



Province of Alberta

COMPANIES ACT

Revised Statutes of Alberta 2000 Chapter C-21

Current as of December 17, 2014

Office Consolidation

© Published by Alberta Queen's Printer

Queen's Printer Bookstore
7th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
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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 *Companies Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	<i>Amendments</i>
Companies Act		
Companies.....	119/2000	206/2001, 251/2001, 354/2003, 4/2011, 32/2016

COMPANIES ACT

Chapter C-21

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

Definitions

1 In this Act,

- (a) repealed 1995 c28 s65;
- (a.01) “articles” means

- (i) the articles of association prescribing regulations for a company, whether as originally framed or as altered by special resolution, and including, insofar as they apply to the company, the regulations contained, as the case may be,
 - (A) in Table A in the Schedule to this Act or in the First Schedule to *The Companies Act*, RSA 1955 c53 or RSA 1942 c240, or to *The Companies Act, 1929*, SA 1929 c14, or
 - (B) in Table A in the First Schedule or in Form B in the Second Schedule to *The Companies Act*, RSA 1922 c156, or to *The Companies Ordinance*, ONWT 1901 c20,
 - or in any such table as altered pursuant to any such Act or Ordinance, and
 - (ii) the bylaws of a company incorporated under Ordinance No. 3 of 1886, being *The Companies Ordinance*, RONWT 1888 c30 or under *The Companies Ordinance*, CONWT 1898 c61, as originally framed or duly altered;
- (a.02) repealed 1995 c28 s65;
- (a.1) “books and papers” and “books or papers” include accounts, deeds, writings and documents;
 - (b) “call” includes an assessment, instalment and any other sum paid or agreed to be paid or payable in respect of a share;
 - (b.1) “charter” includes any Act, Statute, Ordinance or other provision of law, by or under which an extra-provincial company has been incorporated and any amendment thereto applying to the extra-provincial company and any memorandum of association and deed of settlement of the extra-provincial company, and any letters patent or other instrument incorporating the extra-provincial company and any licence or certificate of registration thereof;
 - (c) “charter and regulations” includes the charter of an extra- provincial company and its articles of association, regulations, bylaws and rules;
 - (c.1) “Commission” means the Alberta Securities Commission;
 - (d) “company” includes any company incorporated under this Act and an existing company;

- (d.1) “company limited by guarantee” means a company having the liability of its members limited by the memorandum to the amount that the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up;
- (e) “company limited by shares” means a company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them;
- (e.1) “contributory” means a person liable to contribute to the assets of a company in the event of its being wound up under this Act, and, in all proceedings prior to the final determination of the persons who are to be deemed contributories, includes every person alleged to be a contributory;
- (f) “Court” means the Court of Queen’s Bench;
- (f.1) “debentures” includes debenture stock and bonds;
- (g) “director” includes any person occupying the position of director by whatever name called;
- (g.1) “dividend” includes bonus or any distribution to shareholders as such;
- (h) “document” includes summons, notice, order, certificate, register and legal process;
- (h.01) “Executive Director” means the Executive Director of the Commission as defined or otherwise provided for under the *Securities Act*;
- (h.1) “existing company” means a company lawfully incorporated or registered under any Act or Ordinance respecting companies at any time in force in Alberta prior to October 1, 1929, and subject to the legislative authority of the Legislature;
- (i) “extra-provincial company” means a corporation
 - (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 Legislature by section 16 of the *Alberta Act* (Canada);

- (j) “land” includes all messuages, land, tenements, hereditaments of any tenure, leaseholds and all immovable property of every kind;
- (k) “limited company” includes a company limited by shares, a company limited by guarantee and a specially limited company;
- (l) “member” means a subscriber of the memorandum of a company and every other person who agrees to become a member of a company and whose name is entered in its register of members;
- (m) “memorandum” means a memorandum of association of a company as originally framed or as lawfully altered;
- (n) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (o) “mortgage” includes charge;
- (p) “non-resident company” means a company that is not deemed to be resident in Canada under paragraph 250(4)(c) of the *Income Tax Act* (Canada);
- (q) “prescribed” means prescribed by the regulations;
- (r) “private company” means a company that by its memorandum or articles,
 - (i) in the case of a company having a share capital,
 - (A) restricts or prohibits the right to transfer any of its shares,
 - (B) limits the number of its members to 50 or less, exclusive of persons who are in the employment of the company, and persons who, having been formerly in the employment of the company, were while in that employment and have continued after the determination of that employment to be members of the company, but where 2 or more persons hold one or more shares in the company jointly they shall, for the purposes of this definition, be treated as a single member, and
 - (C) prohibits any invitation to the public to subscribe for any shares or debentures of the company,

or

- (ii) in the case of a company not having a share capital,
 - (A) limits the number of its members to 50 or less (exclusive of persons who are in the employment of the company, and of persons who, having been formerly in the employment of the company, were while in that employment and have continued after the determination of that employment to be members of the company),
 - (B) prohibits any invitation to the public to become members or to subscribe for debentures of the company, and
 - (C) restricts or prohibits any transfer of the interest of a member in the company;
- (s) “prospectus” means any prospectus, notice, circular, advertisement or other document offering to the public for subscription or purchase any shares or debentures of, or inviting the public to become members of, a company or an intended company;
- (t) “public company” means a company that is not a private company;
- (u) “Registrar” means the Registrar of Companies or other authorized person performing the Registrar’s duties under this Act;
- (u.1) “Registrar’s periodical” means the Registrar’s periodical established under the *Business Corporations Act*;
- (v) “resident Albertan” means an individual who
 - (i) is a Canadian citizen, or
 - (ii) has been lawfully admitted to Canada for permanent residence,and who is ordinarily resident in Alberta;
- (w) “securities” means notes, bonds, debentures or other evidences of indebtedness issued by a corporation, whether secured or unsecured;

- (x) “share” means share in the share capital of the company, and includes stock, except where a distinction between stock and shares is expressed or implied;
- (y) “special resolution” means
 - (i) a resolution passed
 - (A) at a general meeting of which not less than 21 days’ notice specifying the intention to propose the resolution has been duly given, and
 - (B) by a majority of not less than 75% of the votes of those members who, if entitled to do so, vote in person or by proxy,
 - (ii) a resolution proposed and passed as a special resolution at a general meeting of which less than 21 days’ notice has been given, if all the members entitled to attend and vote at that general meeting so agree, or
 - (iii) a resolution consented to in writing by all the members who would have been entitled at a general meeting to vote on the resolution in person or, if proxies are permitted, by proxy;
- (z) “specially limited company” means a company limited by shares, the memorandum of which provides that no member is to be personally liable for the amount, if any, unpaid on the member’s shares;
- (aa) “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.

RSA 2000 cC-21 s1;2002 cA-4.5 s25;2014 c8 s17

Interpretation

2(1) For the purposes of this Act, a company is deemed to be a subsidiary of another company if, but only if,

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

- (iii) 2 or more companies each of which is controlled by that other,
- or
- (b) it is a subsidiary of a company that is that other's subsidiary.
- (2) For the purposes of this Act, a company is deemed to be another's holding company if, but only if, that other is its subsidiary.
- (3) For the purposes of this Act, one company is deemed to be affiliated with another company if, but only if, one of them is the subsidiary of the other or both are subsidiaries of the same company or each of them is controlled by the same person.
- (4) For the purposes of this Act, a company is deemed to be controlled by another company or person or by 2 or more companies if, but only if,
- (a) shares of the first-mentioned company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other company or person or by or for the benefit of those other companies, and
 - (b) the votes carried by those shares are sufficient, if exercised, to elect a majority of the board of directors of the first-mentioned company.
- (5) If a company formed under section 15(4) or its shareholders or directors are empowered or required by this or any other Act to pass a resolution, the resolution is deemed to be passed if it is signed by the sole shareholder of the company, and any requirement to hold a meeting does not apply.
- (6) If a company whose sole shareholder is the Crown in right of Alberta or the shareholders or directors of such a company are empowered or required by this or any other Act to pass a resolution, the resolution is deemed to be passed if it is signed by the member of the Executive Council charged with the administration of the Act pursuant to which the Crown acquired the shares of the company and any requirement to hold a meeting does not apply.

RSA 1980 cC-20 s2;1995 c23 s8

Limited application of Act

2.1 Notwithstanding anything in this Act, on and after February 1, 1982

- (a) no company shall
 - (i) be incorporated or registered under this Act except under Part 9,
 - (ii) be continued into Alberta under section 174, or
 - (iii) be continued out of Alberta under section 175, and
- (b) no extra-provincial company shall be registered under this Act.

1981 cB-15 s284(5)

Part 1

Application of Act

Existing companies

3(1) This Act applies to existing companies in the same manner,

- (a) in the case of a company limited by shares, as if the company had been formed and incorporated under this Act as a company limited by shares,
- (b) in the case of a company limited by guarantee, as if the company had been formed and incorporated under this Act as a company limited by guarantee, and
- (c) in the case of a specially limited company, as if the company had been formed and incorporated under this Act as a specially limited company.

(2) A reference, express or implied, to the date of incorporation shall be construed as a reference to the date at which the existing company was incorporated under the Act or Ordinance, as the case may be, under which it was incorporated.

(3) The articles of an existing company shall, so far as they are not contrary to any express provision of this Act, remain in force until altered or rescinded.

RSA 1980 cC-20 s3

Non-application of Act to corporations

3.1 This Act does not apply to a corporation as defined in the *Business Corporations Act*.

1981 cB-15 s284(5)

Partial application of Act

4 Every company heretofore or hereafter incorporated by Act of the Legislature is subject to and shall comply with sections 6, 86, 87, 93, 118 to 121, 133, 162 and 304 of this Act, and in the case of

any conflict between those sections and any section of the Act of incorporation those sections prevail, except to the extent the Act of incorporation expressly exempts the company from any of those sections.

RSA 2000 cC-21 s4;RSA 2000 cl-3 s853;
RSA 2000 cR-4 s58;2002 c30 s27

Winding-up

5 Division 3 of Part 10 applies, with all necessary modifications, to the winding-up of any company, society, or association incorporated by or under any Act of the Legislature, unless the Act contains other provisions to the contrary, and applies so far as the jurisdiction of the Court extends, to the winding-up of the affairs of any other company.

RSA 1980 cC-20 s5

Companies formed by special Act

6 Every company heretofore or hereafter incorporated by an Act of the Legislature and whose nominal or authorized capital is increased by an order of the Lieutenant Governor in Council, by a resolution or otherwise, shall pay to the Registrar the same fee in respect of the increase as a company that is formed under this Act and that increases its capital is required to pay.

RSA 1980 cC-20 s6

Part 2 General Provisions

7 Repealed 1981 cB-15 s284(5).

Extra-territorial capacity of Provincial corporations

8(1) For the purposes of this section, the expression “charter” includes any Act, letters patent under the Great Seal, certificate of incorporation, memorandum of association, declaration or other instrument by or under which a corporation has been or may be incorporated in Alberta.

(2) Every corporation heretofore or hereafter created within Alberta by or under any Act of the Legislature or by or under any Ordinance of the Northwest Territories and subject to the legislative authority of the Legislature has, and is deemed to have always had, capacity to accept powers to effect its objects or purposes outside Alberta from any authority lawfully competent to confer those powers, except where its operations are confined to Alberta by some express provision in its charter or an Act of the Legislature.

(3) An express provision in the charter of a corporation confining the operations of the corporation to Alberta may be abrogated in

the same manner as the objects or purposes of the corporation may by law be altered.

RSA 1980 cC-20 s8

Property in joint tenancy

9(1) For the purposes of this section “corporation” means a corporation heretofore or hereafter created within Alberta by or under any Act of the Legislature, and a corporation heretofore incorporated by or under any Ordinance of the Northwest Territories, and subject to the legislative authority of the Legislature, and includes any other company lawfully carrying on business in Alberta.

(2) Every corporation is capable of acquiring and holding real or personal property in joint tenancy in the same manner as if it were an individual, and when a corporation and an individual, or 2 or more corporations, become entitled to any property under circumstances or by virtue of any instrument that would, if the corporation had been an individual, have created a joint tenancy, they are entitled to the property as joint tenants.

(3) Notwithstanding subsection (2), the acquisition and holding of property by a corporation in joint tenancy is subject to the like conditions and restrictions that attach to the acquisition and holding of property by a corporation in severalty.

(4) When a corporation is joint tenant of any property, then on its dissolution the property devolves on the other joint tenant.

RSA 1980 cC-20 s9

Use of word “limited”, etc.

10 No person or persons shall trade or carry on business within Alberta under any name or title of which “limited” or “Ltd.,” “limited liability,” or “limited, non-personal liability” is or are the last word or words, unless duly incorporated with limited liability and entitled to use that word or those words, and every person so trading or carrying on business is guilty of an offence and liable to a fine not exceeding \$25 for every day on which that name or title has been used.

RSA 1980 cC-20 s10

Name of company

11(1) A company shall not be incorporated and an extra-provincial company shall not be registered under a name,

- (a) that is known by the Registrar to be the same as the name of an existing corporation,

- (b) that suggests or implies a connection with the Crown or any member of the Royal family or the Government of Canada or the government of any province or territory of Canada or any department, branch, bureau, service, agency or activity of any such government without the consent in writing of the appropriate authority,
- (c) that includes the word “co-operative” or any abbreviation or derivation thereof, or
- (d) that in the opinion of the Registrar is objectionable.

(2) A company shall not be incorporated under this Act under a name that is known by the Registrar to be the same as that of a dissolved corporation.

(3) A company shall not be incorporated or registered under this Act under a name that is known to the Registrar to be similar to the name of any other corporation if the use of that name by the company would be likely to deceive, unless the corporation consents in writing to its name being given in whole or in part to the company and, if required by the Registrar, undertakes to dissolve or to change its name within 6 months after the incorporation of the company.

(4) A company shall not be incorporated or registered under this Act under a name that is known to the Registrar to be the same as or similar to the name of a business or association if the use of that name by the company would be likely to deceive, unless the business or association consents in writing to its name being given in whole or in part to the company and, if required by the Registrar, undertakes to cease to carry on its business or activities or to change its name within 6 months after the incorporation of the company.

(5) If a company other than an extra-provincial company, through inadvertence or otherwise, has been or is given a name that is the same as or is similar to the name of any other company, business or association that has previously been carrying on business or been incorporated or registered in Alberta or that is objectionable for any reason, the Registrar, after the Registrar has given notice to the company of the Registrar’s intention to do so, may by order change the name of the company.

(6) Repealed 1984 c12 s3.

(7) Subsections (1), (3) and (4) do not apply to a company incorporated by or under an Act of the Parliament of Canada.

(8) In this section “business or association” means an individual carrying on business, an association or a partnership.

RSA 1980 cC-20 s11;1984 c12 s3

Change of name

12(1) A person who feels aggrieved by reason of

- (a) the refusal of the Registrar to incorporate a company or to register an extra-provincial company pursuant to section 11(1), (3) or (4),
- (b) the refusal of the Registrar to make an order under section 11(5) to change the name of a company,
- (c) a notice given by the Registrar under section 11(5) of the Registrar’s intention to make an order to change the name of a company,
- (d) the refusal by the Registrar to give the Registrar’s approval under section 32(1) to a change of the name of a company, or
- (e) the approval by the Registrar under section 192(2) to the use by an extra-provincial company of a name or title other than the name or title under which it is registered, or the refusal of the Registrar to give an approval under section 192(2),

may appeal the Registrar’s refusal, notice or approval to the Court by way of originating notice and on at least 7 days’ notice to the Registrar and to any other persons that the Court directs.

(2) The Court may dismiss the appeal or direct the Registrar to withdraw the Registrar’s refusal or notice or revoke the Registrar’s approval, as the case may be.

(3) Within 10 days after the entry of an order under subsection (2), the company or extra-provincial company concerned shall file with the Registrar a copy of the order certified by the clerk of the Court.

RSA 1980 cC-20 s12

Powers of companies

13(1) No company shall be formed under this Act, nor has a company power under this Act

- (a) to issue any note payable to the bearer thereof, or any promissory note intended to be circulated as money or as the note of a bank, or to engage in the business of banking,
- (b) repealed RSA 2000 cR-4 s58,

- (c) to carry on the business of insurance,
- (d) to execute the office of executor, administrator, trustee, receiver, assignee, liquidator, guardian of a minor's estate or committee of a lunatic's estate, except as is expressly authorized by this Act,
- (e) to construct or operate a telegraph or telephone system, except as is expressly authorized by this Act, or
- (f) to carry on any of the business usually or ordinarily carried on by a stock exchange or to provide, for the marketing of any shares, stocks or other securities of any company or corporation, the facilities that are ordinarily and usually afforded by a stock exchange.

(2) Repealed by Revision.

RSA 2000 cC-21 s13;RSA 2000 cR-4 s58

Loans

14(1) A public company shall not make any loan to any of its shareholders or directors or give, whether directly or indirectly and whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with a purchase made or to be made by any person of any shares in the company.

(2) Nothing in subsection (1) shall be taken to prohibit

- (a) the lending of money by the company in the ordinary course of its business when the lending of money is part of the ordinary business of the company,
- (b) the making by a company of loans to persons who are, in good faith, in the employment of the company, whether directors or otherwise, with a view to enabling or assisting those persons to erect or purchase dwelling houses for their own occupation,
- (c) the provision by a company, in accordance with any scheme for the time being in force, of money for the purchase by trustees of fully paid up shares in the capital stock of the company, to be held by or for the benefit of employees of the company, including any director holding a salaried employment or office in the company, or
- (d) the making by a company of loans to persons in the employment of the company, including directors holding salaried employment, with a view to enabling those persons

to purchase fully paid-up shares in the capital stock of the company, to be held by themselves by way of beneficial ownership.

(3) If a loan is made by a public company in contravention of subsection (1), all directors and officers of the company making it or assenting to it are, until repayment of the loan, jointly and severally liable to the company and any person injured for any loss, damage or costs that the company or person sustained or incurred by reason of the contravention of subsection (1).

(4) Notwithstanding subsection (3),

- (a) the liability of the directors and officers of a company under this section is limited to the amount of the loan made in contravention of subsection (1) with interest at the rate, if any, stipulated for in the loan, and
- (b) a director shall not be held liable for a contravention of subsection (1) if the director proves that the contravention was not due to any misconduct or negligence on the director's part.

