim arising out of that liability, act or default is brought within 2 years from the date on which the former shareholder last ceased to be a shareholder of the unlimited liability corporation.

(3) A former shareholder of an unlimited liability corporation is not liable for any liability, act or default of the unlimited liability corporation that did not exist on or prior to the date on which the former shareholder last ceased to be a shareholder of the unlimited liability corporation.

2005 c8 s9;2005 c40 s2

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.

2005 c8 s9

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”.

2005 c8 s9

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 prior to the date shown on the certificate of continuance the shareholders of the extra-provincial corporation had unlimited liability for any liability, act or default of the extra-provincial corporation, 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 prior to the date shown on the certificate of continuance the shareholders of the extra-provincial corporation were not, as shareholders, liable for any liability, act or default of the extra-provincial corporation,
 - (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.

2005 c8 s9

**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 is 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.

2005 c8 s9

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 former shareholder who last ceased to be a shareholder within 2 years prior to the date of dissolution, 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.

2005 c8 s9;2005 c40 s3

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.

2005 c8 s9

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).

2005 c8 s9

Part 3

Capacity and Powers

Capacity of a corporation

16(1) A corporation has the capacity and, subject to this Act, the rights, powers and privileges of a natural person.

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

1981 cB-15 s15

Restriction on powers

17(1) It is not necessary for a bylaw to be passed in order to confer any particular power on the corporation or its directors.

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

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

1981 cB-15 s16

No constructive notice

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

1981 cB-15 s17

Authority of directors, officers and agents

19 A corporation, a guarantor of an obligation of the corporation or a person claiming through the corporation may not assert against

a person dealing with the corporation or dealing with any person who has acquired rights from the corporation

- (a) that the articles, bylaws or any unanimous shareholder agreement have not been complied with,
- (b) that the persons named in the most recent notice filed by the Registrar under section 106 or 113 are not the directors of the corporation,
- (c) that the place named as the registered office in the most recent notice filed by the Registrar under section 20 is not the registered office of the corporation,
- (d) that the post office box designated as the address for service by mail in the most recent notice filed by the Registrar under section 20 is not the address for service by mail of the corporation,
- (e) that a person held out by the corporation as a director, an officer or an agent of the corporation
 - (i) has not been duly appointed, or
 - (ii) has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,
- (f) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine, or
- (g) that financial assistance referred to in section 45 or a sale, lease or exchange of property referred to in section 190 was not authorized,

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

1981 cB-15 s18

Part 4

Registered Office, Records and Seal

Registered office, records office, address for service by mail

20(1) A corporation shall at all times have a registered office within Alberta.

(2) A notice of

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

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

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

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

(4) A post office box designated as the corporation's address for service by mail shall not be designated as the corporation's records office or registered office.

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

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

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

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

1981 cB-15 s19;1983 c20 s3

Corporate records

21(1) A corporation shall prepare and maintain at its records office records containing

- (a) the articles and the bylaws, all amendments to the articles and bylaws, a copy of any unanimous shareholder agreement and any amendment to a unanimous shareholder agreement,

- (b) minutes of meetings and resolutions of shareholders,
- (c) copies of all notices required by section 106 or 113,
- (d) a securities register complying with section 49,
- (e) copies of the financial statements, reports and information referred to in section 155(1), and
- (f) a register of disclosures made pursuant to section 120.

(2) Notwithstanding subsection (1), a central securities register may be maintained at an office in Alberta of a corporation's agent referred to in section 49(3)(a), and a branch securities register may be kept at any place in or out of Alberta designated by the directors.

(3) If a central securities register is maintained under subsection (2) at a place other than the records office, the corporation shall maintain at its records office a record containing the names and addresses of all agents and offices at which those registers are maintained and descriptions of all those registers.

(4) A corporation that

- (a) complies with section 24(2), and
- (b) maintains in Canada a register or record referred to in subsection (3)

complies with subsection (1).

(5) In addition to the records described in subsection (1), a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of the directors.

(6) For the purposes of subsections (1)(b) and (2), if a body corporate is continued under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.

(7) The records described in subsection (5) shall be kept at the registered office or records office of the corporation or at any other place the directors think fit and shall at all reasonable times be open to examination by the directors.

(8) If accounting records of a corporation are kept at a place outside Alberta, there shall be kept at the registered office or records office or at any other place in Alberta the directors think fit, accounting records adequate to enable the directors to ascertain the

financial position of the corporation with reasonable accuracy on a quarterly basis, and those records shall at all reasonable times be open to examination by the directors.

(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).

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

RSA 2000 cB-9 s21;2005 c8 s10

Additional copies to Registrar

22 A corporation shall provide to the Registrar on request an additional copy in legible written form of any document previously sent to or filed with the Registrar pursuant to this Act or a regulation under this Act.

1987 c15 s3

Access to corporate records

23(1) The directors and shareholders of a corporation, their agents and legal representatives may examine the records referred to in section 21(1) during the usual business hours of the corporation free of charge.

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

(3) Creditors of a corporation and their agents and legal representatives may examine the records referred to in section 21(1)(a), (c) and (d), other than a unanimous shareholder agreement or an amendment to a unanimous shareholder agreement, during the usual business hours of the corporation on payment of a reasonable fee and may make copies of those records.

(4) Any person may examine the records referred to in section 21(1)(c) and (d) during the usual business hours of the corporation on payment of a reasonable fee and may make copies of those records.

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

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

as shown on the records of the corporation.

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

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

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

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

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

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

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

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

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

- (a) an effort to influence the voting of shareholders of the corporation,
- (b) an offer to acquire shares of the corporation, or
- (c) any other matter relating to the affairs of the corporation.

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

1981 cB-15 s21

Form of records

24(1) All registers and other records required by this Act to be prepared and maintained may be in a bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

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

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

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

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

- (a) prevent loss or destruction of,
- (b) prevent falsification of entries in, and
- (c) facilitate detection and correction of inaccuracies in,

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

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

1981 cB-15 s22

Corporate seal

25(1) A corporation may adopt and change a corporate seal that shall contain the name of the corporation.

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

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

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

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

1981 cB-15 s23

Part 5 Corporate Finance

Shares and classes of shares

26(1) Shares of a corporation shall be in registered form and shall be without nominal or par value.

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

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

- (a) to vote at any meeting of shareholders of the corporation,
 - (b) to receive any dividend declared by the corporation, and
 - (c) to receive the remaining property of the corporation on dissolution.
- (4) The articles may provide for more than one class of shares and, if they so provide,
- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the articles, and
 - (b) the rights set out in subsection (3) shall be attached to at least one class of shares but all of those rights are not required to be attached to one class.
- (5) Subject to section 29, if a corporation has more than one class of shares, the rights of the holders of the shares of any class are equal in all respects.

1981 cB-15 s24

Issue of shares

- 27(1)** Subject to the articles, the bylaws and any unanimous shareholder agreement and to section 30, shares may be issued at the times and to the persons and for the consideration that the directors determine.
- (2) Shares issued by a corporation are non-assessable and the holders are not liable to the corporation or to its creditors in respect of those shares.
- (3) A share shall not be issued until the consideration for the share is fully paid in money or in property or past service that is not less in value than the fair equivalent of the money that the corporation would have received if the share had been issued for money.
- (4) In determining whether property or past service is the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the corporation.
- (5) For the purposes of this section, “property” does not include a promissory note or promise to pay 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.

RSA 2000 cB-9 s27;2005 c8 s11

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.

2005 c8 s12

Stated capital accounts

28(1) A corporation shall maintain a separate stated capital account for each class and series of shares it issues.

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

(3) Notwithstanding section 27(3) and subsection (2) of this section, if a corporation issues shares

(a) in exchange for

- (i) property, other than a promissory note or promise to pay, or
- (ii) issued shares of the corporation of a different class or series,

or

(b) pursuant to

- (i) an amalgamation agreement referred to in section 182 or 187, or
- (ii) an arrangement referred to in section 193(1)(b) or (c)

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

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

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

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

- (a) the amount to be added was not received by the corporation as consideration for the issue of shares, and
- (b) the corporation has issued any outstanding shares of more than one class or series,

the addition to the stated capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than 2 classes of convertible shares referred to in section 39(5).

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

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

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

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

(10) When a body corporate is continued under this Act, the stated capital of each class and series of shares of the corporation immediately following its continuance is deemed to equal the paid up capital of each class and series of shares of the body corporate immediately prior to its continuance.

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

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

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

1981 cB-15 s26;1983 c20 s5;1987 c15 s4

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.

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

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer on shares of a series

- (a) greater voting rights than are attached to shares of any other series in the same class that are then outstanding, or
- (b) a priority in respect of dividends or return of capital over shares of any other series in the same class that are then outstanding.

(4) Subsection (3) does not apply to a right or privilege to exchange a share or shares for, or to convert a share or shares into, a share or shares of another class.

(5) 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.

(6) On receipt of articles of amendment designating a series of shares, the Registrar shall issue a certificate of amendment in accordance with section 267.

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

RSA 2000 cB-9 s29;2005 c8 s13

Shareholder's pre-emptive right

30(1) If the articles or a unanimous shareholder agreement so provides, no shares of a class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at the same price and on the same terms as those shares are to be offered to others.

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

- (a) for a consideration other than money,
- (b) as a share dividend, or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

1981 cB-15 s28

Options and other rights to acquire securities

31(1) A corporation may issue certificates, warrants or other evidences of conversion privileges, options or rights to acquire securities of the corporation, and shall set out their conditions

- (a) in the certificates, warrants or other evidences, or
- (b) in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

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

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

1981 cB-15 s29

Prohibited share holdings

32(1) Except as provided in subsections (2) and (2.1) and sections 33 to 36, a corporation

- (a) shall not hold shares in itself or in its holding body corporate, and
- (b) shall not permit any of its subsidiary bodies corporate to acquire shares of the corporation.

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

(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).

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

- (a) the body corporate became a subsidiary of the corporation,
or
- (b) the corporation was continued under this Act.

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

RSA 2000 cB-9 s32;2005 c8 s14

Exception

33(1) A corporation may in the capacity of a legal representative hold shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.

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

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

- (a) holds the shares in the capacity of a legal representative, and
- (b) has complied with section 153.

(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).

RSA 2000 cB-9 s33;2005 c8 s15

Acquisition by corporation of its own shares

34(1) Subject to subsection (2) and to its articles, a corporation may purchase or otherwise acquire shares issued by it.

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

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and stated capital of all classes.

(3) Subject to any unanimous shareholder agreement, a corporation that is not a distributing corporation shall, within 30 days after the purchase of any of its issued shares, notify its shareholders in accordance with section 255

- (a) of the number of shares it has purchased,
- (b) of the names of the shareholders from whom it has purchased the shares,
- (c) of the price paid for the shares,
- (d) if the consideration was other than cash, of the nature of the consideration given and the value attributed to it, and
- (e) of the balance, if any, remaining due to shareholders or shareholders from whom it purchased the shares.

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

1981 cB-15 s32

Alternative acquisition by corporation of its own shares

35(1) Notwithstanding section 34(2), a corporation may, subject to subsection (3) and to its articles, purchase or otherwise acquire shares issued by it to

- (a) settle or compromise a debt or claim asserted by or against the corporation,
- (b) eliminate fractional shares, or
- (c) fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

(2) Notwithstanding section 34(2), a corporation may purchase or otherwise acquire shares issued by it to

- (a) satisfy the claim of a shareholder who dissents under section 191, or
- (b) comply with an order under section 242.

(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.

(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.

RSA 2000 cB-9 s35;2005 c8 s16

Redemption of shares

36(1) Notwithstanding section 34(2) or 35(3), a corporation may, subject to subsection (2) and to its articles, purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price of those shares stated in the articles or calculated according to a formula stated in the articles.

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

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed.

1981 cB-15 s34

Donated and escrowed shares

37(1) A corporation may accept from any shareholder a share of the corporation

- (a) that is surrendered to it as a gift, or
- (b) that has been held in escrow pursuant to an escrow agreement required by the Executive Director and that is surrendered pursuant to that agreement.

(2) The corporation may not extinguish or reduce a liability in respect of an amount unpaid on a share surrendered under subsection (1)(a) except in accordance with section 38.

1981 cB-15 s35;1988 c7 s3;1995 c28 s64

Other reduction of stated capital

38(1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital for any purpose including, without limiting the generality of the foregoing, the purpose of

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share,
- (b) distributing to the holders of the issued shares of any class or series of shares an amount not exceeding the stated capital of the class or series, and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realizable assets.

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

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

- (a) the corporation is, or would after the reduction be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.

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

- (a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section, or
- (b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other

recipient as a consequence of a reduction of capital made contrary to this section.

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

(6) This section does not affect any liability that arises under section 118.

1981 cB-15 s36

Adjustment of stated capital account

39(1) On a purchase, redemption or other acquisition by a corporation under section 34, 35, 36, 46, 191 or 242(3)(g) of shares or fractions of shares issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares purchased, redeemed or otherwise acquired an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares or fractions of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

(2) A corporation shall deduct the amount of a payment made by the corporation to a shareholder under section 242(3)(h) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

(3) A corporation shall adjust its stated capital account or accounts in accordance with a special resolution referred to in section 38(2).

(4) On a conversion or a change under section 173, 192, 193 or 242 of issued shares of a corporation into shares of another class or series, the corporation shall

- (a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change, and
- (b) add the result obtained under clause (a) and any additional consideration pursuant to the conversion or change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

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

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

(7) For the purposes of this section, a corporation holding shares in itself as permitted by section 33(1) and (2) is deemed not to have purchased, redeemed or otherwise acquired those shares.

(8) Shares issued by a corporation and converted pursuant to their terms or changed under section 173, 192, 193 or 242 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been converted or changed.

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

1981 cB-15 s37

Repayment, acquisition and reissue of debt obligations

40(1) Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid, and those obligations remain obligations of the corporation until they are discharged.

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

1981 cB-15 s37.1;1983 c20 s6

Enforceability of contract against corporation

41(1) A contract with a corporation providing for the purchase by it of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without being in breach of section 34 or 35.

(2) In an action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prevented by section 34 or 35.

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party to that contract retains the status of a claimant and is entitled to be paid as soon as the corporation is lawfully able to do so or, in liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class of shareholders whose rights were in priority to the rights given to the class of shares that the claimant contracted to sell to the corporation, but in priority to the rights of the other shareholders.

1981 cB-15 s38

Commission on sale of shares

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

1981 cB-15 s39

Dividends

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

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

1981 cB-15 s40

Form of dividend

44(1) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to section 43, a corporation may pay a dividend in money or property.

(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.

RSA 2000 cB-9 s44;2005 c8 s17

Financial assistance

45(1) In this section, “financial assistance” means financial assistance by means of a loan, guarantee or otherwise.

(2) A corporation may give financial assistance to any person for any purpose.

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

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

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

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

or

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

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

1981 cB-15 s42;2000 c10 s2

Shareholder immunity

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) or Part 2.1.

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

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

RSA 2000 cB-9 s46;2005 c8 s18;2006 cS-4.5 s106

Part 6 Security Certificates, Registers and Transfers

Transfers of securities

47 Except as otherwise provided in this Act and the *Civil Enforcement Act*, the transfer or transmission of a security is governed by the *Securities Transfer Act*.

RSA 2000 cB-9 s47;2006 cS-4.5 s106

Security certificates

48(1) A security holder is entitled at the security holder's option to a security certificate that complies with this Act or a non-transferable written acknowledgment of the security holder's right to obtain a security certificate from a corporation in respect of the securities of that corporation held by the security holder.

(2) A corporation may charge a fee in an amount not exceeding the maximum amount prescribed in the regulations for a security certificate issued in respect of a transfer.

(3) A corporation is not required to issue more than one security certificate in respect of securities held jointly by several persons,

and delivery of a certificate to one of several joint holders is sufficient delivery to all.

(4) A security certificate must be signed by at least one director or officer of the corporation or by or on behalf of a registrar, transfer agent or branch transfer agent of the corporation or by a trustee who certifies it in accordance with a trust indenture.

(5) Any signatures required on a security certificate may be printed or otherwise mechanically reproduced on it.

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

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

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

(8) Repealed 2006 cS-4.5 s106.

(9) A distributing corporation whose shares are held by more than one person shall not restrict the transfer of its shares except by way of a constraint permitted under section 174.

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

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

- (i) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series insofar as they have been fixed by the directors, and
- (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

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

- (a) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series insofar as they have been fixed by the directors, and
- (b) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

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

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

- (a) the scrip certificates become void if they are not exchanged for a share certificate representing a full share before a specified date, and
- (b) any shares for which those scrip certificates are exchangeable may, notwithstanding any pre-emptive right, be issued by the corporation to any person and the proceeds of those shares distributed rateably to the holders of the scrip certificates.

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

- (a) the fractional share results from a consolidation of shares, or
- (b) the articles of the corporation otherwise provide.

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

RSA 2000 cB-9 s48;2005 c8 s19;2006 cS-4.5 s106

Securities records

49(1) A corporation shall maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities

- (a) the names, alphabetically arranged, and the latest known address of each person who is or has been a security holder,
- (b) the number of securities held by each security holder, and
- (c) the date and particulars of the issue and transfer of each security.

(2) A corporation shall keep the information entered in the register referred to in subsection (1) for the period of time prescribed in the regulations.

(3) A corporation may appoint

- (a) one or more trust corporations as its agent or agents to maintain a central securities register or registers, and
- (b) an agent or agents to maintain a branch securities register or registers.

(4) Registration of the issue or transfer of a security in the central securities register or in a branch securities register is complete and valid registration for all purposes.

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

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

(7) Neither a corporation, nor its agent nor a trustee defined in section 81(1) is required to produce

- (a) a cancelled security certificate in registered form, an instrument referred to in section 31(1) that is cancelled or a like cancelled instrument in registered form 6 years after the date of its cancellation,
- (b) a cancelled security certificate in bearer form or an instrument referred to in section 31(1) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation, or

- (c) an instrument referred to in section 31(1) or a like instrument, irrespective of its form, after the date of its expiry.

1981 cB-15 s46;1987 c15 s8;1991 cL-26.5 s335(7)

Dealings with registered holders and transmission on death

50(1) A corporation or a trustee as defined in section 81(1) may, subject to sections 133, 134 and 137 and the *Civil Enforcement Act*, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

(2) Notwithstanding subsection (1), but subject to a unanimous shareholder agreement, a corporation whose articles restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder the person represents if that person furnishes evidence as described in section 87(3) of the *Securities Transfer Act* to the corporation that the person is

- (a) the executor, administrator, heir or legal representative of the heirs of the estate of a deceased security holder,
- (b) a guardian, committee, trustee, curator or tutor representing a registered security holder who is an infant, an incompetent person or a missing person, or
- (c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

(3) If a person on whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof of the person's authority to exercise rights or privileges in respect of a security of the corporation that is not registered in the person's name, the corporation shall treat that person as entitled to exercise those rights or privileges.

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

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

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

- (a) it receives proof satisfactory to it of the death of any joint holder of the security, and
- (b) the security provides that the persons to whom the security was issued are joint holders with right of survivorship.

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

- (a) the original grant of probate or of letters of administration, or a copy of it certified to be a true copy by
 - (i) the court that granted the probate or letters of administration,
 - (ii) a trust company incorporated under the laws of Canada or a province or territory, or
 - (iii) a lawyer or notary acting on behalf of the person referred to in subsection (2)(a),

or

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

together with

- (c) an affidavit, statutory declaration or declaration of transmission made by a person referred to in subsection (2)(a), stating the particulars of the transmission, and
- (d) the security certificate that was owned by the deceased holder
 - (i) in the case of a transfer to a person referred to in subsection (2)(a), with or without the endorsement of that person, and
 - (ii) in the case of a transfer to any other person, endorsed in accordance with section 29 of the *Securities Transfer Act*,

and accompanied with any assurance the corporation may require under section 87 of the *Securities Transfer Act*.

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

- (a) the security certificate that was owned by the deceased holder, and
- (b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the legal representative or the person the legal representative designates to become the registered holder.

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

RSA 2000 cB-9 s50;2006 cS-4.5 s106

Overissue

51(1) When there has been an overissue within the meaning of the *Securities Transfer Act* and the corporation subsequently amends its articles, or a trust indenture to which it is a party, to increase its authorized securities to a number equal to or in excess of the number of securities previously authorized plus the amount of the securities overissued, the securities so overissued are valid from the date of their issue.

(2) Subsection (1) does not apply if the issuer has purchased and delivered a security in accordance with section 67(2) or (3) of the *Securities Transfer Act*.

(3) A purchase or payment in accordance with section 67(2) or (3) of the *Securities Transfer Act* is not a purchase or payment to which section 34, 35, 36 or 39 applies.

RSA 2000 cB-9 s51;2006 cS-4.5 s106

52 to 80 Repealed 2006 cS-4.5 s106.

Part 7 Trust Indentures

Interpretation and application

81(1) In this Part,

- (a) “event of default” means an event specified in a trust indenture on the occurrence of which
 - (i) a security interest constituted by the trust indenture becomes enforceable, or
 - (ii) the principal, interest and other money payable under the trust indenture become or may be declared to be payable before maturity,

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

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

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

RSA 2000 cB-9 s81;2016 c18 s1

Conflict of interest

82(1) No person shall be appointed as trustee if there is a material conflict of interest between the person’s role as trustee and the person’s role in any other capacity.

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

- (a) eliminate the conflict of interest, or
- (b) resign from office.

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

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

1981 cB-15 s78

Qualification of trustee

83 A trustee, or at least one of the trustees if more than one is appointed, shall be a trust corporation.

1981 cB-15 s79;1991 cL-26.5 s335(7)

List of security holders

84(1) A holder of debt obligations issued under a trust indenture may, on payment to the trustee of a reasonable fee, require the trustee to furnish within 15 days after delivering to the trustee the statutory declaration referred to in subsection (4), a list setting out

- (a) the names and addresses of the registered holders of the outstanding debt obligations,
- (b) the principal amount of outstanding debt obligations owned by each of those holders, and
- (c) the aggregate principal amount of debt obligations outstanding, as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to that trustee.

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

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

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

- (a) the name and address of the person requiring the trustee to furnish the list and, if the person is a body corporate, the address for service of the body corporate, and
- (b) that the list will not be used except as permitted under subsection (5).

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

- (a) an effort to influence the voting of the holders of debt obligations,
- (b) an offer to acquire debt obligations, or
- (c) any other matter relating to the debt obligations or the affairs of the issuer or guarantor of the debt obligations.

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

1981 cB-15 s80

Evidence of compliance

85(1) An issuer or a guarantor of debt obligations issued or to be issued under a trust indenture shall before the doing of any act under clause (a), (b) or (c), furnish the trustee with evidence of compliance with the conditions in the trust indenture relating to

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

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

1981 cB-15 s81

Contents of declaration

86 Evidence of compliance as required by section 85 shall consist of

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with, and
- (b) if the trust indenture requires compliance with conditions that are subject to review

- (i) by legal counsel, an opinion of legal counsel that those conditions have been complied with, and
- (ii) by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor, or any other accountant the trustee may select, that those conditions have been complied with.

1981 cB-15 s82

Further evidence of compliance

87 The evidence of compliance referred to in section 86 shall include a statement by the person giving the evidence

- (a) declaring that the person has read and understands the conditions of the trust indenture described in section 85,
- (b) describing the nature and scope of the examination or investigation on which the person based the certificate, statement or opinion, and
- (c) declaring that the person has made any examination or investigation that the person believes necessary to enable the person to make the statements or give the opinions contained or expressed in it.

1981 cB-15 s83

Trustee may require evidence of compliance

88(1) On the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with evidence in any form the trustee may require as to compliance with any condition of the trust indenture relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

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

1981 cB-15 s84

Notice of default

89 The trustee shall, within 30 days after the trustee becomes aware of its occurrence, give to the holders of debt obligations issued under a trust indenture, notice of every event of default

arising under the trust indenture and continuing at the time that the notice is given, unless the trustee reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs the issuer or guarantor in writing.

1981 cB-15 s85

Trustee's duty of care

90 A trustee in exercising the trustee's powers and discharging the trustee's duties shall

- (a) act honestly and in good faith with a view to the best interests of the holders of the debt obligations issued under the trust indenture, and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

1981 cB-15 s86

Trustee's reliance on statements

91 Notwithstanding section 90, a trustee is not liable if the trustee relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

1981 cB-15 s87

No exculpation of trustee by agreement

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

- (a) a trustee and the holders of debt obligations issued under the trust indenture, or
- (b) between the trustee and the issuer or guarantor

shall operate so as to relieve a trustee from the duties imposed on the trustee by section 90.

1981 cB-15 s88

Part 8 Receivers and Receiver-Managers

Functions of receiver

93 A receiver of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property and realize the security interest of those on behalf of whom the receiver is appointed, but, except to the extent permitted by the Court, the receiver may not carry on the business of the corporation.

1981 cB-15 s89

Functions of receiver-manager

94 A receiver of a corporation may, if the receiver is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom the receiver is appointed.

1981 cB-15 s90

Directors' powers during receivership

95 If a receiver-manager is appointed by the Court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

1981 cB-15 s91

Court-appointed receiver or receiver-manager

96 A receiver or receiver-manager appointed by the Court shall act in accordance with the directions of the Court.

1981 cB-15 s92

Duty under debt obligation

97 A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any direction of the Court made under section 99.

1981 cB-15 s93

Duty of care

98 A receiver or receiver-manager of a corporation appointed under an instrument shall

- (a) act honestly and in good faith, and
- (b) deal with any property of the corporation in the receiver's or receiver-manager's possession or control in a commercially reasonable manner.

1981 cB-15 s94

Powers of the Court

99 On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument, or on an application by any interested person, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving the receiver's or receiver-manager's accounts;
- (b) an order determining the notice to be given to any person or dispensing with notice to any person;

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

1981 cB-15 s95;1987 c15 s9

Duties of receiver and receiver-manager**100** A receiver or receiver-manager shall

- (a) immediately notify the Registrar of the receiver's or receiver-manager's appointment or discharge,
- (b) take into the receiver's or receiver-manager's custody and control the property of the corporation in accordance with the Court order or instrument under which the receiver or receiver-manager is appointed,
- (c) open and maintain a bank account in the receiver's or receiver-manager's name as receiver or receiver-manager of the corporation for the money of the corporation coming under the receiver's or receiver-manager's control,
- (d) keep detailed accounts of all transactions carried out by the receiver or receiver-manager as receiver or receiver-manager,
- (e) keep accounts of the receiver's or receiver-manager's administration that must be available during usual business hours for inspection by the directors of the corporation,

- (f) prepare at least once in every 6-month period after the date of the receiver's or receiver-manager's appointment financial statements of the receiver's or receiver-manager's administration as far as is practicable in the form required by section 155, and, subject to any order of the Court, file a copy of them with the Registrar within 60 days after the end of each 6-month period, and
- (g) on completion of the receiver's or receiver-manager's duties,
 - (i) render a final account of the receiver's or receiver-manager's administration in the form adopted for interim accounts under clause (f),
 - (ii) send a copy of the final report to the Registrar who shall file it, and
 - (iii) send a copy of the final report to each director of the corporation.

1981 cB-15 s96

Part 9

Directors and Officers

Directors

101(1) Subject to any unanimous shareholder agreement, the directors shall manage or supervise the management of the business and affairs of a corporation.

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

RSA 2000 cB-9 s101;2005 c8 s20

Bylaws

102(1) Unless the articles, bylaws or a unanimous shareholder agreement otherwise provide, the directors may, by resolution, make, amend or repeal any bylaws that regulate the business or affairs of the corporation.

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

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

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

(5) A shareholder entitled to vote at an annual meeting of shareholders may in accordance with section 136 make a proposal to make, amend or repeal a bylaw.

1981 cB-15 s98

General borrowing powers

103(1) Unless the articles or bylaws of, or a unanimous shareholder agreement relating to, a corporation otherwise provide, the directors of a corporation may, without authorization of the shareholders,

- (a) borrow money on the credit of the corporation,
- (b) issue, reissue, sell or pledge debt obligations of the corporation,
- (c) subject to section 45, give a guarantee on behalf of the corporation to secure performance of an obligation of any person, and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation.

(2) Notwithstanding sections 115(3) and 121(a), unless the articles or bylaws of or a unanimous shareholder agreement relating to a corporation otherwise provide, the directors may, by resolution, delegate the powers referred to in subsection (1) to a director, a committee of directors or an officer.

1981 cB-15 s98.1

Organization meeting

104(1) After issue of the certificate of incorporation, a meeting of the directors of the corporation shall be held at which the directors may

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

(2) Subsection (1) does not apply to a body corporate to which a certificate of amalgamation has been issued under section 185 or 187 or to which a certificate of continuance has been issued under section 188.

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

(4) A director may waive notice under subsection (3).

1981 cB-15 s99

Qualifications of directors

105(1) The following persons are disqualified from being a director of a corporation:

- (a) anyone who is less than 18 years of age;
- (b) anyone who
 - (i) is a represented adult as defined in the *Adult Guardianship and Trusteeship Act* or is the subject of a certificate of incapacity that is in effect under the *Public Trustee Act*,
 - (ii) is a formal patient as defined in the *Mental Health Act*,

- (iii) is the subject of an order under *The Mentally Incapacitated Persons Act*, RSA 1970 c232, appointing a committee of the person or estate, or both, or
 - (iv) has been found to be a person of unsound mind by a court elsewhere than in Alberta;
- (c) a person who is not an individual;
- (d) a person who has the status of bankrupt.
- (2)** Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.
- (3)** At least 1/4 of the directors of a corporation must be resident Canadians.
- (4)** Repealed 2005 c8 s21.
- (5)** A person who is elected or appointed a director is not a director unless
- (a) the person was present at the meeting when the person was elected or appointed and did not refuse to act as a director, or
 - (b) if the person was not present at the meeting when the person was elected or appointed,
 - (i) the person consented to act as a director in writing before the person's election or appointment or within 10 days after it, or
 - (ii) the person has acted as a director pursuant to the election or appointment.
- (6)** For the purpose of subsection (5), a person who is elected or appointed a director and refuses under subsection (5)(a) or fails to consent or act under subsection (5)(b) is deemed not to have been elected or appointed a director.

RSA 2000 cB-9 s105;2005 c8 s21;2008 cA-4.2 s121

Election and appointment of directors

- 106(1)** At the time of sending articles of incorporation, the incorporators shall send to the Registrar a notice of directors in the prescribed form and the Registrar shall file the notice.
- (2)** Each director named in the notice referred to in subsection (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

(3) Subject to subsection (9)(a) and section 107, shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders following the election.

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

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

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

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

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

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

- (a) for terms expiring not later than the close of the 3rd annual meeting of shareholders following the election, and
- (b) by creditors or employees of the corporation or by a class or classes of those creditors or employees.

1981 cB-15 s101;1983 c20 s11

Cumulative voting

107 If the articles provide for cumulative voting,

- (a) the articles shall require a fixed number and not a minimum and maximum number of directors,
- (b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder

multiplied by the number of directors to be elected, and the shareholder may cast all those votes in favour of one candidate or distribute them among the candidates in any manner,

- (c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 2 or more candidates to be elected by a single resolution,
- (d) if a shareholder votes for more than one candidate without specifying the distribution of the shareholder's votes among the candidates, the shareholder is deemed to have distributed the votes equally among the candidates for whom the shareholder voted,
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled,
- (f) each director ceases to hold office at the close of the first annual meeting of shareholders following the director's election,
- (g) a director may not be removed from office if the votes cast against the director's removal would be sufficient to elect the director, and those votes could be voted cumulatively, at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected, and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director, and those votes could be voted cumulatively, at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

1981 cB-15 s102

Ceasing to hold office

108(1) A director of a corporation ceases to hold office when

- (a) the director dies or resigns,
- (b) the director is removed in accordance with section 109, or
- (c) the director becomes disqualified under section 105(1).

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

1981 cB-15 s103

Removal of directors

109(1) Subject to section 107(g) or a unanimous shareholder agreement, the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

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

(3) Subject to section 107(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 111.

(4) A director elected or appointed under section 106(9) may be removed only by those persons having the power to elect or appoint that director.

1981 cB-15 s104

Attendance at meetings

110(1) A director of a corporation is entitled to receive notice of and to attend and be heard at every meeting of shareholders.

(2) A director who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the director from office, or
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of the director's resignation or removal or because the director's term of office has expired or is about to expire,

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

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

- (a) to every shareholder entitled to receive notice of any meeting referred to in subsection (1) and,
- (b) if the corporation is a distributing corporation, to the director

unless the statement is included in or attached to a management proxy circular required by section 150.

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

1981 cB-15 s105

Filling vacancies

111(1) Notwithstanding section 114(3), a quorum of directors may, subject to subsections (3) and (4), fill a vacancy among the directors, except a vacancy resulting from an increase in the number or minimum number of directors or from a failure to elect the number or minimum number of directors required by the articles.

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

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

- (a) subject to subsection (4), the remaining directors elected by that class or series may fill the vacancy except a vacancy resulting from an increase in the number or minimum number of directors for that class or series or from a failure to elect the number or minimum number of directors for that class or series, or
- (b) if there are no such remaining directors, any holder of shares of that class or series or any member of that other class of persons, as the case may be, may call a meeting of those shareholders or those persons for the purpose of filling the vacancy.

- (4) The articles or a unanimous shareholder agreement may provide that a vacancy among the directors shall only be filled by
- (a) a vote of the shareholders,
 - (b) a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series, or
 - (c) the vote of any class of persons having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class of persons.
- (5) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor.

1981 cB-15 s106

Change in number of directors

112(1) The shareholders of a corporation may amend the articles to increase or, subject to section 107(h), to decrease the number of directors or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

(2) If the shareholders adopt an amendment to the articles of a corporation to increase the number or minimum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect an additional number of directors authorized by the amendment, and for that purpose, notwithstanding sections 179(1) and 267(3), on the issue of a certificate of amendment the articles are deemed to be amended as of the date on which the shareholders adopt the amendment to the articles.

1981 cB-15 s107

Notice of change of directors

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.

(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.

(2) Any interested person, or the Registrar, may apply to the Court for an order to require a corporation or a director, as the case may be, to comply with this section, and the Court may so order and make any further order it thinks fit.

RSA 2000 cB-9 s113;2005 c8 s22

Meetings of directors

114(1) Unless the articles otherwise provide, the directors may meet at any place and on any notice the bylaws require.

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

(3) Directors shall not transact business at a meeting of directors unless at least 1/4 of the directors present are resident Canadians.

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

- (a) a resident Canadian director who is unable to be present approves in writing or by electronic means, 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 1/4 of the directors present at the meeting.

(5) A notice of a meeting of directors shall specify any matter referred to in section 115(3) that is to be dealt with at the meeting but, unless the bylaws otherwise provide, need not specify the purpose or the business to be transacted at the meeting.

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

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

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

(9) A director may participate in a meeting of directors or of a committee of directors by electronic means, 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.

RSA 2000 cB-9 s114;2005 c8 s23;2016 c18 s1

Delegation to managing director or committee

115(1) The directors of a corporation may appoint from their number a managing director, who must be a resident Canadian, or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

(2) If the directors of a corporation appoint a committee of directors, at least 1/4 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,
- (b.1) appoint additional directors,
- (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.

RSA 2000 cB-9 s115;2005 c8 s24;2016 c18 s1

Validity of acts of directors, officers and committees

116(1) An act of a director or officer is valid notwithstanding an irregularity in the director's or officer's election or appointment or a defect in the director's or officer's qualification.

(2) An act of the directors or a committee of directors is valid notwithstanding non-compliance with section 105(3) or (4), 114(3) or 115(2).

1981 cB-15 s111

Resolution instead of meeting

117(1) Subject to the articles, the bylaws or a unanimous shareholder agreement, a resolution in writing, signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors.

(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of directors, and signed by all the directors entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of directors.

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

1981 cB-15 s112;1987 c15 s13

Liability of directors and others

118(1) Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 27 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

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

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

- (a) a purchase, redemption or other acquisition of shares contrary to section 34, 35 or 36,
- (b) a commission on a sale of shares not provided for in section 42,

- (c) a payment of a dividend contrary to section 43,
- (d) financial assistance contrary to section 45,
- (e) a payment of an indemnity contrary to section 124, or
- (f) a payment to a shareholder contrary to section 191 or 242,

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

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

(5) If money or property of a corporation was paid or distributed to a shareholder or other recipient contrary to section 34, 35, 36, 42, 43, 45, 124, 191 or 242, the corporation, any director or shareholder of the corporation, or any person who was a creditor of the corporation at the time of the payment or distribution, is entitled to apply to the Court for an order under subsection (6).

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

- (a) order a shareholder or other recipient to restore to the corporation any money or property that was paid or distributed to the shareholder or other recipient contrary to section 34, 35, 36, 42, 43, 45, 124, 191 or 242;
- (b) order the corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares;
- (c) make any further order it thinks fit.

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

(8) A director is not liable under subsection (3)(d) if the director proves that the director did not know and could not reasonably have known that the financial assistance was given contrary to section 45.

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

1981 cB-15 s113;1988 c7 s3;1995 c28 s64

Directors' liability for wages

119(1) Directors of a corporation are jointly and severally liable to employees of the corporation for all debts not exceeding 6 months wages payable to each employee for services performed for the corporation while they are directors.

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

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

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

- (a) the corporation has been sued for the debt within 6 months after it has become due and execution has been returned unsatisfied in whole or in part,
- (b) the corporation has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within 6 months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution, or
- (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the debt has been proved within 6 months after the date of the assignment or receiving order.

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

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

(6) If a director pays a debt referred to in subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings, the director is entitled to any preference that the employee would

have been entitled to, and if a judgment has been obtained, the director is entitled to an assignment of the judgment.

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

1981 cB-15 s114;1987 c15 s14;1994 c23 s51

Disclosure by directors and officers in relation to contracts

120(1) A director or officer of a corporation who

- (a) is a party to a material contract or material transaction or proposed material contract or proposed material transaction 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 material transaction or proposed material contract or proposed material transaction 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 or transaction is first considered,
- (b) if the director was not interested in a proposed contract or transaction 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 or transaction is made, at the first meeting after the director becomes so interested, or
- (d) if a person who is interested in a contract or transaction later becomes a director, at the first meeting after the director becomes a director.

(3) Where a proposed contract or transaction 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 or transaction 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 transaction or proposed contract or transaction is to be considered or has been considered at a meeting of directors,
 - (b) if the officer becomes interested after a contract or transaction is made, forthwith after the officer becomes so interested, or
 - (c) if a person who is interested in a contract or transaction later becomes an officer, forthwith after the officer becomes an officer.
- (5)** If a material contract or material transaction or proposed material contract or proposed material transaction 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 transaction or proposed contract transaction.
- (6)** A director referred to in subsection (1) shall not vote on any resolution to approve the contract or transaction unless the contract or transaction 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 or transaction relating primarily to the director's remuneration as a director, officer, employee or agent of the corporation or an affiliate,
 - (c) a contract or transaction for indemnity or insurance under section 124, or
 - (d) a contract or transaction 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 or transaction 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 or transaction 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 or material transaction 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 or transaction is neither void nor voidable by reason only of that relationship, or by reason only that a director with an interest in the contract or transaction 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 or transaction, 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 or transaction 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 or transaction was approved by the directors or the shareholders and it was reasonable and fair to the corporation at the time it was approved.

(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.

(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.

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

RSA 2000 cB-9 s120;2005 c8 s25

Officers

121 Subject to the articles, the bylaws or any unanimous shareholder agreement,

- (a) the directors may designate the offices of the corporation, appoint as officers individuals of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in section 115(3),
- (b) a director may be appointed to any office of the corporation, and
- (c) 2 or more offices of the corporation may be held by the same person.

1981 cB-15 s116

Duty of care of directors and officers

122(1) Every director and officer of a corporation in exercising the director's or officer's powers and discharging the director's or officer's duties shall

- (a) act honestly and in good faith with a view to the best interests of the corporation, and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, bylaws and any unanimous shareholder agreement.

(3) Subject to section 146(7), no provision in a contract, the articles, the bylaws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves the director or officer from liability for a breach of that duty.

(4) In determining whether a particular transaction or course of action is in the best interests of the corporation, a director, if the director is elected or appointed by the holders of a class or series of shares or by employees or creditors or a class of employees or creditors, may give special, but not exclusive, consideration to the interests of those who elected or appointed the director.

1981 cB-15 s117

Dissent by director

123(1) A director who is present at a meeting of directors or committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless

- (a) the director requests that the director's abstention or dissent be, or the director's abstention or dissent is, entered in the minutes of the meeting,
- (b) the director sends the director's written dissent to the secretary of the meeting before the meeting is adjourned,
- (c) the director sends the director's dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned, or
- (d) the director otherwise proves that the director did not consent to the resolution or action.

(2) A director who votes for or consents to a resolution or action is not entitled to dissent under subsection (1).

(3) A director is not liable under section 118, 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 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.

RSA 2000 cB-9 s123;2005 c8 s26

Indemnification by corporation

124(1) Except in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, a corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or a person who acts or acted at the corporation's request as a director or officer of a body corporate of which the corporation is or was a shareholder or creditor, and the director's or officer's heirs and legal representatives, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the director or officer in respect of any civil, criminal or administrative action or proceeding to which the director or officer is made a party by reason of being or having been a director or officer of that corporation or body corporate, if

- (a) the director or officer acted honestly and in good faith with a view to the best interests of the corporation, and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the director or officer had reasonable grounds for believing that the director's or officer's conduct was lawful.

(2) A corporation may with the approval of the Court indemnify a person referred to in subsection (1) in respect of an action by or on behalf of the corporation or body corporate to procure a judgment in its favour, to which the person is made a party by reason of being or having been a director or an officer of the corporation or body corporate, against all costs, charges and expenses reasonably incurred by the person in connection with the action if the person fulfils the conditions set out in subsection (1)(a) and (b).

(3) Notwithstanding anything in this section, a person referred to in subsection (1) is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal or

administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of the corporation or body corporate, if the person seeking indemnity

- (a) was substantially successful on the merits in the person's defence of the action or proceeding,
- (b) fulfils the conditions set out in subsection (1)(a) and (b), and
- (c) is fairly and reasonably entitled to indemnity.

(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.

(4) A corporation may purchase and maintain insurance for the benefit of any person referred to in subsection (1) against any liability incurred by the person

- (a) in the person's capacity as a director or officer of the corporation, except when the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the corporation, or
- (b) in the person's capacity as a director or officer of another body corporate if the person acts or acted in that capacity at the corporation's request, except when the liability relates to the person's failure to act honestly and in good faith with a view to the best interests of the body corporate.

(5) A corporation or a person referred to in subsection (1) may apply to the Court for an order approving an indemnity under this section and the Court may so order and make any further order it thinks fit.

(6) On an application under subsection (5), the Court may order notice to be given to any interested person and that person is entitled to appear and be heard in person or by counsel.

RSA 2000 cB-9 s124;2005 c8 s27

Remuneration

125(1) Subject to the articles, the bylaws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

(2) Disclosure of the aggregate remuneration of directors, the aggregate remuneration of officers and the aggregate remuneration of employees shall be made as prescribed.