(5) Proceedings to recover any loss, damage or costs sustained or incurred by reason of a contravention of subsection (1) may not be commenced after the expiration of 2 years from the date on which the loss, damage or costs were sustained or incurred.

RSA 1970 c60 s14

Part 3 Incorporation and Organization

Division 1 Memorandum of Association

Formation of companies

15(1) Any 3 or more persons (or in the case of a private company, any 2 or more persons) associated for any lawful purpose permitted by this Act may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with limited liability, that is to say,

- (a) a company limited by shares,
- (b) a company limited by guarantee, or
- (c) a specially limited company.

(2) Notwithstanding subsection (1), if a company is being formed for the purposes of a club, the Registrar may require evidence to the Registrar's satisfaction that the club has been carried on for at least one year immediately preceding the application for incorporation and has been conducted in a proper manner.

(3) Notwithstanding subsections (1) and (2), in any event if a company is being formed for the purposes of a social club, the Registrar may, in the Registrar's discretion, refuse incorporation.

(4) Repealed by Revision.

(5) Repealed 1994 cM-26.1 s642(9).

(6) The memorandum shall be signed by each subscriber in the presence of at least one witness, who must attest the signature.

(7) In the case of a company having a share capital,

(a) no subscriber of the memorandum may take less than one share, and

(b) each subscriber must write opposite to the subscriber's name the number and class of shares the subscriber takes.

RSA 1980 cC-20 s15;1983 cD-9.5 s98;1994 cM-26.1 s642(9)

Company limited by shares

16(1) In the case of a company limited by shares, the memorandum shall, in the prescribed form, state

(a) the name of the company, with "Limited" or "Ltd." as the last word thereof,

(b) the objects of the company,

(c) that the liability of the members is limited, and

(d) particulars of the share capital with which the company proposes to be incorporated, which may be

(i) divided into shares of a fixed amount,

(ii) divided into shares without nominal or par value, or

(iii) divided into shares comprised partly of one of the foregoing classes and partly of the other.

(2) to (4) Repealed by Revision.

(5) Notwithstanding subsection (1)(c), the memorandum of a company the objects of which include the objects contained in the schedule to the *Chartered Accountants Act* or *Legal Profession Act* shall state that the liability of the members is limited except in the circumstances described in section 55(1) of the *Chartered Accountants Act*, section 116(1) of the *Legal Profession Act* or section 67(1) of the *Medical Profession Act*.

RSA 2000 cC-21 s16;RSA 2000 cH-7 s146

(NOTE: Section 146(4)(c)(ii) of the *Health Professions Act*, RSA 2000 cH-7, purports to amend the *Companies Act* as follows:

(4) The Companies Act is amended

(c) in section 16(5)

(ii) by striking out “, section 119(1) of the *Legal Profession Act* or section 77(1) of the *Medical Profession Act***” and substituting “**or section 119(1) of the *Legal Profession Act***”.**)

Company limited by guarantee

17(1) In the case of a company limited by guarantee the memorandum shall, in the prescribed form, state

- (a) the name of the company, with “Limited” or “Ltd.” as the last word in its name,
- (b) the objects of the company,
- (c) that the liability of the members is limited, and
- (d) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he or she is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he or she ceases to be a member, and of the costs, charges and expenses of winding-up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount.

(2) When the company has a share capital the memorandum shall also state the amount of share capital with which the company proposes to be registered as hereinbefore provided in the case of a company limited by shares.

(3) When the company has not a share capital, every provision in the memorandum or articles or in any resolution of the company that purports to give any person a right to participate in the

divisible profits of the company otherwise than as a member is void.

(4) For the purpose of provisions of this Act relating to the memorandum of the company, every provision in the memorandum or articles or in any resolution of the company purporting to divide the undertaking of the company into shares or interests shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

RSA 1970 c60 s17

Use of Limited or Ltd.

18 Notwithstanding section 16 or 17,

- (a) a company with “Limited” as the last word in the name thereof may use the abbreviation “Ltd.”, and
- (b) a company with “Ltd.” as the last word in the name thereof may use the word “Limited”,

and reference thereto may be made in the same manner.

RSA 1970 c60 s18

Specially limited company

19 In the case of a specially limited company the memorandum shall, in the prescribed form, state

- (a) the name of the company, with “Limited (Non-personal Liability)” as the last words in its name,
- (b) that the objects of the company are restricted to prospecting for, locating, acquiring, managing, developing, working, and selling mines, mineral claims, and mining properties, and the winning, getting, treating, refining, and marketing of minerals therefrom, and to the exercise of the powers mentioned in section 20(3),
- (c) that the liability of the members is limited and no personal liability will attach to any member, and
- (d) the amount of share capital with which the company proposes to be registered and the division thereof into shares of fixed amount.

RSA 1970 c60 s19

Powers of company

20(1) For the purpose of carrying out its objects, a company other than a specially limited company has the following powers, except those of them expressly excluded by the memorandum:

- (a) the power to purchase, take on lease or in exchange, hire, or otherwise acquire and hold any real and personal property and any rights or privileges that the company may think necessary or convenient for the purposes of its business;
- (b) the power to construct, improve, maintain, develop, work, manage, carry out or control any roads, ways, tramways, branches or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences that may seem calculated, directly or indirectly, to advance the company's interests, and the power to contribute to subsidize, or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
- (c) the power to acquire and undertake the whole or any part of the business, property and liabilities of any person or company, wheresoever incorporated, carrying on any business that the company is authorized to carry on, or possessed of property suitable for the purposes of the company;
- (d) the power to apply for, purchase or otherwise acquire any patents, licences, concessions, and the like, conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention capable of being used for any of the purposes of the company or the acquisition of which may seem calculated, directly or indirectly, to benefit the company, and the power to use, exercise, develop, or grant licences in respect of, or otherwise turn to account the property, rights, or information so acquired;
- (e) the power to enter into partnership or into any arrangement for sharing of profits, union of interests, co-operation, joint adventure, reciprocal concessions or otherwise with any person or company, wheresoever incorporated, carrying on or engaged in or about to carry on or engage in any business or transaction that the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as, directly or indirectly, to benefit the company;
- (f) the power to enter into with any governments or authorities (municipal, local or otherwise), any agreements that seem conducive to the company's objects or any of them, the power to obtain from any such government or authority any rights, privileges, and concessions that the company thinks

it desirable to obtain, and the power to carry out, exercise, and comply with any such arrangements, rights, privileges, and concessions;

- (g) the power to take or otherwise acquire and hold the shares, stock, debentures, or other securities of any company, wheresoever incorporated, having objects altogether or in part similar to those of the company, or carrying on any business capable of being conducted so as, directly or indirectly, to benefit the company, and the power to sell or reissue, with or without guarantee, or otherwise deal with items;
- (h) the power to borrow or raise or secure the payment of money in any manner the company thinks fit, and, without limiting the generality of the foregoing, by the issue of debentures or debenture stock, perpetual or otherwise, charged on all or any of the company's property (both present and future), including its uncalled capital, and the power to purchase, redeem, or pay off any such securities;
- (i) the power to adopt any means of making known the products of the company that seems expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals, and by granting prizes, rewards, and donations;
- (j) the power to lend money to any person or company, wheresoever incorporated, having dealings with the company or with whom the company proposes to have dealings, and the power to guarantee the contracts of any such person or company;
- (k) the power to raise and assist in raising money for, and to aid by way of bonus, loan, promise, endorsement, guarantee or otherwise, any person or company with whom or which the company may have business relations or any of whose shares, securities or other obligations are held by the company and to guarantee the performance or fulfilment of any contracts or obligations of any such person or company, and in particular to guarantee the payment of the principal of and interest on securities, mortgages and liabilities of any such person or company;
- (l) the power to sell or dispose of the undertaking of the company or any part thereof for a consideration the company thinks fit, and in particular for shares, debentures, or securities of any other company wheresoever

incorporated, having objects altogether or in part similar to those of the company, and the power to distribute any of the property of the company among the members in specie;

- (m) the power to promote any company or companies for the purpose of acquiring all or any of the property and liabilities of the company or for any other purpose that seems, directly or indirectly, calculated to benefit the company;
- (n) the power to remunerate any person or company, wheresoever incorporated, for services rendered or to be rendered in placing or assisting to place or guaranteeing the placing of any of the shares in the company's capital or any debentures, debenture stock or other securities of the company, or in or about the formation or promotion of the company or the conduct of or the sale or disposition of its business;
- (o) the power to draw, make, accept, endorse, execute and issue promissory notes, bills of exchange, bills of lading, warrants, and other negotiable or transferable instruments;
- (p) the power to carry on any business capable of being conveniently carried on in connection with the business of the company, or calculated, directly or indirectly, to enhance the value of or render profitable any of the company's property or rights;
- (q) the power to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;
- (r) the power to invest and deal with any money of the company that is not immediately required, in any manner from time to time determined;
- (s) the power to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or its predecessors in business, or the dependants or connections of those persons, and the power to grant pensions and allowances and to make payments towards insurance and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or useful object;
- (t) the power to procure the registration and recognition of the company in any foreign country or place, and the power to

designate persons therein, according to the laws of the foreign country or place, to represent the company, and to accept service for and on behalf of the company of any process or suit;

- (u) the power to carry out all or any of the objects of the company and do all or any of the above things as principals, agents, contractors, or otherwise, and either alone or in conjunction with others;
- (v) the power to do all other things incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

(2) Subsection (1) only applies to an existing company if the company passes a resolution to that effect.

(3) For the purposes of carrying out its objects, a specially limited company has the following powers, except those of them expressly excluded by the memorandum, and except as in this Act expressed, a specially limited company has no greater powers:

- (a) the power to acquire by purchase, lease, hire, discovery, location or otherwise and to hold mines, mineral claims, mineral leases, mining lands, prospects, licences and mining rights of every description, including petroleum claims and land and natural gas claims and land, and the power to work, develop, operate, turn to account, sell, or otherwise dispose of them or any of them or any interest therein;
- (b) the power to dig, drill or bore for, raise, crush, wash, smelt, reduce, refine, amalgamate, assay, analyze and otherwise treat gold, silver, copper, lead, iron, coal, petroleum, natural gas and any other ore deposit, metal or mineral whatsoever, whether belonging to the company or not, and the power to render it merchantable, and to buy, sell, and deal in it or any product thereof;
- (c) the power to engage in any branch of mining, smelting, milling, and refining minerals;
- (d) the power to acquire by purchase, lease, hire, exchange or otherwise, timber land, leases or claims, rights to cut timber, surface rights and rights of way, water rights and privileges, patents, patent rights and concessions, and other real or personal property;
- (e) the power to acquire by purchase, lease, hire, exchange or otherwise, and to construct, operate, maintain or alter, trails,

roads, ways, tramways, reservoirs, dams, flumes, race and other ways, watercourses, canals, aqueducts, pipelines, wells, tanks, bridges, wharves, piers, mills, pumping plants, factories, foundries, furnaces, coke-ovens, crushing works, smelting works, concentrating works, refining works, hydraulic, electrical, and other works and appliances, power devices and plants of every kind, laboratories, warehouses, boarding-houses, dwellings, buildings, machinery, plants, and other works and conveniences, and the power to buy, sell, manufacture, and deal in all kinds of goods, stores, provisions, implements, chattels and effects required by the company or its workers or servants;

- (f) the power to build, purchase, lease, hire, charter, navigate, use and operate cars, wagons and other vehicles, boats, ships and other vessels for the purposes of the company;
- (g) the power to sell, or otherwise dispose of, ore, metal, oil, gas, or mineral product, and the power to take contracts for mining work of all kinds, and to accept as the consideration shares, stock, debentures, or other securities of any limited company, wheresoever incorporated and carrying on any business, directly or indirectly, conducive to the objects of a specially limited company if those shares (except the shares of a company having non-personal liability), stock, debentures or other securities are fully paid up, and the power to sell or otherwise dispose thereof;
- (h) the power to enter into any arrangement for sharing profits, for union of interests or for co-operation with any person or company, wheresoever incorporated, carrying on or about to carry on any business, transaction or undertaking that a specially limited company is authorized to carry on;
- (i) the power to acquire and undertake the whole or any part of the business, property and liabilities of any person or company, wheresoever incorporated, carrying on any business permitted to, or possessed of property suitable for, the purposes of a specially limited company;
- (j) the power to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;
- (k) the power to borrow, raise or secure the payment of money in any manner it thinks fit, and in particular by the issue of debentures charged on all or any part of the property, including uncalled capital, so, however, that the total

amount borrowed, raised, or secured and outstanding will not, without the sanction of a general meeting of the company, exceed 25% of the capital for the time being paid up, but nothing in this clause limits or affects any power of borrowing vested in the directors under the memorandum or articles;

- (l) the power to distribute in specie among the members any of the property of the company;
 - (m) the power to sell, improve, manage, develop, exchange, lease, mortgage, dispose of, turn to account or otherwise deal with the undertaking or the whole or any part of the property and rights of the company, and the power to accept as consideration therefor shares, stock, debentures or other securities of any limited company, wheresoever incorporated and carrying on any business, directly or indirectly, conducive to the objects of a specially limited company if those shares (except the shares of a company having non-personal liability), stock, debentures or other securities are fully paid up;
 - (n) the power to procure the registration, licensing or recognition of the company in any part of Canada or in any other country, and the power to accept rights and powers to carry on its business therein;
 - (o) the power to do all or any of the above things as principals, agents, contractors or otherwise, and by or through trustees, agents, or otherwise, and either alone or in conjunction with others.
- (4) A company has, as ancillary and incidental to the objects set forth in the memorandum, the power to sell or dispose of the undertaking of the company or any part thereof for any consideration the company thinks fit, unless the power is expressly excluded by the memorandum.

RSA 1980 cC-20 s20

Division 2

Articles of Association

Company with share capital

21(1) Articles of association prescribing regulations for the company,

- (a) in the case of a company having a share capital and limited by guarantee, shall be registered with the memorandum, and

- (b) in the case of any other company having a share capital, may be registered with the memorandum,

and the articles may adopt all or any of the regulations contained in Table A in the Schedule.

(2) The regulations contained in Table A in the Schedule

- (a) if articles are not registered, or
- (b) if articles are registered, then in so far as they do not exclude or modify the regulations in Table A,

are so far as applicable the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

(3) When Table A in the Schedule is adopted by a private company or becomes the regulations of a private company in whole or in part,

- (a) Article 3 of Table A has no application in respect of the private company, and
- (b) Article 17 of Table A, if adopted or if applied to a private company, shall be read as if the words “not being fully paid shares” did not occur therein.

RSA 1980 cC-20 s21

Company without share capital

22(1) In the case of a company limited by guarantee and not having a share capital articles of association prescribing regulations for the company shall be registered with the memorandum.

(2) The articles shall, for the purpose of enabling the Registrar to determine the fees payable on registration, state the number of members of which the company will consist.

RSA 1980 cC-20 s22

Form of articles

23 The articles shall be printed or typewritten and divided into paragraphs which shall be numbered consecutively.

RSA 1980 cC-20 s23

Signing of articles

24 The articles, if any, shall be signed by each subscriber to the memorandum of association in the presence of at least one witness, who shall attest the signature.

RSA 1980 cC-20 s24

Division 3 Registration and Incorporation

Delivery of memorandum and articles

25(1) The applicants for incorporation shall deliver the memorandum and the articles, if any, to the Registrar, and if all other requirements of this Act precedent to incorporation have been complied with, the Registrar shall retain and register them.

(2) An application for incorporation shall be accompanied by documents relating to corporate names that are prescribed by the regulations and by any information respecting the subscribers that may be required by regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) in the form and manner prescribed by those regulations.

RSA 1980 cC-20 s25;1984 c12 s3;1994 c23 s50

Power to alter memorandum

26(1) On the registration of the memorandum of a company, the Registrar shall issue a certificate under the Registrar's seal of office, showing that the company is incorporated, and

- (a) in the case of a company limited by shares, that the company is limited,
- (b) in the case of a specially limited company, that the company is specially limited, or
- (c) in the case of a company limited by guarantee, that the company is limited by guarantee

and shall, at the cost of the applicants for incorporation, publish a notice of the incorporation in *The Alberta Gazette*.

(2) If the memorandum and the articles, if any, of the company as registered by the Registrar under section 25 do not in fact comply with all the requirements of this Act and the Registrar by inadvertence issues a certificate under subsection (1), the company shall on the Registrar's request file with the Registrar any documents the Registrar requires, and thereupon the Registrar may correct the register and issue a corrected certificate.

RSA 1980 cC-20 s26

Conclusiveness of certificate

27 A certificate of incorporation given by the Registrar in respect of a company is conclusive proof that all the requirements of this Act in respect of registration and of matters precedent and incidental to incorporation have been complied with, and that the

company is a company authorized to be registered and duly registered under this Act.

RSA 1980 cC-20 s27

Effect of incorporation

28 From the date of incorporation mentioned in the certificate of incorporation the subscribers, together with the other persons that from time to time become members of the company, are a corporation by the name contained in the memorandum, capable of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with power to hold land, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

RSA 1980 cC-20 s28

Effect of memorandum and articles

29(1) The memorandum and articles, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed and sealed by each member, and contained covenants on the part of each member, the member's heirs, executors, and administrators, and in the case of a corporation, its successors, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles is a debt due from the member to the company and in the nature of a specialty debt.

RSA 1980 cC-20 s29

Part 4 Alteration of Constitution

Division 1 Memorandum of Association

Power to alter memorandum

30 A company shall not alter the conditions contained in its memorandum, except in the cases and in the mode and to the extent for which express provision is made in this Act.

RSA 1980 cC-20 s30

Alterations in memorandum

31(1) If an alteration is made in the memorandum of a company, every copy of the memorandum issued after the date of the alteration shall be in accordance with the alteration.

(2) Every company that defaults in complying with this section is guilty of an offence.

RSA 1980 cC-20 s31

Change of name

32(1) A company may, by special resolution and with the approval of the Registrar signified in writing, change its name.