1981 cB-15 s120

Part 10 Insider Trading

Definitions

126 In this Part,

- (a) “corporation” does not include a distributing corporation;
- (b) “insider” means, with respect to a corporation,
 - (i) the corporation, in respect of the purchase or other acquisition by it of shares issued by it or any of its affiliates,
 - (ii) a director or officer of the corporation,
 - (iii) a person who, with respect to at least 10% of the voting rights attached to the voting shares of the corporation,
 - (A) beneficially owns, directly or indirectly, voting shares carrying those voting rights,
 - (B) exercises control or direction over those voting rights, or
 - (C) beneficially owns, directly or indirectly, voting shares carrying some of those voting rights and exercises control or direction over the remainder of those voting rights,
 - (iv) a person employed by the corporation or retained by it on a professional or consulting basis,
 - (v) an affiliate of the corporation,
 - (vi) a person who receives specific confidential information from a person described in this clause or in section 128 and who has knowledge that the person giving the information is a person described in this clause or in section 128, and
 - (vii) a person who receives specific confidential information from the first mentioned person in subclause (vi) and who has knowledge that that person received that knowledge in the manner described in that subclause;

- (c) “voting share” means an issued and outstanding share carrying voting rights under all circumstances or under any circumstances that have occurred and are continuing.

1981 cB-15 s121

Deemed insiders**127** For the purposes of this Part,

- (a) a director or an officer of a body corporate that is an insider of a corporation is deemed to be an insider of the corporation,
- (b) a director or an officer of a body corporate that is a subsidiary is deemed to be an insider of its holding corporation,
- (c) a person is deemed to own beneficially shares beneficially owned by a body corporate controlled by the person directly or indirectly, and
- (d) a body corporate is deemed to own beneficially shares beneficially owned by its affiliates.

1981 cB-15 s122

Deemed insiders**128** For the purposes of this Part,

- (a) if a body corporate becomes an insider of a corporation or enters into a business combination with a corporation, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous 6 months or for any shorter period during which the director or officer was a director or officer of the body corporate, and
- (b) if a corporation becomes an insider of a body corporate or enters into a business combination with a body corporate, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous 6 months or for any shorter period during which the director or officer was a director or officer of the body corporate.

1981 cB-15 s123

Business combination defined**129** In section 128, “business combination” means an acquisition of all or substantially all the property of one body corporate by another or an amalgamation of 2 or more bodies corporate.

1981 cB-15 s124

Civil liability of insiders

130(1) An insider who sells to or purchases from a shareholder of the corporation or any of its affiliates a security of the corporation or any of its affiliates and in connection with that sale or purchase makes use of any specific confidential information for the insider's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security

- (a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person at the time of the transaction, and
- (b) is accountable to the corporation for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

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

1981 cB-15 s125

Part 11 Shareholders

Place of shareholders' meetings

131(1) Meetings of shareholders of a corporation must be held at the place within Alberta provided in the bylaws or, in the absence of such provision, at the place within Alberta that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a corporation may be held outside Alberta if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends a meeting of shareholders held outside Alberta is deemed to have so agreed except when the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully held.

(3) Subject to any limitations or requirements set out in the regulations, if any, a shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by electronic means, telephone or other communication facilities that permit all persons participating in the meeting to hear or otherwise communicate with 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.

(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.

(4) Notwithstanding subsections (1) and (2), if the articles so provide, meetings of shareholders may be held outside Alberta.

RSA 2000 cB-9 s131;2005 c8 s28

Calling meetings

132(1) The directors of a corporation

- (a) shall call an annual meeting of shareholders to be held not later than 18 months after
- (i) the date of its incorporation, or
 - (ii) the date of its certificate of amalgamation, in the case of an amalgamated corporation,
- and subsequently not later than 15 months after holding the last preceding annual meeting, and

- (b) may at any time call a special meeting of shareholders.

(2) Notwithstanding subsection (1), the corporation may apply to the Court for an order extending the time in which the first or the next annual meeting of the corporation shall be held.

(3) Repealed 2014 c17 s57.

(4) If, on an application under subsection (2), the Court is satisfied that it is in the best interests of the corporation, the Court may extend the time in which the first or the next annual meeting of the corporation shall be held, in any manner and on any terms it thinks fit.

RSA 2000 cB-9 s132;2014 c17 s57

Record dates

133(1) For the purpose of determining shareholders

- (a) entitled to receive payment of a dividend,
- (b) entitled to participate in a liquidation distribution, or
- (c) for any other purpose except the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than 50 days the particular action to be taken.

(2) For the purpose of determining shareholders entitled to receive notice of or to vote at a meeting of shareholders, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

(3) If no record date is fixed,

- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be
 - (i) at the close of business on the last business day preceding the day on which the notice is sent, or,
 - (ii) if no notice is sent, the day on which the meeting is held,

and

- (b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of or to vote at a meeting, is to be at the close of business on the day on which the directors pass the resolution relating to that purpose.

(4) If the directors of a distributing corporation fix a record date then, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fixed the record date, notice of the record date shall be given not less than 7 days before the date so fixed

- (a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded, and

- (b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading.

RSA 2000 cB-9 s133;2005 c8 s29

Notice of meeting, adjournment, business and notice of business

134(1) Notice of the time and place of a meeting of shareholders shall be sent not less than 21 days and not more than 50 days before the meeting,

- (a) to each shareholder entitled to vote at the meeting,
- (b) to each director, and
- (c) to the auditor of the corporation.

(2) Notwithstanding section 255(3), a notice of a meeting of shareholders sent by mail to a shareholder, director or auditor in accordance with section 255(1) is deemed to be sent to the shareholder on the day on which it is deposited in the mail.

(3) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under section 133(2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(4) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of less than 30 days it is not necessary, unless the bylaws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the time of an adjournment.

(5) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days, section 149(1) does not apply.

(6) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements and auditor's report, fixing the number of directors for the following year, election of directors and reappointment of the incumbent auditor, is deemed to be special business.

(7) Notice of a meeting of shareholders at which special business is to be transacted shall state

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment on that business, and
- (b) the text of any special resolution to be submitted to the meeting.

(8) The text of a special resolution may be amended at a meeting of shareholders if the amendments correct manifest errors or are not material.

1981 cB-15 s129;1987 c15 s16

Waiver of notice

135 A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders, and attendance of the shareholder or other person at a meeting of shareholders is a waiver of notice of the meeting, except when the shareholder or other person attends a meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called.

1981 cB-15 s130

Shareholder proposals

136(1) A registered holder of shares entitled to vote at an annual meeting of shareholders, or a beneficial owner of shares, may

- (a) submit to the corporation notice of any matter related to the business or affairs of the corporation that the registered holder or beneficial owner of shares 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 registered holder or beneficial owner of shares would have been entitled to submit a proposal.

(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).

(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 registered holder or beneficial owner of shares, the corporation shall include in the management proxy circular or attach to it a statement by the registered holder or beneficial owner of shares of not more than 200 words in support of the proposal, and the name and address of the registered holder or beneficial owner of shares.

(4) A proposal may include nominations for the election of directors if the proposal is signed by one or more registered 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, or by beneficial owners of shares representing in the aggregate the same percentage of shares, 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 registered holder or beneficial owner of shares 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 request of the registered holder or beneficial owner of shares, 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 registered holder or beneficial owner of shares failed to present the proposal, in person or by proxy, at the meeting,

- (d) substantially the same proposal was submitted to registered holders or beneficial owners of shares 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 request of the registered holder or beneficial owner of shares 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 registered holder or beneficial owner of shares submitting the proposal of its intention to omit the proposal from the management proxy circular and send to the registered holder or beneficial owner of shares a statement of the reasons for the refusal.

(8) On the application of a registered holder or beneficial owner of shares 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.

RSA 2000 cB-9 s136;2005 c8 s30;2005 c40 s4

Shareholder list

137(1) A corporation 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), 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 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.

(3) If a corporation does not fix a record date under section 133(2), a person named in the list prepared under subsection (1)(b)(i) 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 date on which the list referred to in subsection (1)(b)(i) is prepared, and
- (b) the transferee of those shares
 - (i) produces properly endorsed share certificates, or
 - (ii) otherwise establishes that 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.

(4) A shareholder may examine the list of shareholders

- (a) during usual business hours at the records office of the corporation or at the place where its central securities register is maintained, and
- (b) at the meeting of shareholders for which the list was prepared.

RSA 2000 cB-9 s137;2005 c8 s31

Quorum

138(1) Unless the bylaws otherwise provide, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holder or holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the bylaws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

(4) If a corporation has only one shareholder, or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting.

1981 cB-15 s133

Right to vote

139(1) Unless the articles otherwise provide, each share of a corporation entitles the holder of it to one vote at a meeting of shareholders.

(2) If a body corporate or association is a shareholder of a corporation, the corporation shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the corporation.

(3) An individual authorized under subsection (2) may exercise on behalf of the body corporate or association the individual represents all the powers it could exercise if it were an individual shareholder.

(4) Unless the bylaws otherwise provide, if 2 or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if

2 or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

1981 cB-15 s134

Voting

140(1) Unless the bylaws otherwise provide, voting at a meeting of shareholders shall be by a show of hands except when a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

(2) A shareholder or proxyholder may demand a ballot either before or on the declaration of the result of any vote by a show of hands.

(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 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.

RSA 2000 cB-9 s140;2005 c8 s32;2005 c40 s5

Resolution instead of meetings

141(1) A resolution in writing signed by all the shareholders entitled to vote on that resolution is as valid as if it had been passed at a meeting of shareholders.

(2) A resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

(3) A copy of every resolution referred to in subsection (1) or (2) shall be kept with the minutes of the meetings of shareholders.

1981 cB-15 s136

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, but the beneficial owners of shares do not hereby acquire the direct right to vote at the meeting that is the subject of 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.

RSA 2000 cB-9 s142;2005 c8 s33;2005 c40 s6

Meeting called by Court

143(1) If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the

manner prescribed by the bylaws and this Act, or if for any other reason the Court thinks fit, the Court, on the application of a director, a shareholder entitled to vote at the meeting or, if the corporation is a distributing corporation the Executive Director, may order a meeting to be called, held and conducted in the manner that the Court directs.

(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by the bylaws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

1981 cB-15 s138;1988 c7 s3;1995 c28 s64

Court review of election

144(1) A corporation or a shareholder or director may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

(2) On an application under this section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made;
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

1981 cB-15 s139

Pooling agreement

145 A written agreement between 2 or more shareholders may provide that in exercising voting rights the shares held by them shall be voted as provided in the agreement.

1981 cB-15 s139.1

Unanimous shareholder agreement

146(1) A unanimous shareholder agreement may provide for any or all of the following:

- (a) the regulation of the rights and liabilities of the shareholders, as shareholders, among themselves or between themselves and any other party to the agreement;
- (b) the regulation of the election of directors;
- (c) the management of the business and affairs of the corporation, including the restriction or abrogation, in whole or in part, of the powers of the directors;
- (d) any other matter that may be contained in a unanimous shareholder agreement pursuant to any other provision of this Act.

(2) If a unanimous shareholder agreement is in effect at the time a share is issued by a corporation to a person other than an existing shareholder,

- (a) that person is deemed to be a party to the agreement whether or not the person had actual knowledge of it when the share certificate was issued,
- (b) the issue of the share certificate does not operate to terminate the agreement, and
- (c) if that person is a bona fide purchaser without actual knowledge of the unanimous shareholder agreement, that person may rescind the contract under which the shares were acquired by giving a notice to that effect to the corporation within a reasonable time after the person receives actual knowledge of the unanimous shareholder agreement.

(3) If a unanimous shareholder agreement is in effect when a person who is not a party to the agreement acquires a share of a corporation, other than under subsection (2),

- (a) the person who acquired the share is deemed to be a party to the agreement whether or not the person had actual knowledge of it when the person acquired the share, and
- (b) neither the acquisition of the share nor the registration of that person as a shareholder operates to terminate the agreement.

(4) If

- (a) a person referred to in subsection (3) is a protected purchaser as defined in the *Securities Transfer Act* and did not have actual knowledge of the unanimous shareholder agreement, and
- (b) the person's transferor's share certificate did not contain a reference to the unanimous shareholder agreement,

that person may, within 30 days after the person acquires actual knowledge of the existence of the agreement, send to the corporation a notice of objection to the agreement.

(5) If a person sends a notice of objection under subsection (4),

- (a) the person is entitled to be paid by the corporation the fair value of the shares held by the person, determined as of the close of business on the day on which the person became a shareholder, and
- (b) section 191(4) and (6) to (20) apply, with the necessary changes, as if the notice of objection under subsection (4) were a written objection sent to the corporation under section 191(5).

(6) A transferee who is entitled to be paid the fair value of the transferee's shares under subsection (5) also has the right to recover from the transferor by action the amount by which the value of the consideration paid for the transferee's shares exceeds the fair value of those shares.

(7) A shareholder who is a party or is deemed to be a party to a unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the corporation to which the agreement relates to the extent that the agreement restricts the powers of the directors to manage the business and affairs of the corporation, and the directors are thereby relieved of their duties and liabilities, including any liabilities under section 119 or any other enactment, to the same extent.

(8) A unanimous shareholder agreement may not be amended without the written consent of all those who are shareholders at the effective date of the amendment.

(9) A unanimous shareholder agreement may exclude the application to the agreement of all but not part of this section.

RSA 2000 cB-9 s146;2005 c8 s34;2006 cS-4.5 s106

Part 12 Proxies

Definitions

147 In this Part,

- (a) “form of proxy” means a written or printed form that, on completion and execution by or on behalf of a shareholder, becomes a proxy;
- (b) “proxy” means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on the shareholder’s behalf at a meeting of shareholders;
- (c) “registrant” means a person required to be registered to trade or deal in securities under the laws of any jurisdiction;
- (d) “solicit” or “solicitation” includes
 - (i) a request for a proxy whether or not accompanied with or included in a form of proxy,
 - (ii) a request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
 - (iv) the sending of a form of proxy to a shareholder under section 149,

but does not include
 - (v) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,
 - (vi) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
 - (vii) the sending by a registrant of the documents referred to in section 153, or
 - (viii) a solicitation by a person in respect of shares of which the person is the beneficial owner;

- (e) “solicitation by or on behalf of the management of a corporation” means a solicitation by any person pursuant to a resolution or the instructions of, or with the acquiescence of, the directors or a committee of the directors.

1981 cB-15 s141

Appointing proxyholder

148(1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder and one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) A proxy shall be executed by the shareholder or by the shareholder’s attorney authorized in writing.

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

(4) A shareholder may revoke a proxy

(a) by depositing an instrument in writing executed by the shareholder or by the shareholder’s attorney authorized in writing

(i) at the registered office of the corporation at any time up to and including the last business day preceding the day of the meeting, or an adjournment of that meeting, at which the proxy is to be used, or

(ii) with the chair of the meeting on the day of the meeting or an adjournment of the meeting, or

(b) in any other manner permitted by law.

(5) The directors may specify in a notice calling a meeting of shareholders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting must be deposited with the corporation or its agent.

1981 cB-15 s142

Mandatory solicitation

149(1) Subject to subsection (2), the management of a corporation that is not a private issuer within the meaning of the *Securities Act* 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 that is not a private issuer within the meaning of the *Securities Act* is not required to send a form of proxy under subsection (1)
- (a) repealed 2005 c8 s35,
 - (b) if all of the shareholders entitled to vote at a meeting of shareholders have agreed in writing to waive the application of subsection (1).
- (3) A shareholder may revoke a waiver given under subsection (2)(b) in respect of any meeting of shareholders by sending to the corporation a notice in writing to that effect not less than 40 days before the date of the meeting in respect of which the waiver was given.
- (4) If the management of a corporation, without reasonable cause, contravenes subsection (1), the corporation is guilty of an offence and liable to a fine of not more than \$5000.
- (5) If a corporation contravenes subsection (1), then, whether or not the corporation has been prosecuted or convicted in respect of that contravention, any director or officer of the corporation who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

RSA 2000 cB-9 s149;2005 c8 s35

Soliciting proxies

150(1) A person shall not solicit proxies unless

- (a) in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular in the prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting, or
- (b) in the case of any other solicitation, a dissident's proxy circular in the prescribed form stating the purposes of the solicitation

is sent to the auditor of the corporation, to each shareholder whose proxy is solicited and, if clause (b) applies, to the corporation.

- (2) Subsection (1) does not apply to a corporation that has 15 or fewer shareholders entitled to vote at meetings of shareholders.
- (3) A person required to send a management proxy circular or dissident's proxy circular under subsection (1) shall, if the corporation is a distributing corporation, file concurrently a copy of it with the Executive Director, together with a copy of the notice of

the meeting, form of proxy and any other documents for use in connection with the meeting.

(4) A person who contravenes subsection (1) or (3) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(5) If the person who contravenes subsection (3) is a body corporate, then, whether or not the body corporate has been prosecuted or convicted in respect of that contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

1981 cB-15 s144;1988 c7 s3;1995 c28 s64

Exemption orders

151 On the application of an interested person,

- (a) the Commission, if the corporation is a distributing corporation, or
- (b) the Court, if the corporation is not a distributing corporation,

may make an order on any terms it considers appropriate exempting that person from the application of section 149 or 150(1), and the order may have retrospective effect.

1981 cB-15 s145;1988 c7 s3;1995 c28 s64

Rights and duties of proxyholder

152(1) A person who solicits a proxy and is appointed as a proxyholder shall attend in person or cause an alternate proxyholder to attend the meeting in respect of which the proxy is given and comply with the directions of the shareholder who appointed the person.

(2) A proxyholder or an alternate proxyholder has the same rights as the shareholder who appointed the proxyholder or alternate proxyholder to speak at a meeting of shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at the meeting in respect of any matter by way of any show of hands.

(3) Notwithstanding subsections (1) and (2), if the chair of a meeting of shareholders declares to the meeting that, if a ballot is conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what to the chair's knowledge will be the decision of the meeting in relation to

any matter or group of matters is less than 5% of the votes attached to the shares entitled to vote and represented at the meeting on that ballot, then, unless a shareholder or proxyholder demands a ballot,

- (a) the chair may conduct the vote in respect of that matter or group of matters by a show of hands, and
- (b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by a show of hands.

(4) A proxyholder or alternate proxyholder who without reasonable cause fails to comply with the directions of a shareholder under this section is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

1981 cB-15 s146

Duties of registrant

153(1) Shares of a corporation that are registered in the name of a registrant or the registrant's nominee and not beneficially owned by the registrant shall not be voted unless the registrant, forthwith after receipt of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents, other than the form of proxy sent to shareholders by or on behalf of any person for use in connection with the meeting, sends a copy of those documents to the beneficial owner and, except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

(2) A registrant shall not vote or appoint a proxyholder to vote shares registered in the registrant's name or in the name of the registrant's nominee that the registrant does not beneficially own unless the registrant receives voting instructions from the beneficial owner.

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in subsection (1) other than copies of the document requesting voting instructions.

(4) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

(5) If requested by a beneficial owner, a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

(6) The contravention of this section by a registrant does not render void any meeting of shareholders or any action taken at a meeting of shareholders.

(7) Nothing in this section gives a registrant the right to vote shares that the registrant is otherwise prohibited from voting.

(8) A registrant who knowingly contravenes this section is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(9) If the registrant who contravenes this section is a body corporate, then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention is also guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

1981 cB-15 s147

Court orders

154 If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made, an interested person or, if the corporation is a distributing corporation the Executive Director, may apply to the Court and the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order restraining the solicitation, the holding of the meeting or any person from implementing or acting on any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation;
- (c) an order adjourning the meeting.

1981 cB-15 s148;1988 c7 s3;1995 c28 s64

Part 13 Financial Disclosure

Annual financial statements

155(1) Subject to section 156, the directors of a corporation shall place before the shareholders at every annual meeting

- (a) the following financial statements as prescribed:
- (i) if the corporation has not completed a financial period and the meeting is held after the end of the first 6-month period of that financial period, a financial statement for the period that began on the date the corporation came into existence and ended on a date occurring not earlier than 6 months before the annual meeting;
 - (ii) if the corporation has completed only one financial period, a financial statement for that year;
 - (iii) if the corporation has completed 2 or more financial periods, comparative financial statements for the last 2 completed financial periods;
 - (iv) if the corporation has completed one or more financial periods but the annual meeting is held after 6 months has expired in its current financial period, a financial statement for the period that
 - (A) began at the commencement of its current financial period, and
 - (B) ended on a date that occurred not earlier than 6 months before the annual meeting,in addition to any statements required under subclause (ii) or (iii),
- (b) the report of the auditor, if any, and
- (c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the bylaws or any unanimous shareholder agreement.

(2) Notwithstanding subsection (1)(a)(iii), the financial statements for the earlier of the 2 financial periods referred to in that subclause may be omitted if the reason for the omission is set out in the financial statements, or in a note to them, to be placed before the shareholders at the annual meeting.

1981 cB-15 s149

Exemption

156(1) Section 155 does not apply to a corporation that is subject to and complies with the provisions of the *Securities Act* relating to the financial statements to be placed before the shareholders at every annual meeting.

(2) A distributing corporation may apply to the Commission for an order authorizing the corporation to omit from its financial statements any item prescribed, or to dispense with the publication of any financial statement prescribed, and the Commission may, if it reasonably believes that the disclosure of the item or statement would be detrimental to the corporation, make the order on any reasonable conditions it thinks fit.

(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).

RSA 2000 cB-9 s156;2005 c8 s36

Consolidated statements

157(1) A corporation shall keep at its records office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

(2) Shareholders of a corporation and their agents and legal representatives may on request examine the statements referred to in subsection (1) during the usual business hours of the corporation, and may make extracts from them, free of charge.

(3) A corporation may, within 15 days after a request to examine under subsection (2), apply to the Court for an order barring the right of any person to so examine, and the Court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar that right and make any further order it thinks fit.

(4) A corporation shall give notice of an application under subsection (3) to the person making a request under subsection (2), and that person may appear and be heard in person or by counsel.

1981 cB-15 s151

Approval of financial statements

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 or a facsimile version of the signature reproduced on the statements.

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 155 unless the financial statements are

(a) approved and signed in accordance with subsection (1), and

- (b) accompanied with the report of the auditor of the corporation, if any.

RSA 2000 cB-9 s158;2005 c8 s37

Copies to shareholders

159(1) A corporation shall, not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under section 141(2) instead of the annual meeting, send a copy of the documents referred to in section 155 to each shareholder, except to a shareholder who has informed the corporation in writing that the shareholder does not want a copy of those documents.

(2) A corporation that, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$5000.

(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.

RSA 2000 cB-9 s159;2005 c8 s38

Copies to Executive Director

160(1) A distributing corporation shall, not less than 21 days before each annual meeting of shareholders or forthwith after the signing of a resolution under section 141(2) instead of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution instead of the meeting should have been signed, file a copy of the documents referred to in section 155 with the Executive Director.

(2) If a distributing corporation

- (a) sends to its shareholders, or
- (b) is required to file with or send to a public authority or a stock exchange

interim financial statements or related documents, the corporation shall forthwith file copies of them with the Executive Director.

(3) A subsidiary corporation is not required to comply with this section if

- (a) the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary, and

(b) the consolidated or combined financial statements of the holding corporation are included in the documents filed with the Executive Director by the holding corporation in compliance with this section.

(4) A corporation that contravenes this section is guilty of an offence and liable to a fine of not more than \$5000.

1981 cB-15 s154;1988 c7 s3;1995 c28 s64

Qualification of the auditor

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.

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

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of the auditor's disqualification.

(4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

(5) An interested person may apply to the Court for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not

unfairly prejudice the shareholders, make an exemption order on any terms it thinks fit and the exemption order may have retrospective effect.

RSA 2000 cB-9 s161;2005 c8 s39

Auditor's appointment and remuneration

162(1) Subject to section 163, shareholders of a corporation shall, by ordinary resolution, at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

(2) An auditor appointed under section 104 is eligible for appointment under subsection (1).

(3) Notwithstanding subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until the auditor's successor is appointed.

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, may be fixed by the directors.

1981 cB-15 s156

Dispensing with auditor

163(1) The shareholders of a corporation other than a distributing corporation may resolve not to appoint an auditor.

(2) A resolution under subsection (1) is valid only until the next succeeding annual meeting of shareholders.

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

1981 cB-15 s157

Auditor ceasing to hold office

164(1) An auditor of a corporation ceases to hold office when

- (a) the auditor dies or resigns, or
- (b) the auditor is removed pursuant to section 165.

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

1981 cB-15 s158

Removal of auditor

165(1) The shareholders of a corporation may by ordinary resolution at a special meeting remove from office the auditor, other than an auditor appointed by the Court under section 167.

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 166.

1981 cB-15 s159

Filling vacancy

166(1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

(3) The articles of a corporation may provide that a vacancy in the office of auditor shall only be filled by vote of the shareholders.

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of the auditor's predecessor.

(5) Subsections (1) and (2) do not apply if the shareholders have resolved under section 163 not to appoint an auditor.

1981 cB-15 s160

Court-appointed auditor

167(1) If a corporation does not have an auditor, the Court may, on the application of a shareholder or, if the corporation is a distributing corporation the Executive Director, appoint and fix the remuneration of an auditor who holds office until an auditor is appointed by the shareholders.

(2) Subsection (1) does not apply if the shareholders have resolved under section 163 not to appoint an auditor.

1981 cB-15 s161;1988 c7 s3;1995 c28 s64

Rights and liabilities of auditor or former auditor

168(1) The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard at every meeting on matters relating to the auditor's duties as auditor.

(2) If a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice to

the auditor or a former auditor of the corporation not less than 10 days before a meeting of shareholders, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to the auditor's duties as auditor or the former auditor's former duties as auditor, as the case may be.

(3) A director or shareholder who sends a notice referred to in subsection (2) shall send concurrently a copy of the notice to the corporation.

(4) An auditor or former auditor of a corporation who without reasonable cause contravenes subsection (2) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(5) An auditor who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of directors or shareholders called for the purpose of removing 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, or
- (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.

(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).

(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 statements referred to in subsections (5) and (5.1), unless the statements are included in or attached to a management proxy circular required by section 150.

(7) No person shall accept an appointment as or consent to be appointed as auditor of a corporation if the person is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until the person has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, that auditor is to be replaced.

(8) Notwithstanding subsection (7), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if, within 15 days after making the request referred to in that subsection, the person does not receive a reply.

RSA 2000 cB-9 s168;2005 c8 s40

Auditor's duty to examine

169(1) An auditor of a corporation shall make the examination that is in the auditor's opinion necessary to enable the auditor to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except those financial statements or parts of those statements that relate to the earlier of the 2 financial years referred to in section 155(1)(a)(iii).

(2) Notwithstanding section 170, an auditor of a corporation may reasonably rely on the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

(3) For the purpose of subsection (2), reasonableness is a question of fact.

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported on by the auditor are in consolidated form.

1981 cB-15 s163

Auditor's right to information

170(1) On the demand of the auditor of a corporation, the present or former directors, officers, employees or agents of the

corporation and the former auditors of the corporation shall furnish any

- (a) information and explanations, and
- (b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries

that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 169 and that the directors, officers, employees, agents or former auditors are reasonably able to furnish.

(2) On the demand of the auditor of a corporation, the directors of the corporation shall

- (a) to the extent they are reasonably able to do so, obtain from the present or former directors, officers, employees, agents or auditors of any subsidiary of the corporation the information and explanations that the present or former directors, officers, employees, agents or auditors are reasonably able to furnish and that are, in the opinion of the corporation's auditor, necessary to enable the auditor to make the examination and report required under section 169, and
- (b) furnish the information and explanations so obtained to the corporation's auditor.

(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.

RSA 2000 cB-9 s170;2005 c8 s41

Audit committee

171(1) Subject to subsection (3), a distributing corporation shall, and any other corporation may, have an audit committee.

(2) The audit committee of a distributing corporation must be composed of not less than 3 directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates.

(3) A distributing corporation may apply to the Commission for an order authorizing the corporation to dispense with an audit committee, and the Commission may, if it is satisfied that the shareholders will not be prejudiced by the order, permit the corporation to dispense with an audit committee on any reasonable conditions that it thinks fit.

(4) An audit committee shall review the financial statements of the corporation before they are approved under section 158.

(5) The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard at the meeting, and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

(6) The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

(7) A director or an officer of a corporation shall forthwith notify the audit committee and the auditor of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor has reported on.

(8) If the auditor or a former auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement on which the auditor or former auditor has reported, and if in the auditor's or former auditor's opinion the error or misstatement is material, the auditor or former auditor shall inform each director accordingly.

(9) When under subsection (8) the auditor or a former auditor informs the directors of an error or misstatement in a financial statement,

- (a) the directors shall prepare and issue revised financial statements or otherwise inform the shareholders, and
- (b) if the corporation is a distributing corporation, the corporation shall file the revised financial statements with the Executive Director or inform the Executive Director of the error or misstatement in the same manner that the shareholders were informed of it.

(10) Every director or officer of a corporation who knowingly contravenes subsection (7) or (9) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

1981 cB-15 s165;1988 c7 s3;1995 c28 s64

Qualified privilege

172 Any oral or written statement or report made under this Act by the auditor or a former auditor of a corporation has qualified privilege.

1981 cB-15 s166

Part 14 Fundamental Changes

Amendment of articles

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

- (a) change its name, subject to section 12,
- (b) add, change or remove any restriction on the business or businesses that the corporation may carry on,
- (c) change any maximum number of shares that the corporation is authorized to issue,
- (d) create new classes of shares,
- (e) change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued,
- (f) change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series,
- (g) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,
- (h) cancel a class or series of shares where there are no issued or outstanding shares of that class or series,
- (i) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of that series,
- (j) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series,
- (k) revoke, diminish or enlarge any authority conferred under clauses (i) and (j),
- (l) increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 107 and 112,

- (m) subject to section 48(8), add, change or remove restrictions on the transfer of shares,
- (m.1) add or remove an express statement establishing the unlimited liability of shareholders as set out in section 15.2, or
- (n) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

(3) Notwithstanding subsection (1), but subject to section 12, where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

RSA 2000 cB-9 s173;2005 c8 s42

Constrained shares

174(1) Subject to sections 176 and 177, a distributing corporation may by special resolution amend its articles in accordance with the regulations to constrain the issue or transfer of its shares

- (a) to persons who are not resident Canadians, or
- (b) to enable the corporation or any of its affiliates to qualify under any law of Canada or any province or territory of Canada referred to in the regulations
 - (i) to obtain a licence to carry on any business,
 - (ii) to become a publisher of a Canadian newspaper or periodical, or
 - (iii) to acquire shares of a financial intermediary as defined in the regulations.

(2) A corporation referred to in subsection (1) may by special resolution amend its articles to remove any constraint on the issue or transfer of its shares.

(3) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under subsection (1), revoke the resolution before it is acted on without further approval of the shareholders.

- (4) The Lieutenant Governor in Council may make regulations with respect to a corporation that constrains the issue or transfer of its shares prescribing
- (a) the disclosure required of the constraints in documents issued or published by the corporation,
 - (b) the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation,
 - (c) the limitations on voting rights of any shares held contrary to the articles of the corporation,
 - (d) the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the right of the corporation and its directors, employees and agents to rely on that disclosure and the effects of that reliance, and
 - (e) the rights of any person owning shares of the corporation at the time of an amendment to its articles constraining share issues or transfers.
- (5) An issue or a transfer of a share or an act of a corporation is valid notwithstanding any contravention of this section or the regulations.

1981 cB-15 s168;1987 c15 s17;1992 c21 s6

Proposal for amendment

175(1) Subject to subsection (2), a director or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 136, make a proposal to amend the articles.

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered shall set out the proposed amendment and, if applicable, shall state that a dissenting shareholder is entitled to be paid the fair value of the shareholder's shares in accordance with section 191, but failure to make that statement does not invalidate an amendment.

1981 cB-15 s169

Class votes

176(1) The holders of shares of a class or, subject to subsection (2), of a series are entitled to vote separately as a class or series on a proposal to amend the articles to

- (a) increase or decrease the maximum number of authorized shares of that class,

- (b) increase the maximum number of authorized shares of a class having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,
 - (c) effect an exchange, reclassification or cancellation of all or part of the shares of that class,
 - (d) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
 - (i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,
 - (ii) add, remove or change prejudicially redemption rights,
 - (iii) reduce or remove a dividend preference or a liquidation preference, or
 - (iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire securities of a corporation or sinking fund provisions,
 - (e) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,
 - (f) create a new class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class,
 - (g) make the rights or privileges of any class of shares having rights or privileges inferior to the rights or privileges of the shares of that class equal or superior to the rights or privileges of the shares of that class,
 - (h) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class, or
 - (i) constrain the issue or transfer of the shares of that class or extend or remove that constraint.
- (2)** The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if the series is affected by an amendment in a manner different from other shares of the same class.

(3) Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the amendment as a class or series have approved the amendment by a special resolution.

1981 cB-15 s170;1987 c15 s18

Delivery of articles of amendment

177(1) Subject to any revocation under section 173(2) or 174(3), after an amendment has been adopted under section 173, 174 or 176, articles of amendment in the prescribed form shall be sent to the Registrar.

(2) If an amendment is to change the name of a corporation, documents relating to corporate names that are prescribed by the regulations shall, unless otherwise provided by the Registrar, be sent to the Registrar.

(3) If an amendment effects or requires a reduction of stated capital, section 38(3) and (4) apply.

1981 cB-15 s171;1983 c20 s13;1984 c12 s1

Certificate of amendment

178 On receipt of articles of amendment, the Registrar shall issue a certificate of amendment in accordance with section 267.

1981 cB-15 s172

Effect of certificate

179(1) An amendment becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

(2) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or any of its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or any of its directors or officers is a party.

1981 cB-15 s173

Restated articles of incorporation

180(1) A corporation may at any time, and shall when reasonably so directed by the Registrar, restate the articles of incorporation as amended.

(2) A restatement of articles

- (a) may be done by a resolution of the directors where the restatement only consolidates previous amendments or is

done in conjunction with an amendment that the directors are authorized to make without a special resolution, and

(b) must be done by special resolution in all other cases.

(3) Restated articles of incorporation in prescribed form must be sent to the Registrar.

(4) On receipt of restated articles of incorporation, the Registrar shall issue a certificate of registration of restated articles in accordance with section 267.

(5) Restated articles of incorporation are effective on the date shown in the certificate of registration of restated articles and supersede the original articles of incorporation and all amendments to them.

1981 cB-15 s174;1999 c26 s1

Amalgamation

181 Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

1981 cB-15 s175;1996 c32 s1

Amalgamation agreement

182(1) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be included in articles of incorporation under section 6,
- (b) the name and address of each proposed director of the amalgamated corporation,
- (c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation,
- (d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate that the holders of those shares are to receive in addition to or instead of securities of the amalgamated corporation,
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation,

- (f) whether the bylaws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed bylaws, and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares, and no provision shall be made in the agreement for the conversion of those shares into shares of the amalgamated corporation.

1981 cB-15 s176

Shareholder approval of amalgamation agreement

183(1) The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of the holders of shares of the amalgamating corporation of which they are directors and, subject to subsection (4), to the holders of each class or series of those shares.

(2) A notice of a meeting of shareholders complying with section 134 shall be sent in accordance with that section to each shareholder of each amalgamating corporation and shall

- (a) include or be accompanied with a copy or summary of the amalgamation agreement, and
- (b) state that a dissenting shareholder is entitled to be paid the fair value of the shareholder's shares in accordance with section 191, but failure to make that statement does not invalidate an amalgamation.

(3) Each share of an amalgamating corporation carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

(4) The holders of shares of a class or series of shares of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 176.

(5) Subject to subsection (4), an amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by special resolutions.

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, notwithstanding approval of the agreement by the shareholders of all or any of the amalgamating corporations.

1981 cB-15 s177

Vertical and horizontal short form amalgamation

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

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and
- (b) the resolutions provide that
 - (i) the shares of each amalgamating subsidiary corporation shall be cancelled without any repayment of capital in respect of those shares,
 - (ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating holding corporation,
 - (iii) no securities shall be issued by the amalgamated corporation in connection with the amalgamation, and
 - (iv) the stated capital of the amalgamated corporation shall be the same as the stated capital of the amalgamating holding corporation.

(2) Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 182 and 183 if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation, and
- (b) the resolutions provide that
 - (i) the shares of all but one of the amalgamating subsidiary corporations shall be cancelled without any repayment of capital in respect of those shares,

- (ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary corporation whose shares are not cancelled, and
- (iii) the stated capital of the amalgamating subsidiary corporations whose shares are cancelled shall be added to the stated capital of the amalgamating subsidiary corporation whose shares are not cancelled.

RSA 2000 cB-9 s184;2005 c8 s43

Delivery of articles of amalgamation and statutory declaration to Registrar

185(1) Subject to section 183(6), after an amalgamation agreement has been adopted under section 183 or an amalgamation has been approved under section 184, articles of amalgamation in prescribed form shall be sent to the Registrar together with the documents required by sections 20 and 106 and, if the name of the amalgamated corporation is not the same as that of one of the amalgamating corporations, documents relating to corporate names prescribed by the regulations.

(2) The articles of amalgamation shall have attached to them the amalgamation agreement, if any, and a statutory declaration of a proposed director of the amalgamated corporation that establishes to the satisfaction of the Registrar that

- (a) there are reasonable grounds for believing that
 - (i) the amalgamated corporation will be able to pay its liabilities as they become due, and
 - (ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes, and
- (b) there are reasonable grounds for believing that
 - (i) no creditor will be prejudiced by the amalgamation, or
 - (ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(3) For the purposes of subsection (2), adequate notice is given if

- (a) a notice of the proposed amalgamation in writing is sent to each known creditor having a claim against the corporation that exceeds \$1000,

- (b) a notice of the proposed amalgamation is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice of the proposed amalgamation is given in each province and territory in Canada where the corporation carries on business, and
- (c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act unless a creditor of the corporation objects to the amalgamation within 30 days from the date of the notice.

(4) On receipt of articles of amalgamation and the other documents required by subsections (1) and (2), and on receipt of the prescribed fees, the Registrar shall issue a certificate of amalgamation in accordance with section 267.

1981 cB-15 s179;1984 c12 s1;1987 c15 s19

Effect of certificate of amalgamation

186 Subject to section 15.6, 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.

RSA 2000 cB-9 s186;2005 c8 s44

Amalgamation of Alberta corporation and extra-provincial corporation where one is wholly-owned subsidiary of the other

187(1) A corporation may amalgamate with an extra-provincial corporation and continue as one corporation under this Act if

- (a) the extra-provincial corporation is authorized to amalgamate with the corporation by the laws of the jurisdiction in which the extra-provincial corporation is incorporated, and
- (b) one is the wholly-owned subsidiary of the other.

(2) Subsection (1) does not apply if the corporation is a professional corporation.

(3) A corporation and an extra-provincial corporation proposing to amalgamate shall enter into an amalgamation agreement setting out the terms and means of effecting the amalgamation and, in particular,

- (a) providing for the matters enumerated in section 182(1)(a), (b) and (g),
- (b) providing that the shares of the wholly-owned subsidiary shall be cancelled without any repayment of capital in respect of those shares, and
- (c) providing that no securities shall be issued by the amalgamated corporation in connection with the amalgamation.

(4) An amalgamation under this section is adopted when

- (a) the agreement is approved by the directors of the corporation,
- (b) the agreement is approved by the directors or comparable governing body of, or the members of, the extra-provincial corporation, whichever body is required under the laws of the jurisdiction of incorporation of the extra-provincial corporation to approve it, and
- (c) the extra-provincial corporation has otherwise complied with the law of the jurisdiction in which it is incorporated.

(5) An amalgamation agreement under this section may provide that at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of the corporation or the directors or comparable governing body of the extra-provincial corporation, notwithstanding any previous approval of the agreement.

(6) Sections 185 and 186 apply to an amalgamation under this section as if both of the amalgamating bodies corporate were corporations except that the notice referred to in section 185(3)(b) shall also be published or distributed in each jurisdiction outside Canada where either body corporate carries on business.

1981 cB-15 s180.1

Continuance of an extra-provincial corporation as an Alberta corporation

188(1) An extra-provincial corporation may, if so authorized by the laws of the jurisdiction in which it is incorporated, apply to the Registrar for a certificate of continuance.

(2) The provisions of the articles of continuance of an extra-provincial corporation may, without so stating, vary from the provisions of the extra-provincial corporation's act of incorporation, articles, letters patent or memorandum or articles of association, if the variation is one which a corporation incorporated under this Act could effect by way of amendment to its articles.

(3) Articles of continuance in the prescribed form must be sent to the Registrar together with the documents required by sections 12(3), 20 and 106.

(4) On receipt of articles of continuance and the documents required by sections 12(3), 20 and 106, the Registrar shall issue a certificate of continuance in accordance with section 267.

(5) On the date shown in the certificate of continuance

- (a) the extra-provincial corporation becomes a corporation to which this Act applies as if it had been incorporated under this Act,
- (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation, and
- (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation.

(6) The Registrar shall forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

(7) When an extra-provincial corporation is continued as a corporation under this Act,

- (a) the property of the extra-provincial corporation continues to be the property of the corporation,

- (b) the corporation continues to be liable for the obligations of the extra-provincial corporation,
- (c) an existing cause of action, claim or liability to prosecution is unaffected,
- (d) a civil, criminal or administrative action or proceeding pending by or against the extra-provincial corporation may be continued to be prosecuted by or against the corporation, and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the extra-provincial corporation may be enforced by or against the corporation.

(8) A share of an extra-provincial corporation issued before the extra-provincial corporation was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and continuance under this section does not deprive a holder of any right or privilege that the holder claims under, or relieve the holder of any liability in respect of, an issued share.

(9) Notwithstanding section 26(1), if a corporation continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to a share certificate in favour of bearer, the corporation may, if a holder of such a share certificate exercises the conversion privilege attached to it, issue a share certificate in favour of bearer for the same number of shares to the holder.

(10) For the purposes of subsections (8) and (9), “share” includes an instrument referred to in section 31(1), a share warrant or a like instrument.

(11) If the Registrar determines on the application of an extra-provincial corporation that it is not practicable to change a reference to the nominal or par value of shares of a class or series that it was authorized to issue before it was continued under this Act, the Registrar may, notwithstanding section 26(1), permit the extra-provincial corporation to continue to refer in its articles to those shares, whether issued or unissued, as shares having a nominal or par value.

(12) A corporation shall set out in its articles the maximum number of shares of a class or series referred to in subsection (11)

and may not amend its articles to increase that maximum number of shares or to change the nominal or par value of those shares.

RSA 2000 cB-9 s188;2006 cS-4.5 s106

Continuance of an Alberta corporation into another jurisdiction

189(1) Subject to subsection (9), a corporation may, if

- (a) it is authorized by the shareholders in accordance with this section, and
- (b) the Registrar approves the proposed continuance in another jurisdiction on being satisfied that the continuance will not adversely affect creditors or shareholders of the corporation,

apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) A notice of a meeting of shareholders complying with section 134 shall be sent in accordance with that section to each shareholder and shall state that a dissenting shareholder is entitled to be paid the fair value of the shareholder's shares in accordance with section 191, but failure to make that statement does not invalidate a discontinuance under this Act.