(1.1) Unless otherwise provided by the Registrar, the special resolution filed with the Registrar shall be accompanied by the documents relating to corporate names that are prescribed by the regulations.

(2) When the special resolution has been filed with the Registrar and all lawful requirements of the Registrar in respect of returns or reports due from the company under this Act have been complied with, the Registrar shall

- (a) enter the new name on the register in place of the former name,
- (b) issue under the Registrar's seal of office a certificate showing the change of name, and
- (c) cause a notice setting out the new name and the former name of the company to be published in The Alberta Gazette or the Registrar's periodical at the expense of the company.

(3) The change of name does not affect any rights or obligations of the company, nor render defective any legal proceedings by or against the company, and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

RSA 1980 cC-20 s32;1983 c21 s8;1984 c12 s3

Change in registered office

33(1) A company may by special resolution change the place within Alberta at which the registered office is to be situated.

(2) The powers conferred by this section may if the memorandum or articles so provide be exercised by ordinary resolution of the company or by resolution of the directors.

(3) A resolution under this section does not take effect until a copy has been filed with the Registrar and when the resolution has been so filed the Registrar shall issue under the Registrar's seal of office a certificate showing the alteration effected by the resolution.

RSA 1980 cC-20 s33

Objects

Alteration of objects or powers

34(1) Subject to this section, a company may, by special resolution confirmed by an order of the Court, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it

- (a) to carry on its business more economically or more efficiently,
- (b) to attain its main purpose by new or improved means,
- (c) to carry on some business that, under existing circumstances, may conveniently or advantageously be combined with the business of the company, or
- (d) to restrict or abandon any of the objects specified in the memorandum.

(2) Notwithstanding subsection (1), a company may by ordinary resolution alter its memorandum of association so as to include or exclude any or all of the powers authorized by section 20(1), but no such resolution takes effect until a copy has been filed with the Registrar, who shall thereupon issue under the Registrar's seal of office a certificate showing the alteration effected by the resolution, and shall at the cost of the company publish in The Alberta Gazette or the Registrar's periodical a statement of the alteration.

(3) Before confirming the resolution the Court must be satisfied

- (a) that sufficient notice has been given to every holder of debentures of the company, and to any persons whose interest will, in the opinion of the Court, be affected by the alteration, and
- (b) with respect to every creditor who, in the opinion of the Court, is entitled to object and who signifies an objection in the manner directed by the Court, that either the creditor's consent to the alteration has been obtained or the creditor's debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court, but the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

(4) The Court may make an order confirming the resolution either wholly or in part, and on any terms and conditions it thinks fit.

(5) The Court shall, in exercising its discretion under this section, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members, and the Court may give any directions and make any orders it thinks expedient for facilitating or carrying into effect the arrangement, but no part of the capital of the company may be expended in any such purchase.

(6) When an order is made under this section the company shall, within 15 days from the date of the order or within a further time that the Court may allow, file with the Registrar an office copy thereof, together with a copy of the memorandum as altered, and the resolution as confirmed by the order does not take effect until the copies are filed.

(7) The Registrar shall, under the Registrar's seal of office, certify the registration of the order and the memorandum as altered, and the Registrar's certificate is conclusive proof that all the requirements of this Act with respect to the alteration and the confirmation of the resolution have been complied with, and thenceforward the memorandum so altered is the memorandum of the company.

(8) The Registrar shall cause a statement of the alteration in the objects of the company to be published in The Alberta Gazette or the Registrar's periodical at the cost of the company.

(9) Every company that defaults in filing with the Registrar any document required by this section to be filed with the Registrar is guilty of an offence.

RSA 1980 cC-20 s34;1983 c21 s8

Share Capital

Restrictions on calling up uncalled capital

35 A limited company may by special resolution determine that any portion of its share capital that has not been already called up will not be capable of being called up, except in the event and for the purposes of the company being wound up, and thereupon that portion of its share capital is not capable of being called up except in the event and for the purposes aforesaid.

RSA 1980 cC-20 s35

Alteration of share capital

36(1) A company having a share capital, if authorized by its articles, may by special resolution

- (a) increase the maximum price or consideration for which shares without nominal or par value may be issued, where that maximum price or consideration has been stated in the memorandum or articles,
 - (b) cancel shares that, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares cancelled or in the case of the cancellation of shares without nominal or par value, by the number of shares cancelled,
 - (c) cancel paid-up shares that are surrendered to the company by way of gift, and, if the resolution so provides, diminish the amount of its share capital by the amount of the shares or in the case of shares without nominal or par value by the number of the shares cancelled, and
 - (d) cancel paid-up shares that are acquired by a company on a distribution of the assets of another company under liquidation proceedings, and, if the resolution so provides, diminish the amount of its share capital by the amount of the shares cancelled, or in the case of shares without nominal or par value, by the number of shares cancelled.
- (2) The powers conferred by this section may, if the articles so provide, be exercised by ordinary resolution of the company or by resolution of the directors.
- (3) A cancellation of shares pursuant to this section shall not be deemed to be a reduction of share capital within the meaning of sections 38 to 41.
- (4) A resolution under this section does not take effect until a copy has been filed with the Registrar, and the proper fees paid to him, and when the resolution has been so filed and the fees paid, the Registrar shall issue under the Registrar's seal of office a certificate showing the alteration effected by the resolution.

RSA 1980 cC-20 s36

Consolidation, Subdivision, etc., of Share Capital

Consolidation, subdivision, etc., of share capital

37(1) A company having a share capital, if so authorized by its articles, may by special resolution alter the conditions of its memorandum as follows:

- (a) it may increase its share capital by the creation of new shares of an amount, or of the number of new shares without nominal or par value, that it thinks expedient;
- (b) it may consolidate and divide all or any of its share capital having a par value into shares of larger amount than its existing shares;
- (c) it may convert all or any of its paid-up shares into stock, and reconvert that stock into paid-up shares of any denomination, or without nominal or par value;
- (d) it may subdivide its shares having a par value, or any of them, into shares of smaller amount than its existing shares, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived.

(2) When a company having a share capital has converted any of its shares into stock, all the provisions of this Act that are applicable to shares only cease to apply as to so much of the share capital as it converted into stock, and the register of members of the company and the annual list of members to be filed with the Registrar shall be altered accordingly.

(3) A resolution under this section does not take effect until a copy has been filed with the Registrar, and when the resolution has been so filed the Registrar shall issue under the Registrar's seal of office a certificate showing the alteration effected by the resolution.

RSA 1970 c60 s37

Reorganization of Share Capital

Powers of company to reorganize share capital

38(1) A company having a share capital by special resolution confirmed by an order of the Court,

- (a) may modify the provisions contained in its memorandum so as to reorganize its share capital in any way, and without prejudice to the generality of the foregoing power may modify or alter its memorandum so as to
 - (i) consolidate shares of different classes,
 - (ii) divide its shares into shares of different classes,
 - (iii) vary the rights attached to any class of shares,

- (iv) subject to section 81, convert shares of a fixed amount into shares without nominal or par value, or
- (v) convert shares without nominal or par value into shares of a fixed amount,

but no preference or special privilege attached to or belonging to any class of shares shall be interfered with except by a resolution passed by a majority in number of shareholders of that class and holding 75% of the share capital of that class, and every resolution so passed binds all shareholders of the class, and

- (b) may alter its memorandum so as to reduce its share capital in any way, and without prejudice to the generality of the foregoing power may modify or alter its memorandum so as to
 - (i) extinguish or reduce the liability on any of its shares in respect of share capital not paid up,
 - (ii) either with or without extinguishing or reducing liability on any of its shares, cancel any paid-up share capital that is lost or unrepresented by available assets, or
 - (iii) either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital that is in excess of the wants of the company.

(2) When an order is made under this section, an office copy thereof shall be filed with the Registrar within 15 days from the date of the order or a further time that the Court may allow, and the resolution as confirmed by the order does not take effect until the copy has been so filed.

(3) The Registrar shall issue under his or her seal of office a certificate showing the alteration effected by the resolution as so confirmed.

RSA 1970 c60 s38

Objections by creditors

39(1) If the proposed reduction of share capital involves either diminution of liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Court so directs, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim that, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, is entitled to object to the reduction.

(2) The Court shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) If a creditor who is entered on the list and whose debt or claim is not discharged or determined does not consent to the reduction, the Court may, if it thinks fit, dispense with the consent of that creditor, on the company securing payment of the creditor's debt or claim by appropriating, as the Court may direct, the following amount:

- (a) if the company admits the full amount of the creditor's debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (b) if the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Court after the like inquiry and adjudication as if the company were being wound up by the Court.

(4) A company that wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, is guilty of an offence.

(5) When a proposed reduction of capital involves either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital, if having regard to any special circumstances of the case the Court thinks proper to do so, the Court may direct that this section does not apply as regards any class or any classes of creditors.

RSA 1970 c60 s39

Order reducing share capital

40(1) The Court, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either the creditor's consent to the reduction has been obtained or the creditor's debt or claim has been discharged or has determined, or has been secured, may make an order confirming the resolution for reducing the share capital either wholly or in part and on any terms and conditions it thinks fit.

(2) When an order is made under this section, the company shall file with the Registrar, within 15 days from the date of the order or

within a further time that the Court may allow, an office copy thereof and of a minute which shall be approved by the Court, showing with respect to the share capital of the company, as altered by the order, the amount of the share capital, the number of shares into which it is divided, the amount of each share and the amount, if any, at the date of the registration deemed to be paid up on each share, and the resolution as confirmed by the order does not take effect until the copies have been so filed.

(3) The Registrar shall certify under the Registrar's seal of office the registration of the order and minute, and the Registrar's certificate is conclusive proof that all the requirements of this Act with respect to reduction of share capital have been complied with, and that the share capital of the company is such as is stated in the minute.

(4) With a view to giving proper information to the public, the Court may direct the company to publish the causes that led to and the reasons for the reduction, and notice of the registration with the Registrar, and any other information that the Court may think expedient.

(5) The minute when filed and registered shall be deemed to be substituted for the corresponding part of the memorandum of the company and is valid and alterable as if it had originally been contained therein, and shall be embodied in every copy of the memorandum issued after its registration.

RSA 1970 c60 s40

Member's liability re share

41(1) A member of the company, past or present, is not liable in respect of any share to any call or contribution exceeding in amount the difference, if any, between the amount paid, or, as the case may be, the reduced amount, if any, that is to be deemed to have been paid on the share, and the amount of the share as fixed by the minute.

(2) Notwithstanding subsection (1), if any creditor entitled in respect of any debt or claim to object to the reduction of share capital is by reason of the creditor's ignorance of the proceedings for reduction, or of their nature and effect with respect to the creditor's claim, not entered on the list of creditors, and after the reduction the company is unable to pay the amount of the creditor's debt or claim, then

- (a) every person who was a member of the company at the date of the registration of the order for reduction and minute is liable to contribute for the payment of that debt or claim an amount not exceeding the amount that the person would

have been liable to contribute if the company had commenced to be wound up on the day before that registration, and

- (b) if the company is wound up, the Court, on the application of any such creditor, and proof of the creditor's ignorance as aforesaid, may, if it thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up.

- (3) Nothing in this section affects the rights of the contributories among themselves.

RSA 1970 c60 s41

Division 2

Purchase by a Company of its Own Shares

Authority to buy back shares

42(1) Subject to this Division, a company may purchase shares issued by it.

- (2) Unless its articles otherwise provide, the company shall exercise the power conferred by this section by resolution of the directors.

RSA 1980 cC-20 s42

Decrease in issued capital

43(1) When a company purchases any share issued by it of a class with par value, the issued capital is thereby decreased by an amount equal to the par value of the share.

- (2) When a company purchases any share issued by it of a class without par value, the issued capital is thereby decreased by an amount equal to the amount obtained by dividing

- (a) the amount of the consideration received by the company from time to time for which the shares of that class were issued less any reduction of capital with respect to those shares effected by the company in accordance with this Act,

by

- (b) the number of issued shares of that class.

- (3) Shares which have been issued by a company and purchased by it shall be restored to the status of authorized but unissued shares.

RSA 1980 cC-20 s43

Prohibition on purchase

44(1) A company shall not make any payment to purchase any share issued by it if the directors have reasonable grounds for believing that

- (a) the company is, or would be after the payment, unable to pay its liabilities as they become due, or
- (b) the realizable value of the company's assets would after the payment be less than the aggregate of its liabilities and the paid-up capital of the remaining shares of every class or kind.

(2) Section 104(2) does not apply with respect to a purchase by a company of any share issued by it.

RSA 1980 cC-20 s44

Liability of directors

45(1) Any directors of a company who, contrary to section 44, vote in favour of or consent to a resolution authorizing the company to purchase any share issued by it, are jointly and severally liable to restore to the company any amount so paid and not otherwise recovered by the company.

(2) A director who has satisfied a judgment ordered under this section is entitled to contribution from the other directors who voted in favour of or consented to the resolution.

(3) If a company has purchased any share in contravention of section 44,

- (a) any creditor who was a creditor at the time of the purchase,
- (b) any shareholder, or
- (c) any director who is liable under subsection (1),

may apply to the Court by originating notice for an order compelling the shareholder or former shareholder from whom the share was so purchased to repay to the company an amount equal to the purchase price received for that share.

(4) The Court, on application under subsection (3), may

- (a) order the shareholder or former shareholder from whom the share was purchased to pay to the company an amount equal to the purchase price received for the share purchased in contravention of section 44;

- (b) order the company to issue an equivalent number of shares to the shareholder or the former shareholder;
- (c) make any other order that it thinks appropriate.

(5) An action to enforce a liability under subsection (1) may be commenced only within 2 years after the date of completion of the purchase.

RSA 1980 cC-20 s45

Reporting by private company

46 A private company that purchases shares issued by it shall notify the Registrar, within 30 days of the date of the purchase, of the date, the number and the class or kind of shares that it has purchased.

RSA 1980 cC-20 s46

Application of insider trading rules

47(1) A public company which under this Division purchases shares issued by it shall be deemed to be an insider for the purposes of Part 6, Division 3.

(2) A private company which under this Division purchases a share issued by it and makes use of any specific confidential information for its own benefit or advantage which, if generally known, might reasonably be expected to affect materially the value of the share, is liable to compensate any shareholder or former shareholder from whom the share was purchased for any direct loss suffered by that person as a result of the purchase, unless the information was known or ought reasonably to have been known by that shareholder or former shareholder at the time of the purchase.

(3) An action to enforce any right created by subsection (2) may be commenced only within 2 years after the date of completion of the purchase.

RSA 1980 cC-20 s46

Offer to purchase

48(1) Unless all of the shareholders at the date of the purchase have unanimously agreed in writing to the proposed purchase, a company that proposes to purchase shares issued by it shall

- (a) make its offer to purchase to every shareholder resident in Canada who holds shares of the class or kind to be purchased,
- (b) deliver or mail, in the manner prescribed in the articles of the company for sending a notice of a meeting of the

shareholders, a copy of the offering circular in the prescribed form to each shareholder of record at the time of the offer who is resident in Canada, stating the number and the class or kind of shares which the company proposes to purchase,

- (c) in the case of a private company, file a copy of the offering circular with the Registrar within 15 days of the date that it is first delivered or mailed to the shareholders of the company, and
- (d) in the case of a public company, file a copy of the offering circular with the Executive Director within 5 days of the date that it is first delivered or mailed to the shareholders resident in Canada.

(2) For the purposes of this section, a shareholder is deemed to be resident in Canada if the shareholder's latest address shown on the register of members of the company is an address within Canada.

(3) If, in response to the offer contained in the offering circular, the shareholders agree to sell a greater number of shares than the company offered to buy, the company shall make its purchase from all of the shareholders who offered to sell as nearly as possible on a prorated basis, disregarding fractions.

(4) Notwithstanding subsection (1)(a), a company may make its offer to purchase shares issued by it to every shareholder who holds shares of the class or kind to be purchased, wherever resident, in which case subsection (1)(b) to (d) applies with all necessary modifications.

RSA 1980 cC-20 s48;1988 c7 s4;1995 c28 s65

Exception

49 A public company whose shares are listed on a Canadian stock exchange, or traded in the over-the-counter market in Canada, is not required to comply with section 48 if

- (a) the shares it proposes to purchase are bought through the facilities of a stock exchange or in the over-the-counter market,
- (b) there has been no solicitation of the shareholders by the company, and
- (c) its purchases do not exceed in any single month more than 1% of the class or kind of shares which were issued and outstanding on the first day of that month.

RSA 1980 cC-20 s49

Application for exemption order

50 On an application by a company the Commission may, subject to any terms and conditions it may impose, exempt the company from the requirements of any provision of this Division if in the opinion of the Commission it would not be prejudicial to the public interest to do so.

RSA 1980 cC-20 s50;1988 c7 s4;1995 c28 s65

Non-compliance

51 If, in connection with an offer by a company to purchase shares issued by it, the company or its directors do not comply with this Act or the regulations, the Executive Director or any interested person may apply to the Court by way of originating notice and on the application the Court may make an order

- (a) approving the contents of the offering circular with or without variation and requiring distribution of the corrected document to each shareholder entitled to receive it,
- (b) restraining the distribution of the offering circular,
- (c) requiring any person to comply with this Act or the regulations, or
- (d) rescinding the offer.

RSA 1980 cC-20 s51;1988 c7 s4;1995 c28 s65

Enforceability of contract

52(1) An action for specific performance lies against a company with respect to a contract with the company providing for the purchase of shares issued by it except to the extent that the company is unable to perform the contract without contravening section 44.

(2) In an action brought on a contract referred to in subsection (1), the onus is on the company to prove that performance thereof would contravene section 44.

(3) Until the company has fully performed a contract referred to in subsection (1), the shareholder who contracted to sell a share thereunder retains the status of a claimant and is entitled

- (a) to be paid as soon as the company is lawfully able to do so, or
- (b) 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 which the shareholder contracted to sell to the

company, but in priority to the rights of the other shareholders.

RSA 1980 cC-20 s52

Purchase by subsidiary company

53(1) On and after July 19, 1977, a subsidiary company may not acquire any shares of its holding company in excess of 1% of the number of issued shares of the holding company.