(3) Each share of the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

(4) An application for continuance becomes authorized when the shareholders voting on it have approved of the continuance by a special resolution.

(5) The directors of a corporation may, if authorized by the shareholders at the time of approving an application for continuance under this section, abandon the application without further approval of the shareholders.

(6) On receipt of notice satisfactory to the Registrar that the corporation has been continued under the laws of another jurisdiction, and on giving the Registrar's approval under subsection (1), the Registrar shall file the notice and issue a certificate of discontinuance.

(7) Section 267 applies with the necessary changes to the notice filed under subsection (6) as though the notice were articles that conform to law.

- (8) On the date shown in the certificate of discontinuance, the corporation becomes an extra-provincial corporation as if it had been incorporated under the laws of the other jurisdiction.
- (9) A corporation shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that
- (a) the property of the corporation continues to be the property of the body corporate,
 - (b) the body corporate continues to be liable for the obligations of the corporation,
 - (c) an existing cause of action, claim or liability to prosecution is unaffected,
 - (d) a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate, and
 - (e) a conviction against, or ruling, order or judgment in favour of or against the corporation may be enforced by or against the body corporate.

1981 cB-15 s182

Extraordinary sale, lease or exchange

- 190(1)** A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (2) to (6).
- (2) A notice of meeting of shareholders complying with section 134 shall be sent in accordance with that section to each shareholder and shall
- (a) include or be accompanied with a copy or summary of the agreement of sale, lease or exchange, and
 - (b) state that a dissenting shareholder is entitled to be paid the fair value of the shareholder's shares in accordance with section 191, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (1).
- (3) At the meeting referred to in subsection (2), the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of its terms and conditions.

- (4) Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1) whether or not it otherwise carries the right to vote.
- (5) The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if that class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.
- (6) A sale, lease or exchange referred to in subsection (1) is adopted when the holders of each class or series entitled to vote on it have approved of the sale, lease or exchange by a special resolution.
- (7) The directors of a corporation may, if authorized by the shareholders approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the shareholders.

1981 cB-15 s183

Shareholder's right to dissent

- 191(1)** Subject to sections 192 and 242, a holder of shares of any class of a corporation may dissent if the corporation resolves to
- (a) amend its articles under section 173 or 174 to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class,
 - (b) amend its articles under section 173 to add, change or remove any restrictions on the business or businesses that the corporation may carry on,
 - (b.1) amend its articles under section 173 to add or remove an express statement establishing the unlimited liability of shareholders as set out in section 15.2(1),
 - (c) amalgamate with another corporation, otherwise than under section 184 or 187,
 - (d) be continued under the laws of another jurisdiction under section 189, or
 - (e) sell, lease or exchange all or substantially all its property under section 190.
- (2) A holder of shares of any class or series of shares entitled to vote under section 176, other than section 176(1)(a), may dissent if the corporation resolves to amend its articles in a manner described in that section.

(3) In addition to any other right the shareholder may have, but subject to subsection (20), a shareholder entitled to dissent under this section and who complies with this section is entitled to be paid by the corporation the fair value of the shares held by the shareholder in respect of which the shareholder dissents, determined as of the close of business on the last business day before the day on which the resolution from which the shareholder dissents was adopted.

(4) A dissenting shareholder may only claim under this section with respect to all the shares of a class held by the shareholder or on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

(5) A dissenting shareholder shall send to the corporation a written objection to a resolution referred to in subsection (1) or (2)

- (a) at or before any meeting of shareholders at which the resolution is to be voted on, or
- (b) if the corporation did not send notice to the shareholder of the purpose of the meeting or of the shareholder's right to dissent, within a reasonable time after the shareholder learns that the resolution was adopted and of the shareholder's right to dissent.

(6) An application may be made to the Court after the adoption of a resolution referred to in subsection (1) or (2),

- (a) by the corporation, or
- (b) by a shareholder if the shareholder has sent an objection to the corporation under subsection (5),

to fix the fair value in accordance with subsection (3) of the shares of a shareholder who dissents under this section, or to fix the time at which a shareholder of an unlimited liability corporation who dissents under this section ceases to become liable for any new liability, act or default of the unlimited liability corporation.

(7) If an application is made under subsection (6), the corporation shall, unless the Court otherwise orders, send to each dissenting shareholder a written offer to pay the shareholder an amount considered by the directors to be the fair value of the shares.

(8) Unless the Court otherwise orders, an offer referred to in subsection (7) shall be sent to each dissenting shareholder

- (a) at least 10 days before the date on which the application is returnable, if the corporation is the applicant, or

(b) within 10 days after the corporation is served with a copy of the application, if a shareholder is the applicant.

(9) Every offer made under subsection (7) shall

- (a) be made on the same terms, and
- (b) contain or be accompanied with a statement showing how the fair value was determined.

(10) A dissenting shareholder may make an agreement with the corporation for the purchase of the shareholder's shares by the corporation, in the amount of the corporation's offer under subsection (7) or otherwise, at any time before the Court pronounces an order fixing the fair value of the shares.

(11) A dissenting shareholder

- (a) is not required to give security for costs in respect of an application under subsection (6), and
- (b) except in special circumstances must not be required to pay the costs of the application or appraisal.

(12) In connection with an application under subsection (6), the Court may give directions for

- (a) joining as parties all dissenting shareholders whose shares have not been purchased by the corporation and for the representation of dissenting shareholders who, in the opinion of the Court, are in need of representation,
- (b) the trial of issues and interlocutory matters, including pleadings and questioning under Part 5 of the *Alberta Rules of Court*,
- (c) the payment to the shareholder of all or part of the sum offered by the corporation for the shares,
- (d) the deposit of the share certificates with the Court or with the corporation or its transfer agent,
- (e) the appointment and payment of independent appraisers, and the procedures to be followed by them,
- (f) the service of documents, and
- (g) the burden of proof on the parties.

(13) On an application under subsection (6), the Court shall make an order

- (a) fixing the fair value of the shares in accordance with subsection (3) of all dissenting shareholders who are parties to the application,
- (b) giving judgment in that amount against the corporation and in favour of each of those dissenting shareholders,
- (c) fixing the time within which the corporation must pay that amount to a shareholder, and
- (d) fixing the time at which a dissenting shareholder of an unlimited liability corporation ceases to become liable for any new liability, act or default of the unlimited liability corporation.

(14) On

- (a) the action approved by the resolution from which the shareholder dissents becoming effective,
- (b) the making of an agreement under subsection (10) between the corporation and the dissenting shareholder as to the payment to be made by the corporation for the shareholder's shares, whether by the acceptance of the corporation's offer under subsection (7) or otherwise, or
- (c) the pronouncement of an order under subsection (13),

whichever first occurs, the shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of the shareholder's shares in the amount agreed to between the corporation and the shareholder or in the amount of the judgment, as the case may be.

(15) Subsection (14)(a) does not apply to a shareholder referred to in subsection (5)(b).

(16) Until one of the events mentioned in subsection (14) occurs,

- (a) the shareholder may withdraw the shareholder's dissent, or
- (b) the corporation may rescind the resolution,

and in either event proceedings under this section shall be discontinued.

(17) The Court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date on which the shareholder ceases to have any rights as a shareholder by reason of subsection (14) until the date of payment.

(18) If subsection (20) applies, the corporation shall, within 10 days after

- (a) the pronouncement of an order under subsection (13), or
- (b) the making of an agreement between the shareholder and the corporation as to the payment to be made for the shareholder's shares,

notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

(19) Notwithstanding that a judgment has been given in favour of a dissenting shareholder under subsection (13)(b), if subsection (20) applies, the dissenting shareholder, by written notice delivered to the corporation within 30 days after receiving the notice under subsection (18), may withdraw the shareholder's notice of objection, in which case the corporation is deemed to consent to the withdrawal and the shareholder is reinstated to the shareholder's full rights as a shareholder, failing which the shareholder retains a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

(20) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that

- (a) the corporation is or would after the payment be unable to pay its liabilities as they become due, or
- (b) the realizable value of the corporation's assets would by reason of the payment be less than the aggregate of its liabilities.

RSA 2000 cB-9 s191;2005 c40 s7;2009 c53 s30

Part 15

Corporate Reorganization and Arrangements

Articles of reorganization resulting from court order

192(1) In this section, "order for reorganization" means an order of the Court made under

- (a) section 242,
 - (b) the *Bankruptcy and Insolvency Act* (Canada) approving a proposal, or
 - (c) any other Act of the Parliament of Canada or an Act of the Legislature that affects the rights among the corporation, its shareholders and creditors.
- (2) If a corporation is subject to an order for reorganization, its articles may be amended by the order to effect any change that might lawfully be made by an amendment under section 173.
- (3) If the Court makes an order for reorganization, the Court may also
- (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms of those debt obligations, and
 - (b) appoint directors in place of or in addition to all or any of the directors then in office.
- (4) After an order for reorganization has been made, articles of reorganization in prescribed form shall be sent to the Registrar together with the documents required by sections 20 and 113, if applicable.
- (5) On receipt of articles of reorganization, the Registrar shall issue a certificate of amendment in accordance with section 267.
- (6) An order for reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.
- (7) A shareholder is not entitled to dissent under section 191 if an amendment to the articles of incorporation is effected under this section.

1981 cB-15 s185;1994 c23 s51

Court-approved arrangements

193(1) In this section, “arrangement” includes, but is not restricted to,

- (a) an amendment to the articles of a corporation,
- (b) an amalgamation of 2 or more corporations,

- (c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act,
- (d) a division of the business carried on by a corporation,
- (e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate,
- (f) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid as defined in section 194,
- (g) a liquidation and dissolution of a corporation,
- (h) a compromise between a corporation and its creditors or any class of its creditors or between a corporation and the holders of its shares or debt obligations or any class of those holders, or
- (i) any combination of the foregoing.

(2) An application may be made to the Court by a corporation or a security holder or creditor of a corporation for an order approving an arrangement in respect of the corporation.

(3) If an arrangement can be effected under any other provision of this Act, an application may not be made under this section unless it is impracticable to effect the arrangement under that other provision.

(4) In connection with an application under this section, the Court, unless it dismisses the application,

- (a) shall order the holding of a meeting of shareholders or a class or classes of shareholders to vote on the proposed arrangement,
- (b) shall order a meeting of persons who are creditors or holders of debt obligations of the corporation or of options or rights to acquire securities of the corporation, or any class of those persons, if the Court considers that those persons or that class of persons are affected by the proposed arrangement,
- (c) may, with respect to any meeting referred to in clause (a) or (b), give any directions in the order respecting
 - (i) the calling of and the giving of notice of the meeting,

- (ii) the conduct of the meeting,
 - (iii) subject to subsection (6), the majority required to pass a resolution at the meeting, and
 - (iv) any other matter it thinks fit,
- and
- (d) may make an order appointing counsel to represent, at the expense of the corporation, the interests of the shareholders or any of them.
- (5)** The notice of a meeting referred to in subsection (4)(a) or (b) must contain or be accompanied with
- (a) a statement explaining the effect of the arrangement, and
 - (b) if the application is made by the corporation, a statement of any material interests of the directors of the corporation, whether as directors, security holders or creditors, and the effect of the arrangement on those interests.
- (6)** An order made under subsection (4)(c)(iii) in respect of any meeting may not provide for any majority that is less than the following:
- (a) in the case of a vote of the shareholders or a class of shareholders, a majority of at least $\frac{2}{3}$ of the votes cast by the shareholders voting on the resolution;
 - (b) in the case of a vote of creditors or a class of creditors, a majority in number representing at least $\frac{2}{3}$ of the amount of their claims;
 - (c) in the case of a vote of the holders of debt obligations or a class of those holders, a majority in number representing at least $\frac{2}{3}$ of the amount of their claims;
 - (d) in the case of a vote of holders of options or rights to acquire securities, the majority that would be required under clause (a) or (c) if those holders had acquired ownership of the securities.
- (7)** Notwithstanding anything in subsections (4) to (6), if a resolution required to be voted on pursuant to the order under subsection (4) is in writing and signed by all the persons entitled to vote on the resolution,

- (a) the meeting required to be held by the order need not be held, and
- (b) the resolution is as valid as if it had been passed at a meeting.

(8) Repealed 2014 c17 s57.

(9) After the holding of the meetings required by an order under subsection (4) or the submission to it of written resolutions that comply with subsection (7), the Court shall hear the application and may in its discretion

- (a) approve the arrangement as proposed by the applicant or as amended by the Court, or
- (b) refuse to approve the arrangement,

and make any further order it thinks fit.

(10) After an order referred to in subsection (9)(a) has been made, the corporation shall send to the Registrar

- (a) a copy of the order,
- (b) articles of arrangement in the prescribed form,
- (c) articles of amalgamation or a statement of intent to dissolve pursuant to section 212 in the prescribed form, if applicable, and
- (d) the documents required by sections 20 and 113, if applicable,

and the Registrar shall file them.

(11) On filing any documents referred to in subsections (10)(b) and (c), the Registrar shall issue the appropriate certificate in accordance with section 267.

(12) An arrangement becomes effective

- (a) on the date shown in the certificate issued pursuant to subsection (11), or
- (b) if no certificate is required to be issued pursuant to subsection (11), on the date the documents are filed pursuant to subsection (10).

(13) An arrangement as approved by the Court is binding on the corporation and all other persons.

RSA 2000 cB-9 s193;2014 c17 s57

Part 16 Take-over Bids - Compulsory Purchase

Definitions

194 In this Part,

- (a) “dissenting offeree” means an offeree who does not accept a take-over bid and a person who acquires from an offeree a share for which a take-over bid is made;
- (b) “offer” includes an invitation to make an offer;
- (c) “offeree” means a person to whom a take-over bid is made;
- (d) “offeree corporation” means a corporation whose shares are the object of a take-over bid;
- (e) “offeror” means a person, other than an agent, who makes a take-over bid, and includes 2 or more persons who, directly or indirectly,
 - (i) make take-over bids jointly or in concert, or
 - (ii) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made;
- (f) “share” means a share with or without voting rights and includes
 - (i) a security currently convertible into such a share, and
 - (ii) currently exercisable options and rights to acquire such a share or such a convertible security;
- (g) “take-over bid” means an offer made by an offeror to shareholders to acquire all the shares of any class of shares of an offeree corporation not already owned by the offeror, and includes every take-over bid by a corporation to repurchase all the shares of any class of its shares that leaves outstanding voting shares of the corporation.

1981 cB-15 s187

Compulsory acquisition of shares of dissenting offeree

195(1) A take-over bid is deemed to be dated as of the date on which it is sent.

(2) If within the time limited in a take-over bid for its acceptance or within 120 days after the date of a take-over bid, whichever period is the shorter, the bid is accepted by the holders of not less than 90% of the shares of any class of shares to which the take-over bid relates, other than shares of that class held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on the bid being so accepted and on complying with this Part, to acquire the shares of that class held by the dissenting offerees.

(3) The rights of an offeror and offeree under this Part are subject to any unanimous shareholder agreement.

1981 cB-15 s188;1981 c44 s1

Offeror's notices

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 not less than 90% of the shares to which the bid relates have accepted the take-over bid,
 - (b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid,
 - (c) a dissenting offeree is required to elect
 - (i) to transfer 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) repealed 2005 c8 s45,
- within 20 days after the offeree receives the offeror's notice,
- (d) a dissenting offeree who does not notify the offeror 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
 - (e) a dissenting offeree shall send the share certificates of the class of shares to which the take-over bid relates to the

offeree corporation within 20 days after the offeree receives the offeror's notice.

(2) Concurrently with sending the offeror's notice under subsection (1), the offeror shall send or deliver to the offeree corporation a copy of the offeror's notice, which constitutes a demand under section 88(1) of the *Securities Transfer Act* that the offeree corporation not register a transfer with respect to each share held by a dissenting offeree.

RSA 2000 cB-9 s196;2006 cS-4.5 s106

Surrender of share certificate and payment of money

197(1) A dissenting offeree to whom an offeror's notice is sent under section 196(1) shall, within 20 days after the offeree receives that notice, send the offeree's share certificates of the class of shares to which the take-over bid relates to the offeree corporation.

(2) Within 20 days after the offeror sends an offeror's notice under section 196(1), the offeror shall pay or transfer to the offeree corporation the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under section 196(1)(c)(i).

1981 cB-15 s190

Offeree corporation's obligations

198(1) The offeree corporation is deemed to hold in trust for the dissenting offerees the money or other consideration it receives under section 197(2), and the offeree corporation shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place the other consideration in the custody of a bank or such other body corporate.

(2) Within 30 days after the offeror sends an offeror's notice under section 196(1), the offeree corporation shall, if the offeror has paid or transferred to the offeree corporation the money or other consideration referred to in section 197(2),

- (a) issue to the offeror a share certificate in respect of the shares that were held by dissenting offerees,
- (b) give to each dissenting offeree who elects to accept the take-over bid terms under section 196(1)(c)(i) and who sends or delivers the offeree's share certificates as required under section 197(1), the money or other consideration to which the offeree is entitled, disregarding fractional shares, which may be paid for in money, and

- (c) send to each dissenting shareholder who has not sent the shareholder's share certificates as required under section 197(1) a notice stating that
 - (i) the shareholder's shares have been cancelled,
 - (ii) the offeree corporation or some designated person holds in trust for the shareholder the money or other consideration to which the shareholder is entitled as payment for or in exchange for the shareholder's shares, and
 - (iii) the offeree corporation will, subject to sections 199 to 205, send that money or other consideration to the shareholder forthwith after receiving the shareholder's shares.

1981 cB-15 s191

Offeror's right to apply

199(1) 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.

(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.

RSA 2000 cB-9 s199;2005 c8 s46

No security for costs

200 A dissenting offeree is not required to give security for costs in an application made under this Part.

1981 cB-15 s193

Procedure on application

201 If more than one application is made under sections 196 and 199, the offeror or a dissenting offeree may apply to have the applications heard together.

1981 cB-15 s194

Court to fix fair value

202 On an application under this Part, the Court shall fix a fair value for the shares of each dissenting offeree who is a party to the application.

1981 cB-15 s195

Power of Court

203 The Court may in its discretion appoint one or more appraisers to assist the Court to fix a fair value for the shares of a dissenting offeree.

1981 cB-15 s196

Final order

204 The final order of the Court is to be made against the offeror in favour of each dissenting offeree who has elected to demand payment of the fair value of the offeree's shares for the fair value of the offeree's shares as fixed by the Court.

1981 cB-15 s197

Additional powers of Court

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:

- (a) fix the amount of money or other consideration that is required to be held in trust under section 198(1);
- (b) order that that money or other consideration be held in trust by a person other than the offeree corporation;
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date the offeree sends or delivers the offeree's share certificates under section 197(1) until the date of payment;
- (d) order that any money payable to a shareholder who cannot be found be paid to the Crown and section 228(3) applies in respect of money so paid.

RSA 2000 cB-9 s205;2005 c8 s47

Corporation's offer to repurchase its own shares

206(1) If the take-over bid is an offer by a corporation to repurchase its own shares section 196(2) does not apply, and section 197(2) does not apply, but the corporation shall comply with section 198(1) within 20 days after it sends an offeror's notice under section 196(1).

(2) Subsection (3) applies if

- (a) the take-over bid is an offer by a corporation to repurchase its own shares, and
 - (b) the corporation is prohibited by section 34
 - (i) from depositing or placing the consideration for the shares pursuant to section 198(1), or
 - (ii) paying the amount for the shares fixed by the Court pursuant to section 202.
- (3)** If the conditions referred to in subsection (2) are met, the corporation
- (a) shall re-issue to the dissenting offeree the shares for which the corporation is not allowed to pay, and
 - (b) is entitled to use for its own benefit any money or consideration deposited or placed under section 198(1), and
- the dissenting offeree is reinstated to the offeree's full rights, as a shareholder.

1981 cB-15 s199

Part 17

Liquidation and Dissolution

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.

2005 c8 s48

Staying proceedings

207 Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found to be insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

1981 cB-15 s200;1994 c23 s51

Revival

208(1) If a corporation is dissolved under this Part, any interested person may apply to the Registrar within 5 years after the date of dissolution to have the corporation revived.

(1.1) A corporation may not be revived after the expiry of 5 years from the date of dissolution.

(1.2) Notwithstanding subsection (1.1), a corporation that was dissolved before the coming into force of the *Unclaimed Personal Property and Vested Property Act* may be revived at any time up to 5 years after the coming into force of that Act.

(2) Articles of revival in the prescribed form and documents relating to corporate names that are prescribed by the regulations must, unless otherwise provided by the Registrar, be sent to the Registrar.

(3) On receipt of articles of revival and the documents referred to in subsection (2), the Registrar shall issue a certificate of revival in accordance with section 267.

(4) A corporation is revived on the date shown in the certificate of revival and, subject to any reasonable terms that the Registrar may impose and to rights acquired by any person prior to the revival, the corporation is deemed to have continued in existence as if it had not been dissolved.

RSA 2000 cB-9 s208;2007 cU-1.5 s68

Revival of society

209 Section 208 applies to a society that has been removed from the register under the *Companies Act*.

1983 c20 s14

Revival

210(1) Any interested person may apply to the Court within 5 years after the date of dissolution for an order reviving

- (a) a body corporate dissolved under section 273,
- (a.1) a body corporate dissolved under this Part,
- (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).

(1.1) A body corporate may not be revived after the expiry of 5 years from the date of dissolution.

(1.2) Notwithstanding subsection (1.1), a body corporate that was dissolved before the coming into force of the *Unclaimed Personal Property and Vested Property Act* may be revived at any time up to 5 years after the coming into force of that Act.

(2) An applicant under subsection (1) shall give notice of the application to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

(3) An order under subsection (1) may revive the body corporate

- (a) for the purpose of enabling it to apply for continuance under section 274, or
- (b) for the purpose of carrying out particular acts specified in the order,

and the order shall state that the revival remains in effect for a specific time limited by the order.

(4) In an order under subsection (1), the Court may

- (a) give directions as to the holding of meetings of shareholders, the appointment of directors and meetings of directors,
- (b) in the case of a body corporate revived for the purpose of enabling it to apply for continuance under section 274, give directions regarding any matter that the shareholders are required or authorized to provide for pursuant to section 273(4) and (6),
- (c) specify any provisions of the *Companies Act* that are not to apply to the body corporate during the period of its revival, or declare that any provisions of the *Companies Act* are to apply to the body corporate with the variations prescribed by the order,
- (d) change the name of the body corporate to a number designated or name approved by the Registrar, and
- (e) give any other directions the Court thinks fit.

(5) Where a person seeks the approval of the Registrar under subsection (4)(d), the person shall provide to the Registrar documents relating to corporate names that are prescribed by the regulations.

(6) Subject to subsection (4)(c), the *Companies Act* applies to a body corporate revived under this section.

(7) A body corporate revived by an order under this section is dissolved on the expiration of the time limited by the order unless it is sooner continued as a corporation under section 274.

(8) If an order is made under this section, the applicant shall forthwith send a certified copy of the order to the Registrar who shall file it and restore the body corporate to the register under the *Companies Act*.

(9) A body corporate is revived on the making of an order under this section and, subject to the terms imposed by the order and to rights acquired by any person prior to the revival, the body corporate is deemed to have continued in existence as if it had not been dissolved.

RSA 2000 cB-9 s210;2005 c8 s49;2007 cU-1.5 s68

Dissolution by directors or shareholders in special cases

211(1) A corporation that has not issued any shares and that has no property and no liabilities may be dissolved at any time by resolution of all the directors.

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

(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.

(3) A corporation that has property or liabilities, or both, may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

- (a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute all property and discharge all liabilities, and
 - (b) the corporation has distributed all property and discharged all liabilities before it sends articles of dissolution to the Registrar pursuant to subsection (4).
- (4) Articles of dissolution in prescribed form shall be sent to the Registrar.
- (5) On receipt of articles of dissolution, the Registrar shall issue a certificate of dissolution in accordance with section 267.
- (6) The corporation ceases to exist on the date shown in the certificate of dissolution.

RSA 2000 cB-9 s211;2005 c8 s50

Voluntary liquidation and dissolution

- 212(1)** The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 136, make a proposal for the voluntary liquidation and dissolution of a corporation.
- (2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms of the liquidation and dissolution.
- (3) A corporation may liquidate and dissolve by special resolution of the shareholders or, if the corporation has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote.
- (4) A statement of intent to dissolve in prescribed form must be sent to the Registrar.
- (5) On receipt of a statement of intent to dissolve, the Registrar shall issue a certificate of intent to dissolve in accordance with section 267.
- (6) On issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Registrar issues a certificate of dissolution.
- (7) After issue of a certificate of intent to dissolve, the corporation shall
- (a) immediately cause notice of the issue of the certificate to be sent or delivered to each known creditor of the corporation,

- (b) forthwith publish notice of the issue of the certificate
 - (i) in the Registrar's periodical or The Alberta Gazette, and
 - (ii) once in a newspaper published or distributed in the place where the corporation has its registered office,

and take reasonable steps to give notice of the issue of the certificate in every jurisdiction where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Registrar,
- (c) proceed to collect its property, to dispose of properties that are not to be distributed in kind to its shareholders, to discharge all its obligations and to do all other acts required to liquidate its business, and
- (d) after giving the notice required under clauses (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

(8) The Registrar or any interested person may, at any time during the liquidation of a corporation, apply to the Court for an order that the liquidation be continued under the supervision of the Court as provided in this Part, and on the application the Court may so order and make any further order it thinks fit.

(9) An applicant under this section shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

(10) At any time after the issue of a certificate of intent to dissolve and before the issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked

- (a) by sending to the Registrar a statement of revocation of intent to dissolve in the prescribed form and approved in the same manner as the resolution under subsection (3), and
- (b) by publishing the statement in the Registrar's periodical or The Alberta Gazette.

(11) On receipt of a statement of revocation of intent to dissolve, the Registrar shall issue a certificate of revocation of intent to dissolve in accordance with section 267.

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on its business or businesses.

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution in the prescribed form and send them to the Registrar.

(14) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7)(a) and (b) but is unable to comply with subsection (7)(c) and (d) because it has no assets with which to provide for the payment or discharge of its remaining obligations, the corporation may prepare articles of dissolution in the prescribed form and send them to the Registrar, together with a statutory declaration of a director of the corporation that establishes to the satisfaction of the Registrar

- (a) that the corporation has no assets, and
- (b) that, during the 13 months preceding the date of the statutory declaration, the corporation has not
 - (i) distributed any of its property to its shareholders by dividend or otherwise, or
 - (ii) conferred a benefit on any of the directors by way of remuneration or bonuses or other special payments that is in excess of an amount that fairly represents reasonable remuneration for services performed for the corporation by the director.

(15) On receipt of articles of dissolution under subsection (13) or articles of dissolution and the statutory declaration under subsection (14), the Registrar shall issue a certificate of dissolution in accordance with section 267.

(16) The corporation ceases to exist on the date shown in the certificate of dissolution.

1981 cB-15 s204;1983 c20 s25;1987 c15 s23

Dissolution by Registrar

213(1) Subject to subsections (2) and (3), if a corporation

- (a) has not commenced business within 3 years after the date shown in its certificate of incorporation,
- (b) has not carried on its business for 3 consecutive years, or

- (c) is in default for a period of one year in sending to the Registrar any notice or document required by this Act,

the Registrar may dissolve the corporation by issuing a certificate of dissolution under this section or the Registrar may apply to the Court for an order dissolving the corporation, in which case section 218 applies.

(2) The Registrar shall not dissolve a corporation under this section until the Registrar has

- (a) given 120 days' notice of the Registrar's decision to dissolve the corporation to the corporation and to each director of the corporation, and
- (b) published notice of the Registrar's decision to dissolve the corporation in the Registrar's periodical or The Alberta Gazette.

(3) Unless cause to the contrary has been shown or an order has been made by the Court under section 247, the Registrar may, after expiry of the period referred to in subsection (2), issue a certificate of dissolution in the prescribed form.

(4) The corporation ceases to exist on the date shown in the certificate of dissolution.

1981 cB-15 s205;1983 c20 s25

Dissolution by court order

214(1) The Registrar or any interested person may apply to the Court for an order dissolving a corporation if the corporation has

- (a) failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders,
- (b) contravened section 17(2), 23, 157 or 159, or
- (c) procured any certificate under this Act by misrepresentation.

(2) An applicant under this section, other than the Registrar, shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

(3) On an application under this section or section 213, the Court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it thinks fit.

(4) On receipt of an order under this section, section 213 or section 215, the Registrar shall

- (a) if the order is to dissolve the corporation, issue a certificate of dissolution in the prescribed form, or
- (b) if the order is to liquidate and dissolve the corporation under the supervision of the Court, issue a certificate of intent to dissolve in the prescribed form and publish notice of the order in the Registrar's periodical or The Alberta Gazette.

(5) The corporation ceases to exist on the date shown in the certificate of dissolution.

1981 cB-15 s206;1983 c20 s25

Other grounds for liquidation and dissolution pursuant to court order

215(1) The Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

- (a) if the Court is satisfied that in respect of a corporation or any of its affiliates
 - (i) any act or omission of the corporation or any of its affiliates effects a result,
 - (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, or

- (b) if the Court is satisfied that
 - (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
 - (ii) it is just and equitable that the corporation should be liquidated and dissolved.

(2) On an application under this section, the Court may make any order under this section or section 242 it thinks fit.

(3) Section 243 applies to an application under this section.

1981 cB-15 s207

Application for court supervision

216(1) An application to the Court to supervise a voluntary liquidation and dissolution under section 212(8) shall state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation and dissolution.

(2) If the Court makes an order applied for under section 212(8), the liquidation and dissolution of the corporation shall continue under the supervision of the Court in accordance with this Act.

1981 cB-15 s208

Show cause order

217(1) An application to the Court under section 215(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

(2) On an application under section 215(1), the Court may make an order requiring the corporation and any person having an interest in the corporation or a claim against it to show cause, at a time and place specified in the order but not less than 4 weeks after the date of the order, why the corporation should not be liquidated and dissolved.

(3) On an application under section 215(1), the Court may order the directors and officers of the corporation to furnish to the Court all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the corporation,
- (b) the name and address of each shareholder of the corporation, and
- (c) the name and address of each creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

(4) A copy of an order made under subsection (2) must be

- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office, and
- (b) served on the Registrar and each person named in the order.

(5) Publication and service of an order under this section must be effected by the corporation or by any other person and in any manner the Court may order.

1981 cB-15 s209

Powers of the Court

218 In connection with the dissolution or the liquidation and dissolution of a corporation, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any one or more of the following:

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing a liquidator's remuneration or replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration or replacing inspectors or referees;
- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the corporation;
- (f) an order at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the corporation, or from paying out or transferring any property of the corporation, except as permitted by the Court;
- (g) an order determining and enforcing the duty or liability of any director, officer or shareholder
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
- (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for that purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;

- (i) an order disposing of or destroying the documents and records of the corporation;
- (j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on any terms the Court thinks fit or confirming any act of the liquidator;
- (l) subject to section 224, an order approving any proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
- (n) on the application of any director, officer, security holder, creditor or the liquidator,
 - (i) an order staying the liquidation on any terms and conditions the Court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property;
- (o) after the liquidator has rendered the liquidator's final account to the Court, an order dissolving the corporation.

1981 cB-15 s210

Commencement of liquidation

219 If the Court makes an order for the liquidation of a corporation, the liquidation commences when the order is made.

1981 cB-15 s211

Effect of liquidation order

220(1) If the Court makes an order for the liquidation of a corporation,

- (a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation, and

- (b) the powers of the directors and shareholders cease and vest in the liquidator, except as specifically authorized by the Court.

(2) The liquidator may delegate any of the powers vested in the liquidator by subsection (1)(b) to the directors or shareholders.

1981 cB-15 s212

Appointment of liquidator

221(1) When making an order for the liquidation of a corporation or at any later time, the Court may appoint any person, including a director, an officer or a shareholder of the corporation or any other body corporate, as liquidator of the corporation.

(2) If an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the Court until the office of liquidator is filled.

1981 cB-15 s213

Duties of liquidator

222(1) A liquidator shall

- (a) forthwith after the liquidator's appointment give notice of the liquidator's appointment to the Registrar and to each claimant and creditor known to the liquidator,
- (b) forthwith publish notice in the Registrar's periodical or The Alberta Gazette and once a week for 2 consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office and take reasonable steps to give notice in each province and territory in Canada where the corporation carries on business, stating the fact of the liquidator's appointment and requiring any person
 - (i) indebted to the corporation, to provide a statement of account respecting the indebtedness and to pay to the liquidator at the time and place specified any amount owing,
 - (ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and
 - (iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 2 months after the first publication of the notice,

- (c) take into the liquidator's custody and control the property of the corporation,
 - (d) open and maintain a trust account for the money of the corporation,
 - (e) keep accounts of the money of the corporation received and paid out by the liquidator,
 - (f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation,
 - (g) if at any time the liquidator determines that the corporation is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions,
 - (h) deliver to the Court and to the Registrar, at least once in every 12-month period after the liquidator's appointment or more often as the Court may require, financial statements of the corporation in the form required by section 155 or in any other form the liquidator thinks proper or as the Court may require, and
 - (i) after the liquidator's final accounts are approved by the Court, distribute any remaining property of the corporation among the shareholders according to their respective rights.
- (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.

RSA 2000 cB-9 s222;2005 c8 s51

Powers of liquidator**223(1)** A liquidator may

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisors,
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the corporation,

- (c) carry on the business of the corporation as required for an orderly liquidation,
 - (d) sell property of the corporation publicly or privately,
 - (e) do all acts and execute any documents in the name and on behalf of the corporation,
 - (f) borrow money on the security of the property of the corporation,
 - (g) settle or compromise any claims by or against the corporation, and
 - (h) do all other things for the liquidation of the corporation and distribution of its property.
- (2) A liquidator is not liable if the liquidator relies 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) an opinion, a report or a statement of a lawyer, accountant, engineer, appraiser or other professional advisor retained by the liquidator.
- (3) If a liquidator has reason to believe that any person has in the person's possession or under the person's control, or has concealed, withheld or misappropriated any property of the corporation, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be questioned.
- (4) If the questioning referred to in subsection (3) discloses that a person has in the person's possession or under the person's control or has concealed, withheld or misappropriated property of the corporation, the Court may order that person to restore it or pay compensation to the liquidator.

RSA 2000 cB-9 s223;2009 c53 s30

Final accounts and discharge of liquidator

- 224(1)** A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.
- (2) Within one year after the liquidator's appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the Court

- (a) for approval of the liquidator's final accounts and for an order permitting the liquidator to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights, or
- (b) for an extension of time, setting out the reasons for the extension.

(3) If a liquidator fails to make the application required by subsection (2), a shareholder or creditor of the corporation may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(4) A liquidator shall give notice of the liquidator's intention to make an application under subsection (2) to the Registrar, each inspector appointed under section 218, each shareholder, each creditor known to the liquidator and any person who provided a security or fidelity bond for the liquidator.

(5) If the Court approves the final accounts rendered by a liquidator, the Court shall make an order

- (a) directing the Registrar to issue a certificate of dissolution,
- (b) directing the custody or disposal of the documents and records of the corporation, and
- (c) subject to subsection (6), discharging the liquidator.

(6) The liquidator shall forthwith send or deliver a certified copy of the order referred to in subsection (5) to the Registrar.

(7) On receipt of the order referred to in subsection (5), the Registrar shall issue a certificate of dissolution in accordance with section 267.

(8) The corporation ceases to exist on the date shown in the certificate of dissolution.

1981 cB-15 s216

Shareholder's right to distribution in money

225(1) If in the course of liquidation of a corporation the shareholders resolve or the liquidator proposes to

- (a) exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or
- (b) distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the Court for an order requiring the distribution of the property of the corporation to be in money.

(2) On an application under subsection (1), the Court may order that

- (a) all the property of the corporation be converted into and distributed in money, or
- (b) the applicant be paid the fair value of the applicant's shares, in which case the Court
 - (i) may determine whether any other shareholder is opposed to the proposal and if so, join that shareholder as a party,
 - (ii) may appoint one or more appraisers to assist the Court to fix the fair value of the shares,
 - (iii) shall fix the fair value of the shares of the applicant and the other shareholders joined as parties as of a date determined by the Court,
 - (iv) shall give judgment in the amount of the fair value against the corporation and in favour of each of the shareholders who are parties to the application, and
 - (v) fix the time within which the liquidator must pay that amount to a shareholder after delivery of the shareholder's shares to the liquidator, if the shareholder's share certificate has not been delivered to the Court or to the liquidator at the time the order is pronounced.

1981 cB-15 s217

Custody of records after dissolution

226(1) A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for 6 years following the date of its dissolution or until the expiry of any shorter period that may be ordered under section 224(5).

(2) A person who, without reasonable cause, contravenes subsection (1) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

1981 cB-15 s218

Continuation of actions after dissolution

227(1) In this section, "shareholder" includes the legal representatives of a shareholder.

- (2) Subject to section 15.7, notwithstanding the dissolution of a body corporate under this Act,
- (a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved,
 - (b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within 2 years after its dissolution as if the body corporate had not been dissolved, and
 - (c) any property that would have been available to satisfy any judgment or order if the body corporate had not been dissolved remains available for that purpose.
- (3) Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 106 or 113.
- (4) Notwithstanding the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed in the liquidation is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on the distribution, and an action to enforce that liability may be brought within 2 years after the date of the dissolution of the body corporate.
- (5) The Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to any conditions the Court thinks fit and, if the plaintiff establishes the plaintiff's claim, the Court may refer the proceedings to a referee or other officer of the Court who may
- (a) add as a party to the proceedings before the referee or other officer each person who was a shareholder found by the plaintiff,
 - (b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute toward satisfaction of the plaintiff's claim, and
 - (c) direct payment of the amounts so determined.

RSA 2000 cB-9 s227;2005 c8 s52

Unknown claimants

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

Minister responsible for the *Unclaimed Personal Property and Vested Property Act*.

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor or shareholder.

(3) A person who asserts an entitlement to any money paid to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* must submit a claim in accordance with that Act.

RSA 2000 cB-9 s228;2005 c8 s53;2007 cU-1.5 s68

Property not disposed of

229(1) Subject to sections 227(2) and 228, property of a body corporate that has not been disposed of at the date of its dissolution under this Act vests in the Crown in right of Alberta.

(2) If a body corporate is revived as a corporation under section 208 or 210,

- (a) any property of the body corporate that has not been paid, transferred or delivered to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* remains the property of the corporation, and
- (b) the corporation may make a claim for any of the body corporate's property that has been paid, transferred or delivered to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* in accordance with that Act.

RSA 2000 cB-9 s229;2007 cU-1.5 s68

Part 18 Investigation

Definition

230 In this Part, "affiliated corporation" with reference to a corporation includes an Alberta company affiliated with that corporation.

1981 cB-15 s222

Court order for investigation

231(1) A security holder may apply to the Court, ex parte or on any notice that the Court may require, for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

(2) If, on an application under subsection (1), it appears to the Court that there are sufficient grounds to conduct an investigation to determine whether

- (a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person,
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder,
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or
- (d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in that connection acted fraudulently or dishonestly,

the Court may order an investigation to be made of the corporation and any of its affiliated corporations.

(3) An applicant under this section or section 232 is not required to give security for costs.

(4) An application under this section or section 232 shall be heard in camera unless the Court otherwise orders.

(5) No person may publish anything relating to proceedings under this section or section 232 except with the authorization of the Court or the written consent of the corporation being investigated.

(6) Documents in the possession of the Court relating to an application under this section or section 232 are confidential unless the Court otherwise orders.

(7) Subsections (5) and (6) do not apply to an order of the Court under this section or section 232.

1981 cB-15 s223;1983 c20 s16

Powers of the Court

232(1) On an application under section 231 or on a subsequent application, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order appointing an inspector, fixing the remuneration of an inspector or replacing an inspector;

- (b) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
 - (c) an order authorizing an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine any thing and make copies of any document or record found on the premises;
 - (d) an order requiring any person to produce documents or records to the inspector;
 - (e) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
 - (f) an order requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
 - (g) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
 - (h) an order requiring an inspector to make an interim or final report to the Court;
 - (i) an order determining whether a report of an inspector should be published and, if so, designating the persons to whom all or part of the report should be sent;
 - (j) an order requiring an inspector to discontinue an investigation;
 - (k) an order requiring any person other than the corporation to pay all or part of the costs of the investigation.
- (2) Unless the Court otherwise orders, an inspector shall send a copy of the inspector's report to the corporation.
- (3) Unless the Court otherwise orders, the corporation shall pay the costs of the investigation.
- (4) Any interested person may apply to the Court for directions on any matter arising in the investigation.

1981 cB-15 s224

Powers of inspector

233(1) An inspector under this Part has the powers set out in the order appointing the inspector.

(2) In addition to the powers set out in the order appointing the inspector, an inspector appointed to investigate a corporation may

furnish information to, or exchange information and otherwise cooperate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in section 231(2).

(3) An inspector shall on request produce to an interested person a copy of any order made under section 231 or 232(1).

1981 cB-15 s225

Hearings by inspector

234(1) A hearing conducted by an inspector shall be heard in camera unless the Court otherwise orders.

(2) An individual who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel during the examination.

1981 cB-15 s226

Compelling evidence

235 A person shall not be excused from attending and giving evidence and producing books, papers, documents or records to an inspector under this Part on the grounds that the oral evidence or documents required of the person may tend to incriminate the person or subject the person to any proceeding or penalty, but no oral evidence so required shall be used or is receivable against the person in any proceedings thereafter instituted against the person under any Act of Alberta.

1981 cB-15 s227

Absolute privilege

236 Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

1981 cB-15 s228

Solicitor-client privilege

237 Nothing in this Part affects the privilege that exists in respect of a solicitor and the solicitor's client.

1981 cB-15 s229

Inspector's report as evidence

238 A copy of the report of an inspector under section 232, certified as a true copy by the inspector, is admissible as evidence of the facts stated in it without proof of the appointment or signature of the inspector.

1981 cB-15 s230;1983 c20 s17

Part 19

Remedies, Offences and Penalties

Definitions

239 In this Part,

- (a) “action” means an action under this Act or any other law;
- (b) “complainant” means
 - (i) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
 - (ii) a director or an officer or a former director or officer of a corporation or of any of its affiliates,
 - (iii) a creditor
 - (A) in respect of an application under section 240, or
 - (B) in respect of an application under section 242, if the Court exercises its discretion under subclause (iv),
- or
- (iv) any other person who, in the discretion of the Court, is a proper person to make an application under this Part.

1981 cB-15 s231;2000 c10 s3

Commencing derivative action

240(1) Subject to subsection (2), a complainant may apply to the Court for permission to

- (a) bring an action in the name and on behalf of a corporation or any of its subsidiaries, or
- (b) intervene in an action to which a corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation or subsidiary.