(2) A subsidiary company that acquires any shares of its holding company pursuant to this section is not entitled to receive any notice of, or to vote at, any meeting of the shareholders of the holding company with respect to those shares.

RSA 1980 cC-20 s53

Applications to the Court

54 An application to the Court under this Division shall be heard by a judge designated by the Chief Justice of the Court.

RSA 1980 cC-20 s54

Division 3 Articles of Association

Alteration of articles

55(1) Subject to this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made is as valid as if it were originally contained in the articles, and is subject in like manner to alteration by special resolution.

(2) A copy of every special resolution and of every ordinary resolution to which this section applies and passed by the company under the authority of or affecting the contents of the articles shall, so long as the resolution is in force, be embodied in or annexed to every copy of the articles issued after the passing of the resolution.

(3) Any company that defaults in embodying in or annexing to a copy of its articles a copy of a resolution required by this section to be so embodied or annexed is guilty of an offence.

(4) This section applies to

- (a) resolutions that have been agreed to by all the members of the company, but that, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions,
- (b) resolutions or agreements that have been agreed to by all the members of some class of shareholders, but that, if not so

agreed to, would not have been effective for their purpose unless they had been passed by some particular majority or otherwise in some particular manner, and

- (c) all resolutions or agreements that effectively bind all members of any class of shareholders, though not agreed to by all those members.

RSA 1980 cC-20 s55

Division 4 Conversion of Companies

Company Limited by Shares to Specially Limited Company

Conversion of company limited by shares to specially limited company

56 Subject to anything contained in the memorandum or articles, a company limited by shares and established for the principal object of mining may, for the purpose of converting itself into a specially limited company, alter the conditions of its memorandum by special resolution, so that its memorandum will comply with the requirements of this Act for a specially limited company.

RSA 1980 cC-20 s56

Specially Limited Company to Company Limited by Shares

Conversion of specially limited company to company limited by shares

57 Subject to anything contained in the memorandum or articles, a specially limited company may, for the purpose of converting itself into a company limited by shares, alter its memorandum by special resolution, so that its memorandum will comply with the requirements of this Act for a company limited by shares.

RSA 1980 cC-20 s57

Conversion procedure

58(1) When a company exercises the powers conferred by either section 56 or 57,

- (a) the company shall by its special resolution make any alterations in its articles that may be necessary for the purposes of its conversion,
- (b) the company shall file with the Registrar a copy of the special resolution, together with a copy of its memorandum as altered, and shall surrender to the Registrar its certificate of incorporation, which the Registrar shall cancel, and

- (c) the Registrar shall issue under the Registrar's seal of office a new certificate showing in what respects the constitution of the company is altered,

and thereupon the conversion of the company takes effect according to the tenor of the resolution.

- (2) Whenever any such exercise involves an alteration of the provisions of its memorandum with respect to the objects of the company, the company shall comply with section 34.

RSA 1980 cC-20 s58

Public and Private Companies

Conversion of public company into private company

59 Subject to anything contained in the memorandum or articles, a public company may by special resolution alter its memorandum and articles so as to include the provisions necessary for a private company, and to exclude any provisions inconsistent therewith, and on filing the resolution with the Registrar the company is thereupon converted into a private company, and the Registrar shall issue a certificate showing the change in the status of the company.

RSA 1980 cC-20 s59

Conversion of private company into public company

60(1) Subject to anything contained in the memorandum or articles, a private company with 3 or more members may, for the purpose of being converted into a public company, pass a special resolution altering its memorandum and articles so as to exclude the provisions inconsistent with a public company.

(2) The resolution shall be filed with the Registrar but does not take effect until the Registrar issues under the Registrar's seal of office a certificate that the company has been converted from a private company to a public company.

(3) On the issue of the certificate of conversion pursuant to subsection (2), the company may carry on as a public company the business authorized by its memorandum of association.

RSA 1980 cC-20 s60

Failure to comply with conditions

61(1) If the company fails to comply with the provisions that are included in its memorandum or articles and that constitute it a private company, it ceases to be entitled to the privileges and exemptions conferred on private companies under the sections of this Act relating

- (a) to the making of an annual return in the form of a balance sheet (section 162),
- (b) to the grounds on which a company may be wound up by the Court (section 214), and
- (c) to the minimum number of members with which a company may continue to carry on business (section 312),

and thereupon those sections apply to the company as if it were not a private company.

(2) Notwithstanding subsection (1), the Court, on being satisfied that the failure to comply with the provisions was accidental or due to inadvertence or to some other sufficient cause, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any other person interested, and on any terms and conditions that seem to the Court just and expedient, order that the company be relieved from such consequences as aforesaid.

RSA 1980 cC-20 s61

General Provisions as to Conversions

Conversion not to affect debts

62 No conversion of a company taking effect under this Part affects any debts, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of the company before the conversion, and any legal proceedings in respect thereof may be continued or commenced against it in the same manner as if the conversion had not taken place.

RSA 1980 cC-20 s62

Company in default

63 If a company has failed to send or file any return, notice, or document required to be filed with or sent to the Registrar, the Registrar may refuse to issue a certificate of conversion until the lawful requirements have been fulfilled.

RSA 1980 cC-20 s63

Changes in payment of dividends

63.1 If on February 1, 1982, a company by its memorandum or articles prohibits the payment of dividends to its members, no amendment may thereafter be made to the memorandum or articles to remove or qualify that prohibition.

1981 cB-15 s284(5)

Part 5 Membership and Shares

Division 1 Membership

Entry of subscribers in register

64 The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

RSA 1980 cC-20 s64

Copy of memorandum and articles

65(1) Every company shall send to every member thereof, at the member's request, a copy of the memorandum and of the articles, if any,

- (a) on payment of \$1 or any less sum that the company may prescribe, when the memorandum and articles are printed, or
- (b) for a written or typewritten copy, on payment of 10¢ for every 100 words required to be copied,

and on payment of 50¢ or any less sum that the company may prescribe, a copy of any special or ordinary resolution passed by the company.

(2) A company that defaults in complying with the requirements of this section is guilty of an offence.

RSA 1980 cC-20 s65

Register of members

66(1) Every company shall keep in one or more books a register of its members, and shall enter therein the following particulars:

- (a) the full names, alphabetically arranged or alphabetically indexed, addresses and occupations of the subscribers of the memorandum and of every other person who agrees to become a member of the company and of every person described in the register as representing a named mortgagor, another person or an estate;
- (b) the date at which each person was entered in the register as a member;
- (c) the date at which any person ceased to be a member;

- (d) in the case of a company having a share capital, the number or nominal amount and the class of the shares held by each member and the amount paid or agreed to be considered paid on each of the member's shares;
- (e) in the case of a company not having a share capital, the nature of the interest held by each member, and the amount paid or agreed to be considered as paid in respect of the member's interest;
- (f) particulars of the transfer by any member of the member's shares or other interests;
- (g) in the case of a person described in the register as representing a named mortgagor, another person or an estate, a description of the capacity in which that person represents the person or estate, and the name of the estate or person so represented.

(2) A company that fails to comply with this section is guilty of an offence.

(3) The register of members shall be admitted in evidence, in the absence of evidence to the contrary, as proof of any matters by this Act directed or authorized to be inserted therein.

RSA 1980 cC-20 s66

Registration of transfer

67 On the application of the transferor of any share or interest in a company, the company shall enter in its register of members the name of the transferee in the same manner and subject to the same conditions as if the application for the entry were made by the transferee.

RSA 1980 cC-20 s67

Rectification of register

68(1) When

- (a) the name of any person is, without sufficient cause, entered in or omitted from the register of members of a company, or
- (b) default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member,

the person aggrieved or any member of the company or the company may apply to the Court for rectification of the register.

(2) The Court may either refuse the application, or may direct rectification of the register and payment by the company of any damages sustained by any party aggrieved.

(3) On an application under this section, the Court may decide any question relating to the entitlement of any person who is a party to the application to have the person's name entered in or omitted from the register, whether the question arises between members or alleged members or between members or alleged members on the one hand, and the company on the other, and generally may decide any question necessary or expedient to be decided for rectification of the register.

(4) The Court, when making an order for rectification of the register, shall by its order direct that notice of the rectification be given to the Registrar.

RSA 1980 cC-20 s68

Register, where kept and inspection

69(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company, and, except when closed under the provisions of this Act, shall during business hours (subject to any reasonable restrictions that the company in general meeting may impose, so that not less than 2 hours in each day is allowed for inspection) be opened to the inspection of any member free of charge, and to the inspection of any other person on payment of 25¢, or any less sum that the company may prescribe, for each inspection.

(2) A member or other person may require a copy of the register, or of any part thereof, or of the annual list of members and summary, or of any part thereof, on payment of 25¢, or any less sum that the company may prescribe, for every 100 words or fractional part thereof required to be copied.

(3) A company that refuses any inspection or copy required under this section is guilty of an offence, and the Court may order that an inspection be allowed or a copy furnished within any time it considers fit.

RSA 1980 cC-20 s69

Register of members

70(1) Notwithstanding section 69, a company may keep the register of members at the head office or any branch office in Alberta of any trust corporation.

(2) If the register of members is kept at the head office or branch office of a trust corporation, the trust corporation is subject to the provisions of this Act respecting the register in the same manner

and to the same extent as if the register were kept at the registered office of the company but the trust corporation is not under any circumstances entitled to a lien on the register.

RSA 1980 cC-20 s70;1991 cL-26.5 s335(12)

Power to close register

71 On giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, the directors may close the register of members for any time or times not exceeding in the whole 30 days in each year.

RSA 1980 cC-20 s71

Trusts not to be entered on register

72(1) Subject to section 78, no notice of any trust, express, implied, or constructive, shall be entered on the register, nor is it receivable by the Registrar.

(2) The company is not bound to see to the execution of any trust, express, implied or constructive, and the receipt of any person whose name is entered in the register is a valid discharge to the company for any dividend or sum payable in respect of any share or other interest held by that person.

RSA 1980 cC-20 s72

Branch register outside Province

73(1) A company having a share capital may, if so authorized by its articles, cause to be kept in any one or more provinces, states or countries a branch register or branch registers of members resident outside Alberta.

(2) The company shall give to the Registrar notice of each location of an office where the register is kept, and of any change in its situation, and of the discontinuance of the office in the event of its being discontinued.

(3) The register shall be deemed to be part of the company's register of members (hereinafter referred to as "the principal register"), and shall be kept in the same manner in which the principal register is by this Act required to be kept, except that the advertisement before closing the register shall be inserted in some newspaper circulating in the district wherein the register is kept.

(4) A copy of every entry in the register shall, as soon as possible after the entry is made, be transmitted to the registered office of the company, and the company shall from time to time cause it to be entered up in the principal register or a duplicate of the register, and a duplicate shall for all the purposes of this Act be deemed to be part of the principal register.

(5) The company may discontinue to keep any such register, and thereupon all entries in that register shall be transferred to some other register kept by the company in the same province, state, or country, or to the principal register.

(6) Subject to this Act, any company may by its articles make any provisions it thinks fit respecting the keeping of a register outside Alberta.

RSA 1980 cC-20 s73

Division 2 Shares

Nature of shares

74 The shares or other interest of any member in a company is personal estate, transferable in the manner provided by the articles of the company, and shall not be deemed to be of the nature of real estate.

RSA 1980 cC-20 s74

Certificate of shares

75(1) Every member of a company is entitled without payment to a certificate signed by the proper officers in accordance with the company's articles in that behalf specifying the shares held by the member, and the nominal amount and class of the shares, and the amount paid up thereon, and, in the case of shares held by a member to whom section 78 or 79 applies, the capacity in which that member represents those shares, but in respect of shares held jointly by several persons the company is not bound to issue more than one certificate.

(2) Unless the conditions of the issue of the shares otherwise provide, every company shall, within 2 months after the allotment of any of its shares and within 2 months after the date of lodgment of a transfer of any of its shares, complete and have ready for delivery the certificates of all shares allotted or transferred.

(3) If a certificate is defaced, lost, or destroyed, it may be renewed on payment of the fee, if any, not exceeding \$1, and on the terms, if any, as to evidence and indemnity that the directors think fit.

(4) A company that defaults in complying with the requirements of this section is guilty of an offence.

RSA 1980 cC-20 s75

Certificate of shares as evidence of title

76 A certificate signed by the proper officers of the company, specifying any shares held by any member, shall be admitted in

evidence as prima facie proof of the title of the member to the shares.

RSA 1980 cC-20 s76

Transfer by personal representative

77 A transfer of the shares or other interest of a deceased member in a company and made by the member's personal representative is, although the personal representative is not a member, as valid as if the member had been a member at the time of the execution of the instrument of transfer.

RSA 1980 cC-20 s77

Liability of executor, etc.

78 No executor, administrator, guardian, committee, curator or trustee holding shares or other interest of or for any estate or person described in the register as being represented by him or her is personally subject to any liability in respect of those shares or interest, but the estate or person so represented is liable as if the testator or intestate, the minor, ward, cestui que trust or other person were entered in the register as the member holding the shares or interest and were competent to hold them or it.

RSA 1980 cC-20 s78

Liability of mortgages

79 No mortgagee holding shares or other interest of a mortgagor described in the register as being represented by him or her is personally subject to any liability in respect of those shares or interest, but the mortgagor continues to be liable as if the mortgagor were entered in the register as the member holding the share or other interest.

RSA 1980 cC-20 s79

Payment of calls, dividends, etc.

80 A company, if so authorized by its articles, may do any one or more of the following things:

- (a) make arrangements on the issue of shares for a difference between the shareholders in the amounts and times of payment of calls on their shares;
- (b) accept from any member who assents thereto the whole or a part of the amount remaining unpaid on any shares held by the member, although no part of that amount has been called up;
- (c) pay dividends in proportion to the amount paid up on each share where a larger amount is paid up on some shares than on others.

RSA 1980 cC-20 s80

Shares without nominal or par value

81(1) The memorandum of any company, limited by shares, or limited by guarantee and having a share capital, may provide for the creation of the shares in the capital of the company without nominal or par value, and if it provides for preferred shares having a preference as to principal in addition to shares without nominal or par value, it shall state the amount of the preferred shares, the particular character of the preference and the amount of each preferred share, which shall be \$1 or a multiple thereof.

(2) Every certificate of shares without nominal or par value shall have plainly stated on its face the number of those shares that it represents and the number of those shares that the company is authorized to issue, and no such certificate shall express any nominal or par value for those shares.

(3) The issue and allotment of shares without nominal or par value authorized by this section may be made from time to time for the consideration that may be prescribed in the memorandum or articles, or that may be fixed by the board of directors in default of or subject to such prescription.

(4) Any and all shares without nominal or par value and issued as authorized by this section shall be deemed fully paid and non-assessable and the holder of any such shares is not liable to the company or to its creditors in respect thereof.

(5) For the purpose of the computation of the prescribed fees, the memorandum or articles may state the maximum price or consideration for which shares without nominal or par value may be issued, and the authorized capital of every company (including an extra-provincial company) having shares without nominal or par value, shall, for the purpose of this and all other Acts, be the capital as ascertained under the regulations.

RSA 1980 cC-20 s81

Shares with preferred, deferred or other special rights or restrictions

82(1) Subject to the provisions, if any, in that behalf of the memorandum of association of the company, and without prejudice to any special rights previously conferred on the holders of existing shares in the company, any share in the company may be issued with any preferred, deferred or other special rights, or such restrictions, whether in regard to dividend, voting, return of share capital or otherwise, that the company may from time to time by special resolution determine, and any preference share may, with the sanction of a special resolution, be issued on the terms that it is, or at the option of the company is, liable to be redeemed.

(2) If at any time the share capital is divided into different classes of shares, the rights attached to any class, unless otherwise provided by the terms of issue of the shares of that class, may be varied by a special resolution confirmed by an order of the Court, with the consent in writing of the holders of 75% of the issued shares of that class, or with the sanction of a resolution passed with the majority required for the passing of a special resolution at a separate general meeting of the holders of the shares of the class.

(3) If any class of shares has attached thereto preferred rights as to dividend, the memorandum of association may provide that the shares of that class may from time to time be issued in one or more series and that the directors may by resolution from time to time before issuance, fix the designation, rights, restrictions, conditions and limitations attaching to the shares of each series of that class.

(4) The shares of all series of the same class carrying voting rights shall not carry the right to more than one vote for each share, and when any fixed cumulative dividends or amounts payable on a return of capital are not paid in full, the shares of all series of the same class shall participate ratably in respect of those dividends including accumulations, if any, in accordance with the sums that would be payable on those shares if all those dividends were declared and paid in full, and on any return of capital in accordance with the sums that would be payable on that return of capital if all sums so payable were paid in full.

(5) No shares of any series of such class shall be issued unless and until a certified copy of the resolution of the directors referred to in subsection (3) has been filed with the Registrar, except in the case of the first series if the designation, rights, restrictions, conditions and limitations have been set forth in the memorandum of association or altered memorandum of association.

(6) To every such separate general meeting the provisions of the regulations relating to general meetings apply, with all necessary modifications, but so that the necessary quorum is 2 persons at least, holding or representing by proxy 1/3 of the issued shares of the class, and any holder of shares of the class present in person or by proxy may demand a poll.

(7) The articles may

- (a) provide that the holders of preference shares, or any other class of shares, are to have the right to select a certain portion of the board of directors, or

- (b) give those holders any other control over the affairs of the company, or so restrict their control, that is considered expedient.

RSA 1980 cC-20 s82

Redemption of shares

83(1) No shares that are, or at the option of the company are, liable to be redeemed shall be redeemed except out of those profits of the company that would otherwise be available for dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption.

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

(3) When shares have been redeemed under this section, notice thereof shall be given to the Registrar by the company within 30 days of the redemption date and every company which fails to give notice as required by this subsection is guilty of an offence.

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

(5) When any such shares are redeemed out of the proceeds of a fresh issue, the premium, if any, payable on redemption, shall be provided for out of the profits of the company before the shares are redeemed.

(6) There shall be included in every balance sheet of a company that has issued redeemable preference shares a statement specifying what part of the issued capital of the company consists of such shares, and the date on or before which those shares are, or are to be, liable to be redeemed.