(2) No permission may be granted under subsection (1) unless the Court is satisfied that

- (a) the complainant has given reasonable notice to the directors of the corporation or its subsidiary of the complainant’s intention to apply to the Court under subsection (1) if the directors of the corporation or its subsidiary do not bring, diligently prosecute, defend or discontinue the action,

- (b) the complainant is acting in good faith, and
- (c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

(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.

RSA 2000 cB-9 s240;2005 c8 s54;2014 c13 s49

Powers of the Court

241 In connection with an action brought or intervened in under section 240 or 242(3)(q), the Court may at any time make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order authorizing the complainant or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary;
- (d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

1981 cB-15 s233

Relief by Court on the ground of oppression or unfairness

242(1) A complainant may apply to the Court for an order under this section.

(2) If, on an application under subsection (1), the Court is satisfied that in respect of a corporation or any of its affiliates

- (a) any act or omission of the corporation or any of its affiliates effects a result,
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
- (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the Court may make an order to rectify the matters complained of.

(3) In connection with an application under this section, the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a corporation's affairs by amending the articles or bylaws;
- (d) an order declaring that any amendment made to the articles or bylaws pursuant to clause (c) operates notwithstanding any unanimous shareholder agreement made before or after the date of the order, until the Court otherwise orders;
- (e) an order directing an issue or exchange of securities;
- (f) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (g) an order directing a corporation, subject to section 34(2), or any other person, to purchase securities of a security holder;
- (h) an order directing a corporation or any other person to pay to a security holder any part of the money paid by the security holder for securities;
- (i) an order directing a corporation, subject to section 43, to pay a dividend to its shareholders or a class of its shareholders;
- (j) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (k) an order requiring a corporation, within a time specified by the Court, to produce to the Court or an interested person financial statements in the form required by section 155 or an accounting in any other form the Court may determine;
- (l) an order compensating an aggrieved person;
- (m) an order directing rectification of the registers or other records of a corporation under section 244;

- (n) an order for the liquidation and dissolution of the corporation;
- (o) an order directing an investigation under Part 18 to be made;
- (p) an order requiring the trial of any issue;
- (q) an order granting permission to the applicant to
 - (i) bring an action in the name and on behalf of the corporation or any of its subsidiaries, or
 - (ii) intervene in an action to which the corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing an action on behalf of the corporation or any of its subsidiaries.

(4) This section does not confer on the Court power to revoke a certificate of amalgamation.

(5) If an order made under this section directs an amendment of the articles or bylaws of a corporation, no other amendment to the articles or bylaws may be made without the consent of the Court, until the Court otherwise orders.

(6) If an order made under this section directs an amendment of the articles of a corporation, the directors shall send articles of reorganization in the prescribed form to the Registrar together with the documents required by sections 20 and 113, if applicable.

(7) A shareholder is not entitled to dissent under section 191 if an amendment to the articles is effected under this section.

(8) An applicant under this section may apply in the alternative under section 215(1)(a) for an order for the liquidation and dissolution of the corporation.

RSA 2000 cB-9 s242;2014 c13 s49

Court approval of stay, dismissal, discontinuance or settlement

243(1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or may be approved by the shareholders of the corporation or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 215, 241 or 242.

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or

dismissed for want of prosecution without the approval of the Court given on any terms the Court thinks fit and, if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

(4) In an application made or an action brought or intervened in under this Part, the Court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for the interim costs on final disposition of the application or action.

1981 cB-15 s235

Court order to rectify records

244(1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

(2) If the corporation is a distributing corporation, an applicant under this section shall file notice of the application with the Executive Director.

(3) In connection with an application under this section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order requiring the registers or other records of the corporation to be rectified;
- (b) an order restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before the rectification;
- (c) an order determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the registers or records of the corporation, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders;

- (d) an order compensating a party who has incurred a loss.

1981 cB-15 s236;1988 c7 s3;1995 c28 s64

Court order for directions

245 The Executive Director may apply to the Court for directions in respect of any matter concerning the Executive Director's duties under this Act, and on the application the Court may give any directions and make any further order that it thinks fit.

1981 cB-15 s237;1988 c7 s3;1995 c28 s64

Refusal by Registrar to file

246(1) If the Registrar refuses to file any articles or other document required by this Act to be filed by the Registrar before the articles or other document become effective, the Registrar shall, within 20 days after its receipt by the Registrar or 20 days after the Registrar receives any approval that may be required under any other Act, whichever is the later, give written notice of the Registrar's refusal to the person who sent the articles or document, giving reasons for that refusal.

(2) If the Registrar does not file or give written notice of the Registrar's refusal to file any articles or document within the time limited in subsection (1), the Registrar is deemed for the purposes of section 247 to have refused to file the articles or document.

1981 cB-15 s238

Appeal from decision of Registrar or Commission

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,
- (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,
- (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 this Act,

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.

(2) A person who feels aggrieved by a decision of the Commission to refuse to grant an exemption under section 3(3), 151(a), 156(2) or 171(3) may appeal the decision to the Court of Appeal, and section 38 of the *Securities Act* applies to that appeal.

RSA 2000 cB-9 s247;2005 c8 s55;2009 c7 s2

Compliance or restraining order

248 If a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation contravenes this Act, the regulations, the articles or bylaws or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right the complainant or creditor has, apply to the Court for an order directing that person to comply with, or restraining that person from contravening any of those things, and on the application the Court may so order and make any further order it thinks fit.

1981 cB-15 s240

Application to Court

249 When this Act states that a person may apply to the Court, the application must be made in accordance with the *Alberta Rules of Court*.

RSA 2000 cB-9 s249;2009 c53 s30

Appeals from court orders

250 An appeal lies from an order of the Provincial Court under section 253(1) to the Court of Queen's Bench.

1981 cB-15 s242

Offences relating to reports, returns, etc.

251(1) A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar, the Executive Director or any other person or filed with the Executive Director that

- (a) contains an untrue statement of a material fact, or

- (b) omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made,

is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(2) If a body corporate contravenes subsection (1), then, whether or not the body corporate has been prosecuted or convicted in respect of the contravention, any director or officer of the body corporate who knowingly authorizes, permits or acquiesces in the contravention of subsection (1) is guilty of an offence and liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months or to both.

(3) No person is guilty of an offence under subsection (1) or (2) if the untrue statement or omission was unknown to the person and in the exercise of reasonable diligence could not have been known to the person.

1981 cB-15 s243;1988 c7 s3;1995 c28 s64

General offence

252 Every person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided is guilty of an offence and liable to

- (a) in the case of a body corporate, a fine of not more than \$1000, and
- (b) in the case of an individual, a fine of not more than \$1000 or to imprisonment for a term of not more than one month or to both.

1981 cB-15 s244

Order to comply

253(1) If a person is found guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which the person has been found guilty.

(2) A prosecution for an offence under this Act may be instituted at any time within 2 years from the time when the subject-matter of the complaint arose, but not thereafter.

(3) No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

1981 cB-15 s245

Security for costs

254 In any action or other legal proceeding in which the plaintiff is a body corporate, if it appears to the court on the application of a defendant that the body corporate will be unable to pay the costs of a successful defendant, the court may order the body corporate to furnish security for costs on any terms it thinks fit.

1981 cB-15 s245.1

**Part 20
General****Sending of notices and documents to shareholders and directors**

255(1) A notice or document required by this Act, the regulations, the articles or the bylaws to be sent to a shareholder or director of a corporation may be sent by mail addressed to, or may be delivered personally to,

- (a) the shareholder at the shareholder's latest address as shown in the records of the corporation or its transfer agent, and
- (b) the director at the director's latest address as shown in the records of the corporation or in the last notice filed under section 106 or 113.

(2) For the purpose of the service of a notice or document, a director named in a notice sent by a corporation to the Registrar under section 106 or 113 and filed by the Registrar is presumed to be a director of the corporation referred to in the notice.

(3) A notice or document sent by mail in accordance with subsection (1) to a shareholder or director of a corporation is deemed to be received by the shareholder or director at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or document at that time or at all.

(4) If a corporation sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on 2 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.

(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*.

RSA 2000 cB-9 s255;2005 c8 s56

Notice to and service on a corporation

256(1) A notice or document that is required or permitted to be sent to or served on a corporation may be

- (a) delivered to its registered office, or
- (b) sent by registered mail to
 - (i) its registered office, or
 - (ii) the post office box designated as its address for service by mail,

as shown in the last notice filed under section 20.

(2) Notwithstanding subsection (1), in the case of a notice of intent to dissolve a corporation, the notice may be sent by ordinary mail to the corporation addressed

- (a) to its registered office, or
- (b) to the post office box designated as its address for service by mail,

as shown in the last notice filed under section 20.

(3) A notice or document sent by registered mail to the corporation in accordance with subsection (1)(b) is deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the corporation did not receive the notice or document at that time or at all.

(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.

RSA 2000 cB-9 s256;2005 c8 s57

Notice to and service on the Commission

257(1) A notice or document that is required or permitted to be sent to or filed

- (a) with the Commission may be sent or filed
 - (i) by being left with the Secretary of the Commission during the normal office hours of the Commission, or

(ii) by being mailed by registered mail addressed to an office of the Commission,

or

(b) with the Executive Director may be sent or filed

(i) by being left with the Executive Director during the normal office hours of the Commission, or

(ii) by being mailed by registered mail addressed to an office of the Commission.

(2) Where a notice or document referred to in subsection (1) is sent or filed by registered mail, it is deemed to have been received in the office of the Commission at the time that the notice or document would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the notice or document did not arrive in the office of the Commission.

1981 cB-15 s247.1;1988 c7 s3;1995 c28 s64

Waiver of notice

258(1) 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.

(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*.

RSA 2000 cB-9 s258;2005 c8 s58

Certificate of Registrar as evidence

259(1) When this Act requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate must be signed by the Registrar or by an individual authorized by the Registrar.

(2) Except in a proceeding under section 214 to dissolve a corporation, a certificate referred to in subsection (1) or a certified copy of it, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

1981 cB-15 s249

Certificate of corporation as evidence

260(1) A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the bylaws, a unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the corporation is a party, may be signed by a director, an officer or a transfer agent of the corporation.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a fact stated in a certificate referred to in subsection (1),
- (b) a certified extract from a securities register of a corporation, or
- (c) a certified copy of minutes or extract from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

(3) An entry in a securities register of, or a security certificate issued by, a corporation is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is owner of the securities described in the register or in the certificate.

1981 cB-15 s250

Copies

261 If a notice or document is required under this Act to be filed with or sent to

- (a) the Commission or the Executive Director, or
- (b) a Registrar,

the Commission, the Executive Director or the Registrar, as the case may be, may accept a photocopied or photographic copy of the notice or document.

1981 cB-15 s251;1988 c7 s3;1995 c28 s64

Proof required by Registrar

262 The Registrar may require that a document or a fact stated in a document required by this Act or the regulations to be sent to the Registrar must be verified under oath or by statutory declaration.

1981 cB-15 s252

Appointment of Registrar, service

263(1) In accordance with the *Public Service Act*, there may be appointed a Registrar of Corporations and one or more Deputy Registrars of Corporations and any other employees as may be necessary to administer this Act.

(2) The Minister may prescribe a seal for use by the Registrar in the performance of the Registrar's duties.

(3) A notice or document may be sent or served on the Registrar by leaving it at an office of the Registrar or by mailing it by registered mail addressed to the Registrar at an office of the Registrar and if sent by registered mail is deemed to be received or served at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the Registrar did not receive the notice or document at that time or at all.

1981 cB-15 s253

Registrar's publication

264 The Registrar shall publish, at the times specified by the Minister but not less frequently than once a month, a periodical containing

- (a) the information required by this Act or the regulations to be published in the Registrar's periodical, and
- (b) any other information relating to the administration of this Act that the Registrar considers will be useful to the public.

1981 cB-15 s253.1

Agreements regarding payment of fees

265(1) If the Registrar considers it appropriate to do so, the Registrar may enter into an agreement with a person under which the fees and other charges payable by that person to the Registrar under this Act or the regulations will be charged to the credit of that person on a continuing basis and on the conditions that the Registrar considers necessary, and in that case the amounts so charged are, except for the purposes of subsection (4), deemed to have been paid in accordance with this Act or the regulations.

(2) If any amount charged to the credit of a person under subsection (1) is not paid within 15 days, or within any other period that the Registrar may require, of a request for payment by the Registrar, no further amounts may be charged to the account of that person until all amounts owing are paid in full.

(3) The Registrar may terminate an agreement under subsection (1) with any person on 7 days' notice in writing sent by registered mail to the person at the person's last address known to the Registrar.

(4) Notwithstanding anything in this Act, if a person has not paid the fees required to be paid by this Act or the regulations and has been requested by the Registrar to do so, the Registrar shall not perform any service or issue any certificate or file any document at the request of or for the benefit of that person, unless, in the opinion of the Registrar, exceptional circumstances exist that warrant the performance of those services.

1981 cB-15 s253.2

Regulations

266 The Lieutenant Governor in Council may make regulations

- (a) prescribing any matter required or authorized by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount of the fee;
- (c) prescribing the format and contents of annual returns, notices and other documents required to be sent to the Registrar or to be issued by the Registrar;
- (c.1) prescribing requirements for the purposes of section 131(3) and (3.1);
- (d) prescribing rules with respect to exemptions permitted by this Act;
- (e) declaring that, for the purpose of section 155(1)(a), the standards as they exist from time to time, of any accounting body named in the regulations are to be in force in Alberta, in whole or in part or with any revisions, variations or modifications that are specified by the regulations;
- (f) respecting names of corporations and extra-provincial corporations;
- (g) prohibiting the use of any names or any words or expressions in a name;
- (h) defining any word or expression used in sections 12(1)(c) and 282(1)(c);

- (i) prescribing requirements for the purposes of sections 12(1)(d) and 282(1)(d);
- (j) respecting the circumstances and conditions under which a name under sections 12(1) and 282(1) may be used;
- (k) prescribing the documents referred to in sections 12(3), 177(2), 185(1), 208, 210(5), 280 and 289(1);
- (l) prescribing the punctuation marks and other marks that may form part of a name;
- (m) respecting
 - (i) the form in which and the period of time for which records referred to in section 272(1) are to be kept, and
 - (ii) the disposal of records referred to in section 272(1);
- (n) prescribing the maximum fee that may be charged under section 48(2);
- (o) prescribing the period of time for which information in the register referred to in section 49(1) must be kept.;
- (p) respecting the disclosure of financial assistance for the purpose of section 45(3);
- (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.

RSA 2000 cB-9 s266;2005 c8 s59

Issuing of certificates by Registrar

267(1) In this section, “statement” means a statement of intent to dissolve and a statement of revocation of intent to dissolve referred to in section 212.

- (2) When this Act requires articles or a statement relating to a corporation to be sent to the Registrar, then, unless otherwise specifically provided,
- (a) the articles or statement shall be signed by a director or an officer of the corporation or, in the case of articles of incorporation, by an incorporator, and
 - (b) on receiving articles or a statement that conforms to law, together with any other required documents and the prescribed fees, the Registrar shall
 - (i) endorse on the articles or statement the word “Filed” and the date of the filing,
 - (ii) issue the appropriate certificate and attach the articles or statement to the certificate,
 - (iii) enter the information from the certificate and attached articles or statement in the Registrar’s records, and
 - (iv) send to the corporation or its representative the certificate and attached articles or statement.
- (3) A certificate referred to in subsection (2) issued by the Registrar may be dated as of the day the Registrar receives the articles, statement or Court order pursuant to which the certificate is issued or as of any later day specified by the Court or person who signed the articles or statement.
- (4) A signature required on a certificate referred to in subsection (2) or section 268 may be printed or otherwise mechanically reproduced on the certificate.
- (5) Notwithstanding subsection (3), a certificate of discontinuance may be dated as of the day a corporation is continued under the laws of another jurisdiction.

1981 cB-15 s255;1987 c15 s25

Annual return

- 268(1)** Every corporation shall, on the prescribed date, send to the Registrar an annual return in the prescribed form and the Registrar shall file it.
- (2) The Registrar may furnish any person with a certificate that a corporation has filed with the Registrar a document required to be sent to the Registrar under this Act.
- (3) Repealed 2016 c18 s1.

RSA 2000 cB-9 s268;2016 c18 s1

Certificate of status

268.1 On the payment of the prescribed fee, the Registrar may issue a certificate stating that, according to the Registrar's records, the body corporate named in the certificate

- (a) is or is not an existing corporation on the date of issue of the certificate, or
- (b) was or was not an existing corporation on the day or during the period specified in the certificate.

2016 c18 s1

Alteration of documents

269 The Registrar may alter a notice or document, other than an affidavit or statutory declaration, if so authorized in writing by the person who sent the document or by the person's representative.

1981 cB-15 s257

Errors in certificates

270(1) If there is an error in a certificate, notice, articles or another document, 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 so that the Registrar may correct the document.

(2) A certificate, notice, articles or another document corrected under subsection (1) shall bear the date of the certificate, notice, articles or another document it replaces.

(3) The issue of a corrected certificate, notice, articles or another document under this section does not affect the rights of a person who acts in good faith and for value in reliance on the certificate, notice, articles or another document containing the error.

(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.

RSA 2000 cB-9 s270;2005 c8 s60

Inspection and copies

271(1) A person who has paid the prescribed fee is entitled during usual business hours to examine a document required by this Act or

the regulations to be sent to the Registrar, and to make copies of or extracts from that document.

(2) The Registrar shall furnish any person who has paid the prescribed fee with a copy or a certified copy of a document required by this Act or the regulations to be sent to the Registrar.

1981 cB-15 s259

Records of Registrar

272(1) Records required by this Act to be prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

(2) The records referred to in subsection (1) shall be kept in accordance with the regulations.

(3) If records maintained by the Registrar are prepared and maintained other than in written form,

- (a) the Registrar shall furnish any copy required to be furnished under section 271(2) in legible written form, and
- (b) a reproduction of the text of those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would have been.

1981 cB-15 s260;1987 c15 s26

Continuance of Alberta companies as corporations under this Act

273(1) In this section and sections 274 and 275,

- (a) “Alberta company” does not include
 - (i) a not-for-profit company,
 - (ii) a revived company, or
 - (iii) a trust company incorporated under a predecessor of the *Companies Act*;
- (b) “anniversary month” with reference to an Alberta company means the month in each year that is the same as
 - (i) the month in which its certificate of incorporation was issued, or

(ii) in the case of an amalgamated Alberta company, the month in which its certificate of amalgamation was issued,

(c) “not-for-profit company” means a body corporate registered under the *Companies Act*

(i) that does not have the word “limited” as part of its name by reason of a direction or authorization of the Registrar of Companies under Part 9 of that Act, or

(ii) that by its memorandum of association or articles of association prohibits the payment to its members of any dividend,

but does not include a municipal housing company limited by shares incorporated under the *Companies Act* and having as its object the development, provision and operation, or any of them, of housing and accommodation;

(d) “revived company” means a body corporate described in section 210(1) that is revived under that section for the purpose of enabling it to apply for continuance as a corporation under section 274.

(2) An Alberta company shall apply to the Registrar for a certificate of continuance in accordance with this section.

(3) Section 188(3) to (5) and (7) to (12) apply with the necessary changes to an application for a certificate of continuance under this section as if the Alberta company were an extra-provincial corporation.

(4) The shareholders of the Alberta company entitled to vote at meetings of members

(a) shall adopt articles of continuance,

(b) shall authorize the directors to apply for a certificate of continuance under this section, and

(c) may adopt bylaws to become effective on the issue of the certificate of continuance.

(5) Bylaws under subsection (4)(c) may authorize the directors to require a member to surrender the member’s share certificate for the purpose of having it cancelled and replaced by a new share certificate that complies with section 48.

- (6)** The shareholders of an Alberta company shall act under subsection (4)
- (a) by a special resolution as defined in section 1(y) of the *Companies Act*, or
 - (b) if its memorandum of association provides that a special resolution to alter the articles of association must be passed by a majority greater than 3/4 of the votes cast in person or by proxy, by a resolution passed by that greater majority.
- (7)** An Alberta company shall, before a certificate of continuance is issued, provide the Registrar with proof satisfactory to the Registrar that the resolution required by subsection (6) has been passed.
- (8)** Except with the written consent of all shareholders entitled to vote on it under section 176(1), the articles of continuance shall not contain anything that would result in a change from the Alberta company's memorandum of association or articles of association, if the change is of a kind referred to in that subsection.
- (9)** Where articles of continuance effect a change of a kind referred to in subsection (8), the Alberta company shall, before a certificate of continuance is issued, provide the Registrar with proof satisfactory to the Registrar that the consent required by subsection (8) has been given.
- (10)** A shareholder is not entitled to dissent under section 191 in respect of the adoption of articles of continuance under subsection (4).
- (11)** If, on the application of a member of an Alberta company, the Court is satisfied that the articles of continuance adopted or proposed to be adopted would, if the company were continued as a corporation, effect a result that is oppressive or unfairly prejudicial to or unfairly disregards the interests of that member, the Court may
- (a) restrain the Alberta company from adopting the proposed articles of continuance or proceeding with the application for a certificate of continuance, and
 - (b) change the provisions of the articles of continuance before they are filed by the Registrar.
- (12)** If the required majority cannot be obtained under subsection (6), the Court may, on application by the Alberta company or a member,

- (a) settle the terms of the articles of continuance and the bylaws, and
- (b) give directions respecting the application for a certificate of continuance.

(13) In exercising its powers under subsection (11)(b) or subsection (12)(a) with respect to an Alberta company with share capital, the Court shall make as little change as practicable in the rights of shareholders and in the relative rights of classes and series of shareholders.