(7) If a company fails to comply with subsection (6), the company, and every officer of the company who is in default, is guilty of an offence and liable to a fine not exceeding \$500.

(8) Subject to this section, the redemption of preference shares thereunder may be effected on the terms and in the manner that may be provided by the articles of the company.

(9) When pursuant to this section a company has redeemed or is about to redeem any preference shares, it may issue shares up to the nominal amount of the shares redeemed or to be redeemed as if those shares had never been issued, and accordingly the share capital of the company shall not for the purposes of any enactments relating to fees be deemed to be increased by the issue of shares pursuant to this subsection.

(10) Subsection (9) does not apply to the acceptance by a company of the surrender of mutual fund shares pursuant to section 84.

(11) Notwithstanding subsection (9), when new shares are issued before the redemption of the old shares, the new shares shall not, so far as relates to the payment of fees, be deemed to have been issued pursuant to subsection (9) unless the old shares are redeemed within one month after the issue of the new shares.

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

(13) Nothing in this section in any way interferes with the discretion of the Court to sanction any scheme for reduction of capital under section 38, whether the scheme does or does not involve the cancellation, payment or redemption of preference shares.

RSA 1980 cC-20 s83

Mutual fund shares

84(1) In this section “mutual fund shares” means shares having conditions attached thereto that include conditions requiring the company issuing the shares to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, that are fully paid.

(2) If the only undertaking of a company is the business of investing the funds of the company, its memorandum may provide for the issuing of mutual fund shares, in which case the memorandum shall set out the conditions governing

- (a) the surrender of fully paid mutual fund shares or any fraction or parts thereof that are fully paid, and
- (b) the determination of the price to be paid therefor and the manner and time of payment thereof.

- (3) Section 83(3) does not apply to the surrender or redemption of mutual fund shares.
- (4) Any mutual fund shares or fractions or parts thereof surrendered to the company pursuant to the conditions attached to those shares shall be deemed to be no longer outstanding and shall not be reissued by the company.
- (5) Notwithstanding section 83(1) or anything to the contrary in the company's memorandum or in the certificate for any mutual fund shares, all mutual fund shares shall be deemed to contain the condition that, on the surrender of any fully paid mutual fund shares, or any fractions or parts thereof that are fully paid, the price to be paid therefor may be paid out of the company's assets, including its capital.
- (6) If in any memorandum of association the expression "redemption" or "purchase for cancellation", or an expression of like import, is used in relation to any shares of a company, the expression shall, in relation to mutual fund shares of the company, be deemed to be a reference to acceptance by the company of the surrender of those shares.
- (7) A company incorporated before April 17, 1967 and whose only undertaking is the business of investing the funds of the company shall be deemed to have always had the power to issue mutual fund shares under subsection (2) and this section applies also to that company and any mutual fund shares issued by it before that date.

RSA 1980 cC-20 s84

Share warrants

- 85(1)** Any company having a share capital, if so authorized by its articles, may, with respect to any fully paid-up shares, issue under its common seal a warrant (in this Act called "a share warrant") stating that the bearer of the warrant is entitled to the shares therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the shares included in the warrant.
- (2) A share warrant entitles the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.
- (3) The bearer of a share warrant, subject to the articles of the company, is entitled on surrendering it for cancellation to have the bearer's name entered as a member in the register of members, and the company is responsible for any loss incurred by any person by reason of the company entering in its register the name of a bearer

of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

(4) The bearer of a share warrant may, if the articles of the company so provide, be deemed to be a member of the company within the meaning of this Act, either to the full extent or for any purposes defined in the articles, except that the bearer is not qualified in respect of the shares specified in the warrant to be a director or manager of the company in cases where such a qualification is required by the articles.

(5) On the issue of a share warrant the company shall strike out of the register of members the name of the member then entered therein as holding the shares specified in the warrant as if the member had ceased to be a member, and shall enter in the register the following particulars:

- (a) the fact of the issue of the warrant;
- (b) a statement of the shares included in the warrant;
- (c) the date of the issue of the warrant.

(6) Until the warrant is surrendered, the particulars specified in subsection (5) shall be deemed to be the particulars required by this Act to be entered in the register of members, and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a member.

RSA 1980 cC-20 s85

Part 6 Management and Administration

Division 1 Membership

Registered office

86(1) Every company shall have a registered office in Alberta to which all communications and notices can be addressed.

(2) Notice of the location of the registered office of a company, giving the postal address, shall be filed with the Registrar

- (a) with the memorandum and articles when application is made for incorporation, and
- (b) within 15 days of any change.

(3) A company that defaults in complying with any requirement of this section is guilty of an offence.

RSA 1980 cC-20 s86

Display of company name

87(1) Every company

- (a) shall paint or affix, and keep painted or affixed, its name on the outside of its registered office and every other office or place in which its business is carried on in a conspicuous position and in easily legible letters,
- (b) shall have its name engraved in legible characters on its seal, and
- (c) shall have its name set forth in legible characters in all notices, advertisements, and other official publications of the company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of the company, and in all bills of parcels, invoices, receipts, and letters of credit of the company.

(2) A company that defaults in complying with the requirements of this section is guilty of an offence.

RSA 1980 cC-20 s87

Division 2 Directors

Director appointed by articles or named in prospectus, etc.

88(1) A person is not capable of being appointed director of a public company by the articles, and shall not be named as a director or proposed director of a public company in any prospectus filed by or on behalf of the company, unless, before the registration of the articles or the issue of the prospectus, as the case may be, the person has, by himself or herself or by his or her agent authorized in writing,

- (a) either signed the articles by which the person is so appointed, or the prospectus in which the person is so named or signed and filed with the Registrar a consent in writing to act as a director, and
- (b) either signed the memorandum for a number of shares not less than his or her qualification, if any, or filed with the Registrar proof that the person holds the qualification shares, if any, or an undertaking in writing signed by the

person in the presence of a witness to take from the company and pay for the qualification shares, if any.

(2) When a person is appointed a director of a company by the articles, the person's undertaking under subsection (1)(b) shall be deemed to take effect as a contract with the company forthwith after its certificate of incorporation is issued.

(3) When a person is so appointed or named, any consent or undertaking required by subsection (1) shall be filed with the Registrar at the same time as the document in which the person is so appointed or named.

(4) A company or person who names a director in any prospectus without the consent of the person named is guilty of an offence.

(5) This section applies in the case of a prospectus issued in relation to an intended company, or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of a company or in the organization of the company.

RSA 1980 cC-20 s88

Qualifications of director

89(1) Without prejudice to the restrictions imposed by section 88, every director who is by the articles of a company required to hold a specified share qualification, and who is not already qualified, shall obtain the director's qualification within 2 months after his or her appointment, or any shorter time fixed by the articles.

(2) The office of director of a company shall be vacated if the director does not, within 2 months from the date of the director's appointment, or within any shorter time fixed by the articles, obtain the qualification, or if after the expiration of that period or shorter time the director ceases at any time to hold the director's qualification, and a person vacating office under this section is incapable of being reappointed director of the company until he or she has obtained his or her qualification.

(3) If after the expiration of the period or shorter time mentioned in this section any unqualified person acts as a director of the company, the person is guilty of an offence.

(4) The acts of a director or manager are valid notwithstanding any defect that may afterwards be discovered in the appointment or qualification.

RSA 1980 cC-20 s89

Residence requirements

90(1) At least 50% of the members of the board of every company shall be resident Albertans.

(2) The meetings of a board of directors may be held at any place within or outside Alberta, but in any year a majority of the meetings of a board of directors shall be held at a place within Canada.

(3) No business of a company shall be transacted at a meeting of a board of directors unless at least 50% of the members of the board of directors present at that meeting are resident Albertans.

(4) A company that fails to comply with this section is guilty of an offence and is liable to a fine of not more than \$5000 and every director of the company who authorized, permitted or acquiesced in any such failure is guilty of an offence and liable to a fine of not more than \$1000.

(5) Non-compliance with this section does not invalidate any resolution passed or decision made at a meeting of a board of directors.

(6) This section does not apply to an extra-provincial company or a non-resident company.

(7) The Lieutenant Governor in Council may exempt a company from the application of subsection (1), (2) or (3).

RSA 2000 cC-21 s90;2004 c29 s2

Liability of directors for wages

91 The directors of a company are jointly and severally liable to the clerks, labourers, servants and apprentices thereof for all debts, not exceeding 6 months' wages, due for services performed for the company during the period while the directors were acting as such, but no director is liable to an action therefor unless

- (a) the company is sued therefor or a judgment is obtained against the company within one year after the debt becomes due,
- (b) an execution against the company is returned unsatisfied in whole or in part, and
- (c) the director is sued therefor within one year from the time the director ceased to be a director,

and the amount unsatisfied on the execution is the amount that may be recovered with costs from the directors.

RSA 1980 cC-20 s91

Declaration as to interest in contract

92(1) Subject to this section, a director of a company who is in any way, directly or indirectly, interested in a contract or proposed contract with the company shall declare the director's interest at a meeting of directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of directors at which the question of entering into the contract is first taken into consideration, or, if the director is not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after the director becomes so interested, and in a case where the director becomes interested in a contract after it is made the declaration shall be made at the first meeting of directors held after the director becomes so interested.

(3) For the purposes of this section, a general notice given to the directors of a company by a director to the effect that the director is a shareholder of or otherwise interested in any other company or is a member of a specified firm and is to be regarded as interested in any contract made with that other company or firm, shall be deemed to be a sufficient declaration of interest in relation to any contract so made.

(4) Unless otherwise expressly provided in the articles of association of the company, no director shall vote in respect of any contract or proposed contract in which the director is so interested as aforesaid and if the director does so vote, the director's vote shall not be counted.

(5) Subsection (4) does not apply

- (a) in the case of a contract by or on behalf of the company to give to the directors or any of them security for advances or by way of indemnity,
- (b) in the case of a private company, when there is no quorum of directors in office who are not so interested, or
- (c) in the case of a contract between the company and any other company when the interest of the director in that other company consists solely in the director's being a director or officer of that other company and the holder of not more than the number of shares in that other company requisite to qualify the director as a director.

(6) A director who has made a declaration of the director's interest in a contract or proposed contract in compliance with this section and has not voted in respect of that contract contrary to the

prohibition in subsection (4), if the prohibition applies, is not accountable to the company or any of its shareholders or creditors, by reason only of the director holding that office or of the fiduciary relationship thereby established, for any profit realized by the contract.

(7) Nothing in this section imposes any liability on a director in respect of the profit realized by any contract that has been confirmed by the vote of shareholders of the company at a special general meeting called for that purpose.

(8) In this section

- (a) “contract” includes arrangement;
- (b) “meeting of directors” includes a meeting of an executive committee of the directors.

RSA 1980 cC-20 s92

Register of directors

93(1) Every company shall keep at its registered office a register of its directors and managers, and enter therein the following particulars:

- (a) the full names and addresses and other occupations, if any, of the directors and managers;
- (b) the date on which each director or manager was appointed;
- (c) the date on which each director or manager ceased to hold office as director or manager.

(2) Every company shall file with the Registrar a notice, in the prescribed form, of its first directors or managers within 15 days after their appointment, and within 15 days after any change among the directors or managers is made shall also file with the Registrar a notice of the change in the prescribed form.

(3) A company that fails to comply with this section is guilty of an offence.

RSA 1980 cC-20 s93

Register open to inspection

94(1) The register of directors and managers, commencing from the date of the registration of the company, shall during business hours (subject to any reasonable restrictions as the company in general meeting may impose, so that not less than 2 hours in each day is allowed for inspection) be open to the inspection of any member free of charge and to the inspection of any other person on

payment of 25¢, or any less sum that the company may prescribe, for each inspection.

(2) Any member or other person may require a copy of the register, or of any part thereof, on payment of 25¢ or any less sum that the company may prescribe, for every 100 words or fractional part thereof required to be copied.

(3) A company that refuses any inspection or copy required under this section is guilty of an offence, and the Court may order that an inspection be allowed or a copy furnished within the time it thinks fit.

RSA 1980 cC-20 s94;1984 c46 s2

Division 3 Insider Trading

Definitions

95(1) In this Division,

- (a) “affiliate” means an affiliated company within the meaning of section 2(3);
- (b) “associate”, when used to indicate a relationship with any person, means
 - (i) any company of which that person beneficially owns, directly or indirectly, equity shares carrying more than 10% of the voting rights attached to all equity shares of the company for the time being outstanding,
 - (ii) any trust or estate in which that person has a substantial beneficial interest or as to which that person serves as trustee or in a similar capacity, or
 - (iii) any relative or spouse or adult interdependent partner of that person or any relative of that spouse or adult interdependent partner who, in any such case, has the same home as that person;
- (c) “capital security” means any share of any class of shares of a company or any bond, debenture, note or other obligation of a company, whether secured or unsecured;
- (d) “equity share” means any share of any class of shares of a company carrying voting rights under all circumstances and any share of any class of shares carrying voting rights by reason of the occurrence of any contingency that has occurred and is continuing;

- (e) “insider” or “insider of a company” means
- (i) any director or senior officer of a public company that has 15 or more shareholders, 2 or more persons who are the joint registered owners of one or more shares being counted as one shareholder,
 - (ii) any person who beneficially owns, directly or indirectly, equity shares of such a company carrying more than 10% of the voting rights attached to all equity shares of the company for the time being outstanding, but in computing the percentage of voting rights attached to equity shares owned by an underwriter there shall be excluded any equity shares that have been acquired by the person as underwriter in the course of distribution to the public of those shares, but the exclusion ceases to have effect on completion or cessation of the distribution to the public by the person, or
 - (iii) any person who exercises control or direction over the equity shares of such a company carrying more than 10% of the voting rights attached to all equity shares of the company for the time being outstanding;
- (f) “senior officer” means
- (i) the chairman or any vice-chairman of the board of directors, the president, any vice-president, the secretary, the treasurer or the general manager of a company or any other individual who performs functions for the company similar to those normally performed by an individual occupying any such office, and
 - (ii) each of the 5 highest paid employees of a company, including any individual referred to in clause (i);
- (g) “underwriter” has the same meaning as in the *Securities Act*.
- (2)** For the purposes of this Division,
- (a) every director or senior officer of a corporation that is itself an insider of a company shall be deemed to be an insider of that company,
 - (b) an individual shall be deemed to own beneficially capital securities beneficially owned by a company controlled by the individual or by an affiliate of that company,
 - (c) a company shall be deemed to own beneficially capital securities beneficially owned by its affiliates, and

(d) the acquisition or disposition by an insider of a put, call or other transferable option with respect to a capital security shall be deemed a change in the beneficial ownership of the capital security to which that transferable option relates.

(3) For the purpose of reporting under section 96 or 97, ownership shall be deemed to pass at the time that an offer to sell is accepted by the purchaser or the purchaser's agent or an offer to buy is accepted by the vendor or the vendor's agent.

RSA 2000 cC-21 s95;2002 cA-4.5 s25

Report of holdings by insider

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

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

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

RSA 1980 cC-20 s96;1988 c7 s4;1995 c28 s65

Insider report following take-over bid

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

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

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

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

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

RSA 1980 cC-20 s97;1981 cS-6.1 s198;1988 c7 s4;1995 c28 s65

Public inspection of reports

98 All reports filed with the Executive Director under section 96 shall be available for public inspection at the offices of the Commission during normal business hours of the Commission, and any person may make extracts from the reports.

RSA 1980 cC-20 s98;1988 c7 s4;1995 c28 s65

Penalties for failure to file reports

99(1) Every person who is required to file a report under section 96 or 97 and who fails to do so is guilty of an offence and is liable to a fine of not more than \$1000, and, if that person is a company, every director or officer of that company who authorized, permitted or acquiesced in the failure is also guilty of an offence and is liable to a like fine.

(2) Every person who files a report under section 96 or 97 that is false or misleading by reason of the misstatement or omission of a material fact is guilty of an offence and is liable to a fine of not more than \$1000, and, if that person is a company, every director or officer of that company who authorized, permitted or acquiesced

in the filing of the false or misleading report is also guilty of an offence and is liable to a like fine.

(3) No person is guilty of an offence under subsection (2) if the person did not know and with the exercise of reasonable diligence could not have known that the report was false or misleading by reason of the misstatement or omission of a material fact.

(4) No prosecution shall be brought under subsection (1) or (2) without the consent of the Executive Director.

(5) If it appears to the Executive Director that any person has failed to comply with section 96 or 97, the Executive Director may in his or her discretion apply to a judge of the Court designated by the Chief Justice of the Court for an order requiring that person to comply therewith.

(6) An appeal lies to the Court of Appeal from an order made under subsection (5).

RSA 1980 cC-20 s99;1988 c7 s4;1995 c28 s65

Liability of insiders for loss, etc.

100(1) Every insider of a company or associate or affiliate of that insider, who, in connection with a transaction relating to the capital securities of the company, makes use of any specific confidential information for the insider's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of those securities,

- (a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or ought reasonably to have been known to that person at the time of the transaction, and
- (b) is also accountable to the company for any direct benefit or advantage received or receivable by that insider, associate or affiliate, as the case may be, as a result of the transaction.

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

RSA 1980 cC-20 s100

Action against insider by company

101(1) On application by any person who was at the time of a transaction referred to in section 100(1) or is at the time of the application an owner of capital securities of the company, a judge of the Court designated by the Chief Justice of the Court may, if satisfied that

- (a) that person has reasonable grounds for believing that the company has a cause of action under section 100, and
- (b) either
 - (i) the company has refused or failed to commence an action under section 100 within 60 days after receipt of a written request from that person to do so, or
 - (ii) the company has failed to prosecute diligently an action commenced by it under section 100,

make an order, on any terms as to security for costs and otherwise that to the judge seem fit, requiring the Executive Director to commence or continue an action in the name of and on behalf of the company to enforce the liability created by section 100.

(2) The company and the Executive Director shall be given notice of any application under subsection (1) and has the right to appear and be heard thereon.

(3) Every order made under subsection (1) shall provide that the company shall co-operate fully with the Executive Director in the institution and prosecution of the action and shall make available to the Executive Director all books, records, documents and other material or information known to the company or reasonably ascertainable by the company relevant to the action.

(4) An appeal lies to the Court of Appeal from an order made under subsection (1).

RSA 1980 cC-20 s101;1988 c7 s4;1995 c28 s65

Regulations

102 The Lieutenant Governor in Council may make regulations

- (a) prescribing the form and content of the reports required to be filed under section 96 or 97;
- (b) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Division.

RSA 1980 cC-20 s102

Exemption from filing report

103(1) On the application of any interested person, the Commission may, if satisfied in the circumstances of the particular case that there is adequate justification for so doing, make an order on any terms and conditions that seem to the Commission just and expedient exempting, in whole or in part, a person from the requirements of section 96 or 97.

(2) Section 96 or 97 does not apply to a public company to which Part 9 applies.

(3) Sections 96, 97 and 100 do not apply to an insider, an offeror, or an insider or his or her associate or affiliate, respectively, where the company concerned is a reporting issuer as defined in the *Securities Act*.

RSA 1980 cC-20 s103;1983 c21 s3;1988 c7 s4;1995 c28 s65

Division 4 Dividends

Dividends when company insolvent

104(1) No dividend shall be declared

- (a) when the company is insolvent,
- (b) if the dividend renders the company insolvent, or
- (c) if the dividend will impair the capital of the company.

(2) In determining the solvency of the company for the purposes of this section no account shall be taken of any increase in the surplus or reserves of the company resulting merely from the writing-up of the value of the assets of the company, unless the writing-up was done more than 5 years before the date of the declaration of the dividend.

(3) If the directors of the company

- (a) declare and pay a dividend when the company is insolvent,
- (b) declare and pay a dividend that renders the company insolvent, or
- (c) declare and pay a dividend that impairs the capital of the company,

they are jointly and severally liable to the company and to its creditors for the debts of the company then existing or thereafter contracted until repayment of the dividends so declared and paid, to the extent that the dividends and interest have not been repaid to the company.

(4) If any director present, when the dividend is declared, forthwith requests the entry on the minutes of the board of the director's protest against it, or if any director then absent, within one week after the director becomes aware of its declaration and is able to do so, delivers to the president, secretary or other officer of the company a protest against it and within 8 days thereafter

delivers or mails by registered letter a duplicate copy of the protest to the Registrar, the director may thereby and not otherwise exonerate himself or herself from that liability.

RSA 1980 cC-20 s104

Shares as dividends

105 For the amount of any dividend that the directors may lawfully declare payable in money, the directors, if authorized to do so by the company's articles or by a special resolution, may

- (a) issue therefor shares of the company as fully paid, or
- (b) credit the amount of that dividend on the shares of the company already issued but not fully paid and the liability of the holders of those shares thereon shall be reduced by the amount of the dividend.

RSA 1980 cC-20 s105

Dividends of mining companies or companies with wasting assets

106(1) Notwithstanding section 104,

- (a) a company of which at least 75% in value of the assets are of a wasting character, or
- (b) a mining company that for the time being carries on as its principal business the business of operating producing mining properties owned or controlled by it,

may declare and pay dividends out of its funds that are derived from the operations of the company notwithstanding that the paid-up capital of the company may be thereby reduced or impaired, if the payment does not reduce the value of its remaining assets so that they will be insufficient to meet all the liabilities of the company then existing exclusive of its paid-up capital.

(2) If a dividend is declared in excess of the amount permitted by subsection (1), the directors are liable for the amount in excess of the amount permitted in the same manner and to the same extent as set out in section 104(3).

RSA 1980 cC-20 s106

Deductions from dividends

107 The directors may deduct from the dividends payable to any shareholder all sums of money due from the shareholder to the company on account of calls or otherwise.

RSA 1980 cC-20 s107

Division 5 Financial and Borrowing

Prospectuses

Prospectuses

108(1) Every prospectus, other than a preliminary prospectus, issued by or on behalf of a company shall be filed with the Registrar

- (a) within 15 days of the date on which the prospectus is accepted by the Executive Director pursuant to the *Securities Act*, or by the equivalent authority in another jurisdiction, or
- (b) if the prospectus is not required to be filed with the Executive Director or with an equivalent authority in another jurisdiction, within 15 days of the date of issue of the prospectus.

(2) If the prospectus is required to be filed with the Executive Director pursuant to the *Securities Act*, or the equivalent authority in another jurisdiction, the copy of the prospectus filed with the Registrar shall be certified by an officer of the company to be an exact copy of the prospectus filed with the Executive Director or other authority.

(3) The prospectus shall be dated and that date shall, unless the contrary is proved, be taken as the date of issue of the prospectus.

(4) Every company and person who defaults in complying with or contravenes any requirement of this section is guilty of an offence.

(5) This section applies to a prospectus issued in relation to an intended company or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of the company or in the organization of a company.

RSA 1980 cC-20 s108;1988 c7 s4;1995 c28 s65

Liability for statements in prospectus

109(1) In this section,

- (a) “expert” includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him or her;
- (b) “promoter” means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any

person by reason only of the person acting in a professional capacity for persons engaged in procuring the formation of the company.

(2) When a prospectus invites persons to subscribe for shares in or debentures of a company or to become members of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who is with the person's consent named in the prospectus as a director or as having agreed to become a director, either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, is liable to pay compensation to all persons who subscribe for any shares or debentures or apply for membership on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith,

(a) unless it is proved

- (i) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he or she had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures or admission to membership, as the case may be, believe, that the statement was true,
- (ii) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation, but the director, person named as director, promoter, or person who authorized the issue of the prospectus, is liable to pay compensation as aforesaid if it is proved that he or she had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it, and
- (iii) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document,

or

- (b) unless it is proved
- (i) that having consented to become a director of the company the person withdrew consent before the issue of the prospectus, and that it was issued without the person's authority or consent,
 - (ii) that the prospectus was issued without the person's knowledge or consent, and that on becoming aware of its issue the person forthwith gave reasonable public notice that it was issued without knowledge or consent, or
 - (iii) that after the issue of the prospectus and before allotment thereunder, the person, on becoming aware of any untrue statement therein, withdrew consent thereto and gave reasonable public notice of the withdrawal, and of the reason therefor.

(3) Every person to whom subsection (2)(b)(ii) or (iii) applies shall file with the Registrar a copy of the public notice given by the person, within 7 days from the date of the notice.

(4) If the prospectus contains the name of a person as a director of the company or as having agreed to become a director thereof and the person has not consented to become a director or has withdrawn consent before the issue of the prospectus and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, are liable to indemnify the person named as aforesaid against all damages, costs and expenses to which the person may be made liable by reason of the person's name having been inserted in the prospectus, or in defending himself or herself against any action or legal proceedings brought against him or her in respect thereof.

(5) Every person who by reason of his or her being a director or of being named as a director or of having agreed to become a director, or of having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

RSA 1980 cC-20 s109

Prospectus with application for shares

110(1) No person shall issue any form of application or subscription for a company's shares or debentures offered to the

public unless the form is issued with a prospectus filed under section 108 and complying with Part 8 of the *Securities Act*.

(2) This section does not apply when the form of application is issued

- (a) in connection with an invitation made in good faith to a person to enter into an underwriting agreement with respect to the shares or debentures,
- (b) in relation to the shares or debentures of a company not being offered to the public, or
- (c) to existing members or debenture-holders of the company whether or not an applicant for shares or debentures has the right to renounce in favour of other persons.

(3) A person who acts in contravention of this section is, without prejudice to any other liability, guilty of an offence.

RSA 1980 cC-20 s110;1981 cS-6.1 s198

Prospectus when offering shares

111(1) If a company allots or agrees to allot any shares or debentures of the company with a view to all or any of the shares or debentures being offered for sale to the public, and the whole consideration for those shares or debentures is not paid to the company at the date of the allotment or the offer for sale, whichever date is the earlier, any person who, by a prospectus issued by the person with respect to all or any of those shares or debentures, makes an offer thereof to the public, shall file with the Registrar a copy of the prospectus, signed and dated by the person and that date shall, unless the contrary be proved, be taken as the date of issue of the prospectus.

(2) The prospectus referred to in subsection (1) shall be filed with the Registrar within 7 days after its issue and before any copies thereof are circulated or distributed.

(3) For the purposes of this section

- (a) if an offer of shares or debentures or any of them for sale to the public is made within 6 months after the allotment or agreement to allot those shares or debentures was made, or
- (b) if the whole consideration to be received by the company in respect of the shares or debentures has not been received by the company at the date when the offer of the shares or debentures or any of them for sale to the public was made,

it is, unless the contrary be proved, evidence that the allotment of shares or debentures or the agreement to allot the shares or debentures was made with a view to the shares or debentures being offered for sale to the public.

(4) When a person making an offer for sale to which this section relates is a company or firm, it is sufficient for the purposes of this section if the prospectus is signed on behalf of the company or firm by an officer of the company or a partner of the firm authorized in either case to sign the prospectus.

(5) A copy of the prospectus shall be furnished to every member of the public to whom the offer of any shares or debentures to which the prospectus relates is made at the time the offer is made, and no subscription or application for any share or debenture shall be taken unless a copy of the prospectus has been so furnished.

(6) When a sub-underwriter offers all or any of the shares or debentures of a company to the public by a prospectus prepared or issued by a principal underwriter, the principal underwriter is primarily liable in respect of misstatements contained in the prospectus to any person accepting the offer made by the prospectus.

(7) A person who fails to comply with or who contravenes any of the requirements of this section is guilty of an offence.

(8) In this section,

- (a) “principal underwriter” means a person
 - (i) to whom a company makes an allotment or agrees to make an allotment of shares or debentures of the company with a view to all or any of the shares or debentures being offered for sale to the public, and
 - (ii) who sells or agrees to sell to any other person those shares or debentures with a view to all or any part of those shares or debentures being offered for sale to the public by that other person;
- (b) “sub-underwriter” means a person who purchases from a principal underwriter the shares or debentures of a company with a view to their sale to the public.

RSA 1980 cC-20 s111

Registration of Mortgages, Charges, etc.
112 to 117 Repealed 1981 cB-15 s284(5).

Limitation of time for issue of debentures

118 Unless the conditions of issue of the debentures or debenture stock otherwise provide, every company shall, within 2 months after the allotment of any of its debentures or debenture stock and within 2 months after the date of lodgment of a transfer of any of its debentures or debenture stock, complete and have ready for delivery the debentures and the certificates of all debenture stock allotted or transferred.

RSA 1980 cC-20 s118

Notice to Registrar where receiver appointed

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

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

1983 c21 s4

Preferential payments

120(1) Where either a receiver is appointed on behalf of the holder of any debentures of a company secured by a floating charge or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the floating charge, then, if the company is not at the time in course of being wound up, the debts that in every winding-up are, under the provisions of Part 10 relating to preferential payments, to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession, in priority to any claim for principal or interest in respect of the debentures.

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

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

1983 c21 s4

Receivers' periodical abstracts of receipts and payments

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

- (a) 6 months from the date of his or her appointment, and
- (b) every subsequent 6-month period,

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

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

- (a) within one month after he or she ceases to act as a receiver or manager pursuant to the appointment, file with the Registrar an abstract showing his or her receipts and payments during the period from the end of the 6-month period to which the last abstract under subsection (1) related up to the date of his or her so ceasing, and
- (b) on ceasing to act as a receiver or manager pursuant to the appointment, file a notice to that effect with the Registrar, and the Registrar shall enter the notice in the register of mortgages and charges.

(3) A receiver or manager who defaults in complying with the requirements of this section is guilty of an offence.

1983 c21 s4;1991 c21 s5

Order to make good default

122(1) If on an application to the Court by the liquidator of a company it appears to the Court that any receiver or manager of the property of the company, who has been appointed under the powers contained in any instrument, has, after being required at any time by the liquidator to do so, failed to render proper accounts of his or her receipts and payments and to pay over to the liquidator the amount properly payable to the liquidator, the Court may make an order directing the receiver or manager to make good the default within the time specified in the order.

(2) On an application to the Court by the liquidator of a company, the Court may by order fix the amount to be paid by way of remuneration to any person who, under the powers contained in any instrument, has been appointed as receiver or manager of the property of the company, and may from time to time, on an

application made either by the liquidator or by the receiver or manager, vary or amend any order so made.

RSA 1980 cC-20 s122

Debentures and Floating Charges

Validity of perpetual debentures

123 A condition contained in any debentures or in any deed for securing any debentures, is not, notwithstanding any rule of equity to the contrary, invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

RSA 1980 cC-20 s123

Power to issue redeemed debentures

124(1) When a company has redeemed any debentures previously issued, the company, unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company, or unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures be cancelled, has and shall be deemed always to have had power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place, and on such a reissue the person entitled to the debentures has, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(2) When a company has power to reissue debentures that have been redeemed, particulars with respect to the debentures that may be so reissued shall be included in the balance sheet of the company.

(3) If with the object of keeping debentures alive for the purpose of reissue they have been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purposes of this section.

(4) If a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debt while the debentures remained so deposited.

(5) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by a company shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued.

(6) Nothing in this section prejudices any power reserved to a company by its debentures or the securities for them to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished.

RSA 1980 cC-20 s124

Specific performance

125 A contract with a company to take up and pay for any debenture of the company may be enforced by an order for specific performance.

RSA 1980 cC-20 s125

Conversion into fully paid-up shares

126(1) A company limited by shares may issue bonds, debentures, debenture stock, notes, obligations or fully paid preference shares that provide for the conversion thereof at the option of the holder into fully paid-up common or ordinary shares.

(2) When any of those bonds, debentures, debenture stock, notes or obligations were issued at a discount then, notwithstanding the amount of the discount, all common or ordinary shares issued on the conversion of any of those bonds, debentures, debenture stock, notes or obligations shall be deemed to be fully paid-up common or ordinary shares.

RSA 1980 cC-20 s126

Reduction of Paid-up Capital by Return of Accumulated Profits

Return of accumulated profits

127(1) When a company having a share capital has accumulated a sum of undivided profits that, with the sanction of the shareholders, may be distributed among the shareholders in the form of a dividend or bonus, it may by special resolution return the sum or any part thereof to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount.

(2) The resolution does not take effect until a memorandum, showing the particulars required by this Act in the case of a reduction of share capital, has been filed with the Registrar, but the other provisions of this Act with respect to reduction of share capital do not apply to a reduction of paid-up capital under this section.

(3) On a reduction of paid-up capital pursuant to this section, any shareholder, or any one or more of several joint shareholders, may, within one month after the passing of the resolution for the reduction, require the company to retain, and the company shall retain accordingly, the whole of the money actually paid on the

shares held by the shareholder either alone or jointly with any other person and that in consequence of the reduction would otherwise be returned to the shareholder or them, and thereupon those shares shall, as regards the payment of dividend, be deemed to be paid up to the same extent only as the shares on which payment has been accepted by the shareholders in reduction of paid-up capital, and the company shall invest and keep invested the money so retained in those securities authorized for investment by trustees that the company may determine, and on the money so invested, or on so much thereof as from time to time exceeds the amount of calls subsequently made on the shares in respect of which it has been retained, the company shall pay the interest received from time to time on the securities.

(4) The amount retained and invested shall be held to represent the future calls that may be made to replace the share capital so reduced on those shares, whether the amount obtained on sale of the whole, or that proportion thereof that represents the amount of any call when made, produces more or less than the amount of the call.

(5) On a reduction of paid-up share capital pursuant to this section, the powers vested in the directors of making calls on shareholders in respect of the amount unpaid on their shares extends to the amount of the unpaid share capital as augmented by the reduction.

(6) After any reduction of share capital under this section the company shall specify, in the annual list of members to be filed with the Registrar, the amount retained at the request of any of the shareholders pursuant to this section, and shall specify in the statements of account laid before any general meeting of the company the amount of undivided profits returned in reduction of paid-up share capital under this section.

RSA 1980 cC-20 s127

Payment of Interest out of Capital

Payment of interest out of capital

128(1) If any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or buildings or the provision of any plant that cannot be made profitable for a long time, the company may pay interest, on so much of that share capital as is for the time being paid up, for the period and subject to the conditions and restrictions mentioned in this section, and may charge it to capital as part of the cost of construction of the work or building or the provision of the plant.

(2) No such payment shall be made unless it is authorized by the articles or by special resolution.

(3) No such payment, whether authorized by the articles or by special resolution, shall be made without the previous sanction of the Lieutenant Governor in Council, who before sanctioning the payment may, at the expense of the company, appoint a person to inquire and report to the Lieutenant Governor in Council as to the circumstances of the case, and may before making the appointment require the company to give security for the payment of the costs of the inquiry.

(4) The payment shall be made only for a period that may be determined by the Lieutenant Governor in Council and that period shall in no case extend beyond the close of the half-year next after the half-year during which the works or buildings have been actually completed or the plant provided.

(5) The rate of interest shall in no case exceed 7% or a lower rate that may be fixed by the Lieutenant Governor in Council.

(6) The payment of the interest does not operate as a reduction of the amount paid up on the shares in respect of which it is paid.

(7) The accounts of the company shall show the share capital on which, and the rate at which, interest has been paid out of capital during the period to which the accounts relate.

RSA 1980 cC-20 s128

Commissions and Discounts

Commissions and brokerage

129(1) A company may pay a commission to any person in consideration of the person subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission is authorized by the memorandum or articles, and the commission paid or agreed to be paid does not exceed the amount or rate so authorized, and, in the case of a public company, if the amount or rate per cent of the commission paid or agreed to be paid is,

- (a) in the case of shares offered to the public for subscription, disclosed in the prospectus, or
- (b) in the case of shares not offered to the public for subscription, disclosed in any circular or notice, not being a prospectus, inviting subscriptions for the shares.

(2) Except as provided in subsection (1), no company shall apply any of its shares or capital money either directly or indirectly in

payment of any commission, discount, or allowance to any person in consideration of subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or capital money are so applied by being added to the purchase-money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money is paid out of the nominal purchase-money or contract price, or otherwise.

(3) Nothing in this section affects the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay, and a vendor to, promoter of, or other person who receives payment in money or shares from, a company has, and shall be deemed always to have had, power to apply any part of the money or shares so received in payment of any commission, the payment of which, if made directly by the company, would have been legal under this section.