(14) An application by an Alberta company for a certificate of continuance shall be made

- (a) in the case of a company other than one to which clause (b) applies, within 3 years after the last day of the anniversary month of the company first occurring after the commencement of this Act,
- (b) in the case of a company that applies and qualifies for an incentive under the *Petroleum Incentives Program Act* (Canada) and the regulations under that Act or the Alberta *Petroleum Incentives Program Act*, SA 1981 cP-4.1, and the regulations under that Act, not later than December 31, 1987, or
- (c) within any period of extension granted under subsection (15).

(15) In case of hardship, the Court may, on application by the company made within the period prescribed in subsection (14)(a) or (b) and with notice to the Registrar, extend that period for any additional period not exceeding one year.

(16) An Alberta company that obtains an order under subsection (15) shall send a copy of the order to the Registrar and the Registrar shall file it.

(17) An Alberta company that does not, within the time mentioned in subsection (14) make an application for a certificate of continuance that is sufficient to require the Registrar to issue the certificate, is dissolved on the expiry of that time.

1981 cB-15 s261;1983 c20 s19;1984 c46 s1;1986 c11 s2;1987 c15 s27

Continuance of revived Alberta companies

274 A revived company may apply to the Registrar for a certificate of continuance and for that purpose

- (a) section 188(3) to (5) and (7) to (12) apply to the application as if the revived company were an extra-provincial corporation, and
- (b) section 273(4) to (13) apply to the application as if the revived company were an Alberta company.

1981 cB-15 s262

Capital redemption reserve fund

275 Where an Alberta company or a revived company is continued under section 273 or 274, whether before or after the coming into force of this section, the capital redemption reserve fund, if any, of the company is, on the date shown in the certificate of continuance, deemed

- (a) to be cancelled, and
- (b) to be added to the retained earnings of the corporation.

1987 c15 s28

Part 21

Extra-provincial Corporations and Extra-provincial Matters

Definitions

276 In this Part,

- (a) “anniversary month”, with reference to an extra-provincial corporation, means the month in each year that is the same as the month in which its certificate of registration was issued;
- (b) “attorney for service” or “attorney” means, with reference to an extra-provincial corporation, the individual who, according to the Registrar’s records, is appointed under this Part as that extra-provincial corporation’s attorney for service;
- (c) “charter” includes
 - (i) a statute, ordinance or other law incorporating an extra-provincial corporation, as amended from time to time,
 - (ii) letters patent of incorporation and any letters patent supplementary to them,
 - (iii) a memorandum of association, as amended from time to time,

- (iv) any other instrument of incorporation, as amended from time to time, and
- (v) any certificate, licence or other instrument evidencing incorporation;
- (d) “internal regulations” includes bylaws, articles of association, rules or regulations relating to the management of the business and affairs of an extra-provincial corporation, by whatever name they are called, if they are made by the members or a class of members of, or the board of directors, board of management or other governing body of, the extra-provincial corporation;
- (e) “registered” means registered under this Part.

1981 cB-15 s263

Carrying on business in Alberta

277(1) For the purposes of this Part, an extra-provincial corporation carries on business in Alberta if

- (a) its name, or any name under which it carries on business, is listed in a telephone directory for any part of Alberta,
- (b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in Alberta is given for the extra-provincial corporation,
- (c) it has a resident agent or representative or a warehouse, office or place of business in Alberta,
- (d) it solicits business in Alberta,
- (e) it is the owner of any estate or interest in land in Alberta,
- (f) it is licensed or registered or required to be licensed or registered under any Act of Alberta entitling it to do business,
- (g) it is, in respect of a commercial vehicle as defined in the *Traffic Safety Act*, the holder of a certificate of registration under the *Traffic Safety Act*, unless it neither picks up nor delivers goods or passengers in Alberta,
- (h) it is the holder of a certificate as defined in section 130 of the *Traffic Safety Act*, unless it neither picks up nor delivers goods or passengers in Alberta, or
- (i) it otherwise carries on business in Alberta.

(2) The Registrar may exempt an extra-provincial corporation from the payment of fees under this Part if the Registrar is satisfied that it does not carry on business for the purpose of gain.

RSA 2000 cB-9 s277;RSA 2000 cT-6 s193

Application

278 This Part does not apply to

- (a) an extra-provincial corporation required to be licensed as an insurer under the *Insurance Act*,
- (b) an extra-provincial corporation required to be registered under the *Loan and Trust Corporations Act*, or
- (c) an extra-provincial cooperative as defined in section 1(1)(v) of the *Cooperatives Act*.

RSA 2000 cB-9 s278;2001 cC-28.1 s447;2001 c23 s1(8);
2011 c13 s1

Division 1 Registration

Requirement to register

279(1) Subject to subsections (2) and (3), every extra-provincial corporation shall be registered under this Part before or within 30 days after it commences carrying on business in Alberta.

(2) If a corporation becomes an extra-provincial corporation by reason of the operation of section 189(8) and is then carrying on business in Alberta, the extra-provincial corporation shall be registered under this Part on or within 30 days after the date shown in the certificate of discontinuance issued under section 189.

(3) An extra-provincial corporation registered under Part 8 of the *Companies Act*, RSA 1980 cC-20, on February 1, 1982 is deemed to be registered under this Part.

1981 cB-15 s266;1983 c20 s20

Application for registration

280(1) An extra-provincial corporation shall apply for registration by sending to the Registrar a statement in the prescribed form.

(2) The statement shall be accompanied with

- (a) a copy of the charter of the extra-provincial corporation verified in a manner satisfactory to the Registrar,
- (b) documents relating to corporate names that are prescribed by the regulations, and

- (c) the appointment of its attorney for service, in the prescribed form.

(3) If all or any part of the charter is not in the English language, the Registrar may require the submission to the Registrar of a translation of the charter or that part of the charter, verified in a manner satisfactory to the Registrar, before the Registrar registers the extra-provincial corporation.

1981 cB-15 s267;1984 c12 s1

281 Repealed 2008 c7 s2.

Name of extra-provincial corporation

282(1) Subject to the circumstances and conditions prescribed by the regulations, an extra-provincial corporation must not be registered with a name or carry on business within Alberta under an assumed name

- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations,
- (b) that is identical to the name of
 - (i) a body corporate incorporated under the laws of Alberta, unless the body corporate has been dissolved for a period of 6 years or more,
 - (ii) an extra-provincial corporation registered in Alberta, or
 - (iii) a Canada corporation,
- (c) that is similar to the name of
 - (i) a body corporate incorporated under the laws of Alberta,
 - (ii) an extra-provincial corporation registered in Alberta, or
 - (iii) a Canada corporation,if the use of that name is confusing or misleading, or
- (d) that does not meet the requirements prescribed by the regulations.

(2) If through inadvertence or otherwise an extra-provincial corporation is registered with or later acquires a name that contravenes subsection (1), the Registrar may, by notice in writing giving the Registrar's reasons, direct the extra-provincial

corporation to change its name to one that the Registrar approves within 90 days after the date of the notice.

(3) The Registrar may give a notice under subsection (2) on the Registrar's own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

RSA 2000 cB-9 s282;2008 c7 s2

Registration by pseudonym

283(1) Notwithstanding section 282, an extra-provincial corporation the name of which contravenes section 282 may, with approval of the Registrar

- (a) be registered with its own name, and
- (b) carry on business in Alberta under an assumed name the use of which is approved by the Registrar and that does not contravene section 282.

(2) The extra-provincial corporation

- (a) shall acquire all property and rights in Alberta under its assumed name, and
- (b) is entitled to all property and rights acquired and subject to all obligations and liabilities incurred under its assumed name as if the same had been acquired and incurred under its own name.

(3) The extra-provincial corporation may sue or be sued in its own name, its assumed name, or both.

(4) An extra-provincial corporation that assumes a name pursuant to subsection (1) may, with the approval of the Registrar and on application in the prescribed form and payment of the prescribed fee, cancel its assumed name and carry on business in Alberta under the name in which it was registered.

1981 cB-15 s270;1983 c20 s22

Certificate of registration

284(1) Subject to section 282, on receipt of the statement and other documents required by section 280 and of the prescribed fees, the Registrar shall

- (a) file the statement and documents,
- (b) register the extra-provincial corporation, and
- (c) issue a certificate of registration in the prescribed form in accordance with section 267.

(2) A certificate of registration issued under this section to an extra-provincial corporation is conclusive proof for the purposes of this Act and for all other purposes that the provisions of this Act in respect of registration of the extra-provincial corporation and all requirements precedent and incidental to registration have been complied with, and that the extra-provincial corporation has been registered under this Part as of the date shown in the certificate of registration.

1981 cB-15 s271

Cancellation of registration

285(1) Subject to subsection (2), the Registrar may cancel the registration of an extra-provincial corporation if

- (a) the extra-provincial corporation is in default for a period of one year in sending to the Registrar any fee, notice or document required by this Part,
- (b) the extra-provincial corporation has sent a notice to the Registrar under subsection (4) or the Registrar has reasonable grounds to believe that the extra-provincial corporation has ceased to carry on business in Alberta,
- (c) the extra-provincial corporation is dissolved,
- (d) the extra-provincial corporation does not carry out an undertaking given in accordance with the regulations,
- (e) the extra-provincial corporation does not comply with a direction of the Registrar under section 282(2), or
- (f) the extra-provincial corporation has otherwise contravened this Part.

(2) The Registrar shall not cancel the registration of an extra-provincial corporation under subsection (1) until

- (a) the Registrar has given at least 120 days' notice of the proposed cancellation with the Registrar's reasons for it,
 - (i) to the extra-provincial corporation by mail addressed to its head office, and
 - (ii) to its attorney for service in accordance with section 288,
- (b) the Registrar has published a notice of the proposed cancellation in the Registrar's periodical or The Alberta Gazette, and

(c) either no appeal is commenced under section 247 or, if an appeal has been commenced, it has been discontinued or the Registrar's decision is confirmed on the appeal.

(3) The Registrar may reinstate the registration of an extra-provincial corporation that was cancelled under subsection (1)(a) on the receipt by the Registrar of the fees, notices and documents required to be sent to the Registrar and of the prescribed reinstatement fee.

(4) An extra-provincial corporation that ceases to carry on business in Alberta shall send a notice to that effect to the Registrar.

1981 cB-15 s272;1983 c20 ss23,25;1984 c46 s1

New certificate of registration

286(1) Subject to section 282, on the reinstatement of the registration of an extra-provincial corporation pursuant to section 285(3), the Registrar shall issue a new certificate of registration in the prescribed form.

(2) The cancellation of the registration of an extra-provincial corporation does not affect its liability for its obligations.

1981 cB-15 s273

Division 2 Information

Use of corporate name

287 An extra-provincial corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments, orders for goods or services issued or made by or on behalf of the extra-provincial corporation in the course of carrying on business in Alberta.

1981 cB-15 s274

Attorney for service of an extra-provincial corporation

288(1) If an attorney of an extra-provincial corporation dies or resigns or the attorney's appointment is revoked, the extra-provincial corporation shall forthwith send to the Registrar an appointment in the prescribed form of an individual as its attorney for service and the Registrar shall file the appointment.

(2) An extra-provincial corporation may in the prescribed form appoint an individual as its alternative attorney if that individual is

(a) a member of a partnership of which the attorney is also a member, or

(b) an assistant manager of the extra-provincial corporation and the attorney is the manager for Alberta of the extra-provincial corporation.

(3) An extra-provincial corporation shall send to the Registrar

- (a) each appointment by it of an alternative attorney, and
- (b) if the alternative attorney dies or resigns or that attorney's appointment is revoked, a notice to that effect,

and the Registrar shall file the appointment or notice, as the case may be.

(4) An attorney for an extra-provincial corporation who intends to resign shall

- (a) give not less than 60 days' notice to the extra-provincial corporation at its head office, and
- (b) send a copy of the notice to the Registrar who shall file it.

(5) An attorney shall forthwith send to the Registrar a notice in the prescribed form of any change of the attorney's address and the Registrar shall file the notice.

(6) An extra-provincial corporation shall ensure that the address of its attorney is an office that is

- (a) accessible to the public during normal business hours, and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (5) or the appointment referred to in section 280(2)(c).

(7) A notice or document required or permitted by law to be sent or served in Alberta on an extra-provincial corporation may be

- (a) delivered to its attorney or to an individual who is its alternative attorney according to the Registrar's records,
- (b) delivered to the address, according to the Registrar's records, of its attorney, or
- (c) sent by registered mail to that address.

(8) A notice or document sent by registered mail to the attorney's address in accordance with subsection (7)(c) 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 attorney did not receive the notice or document at that time or at all.

(9) An individual whose appointment as an attorney or alternative attorney of an extra-provincial corporation is filed with the Registrar of Companies immediately before the commencement of this Act is deemed to be its attorney or an alternative attorney, as the case may be, on the commencement of this Act.

1981 cB-15 s275

Changes in charter, head office, directors

289(1) A registered extra-provincial corporation shall send to the Registrar

- (a) a copy of each amendment to its charter within one month after the effective date of the amendment, verified in a manner satisfactory to the Registrar,
- (b) if the amendment to the charter effects a change in the name under which the extra-provincial corporation is registered, documents relating to corporate names that are prescribed by the regulations, and
- (c) a notice in the prescribed form of any change in
 - (i) the address of its head office in or outside Alberta, or
 - (ii) the membership of its board of directors, board of management or other governing body,

within one month after the effective date of the change,

and the Registrar shall file the copy or the notice, as the case may be.

(2) A notice sent to the Registrar pursuant to subsection (1)(c)(ii) shall contain the address and occupation of each new member of the board of directors or governing body.

(3) An extra-provincial corporation is not required to send a notice under subsection (1)(c) if

- (a) the effective date of the change occurs in its anniversary month or the month following, and
- (b) the change is reflected in the annual return required to be filed under section 292(1).

(4) If the amendment to its charter effects a change in the name under which an extra-provincial corporation is registered, the

Registrar, on filing the copy of the amendment under subsection (1)(a), shall issue a new certificate of amendment of registration in the prescribed form and change the Registrar's records accordingly.

1981 cB-15 s276;1984 c12 s1

Filing of instrument of amalgamation

290(1) A registered extra-provincial corporation shall send to the Registrar

- (a) a copy of any instrument effecting an amalgamation of the extra-provincial corporation with one or more other extra-provincial corporations,
- (b) a copy of the amalgamation agreement, if any, and
- (c) a statement in the prescribed form relating to the amalgamated extra-provincial corporation and the documents referred to in section 280(2),

within one month after the effective date of the amalgamation.

(2) On receiving the documents referred to in subsection (1), the Registrar shall file them and issue a new certificate of registration of the amalgamated extra-provincial corporation.

1981 cB-15 s277

Notices and returns respecting liquidation

291(1) If liquidation proceedings are commenced in respect of a registered extra-provincial corporation, the extra-provincial corporation, or, if a liquidator is appointed, the liquidator,

- (a) shall send to the Registrar forthwith after the commencement of those proceedings a notice showing that the proceedings have commenced and the address of the liquidator if one is appointed, and
- (b) shall send to the Registrar forthwith after the completion of those proceedings a return relating to the liquidation.

(2) The Registrar shall

- (a) on receiving a notice under subsection (1)(a), file it and publish a notice respecting the liquidation in the Registrar's periodical or The Alberta Gazette, and
- (b) on receiving a return under subsection (1)(b), file it and cancel the registration of the extra-provincial corporation forthwith after the expiration of 3 months following the date of filing of the return.

(3) The liquidator of a registered extra-provincial corporation shall send to the Registrar a notice of any change in the liquidator's address within one month after the effective date of the change, and the Registrar shall file the notice.

1981 cB-15 s278;1983 c20 s25

Annual and other returns

292(1) A registered extra-provincial corporation shall, in each year on or before the last day of the month immediately following its anniversary month, send to the Registrar a return in the prescribed form and the Registrar shall file it.

(2) A registered extra-provincial corporation shall, at the request of the Registrar, send to the Registrar a return containing any further or other information that the Registrar may reasonably require.

1981 cB-15 s279

Certificate of compliance

293(1) The Registrar may furnish any person with a certificate that an extra-provincial corporation has sent to the Registrar a document required to be sent to the Registrar under this Act.

(2) A certificate purporting to be signed by the Registrar and stating that a named extra-provincial corporation was or was not registered on a specified day or during a specified period, is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in it without proof of the Registrar's appointment or signature.

1981 cB-15 s280

Division 2.1 Special Rules Respecting Extra-provincial Matters

Definitions

293.1 In this Division,

- (a) "extra-provincial matters" means
 - (i) matters pertaining to extra-provincial corporations set out in this Part and in regulations made under section 293.3, and
 - (ii) matters set out under the laws of another jurisdiction in Canada that are similar to the matters set out in this Part and in regulations made under section 293.3;
- (b) "extra-provincial registrar" means a person in a jurisdiction in Canada who performs a function in that jurisdiction

similar to the function that the Registrar performs under this Act.

2008 c7 s2;2009 c7 s2

Agreements

293.2(1) The Registrar may enter into an agreement with an extra-provincial registrar to address the following matters:

- (a) the collection by the extra-provincial registrar of applications, information, forms, notices, fees and other things relating to extra-provincial matters referred to in section 293.1(a)(i) for the Registrar and any matter relating to the collection of those things and their transmission to the Registrar;
- (b) the collection by the Registrar of applications, information, forms, notices, fees and other things under the laws of another jurisdiction in Canada relating to extra-provincial matters referred to in section 293.1(a)(ii) for the extra-provincial registrar of that jurisdiction and any matter relating to the collection of those things and their transmission to the extra-provincial registrar.

(2) An agreement referred to in subsection (1) may provide for any matter the Registrar considers appropriate, including setting out the powers and duties of the Registrar and the extra-provincial registrar in respect of the matters addressed in the Agreement.

2008 c7 s2;2009 c7 s2

Regulations

293.3 The Lieutenant Governor in Council may make regulations

- (a) classifying or otherwise designating or specifying those extra-provincial registrars to which a regulation made under this section applies;
- (b) classifying or otherwise designating or specifying those extra-provincial corporations to which a regulation made under this section applies;
- (c) respecting the collection by the Registrar of applications, information, forms, notices, fees and other things relating to extra-provincial matters referred to in section 293.1(a)(ii) for an extra-provincial registrar and the transmission of those things to the extra-provincial registrar;
- (d) respecting the registration of and other matters pertaining to extra-provincial corporations, including, without limitation, regulations respecting

- (i) applications for registration of extra-provincial corporations,
 - (ii) annual returns and other returns of extra-provincial corporations,
 - (iii) the reinstatement of registrations of extra-provincial corporations,
 - (iv) changes in the name, charter, head office, directors or attorneys for service of extra-provincial corporations,
 - (v) amalgamations of extra-provincial corporations,
 - (vi) liquidation of extra-provincial corporations, and
 - (vii) the cancellation of registrations of extra-provincial corporations;
- (e) respecting forms that may be required for the purposes of regulations made under this section;
 - (f) respecting the documentation to be issued by the Registrar;
 - (g) providing for fees for the provision of services under regulations made under this section and respecting the payment and collection of the fees;
 - (h) respecting the furnishing of applications, information, forms, notices, fees and other things to the Registrar;
 - (i) exempting an extra-provincial corporation from the operation of all or part of this Part;
 - (i.1) providing that a provision of this Act or a provision of a regulation made under another section of this Act does not apply in respect of extra-provincial corporations;
 - (j) respecting the retention of documents by applicants;
 - (k) defining words and expressions used but not defined in this Division.

2008 c7 s2;2009 c7 s2

Regulation prevails

293.4 Where there is a conflict or inconsistency between a provision of a regulation made under section 293.3 and a provision of this Act or a provision of a regulation made under another section of this Act, the provision of the regulation made under section 293.3 prevails to the extent of the conflict or inconsistency.

Division 3 Capacity, Disabilities and Penalties

Validity of acts

294 No act of an extra-provincial corporation, including any transfer of property to or by an extra-provincial corporation, is invalid by reason only

- (a) that the act or transfer is contrary to or not authorized by its charter or internal regulations or any law of the jurisdiction in which it is incorporated, or
- (b) that the extra-provincial corporation was not then registered.

1981 cB-15 s281

Capacity to commence and maintain legal proceedings

295(1) An extra-provincial corporation while unregistered is not capable of commencing or maintaining any action or other proceeding in any court in Alberta in respect of any contract made in the course of carrying on business in Alberta while it was unregistered.

(2) If an extra-provincial corporation was not registered at the time it commenced an action or proceeding referred to in subsection (1) but becomes registered afterward, the action or proceeding may be maintained as if it had been registered before the commencement of the action or proceeding.

1981 cB-15 s282

General penalty

296 A person who contravenes this Part or the regulations under this Part is guilty of an offence and liable to a fine of not more than \$5000.

RSA 2000 cB-9 s296;2009 c7 s2

Part 22 Other Extra-provincial Legal Entities

Definition

297 In this Part, “extra-provincial legal entity” means an organization to which this Part applies.

1996 c32 s1

Application of Part

298 This Part applies to an organization that is formed in a jurisdiction other than Alberta and that

- (a) is recognized as a legal entity under the laws of that other jurisdiction,
- (b) does not qualify to be registered under this Act as an extra-provincial corporation, and
- (c) does not qualify to be registered under the Partnership Act as a partnership or a limited partnership.

1996 c32 s1

Regulations**299** The Lieutenant Governor in Council may make regulations

- (a) providing for and governing the registration of extra-provincial legal entities under this Act;
- (b) prescribing which provisions, if any, of this Act apply to extra-provincial legal entities;
- (c) modifying any provision of this Act for the purpose of applying that provision to extra-provincial legal entities;
- (d) generally for the governing of extra-provincial legal entities with regard to those matters in respect of which corporations and extra-provincial corporations are governed under this Act.

1996 c32 s1

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