RSA 1980 cC-20 s129

Amount of commissions to be stated in balance sheet

130 If a company has paid any sums by way of commission in respect of any shares or debentures or allowed any sums by way of discount in respect of any debentures, the total amount so paid or allowed, or so much thereof as has not been written off, shall be stated in every balance sheet of the company until the whole amount thereof has been written off.

RSA 1980 cC-20 s130

Division 6 Auditors

Appointment of auditors

131(1) The directors of a company may appoint the first auditors of the company who shall hold office until the close of the first annual meeting, unless previously removed under subsection (4).

(2) The company at each annual meeting shall appoint one or more auditors to hold office until the close of the next annual meeting and, if any appointment is not so made, the auditor in office shall continue in office until a successor is appointed.

(3) The directors may fill any casual vacancy in the office of auditor, but while the vacancy continues the surviving or continuing auditor, if any, may act.

(4) The shareholders, by special resolution, may remove any auditor before the expiration of the auditor's term of office, and

shall by a majority of the votes cast at the meeting at which the resolution is passed appoint another auditor in his or her stead for the remainder of his or her term.

(5) The remuneration of an auditor appointed by the shareholders shall be fixed by the shareholders or by the directors if the articles so provide, and the remuneration of an auditor appointed by the directors shall be fixed by the directors.

(6) If for any reason no auditor is appointed, the Court may, on the application of any shareholder, appoint one or more auditors to hold office until the close of the next annual meeting and fix the remuneration to be paid by the company for their services.

RSA 1980 cC-20 s131

Eligibility for appointment as auditor

132(1) Except as provided in subsection (2), no person shall be appointed as auditor of a company who is a director, officer or employee of that company or an affiliated company or who is a partner, employer or employee of any such director, officer or employee.

(2) On the unanimous vote of the shareholders of a private company present or represented at the meeting at which the auditor is appointed, a director, officer or employee of that company or an affiliated company or a partner, employer or employee of the director, officer or employee may be appointed as auditor of that company, if it is not a subsidiary company of a public company incorporated in Alberta or elsewhere in Canada.

(3) A person appointed as auditor under subsection (2) shall indicate in the report to the shareholders on the annual financial statement of the company that the person is a director, officer or employee of the company or a partner, employer or employee of a director, officer or employee of the company.

RSA 1980 cC-20 s132

Auditor's report to shareholders

133(1) The auditor shall make such examination as will enable the auditor to report to the shareholders as required under subsection (2).

(2) The auditor shall make a report to the shareholders on the financial statement to be laid before the company at any annual meeting during the auditor's term of office and shall state in the auditor's report whether in the auditor's opinion the financial statement referred to therein presents fairly the financial position of the company and the results of its operations for the period under

review in accordance with generally accepted accounting principles.

(3) The auditor in the auditor's report shall make appropriate statements in any case where

- (a) the financial statement of the company is not in agreement with the accounting records,
- (b) the financial statement of the company is not in accordance with the requirements of this Act,
- (c) the auditor has not received all the information and explanations that the auditor has required, or
- (d) proper accounting records have not been kept, so far as appears from the auditor's examination.

(4) The auditor of a company has right of access at all times to all records, documents, books, accounts and vouchers of the company and is entitled to require from the directors and officers of the company any information and explanation that in the auditor's opinion may be necessary to enable the auditor to report as required by subsection (2).

(5) The auditor of a company is entitled to attend any meeting of shareholders of the company at which any accounts that have been examined or reported on by the auditor are to be laid before the shareholders for the purpose of making any statement or explanation the auditor desires with respect to the accounts.

RSA 1980 cC-20 s133;1995 c23 s8

Exemption from audit requirements

134(1) Subject to subsection (2), when in a financial year all the shareholders of a company that

- (a) is not offering its securities to the public,
- (b) has 5 or fewer shareholders, and
- (c) has assets not exceeding \$500 000 and sales and gross operating revenues not exceeding \$1 000 000, as shown on the financial statement of the company for the preceding year,

consent in writing, the company is exempt from sections 131 to 133 in respect of the year in which the consent is given.

(2) Subsection (1) does not apply to a subsidiary company unless its holding company is exempted under subsection (1) at the time the consent of the shareholders is given.

RSA 1980 cC-20 s134

Division 7 Accounting Records and Financial Statements

Books of account and accounting records

135(1) Every company shall cause to be kept proper books of account and accounting records in respect of all financial and other transactions of the company and, without limiting the generality of the foregoing, records of

- (a) all sums of money received and disbursed by the company and the matters in respect of which receipt and disbursement take place,
- (b) all sales and purchases by the company,
- (c) all assets and liabilities of the company, and
- (d) all other transactions affecting the financial position of the company.

(2) The books of account and accounting records mentioned in subsection (1) shall be admitted in evidence before and after dissolution of the company as proof, in the absence of evidence to the contrary, of all facts purporting to be stated therein.

(3) Every company shall cause the books of account and accounting records mentioned in subsection (1)

- (a) to be opened for inspection by any director during the normal business hours of the company, and
- (b) except as provided in subsections (4) and (5), to be kept at the registered office of the company.

(4) Any company may keep at any place where it carries on business that part of the accounting records that relates to the operations and assets and liabilities thereof or to the business of the company carried on or supervised or accounted for at that place, but the company shall keep at the registered office of the company or some other place authorized under subsection (5) those records that will enable the directors to ascertain quarterly with reasonable accuracy the financial position of the company.

(5) A company may determine by resolution of the directors

- (a) that books of account and accounting records required to be kept pursuant to this section be kept at a place in Alberta other than the registered office of the company, and
 - (b) the place in Alberta where the books of account or accounting records shall be kept.
- (6) A copy of the resolution of the directors under subsection (5) shall be filed with the Registrar within 15 days of its date.

RSA 1980 cC-20 s135

Financial statements at annual meeting

136(1) The directors shall lay before each annual meeting of shareholders,

- (a) in the case of a private company, a financial statement for the period that commenced on the date of incorporation and ended not more than 6 months before the annual meeting or, if the company has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than 6 months before the annual meeting, as the case may be, made up of
 - (i) a statement of profit and loss for that period,
 - (ii) a statement of surplus for that period, and
 - (iii) a balance sheet as at the end of that period,
- (b) in the case of a public company, a comparative financial statement relating separately to
 - (i) the period that commenced on the date of incorporation and ended not more than 6 months before the annual meeting or, if the company has completed a financial year, that commenced immediately after the end of the last completed financial year and ended not more than 6 months before the annual meeting, as the case may be, and
 - (ii) the period covered by the financial year next preceding that latest completed financial year, if any,and made up of
 - (iii) a statement of profit and loss for each period,
 - (iv) a statement of surplus for each period,

- (v) a statement of source and application of funds for each period, and
 - (vi) a balance sheet as at the end of each period,
 - (c) the report of the auditor to the shareholders, and
 - (d) any further information respecting the financial position of the company that the articles of the company require.
- (2) It is not necessary to designate the statements referred to in subsection (1) as the statement of profit and loss, statement of surplus, statement of source and application of funds, and balance sheet.
- (3) The report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection by any shareholder.
- (4) Notwithstanding subsection (1)(b), the financial statement referred to in that clause may relate only to the period that ended not more than 6 months before the annual meeting if the reason for the omission of the statement in respect of the period covered by the previous financial statement is set out in the financial statement to be laid before the meeting or by way of note thereto.
- (5) Notwithstanding subsection (1)(b)(v), the statement of source and application of funds may be omitted if the reason for the omission is set out in the financial statement or by way of note thereto.

RSA 1980 cC-20 s136

Statement of profit and loss

137(1) The statement of profit and loss to be laid before an annual meeting shall be drawn up so as to present fairly the results of the operations of the company for the period covered by the statement and, in the case of a public company, so as to distinguish severally at least the following:

- (a) sales or gross operating revenue;
- (b) the operating profit or loss before including or providing for other items of income or expense that are required to be shown separately;
- (c) income from investments in subsidiaries whose financial statements are not consolidated with those of the company;
- (d) income from investments in affiliated companies other than subsidiaries;

- (e) income from other investments;
- (f) non-recurring profits and losses of significant amount including profits or losses on the disposal of capital assets and other items of a special nature to the extent that they are not shown separately in the statement of earned surplus;
- (g) provision for depreciation or obsolescence or depletion;
- (h) amounts written off for goodwill or amortization of any other intangible assets to the extent that they are not shown separately in the statement of earned surplus;
- (i) interest on indebtedness initially incurred for a term of more than one year, including amortization of debt discount or premium and expense;
- (j) taxes on income imposed by any taxing authority,

and shall show the net profit or loss for the financial period.

(2) Notwithstanding subsection (1), items of the natures described in subsection (1)(g) and (h) may be shown by way of note to the statement of profit and loss.

(3) A public company may apply to a judge of the Court designated by the Chief Justice of the Court for an order permitting sales or gross operating revenue referred to in subsection (1)(a) or section 148(1)(b)(i) to be omitted from the statement of profit and loss or the interim financial statement, as the case may be, and the judge may, on any terms and conditions that the judge may impose, permit the omission where the judge is satisfied that in the circumstances the disclosure of that information would be unduly detrimental to the interests of the company.

(4) The applicant shall give the Executive Director notice of an application under subsection (3) and the Executive Director has the right to appear and be heard thereon.

(5) An appeal lies to the Court of Appeal from an order made under subsection (3).

RSA 1980 cC-20 s137;1988 c7 s4;1995 c28 s65

Statement of surplus

138(1) The statement of surplus shall be drawn up so as to present fairly the transactions reflected in the statement and shall show separately a statement of contributed surplus and a statement of earned surplus.

(2) In the case of a public company, the statement of contributed surplus shall be drawn up so as to include and distinguish the following items:

- (a) the balance of that surplus at the end of the preceding financial period;
- (b) the additions to and deductions from that surplus during the financial period, including
 - (i) the amount of surplus arising from the issue of shares or the reorganization of the company's issued capital, including inter alia,
 - (A) the amount of premiums received on the issue of shares at a premium, and
 - (B) the amount of surplus realized on the purchase for cancellation of shares,
 - and
 - (ii) donations of cash or other property by shareholders;
- (c) the balance of that surplus at the end of the financial period.

(3) In the case of a public company, the statement of earned surplus shall be drawn up so as to distinguish at least the following items:

- (a) the balance of that surplus at the end of the preceding financial period;
- (b) the additions to and deductions from that surplus during the financial period and without restricting the generality of the foregoing at least the following:
 - (i) the amount of the net profit or loss for the financial period,
 - (ii) the amount of dividends declared on each class of shares, and
 - (iii) the amount transferred to or from reserves;
- (c) the balance of that surplus at the end of the financial period.

RSA 1980 cC-20 s138

Statement of source and application of funds

139 The statement of source and application of funds referred to in section 136(1)(b)(v) and section 148(1)(a) shall be drawn up so as to present fairly the information shown therein for the period, and shall show separately at least

- (a) funds derived from
 - (i) current operations,
 - (ii) sale of non-current assets, segregating investments, fixed assets and intangible assets,
 - (iii) issue of securities or other indebtedness maturing more than one year after issue, and
 - (iv) issue of shares,and
- (b) funds applied to
 - (i) purchase of non-current assets, segregating investments, fixed assets and intangible assets,
 - (ii) redemption or other retirement of securities or repayment of other indebtedness maturing more than one year after issue,
 - (iii) redemption or other retirement of shares, and
 - (iv) payment of dividends.

RSA 1980 cC-20 s139

Balance sheet

140(1) The balance sheet to be laid before an annual meeting shall be drawn up so as to present fairly the financial position of the company as at the date to which it is made up and, in the case of a public company, so as to distinguish severally at least the following:

- (a) cash;
- (b) debts owing to the company from its directors, officers or shareholders, except debts of reasonable amount arising in the ordinary course of its business that are not overdue having regard to its ordinary terms of credit;

- (c) debts owing to the company, whether on account of a loan or otherwise, from subsidiaries whose financial statements are not consolidated with those of the company;
- (d) debts owing to the company, whether on account of a loan or otherwise, from affiliated companies other than subsidiaries;
- (e) other debts owing to the company, segregating those that arose otherwise than in the ordinary course of its business;
- (f) inventory, stating the basis of valuation;
- (g) shares, bonds, debentures and other investments owned by the company, except those referred to in clauses (h) and (i), stating their nature and the basis of their valuation and showing separately those that are marketable with a notation of their market value;
- (h) shares or securities of subsidiaries whose financial statements are not consolidated with those of the company stating the basis of valuation;
- (i) shares or securities of affiliated companies other than subsidiaries, stating the basis of valuation;
- (j) land, buildings, and plant and equipment, stating the basis of valuation, whether cost or otherwise, and, if valued on the basis of an appraisal, the date of appraisal, the name of the appraiser, the basis of the appraisal value and, if the appraisal took place within 5 years preceding the date to which the balance sheet is made up, the disposition in the accounts of the company of any amounts added to or deducted from those assets on appraisal and also the amount or amounts accumulated in respect of depreciation, obsolescence and depletion;
- (k) there shall be stated under separate headings, insofar as they are not written off,
 - (i) expenditures on account of future business,
 - (ii) any expense incurred in connection with any issue of shares,
 - (iii) any expense incurred in connection with any issue of securities, including any discount thereon, and
 - (iv) any one or more of the following:

- (A) goodwill,
- (B) franchises,
- (C) patents,
- (D) copyrights,
- (E) trade marks, and
- (F) other intangible assets,

and the amount, if any, by which the value of any such assets has been written up after June 30, 1967;

- (l) the aggregate amount of any outstanding loans under section 14(2)(c) and (d);
- (m) bank loans and overdrafts;
- (n) debts owing by the company on loans from its directors, officers or shareholders;
- (o) debts owing by the company to subsidiaries whose financial statements are not consolidated with those of the company whether on account of a loan or otherwise;
- (p) debts owing by the company to affiliated companies other than subsidiaries whether on account of a loan or otherwise;
- (q) other debts owing by the company, segregating those that arose otherwise than in the ordinary course of its business;
- (r) liability for taxes, including the estimated liability for taxes in respect of the income of the period covered by the statement of profit and loss;
- (s) dividends declared but not paid;
- (t) deferred income;
- (u) securities issued by the company, stating the interest rate, the maturity date, the amount outstanding and the existence of sinking fund, redemption requirements and conversion rights, if any;
- (v) the authorized capital, giving the number of each class of shares and a brief description of each class, and indicating therein any class of shares that is redeemable and the redemption price thereof;

- (w) the issued capital, giving the number of shares of each class issued and outstanding and the amount received therefor that is attributable to capital, and showing
 - (i) the number of shares of each class issued since the date of the last balance sheet and the value attributed thereto, distinguishing shares issued for cash, shares issued for services and shares issued for other consideration, and
 - (ii) if any shares have not been fully paid,
 - (A) the number of shares in respect of which calls have not been made and the aggregate amount that has not been called, and
 - (B) the number of shares in respect of which calls have been made and not paid and the aggregate amount that has been called and not paid;
- (x) contributed surplus;
- (y) earned surplus;
- (z) reserves, showing the amounts added thereto and the amounts deducted therefrom during the financial period.

(2) Explanatory information or particulars of any item mentioned in subsection (1) may be shown by way of note to the balance sheet.

RSA 1980 cC-20 s140

Notes to financial statements

141(1) There shall be stated by way of note to the financial statement of every company

- (a) particulars of any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of any of the statements with any of those for the preceding period, and
- (b) the effect, if material, of any such change on the profit or loss for the period.

(2) For the purpose of subsection (1), a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period, even though it did not have a material effect on the profit or loss for the period.

- (3) When applicable in the case of a public company, the following matters shall be referred to in the financial statement or by way of note thereto:
- (a) the basis of conversion of amounts from currencies other than the currency in which the financial statement is expressed;
 - (b) foreign currency restrictions that affect the assets of the company;
 - (c) contractual obligations that will require abnormal expenditures in relation to the company's normal business requirements or financial position or that are likely to involve losses not provided for in the accounts;
 - (d) material contractual obligations in respect of long-term leases, including, in the year in which the transaction was effected, the principal details of any sale and lease transaction;
 - (e) contingent liabilities, stating their nature and, where practicable, the approximate amounts involved;
 - (f) any liability secured otherwise than by operation of law on any assets of the company, stating the liability so secured;
 - (g) any default of the company in principal, interest, sinking fund or redemption provisions with respect to any issue of its securities or credit agreements;
 - (h) the gross amount of arrears of dividends on any class of shares and the date to which those dividends were last paid;
 - (i) if a company has contracted to issue shares or has given an option to purchase shares, the class and number of shares affected, the price and the date for issue of the shares or exercise of the option;
 - (j) the aggregate direct remuneration paid or payable by the company and its subsidiaries whose financial statements are consolidated with those of the company to the directors, and the senior officers, as defined by section 95(1), of the company and, as a separate amount, the aggregate direct remuneration paid or payable to those directors and senior officers by the subsidiaries of the company whose financial statements are not consolidated with those of the company;
 - (k) in the case of a holding company, the aggregate of any shares in, and the aggregate of any securities of, the holding

company held by subsidiary companies whose financial statements are not consolidated with those of the holding company;

- (l) the amount of any loans by the company, or by a subsidiary company, otherwise than in the ordinary course of business, during the company's financial period, to the directors or officers of the company;
- (m) any restriction by the memorandum or articles of the company or by contract on the payment of dividends that is significant in the light of the company's financial position;
- (n) any event or transaction, other than one in the normal course of business operations, between the date to which the financial statement is made up and the date of the auditor's report thereon that materially affects the financial statement;
- (o) the amount of any obligation for pension benefits arising from service prior to the date of the balance sheet, whether or not that obligation has been provided for in the accounts of the company, the manner in which the company proposes to satisfy the obligation and the basis on which it has charged or proposes to charge the related costs against operations.

(4) A note to a financial statement is a part of it.

RSA 1980 cC-20 s141

Insignificant matters

142 Notwithstanding sections 137 to 141, it is not necessary to state in a financial statement any matter that in all the circumstances is of relative insignificance.

RSA 1980 cC-20 s142

Consolidated financial statement

143(1) A company, in this section referred to as "the holding company", may include in the financial statement to be submitted at an annual meeting the assets and liabilities and income and expense of any one or more of its subsidiaries, making due provision for minority interests, if any, and indicating in the financial statement that it is presented in consolidated form.

(2) If the assets and liabilities and income and expense of any one or more subsidiaries of the holding company are not so included in the financial statement of the holding company,

- (a) the financial statement of the holding company shall include a statement setting forth

- (i) the reason why the assets and liabilities and income and expense of the subsidiary or subsidiaries are not included in the financial statement of the holding company,
 - (ii) if there is only one such subsidiary, the amount of the holding company's proportion of the profit or loss of that subsidiary for the financial period coinciding with or ending in the financial period of the holding company, or, if there is more than one such subsidiary, the amount of the holding company's proportion of the aggregate profits less losses, or losses less profits, of all such subsidiaries for the respective financial periods coinciding with or ending in the financial period of the holding company,
 - (iii) the amount included as income from such subsidiary or subsidiaries in the statement of profit and loss of the holding company and the amount included therein as a provision for the loss or losses of such subsidiary or subsidiaries,
 - (iv) if there is only one such subsidiary, the amount of the holding company's proportion of the undistributed profits of that subsidiary earned since the acquisition of the shares of that subsidiary by the holding company to the extent that that amount has not been taken into the accounts of the holding company, or, if there is more than one such subsidiary, the amount of the holding company's proportion of the aggregate undistributed profits of all such subsidiaries earned since the acquisition of their shares by the holding company less its proportion of the losses, if any, suffered by any such subsidiary since the acquisition of its shares to the extent that that amount has not been taken into the accounts of the holding company, and
 - (v) any qualifications contained in the report of the auditor of any such subsidiary on its financial statement for the financial period ending as aforesaid, and any note or reference contained in that financial statement to call attention to a matter that, apart from the note or reference, would properly have been referred to in such a qualification, insofar as the matter that is the subject of the qualification or note is not provided for by the company's own financial statement and is material from the point of view of its shareholders,
- (b) if for any reason the directors of the holding company are unable to obtain the information necessary for the

preparation of the statement that is to be included in the financial statement of the holding company, the directors who sign the financial statement shall so report in writing and their report shall be included in the financial statement instead of the statement,

- (c) true copies of the latest financial statement of such subsidiary or subsidiaries shall be kept on hand by the holding company at its registered office and shall be open to inspection by the shareholders of the holding company on request during the normal business hours of the holding company, but the directors of the holding company may by resolution refuse the right of that inspection if the inspection is not in the public interest or would prejudice the holding company or such subsidiary or subsidiaries, which resolution may, on the application of any such shareholder to the Court, be set aside by the Court, and
- (d) if, in the opinion of the auditor of the holding company, adequate provision has not been made in the financial statement of the holding company for the holding company's proportion
 - (i) where there is only one such subsidiary, of the loss of that subsidiary suffered since acquisition of its shares by the holding company, or
 - (ii) if there is more than one such subsidiary, of the aggregate losses suffered by those subsidiaries since acquisition of their shares by the holding company in excess of its proportion of the undistributed profits, if any, earned by any of those subsidiaries since its acquisition,

the auditor shall state in the auditor's report the additional amount that in the auditor's opinion is necessary to make full provision therefor.

RSA 1980 cC-20 s143

Reserves

144 In a financial statement, the term "reserve" shall be used to describe only

- (a) amounts appropriated from earned surplus at the discretion of management for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred,

- (b) amounts appropriated from earned surplus pursuant to the instrument of incorporation, instrument amending the instrument of incorporation or resolution of the company for some purpose other than to meet a liability or contingency known or admitted or a commitment made as at the statement date or a decline in value of an asset that has already occurred, and
- (c) amounts appropriated from earned surplus in accordance with the terms of a contract and that can be restored to the earned surplus when the conditions of the contract are fulfilled.

RSA 1980 cC-20 s144

Approval of financial statement

145(1) The financial statement shall be approved by the board of directors, such approval to be evidenced by the signature at the foot of the balance sheet by 2 of the directors authorized to sign.

(2) The auditor's report shall be attached to the financial statement or there shall be inserted at the foot of the balance sheet a reference to the report.

RSA 1980 cC-20 s145

Publication of financial statement

146 A company that issues, circulates or publishes a copy of the financial statement

- (a) the original of which has not been approved by its board of directors,
- (b) without having the balance sheet signed by 2 directors, or
- (c) without accompanying the statement with the auditor's report,

is guilty of an offence.

RSA 1980 cC-20 s146

Mailing financial statements to shareholders

147(1) A public company shall, 10 days or more before the date of the annual meeting, send by prepaid mail to each shareholder at the shareholder's last address as shown on the books of the company a copy of the financial statement and a copy of the auditor's report.

(2) A shareholder of a private company is entitled to be furnished by the company on demand with a copy of the documents mentioned in subsection (1).

(3) A company that fails to comply with subsection (1) or (2) is guilty of an offence and is liable to a fine of not more than \$200, and every director or officer of the company who authorizes, permits or acquiesces in any such failure is guilty of an offence and is liable to a like fine.

RSA 1980 cC-20 s147

Comparative interim financial statements

148(1) A public company shall send to each shareholder a copy of a comparative interim financial statement for the 6-month period that commenced on the date of the incorporation or, if the company has completed a financial year, for the 6-month period that commenced immediately after the end of the last completed financial year and for the comparable 6-month period, if any, in the 12 months immediately preceding the commencement of the 6-month period in respect of which the interim financial statement is issued, made up of

- (a) a statement of source and application of funds for each period that complies with section 139, and
- (b) sufficient relevant financial information in summary form to present fairly the results of the operations of the company for each period, including
 - (i) a statement of sales or gross operating revenue,
 - (ii) extraordinary items of income or expense,
 - (iii) net income before taxes on income imposed by any taxing authority,
 - (iv) taxes on income imposed by any taxing authority, and
 - (v) net profit or loss.

(2) The interim financial statement required by subsection (1) may omit either or both of

- (a) the information relating to the comparable period, and
- (b) the statement of source and application of funds,

if the reason for the omission or omissions, as the case may be, is set out in the interim financial statement or by way of note thereto.

(3) There shall be stated by way of note to the interim financial statement required by subsection (1) particulars of

- (a) any change in accounting principle or practice or in the method of applying any accounting principle or practice made during the period covered that affects the comparability of that statement with the statement for the preceding period or with the interim financial statement for a part of the preceding period, and
- (b) the effect, if material, of any such change on the profit or loss for the period covered by the interim financial statement.

(4) For the purpose of subsection (3), a change in accounting principle or practice or in the method of applying any accounting principle or practice affects the comparability of a statement with that for the preceding period or part thereof, even though it did not have a material effect on the profit or loss for the period covered by the interim financial statement.

(5) The interim financial statement required by subsection (1) shall be sent by prepaid mail to each shareholder, within 60 days of the date to which it is made up, at the shareholder's last address as shown on the books of the company.

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

(7) This section does not apply to a public company to which Part 9 applies.

RSA 1980 cC-20 s148

Division 8 General Meetings

Annual general meeting

149(1) Subject to this section, the first annual general meeting of every company shall be held within 16 months from the date on which the company is entitled to commence business, and thereafter a general meeting of the company shall be held once at least in every calendar year and not more than 16 months after the holding of the last preceding general meeting.

(2) The Registrar may relieve a company from the holding of any annual meeting on its filing with the Registrar, not less than one month before the time for holding the meeting, a statutory declaration of a director or officer, stating

- (a) that the declarant is fully conversant with the affairs of the company,
- (b) that the company has not engaged in active business, except the business that is described in the declaration, since the date of its incorporation or of its last annual summary, or of the last declaration filed under this section, as the case may be,
- (c) whether any request for a general meeting has been made by any member since that date as aforesaid, and, if so, the names of all those members,
- (d) the full address of the registered office,
- (e) the full names, addresses, and occupations of the directors,
- (f) whether any shares have been transferred or other changes in membership have taken place since that date as aforesaid, and, if so, particulars thereof,
- (g) particulars of any shares allotted or members admitted since such date as aforesaid, and
- (h) any other information the Registrar requires.

(3) On an application by the company to the Court made either ex parte or on such notice to such persons as the Court may direct, the Court, if satisfied that in the circumstances it is in the best interests of the company to do so, may by order direct that the next annual meeting of the company be held on such date, within 6 months after the expiration of 16 months from the date the last annual meeting of the company was held, as the Court may determine.

(4) Subject to subsection (1), every annual general meeting of a company shall be held at the time and place the articles provide, either directly or by empowering the directors or the shareholders in general meeting to fix the time and place, and in default of any such provision, or if no meeting is held in accordance with that provision, every annual general meeting shall be held at the place where the registered office of the company is situated, in the month following that in which the anniversary of the company's becoming entitled to commence business occurs.

(5) Every company that defaults in complying with the requirements of this section and that has not been relieved by the Registrar is guilty of an offence.

(6) When default has been made in holding a meeting of the company in accordance with this section, the Court may, on the

application of any member of the company, call or direct the calling of a general meeting of the company.

RSA 2000 cC-21 s149;2004 c29 s3

General meeting

150(1) Notwithstanding anything in the articles, the directors of a company shall, on the requisition of members of the company holding at the date of the deposit of the requisition not less than 10% of such of the issued capital of the company as at the date of the deposit carries the right of voting at general meetings of the company, or, in the case of a company not having a share capital, of members of the company representing not less than 10% of the total voting rights of all the members having at that date the right to vote at general meetings of the company, forthwith proceed to convene an extraordinary general meeting of the company.

(2) The requisition must state the objects of the meeting, and be signed by the requisitionists and deposited at the registered office of the company, and may consist of several documents in like form, or to the like effect, each signed by one or more requisitionists.

(3) If the directors do not proceed to cause a meeting to be held within 21 days from the date of the requisition being so deposited, the requisitionists, or any of them, representing more than 50% of the total voting rights of all of them, may themselves convene the meeting, but any meeting so convened shall not be held after 3 months from the date of the deposit.

(4) For the purposes of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice thereof as is required in the case of a special resolution.

(5) Any meeting convened under subsection (3) shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors.

(6) Any reasonable expenses incurred by the requisitionists by reason of the failure of the directors duly to convene a meeting shall be repaid to the requisitionists by the company, and any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the directors as were in default.

RSA 1980 cC-20 s150

Other meetings

151(1) The following provisions have effect insofar as the articles of the company do not make other provision in that behalf:

- (a) a meeting of a company, other than a meeting for the passing of a special resolution, may be called by 7 days' notice in writing;
- (b) a notice of a meeting of a company shall be served on every member of the company in the manner in which notices are required to be served by Table A in the Schedule, and for the purpose of this provision, the expression "Table A" means the table for the time being in force;
- (c) 2 or more members holding not less than 10% of the issued share capital or, if the company has not a share capital, not less than 5% in number of the members of the company, may call a meeting;
- (d) in the case of a private company, 2 members, and in the case of any other company, 3 members, personally present, constitute a quorum;
- (e) any member elected by the members present at a meeting may be chairman thereof;
- (f) in the case of a company originally having a share capital, every member has one vote in respect of each share or each \$50 of stock held by the member, and in any other case, every member has one vote;
- (g) a special resolution within the meaning of section 1(y)(iii) shall be deemed to be a special resolution passed at a general meeting of the company.

(2) If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the articles or this Act, the Court, either on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, or of its own motion, may order a meeting of the company to be called, held and conducted in a manner the Court thinks fit, and when an order is made, the Court may give any ancillary or consequential directions that it thinks expedient, and any meeting called, held, and conducted in accordance with the order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted.

RSA 1980 cC-20 s151

Special resolution

152(1) At any meeting at which a special resolution is submitted to be passed, a declaration of the chairman that the resolution is carried is, unless a poll is demanded, conclusive proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

(2) At any meeting at which a special resolution is submitted to be passed, a poll may be demanded by one person for the time being entitled according to the articles to vote, or if the articles of the company prescribe some larger number, not in any case exceeding 5, by that number of persons.

(3) When a poll is demanded in accordance with this section, in computing the majority of the poll reference shall be had to the number of votes to which each member is entitled by the memorandum or articles of the company.

RSA 1970 c60 s136

**Division 9
Proxies and Proxy Solicitation****Definitions**

153 In this Division,

- (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) “information circular” means the circular referred to in section 157(1);
- (c) “proxy” means a completed and executed form of proxy by means of which a shareholder has appointed a person as the shareholder’s nominee to attend and act for the shareholder and on the shareholder’s behalf at a meeting of shareholders;
- (d) “solicit” and “solicitation” include
 - (i) any request for a proxy whether or not accompanied by or included in a form of proxy,
 - (ii) any request to execute or not to execute a form of proxy or to revoke a proxy,
 - (iii) the sending or delivery 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 or delivery of a form of proxy to a shareholder pursuant to section 156,

but do not include

- (v) the sending or delivery of a form of proxy to a shareholder in response to an unsolicited request made by the shareholder or on the shareholder's behalf, or
- (vi) the performance by any person of ministerial acts or professional services on behalf of a person soliciting a proxy.

RSA 1980 cC-20 s153

Exemptions

154(1) Sections 156 and 157 do not apply to a private company or to a public company that has fewer than 15 shareholders, 2 or more persons who are the joint registered owners of one or more shares being counted as one shareholder.

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

(2) On the application of any interested person, a judge of the Court designated by the Chief Justice of the Court may, if satisfied that in the circumstances of the particular case there is adequate justification for so doing, make an order, on any terms and conditions that seem to the judge just and expedient, exempting, in whole or in part, any person from the requirements of section 156 or from the requirements of section 157(1).

(3) The applicant shall give the Executive Director notice of an application under subsection (2) and the Executive Director has the right to appear and be heard thereon.

(4) An appeal lies to the Court of Appeal from an order made under subsection (2).

RSA 1980 cC-20 s154;1983 c21 s5;1988 c7 s4;1995 c28 s65

Appointment of nominees by proxies, etc.

155(1) Every shareholder, including a shareholder that is a corporation, entitled to vote at a meeting of shareholders may by means of a proxy appoint a person, who need not be a shareholder, as the person's nominee to attend and act at the meeting in the manner, to the extent and with the power conferred by the proxy.

(2) A proxy shall be executed by the shareholder or the shareholder's attorney authorized in writing or, if the shareholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized, and ceases to be valid one year from its date.

(3) In addition to the requirements, where applicable, of section 158, a proxy shall contain the date thereof and the appointment and name of the nominee and may contain a revocation of a former proxy and restrictions, limitations or instructions as to the manner in which the shares in respect of which the proxy is given are to be voted or that may be necessary to comply with the laws of any jurisdiction in which the shares of the company are listed on a stock exchange or a restriction or limitation as to the number of shares in respect of which the proxy is given.

(4) In addition to revocation in any other manner permitted by law, a proxy may be revoked by instrument in writing executed by the shareholder or by the shareholder's attorney authorized in writing or, if the shareholder is a corporation, under its corporate seal or by an officer or attorney thereof duly authorized, and deposited either at the head office of the company at any time up to and including the last business day preceding the day of the meeting, or any adjournment thereof, at which the proxy is to be used or with the chairman of the meeting on the day of the meeting, or adjournment thereof, and on either of those deposits the proxy is revoked.

(5) The directors may by resolution fix a time not exceeding 48 hours, excluding Saturdays and holidays, preceding any meeting or adjourned meeting of shareholders before which time proxies to be used at that meeting must be deposited with the company or an agent thereof, and any period of time so fixed shall be specified in the notice calling the meeting or in the information circular relating thereto.

RSA 1980 cC-20 s155

Mailing proxy form to shareholder

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

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

company who authorized, permitted or acquiesced in the failure is also guilty of an offence and is liable to a like fine.

RSA 1970 c60 s140

Solicitation of proxies

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

- (a) in the case of a solicitation by or on behalf of the management of a company, an information circular, either as an appendix to or as a separate document accompanying the notice of the meeting, is sent by prepaid mail to each shareholder of the company whose proxy is solicited at the shareholder's last address as shown on the books of the company, or
- (b) in the case of any other solicitation, the person making the solicitation, concurrently with or prior thereto, delivers or sends an information circular to each shareholder of the company whose proxy is solicited.

(2) Subsection (1) does not apply to

- (a) any solicitation, otherwise than by or on behalf of the management of a company, where the total number of shareholders whose proxies are solicited is not more than 15, two or more persons who are the joint registered owners of one or more shares being counted as one shareholder,
- (b) any solicitation by a person made pursuant to section 79 of the *Securities Act*, and
- (c) any solicitation by a person in respect of shares of which he or she is the beneficial owner.

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

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

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

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

RSA 1970 c60 s141

Special form of proxy

158 When section 156 or 157 is applicable to a solicitation of proxies,

- (a) the form of proxy sent to a shareholder by a person soliciting proxies
 - (i) shall indicate in bold-face type whether or not the proxy is solicited by or on behalf of the management of the company, and
 - (ii) shall provide a specifically designated blank space for dating the form of proxy,
- (b) the form of proxy shall provide means whereby the person whose proxy is solicited is afforded an opportunity to specify that the shares registered in the person's name shall be voted by the nominee in favour of or against, in accordance with that person's choice, each matter or group of related matters identified therein or in the information circular as intended to be acted on, other than the election of directors and the appointment of auditors, but a proxy may confer discretionary authority with respect to matters as to which a choice is not so specified by such means if the form of proxy or the information circular states in bold-face type how it is intended to vote the shares represented by the proxy in each such case,
- (c) a proxy may confer discretionary authority with respect to amendments or variations to matters identified in the notice of meeting, or other matters which may properly come before the meeting, if
 - (i) the person by whom or on whose behalf the solicitation is made is not aware a reasonable time prior to the time the solicitation is made that any such amendments, variations or other matters are to be presented for action at the meeting, and

- (ii) a specific statement is made in the information circular or in the form of proxy that the proxy is conferring that discretionary authority,
- (d) no proxy shall confer authority
 - (i) to vote for the election of any person as a director of the company unless a bona fide proposed nominee for the election is named in the information circular, or
 - (ii) to vote at any meeting other than the meeting specified in the notice of meeting or any adjournment thereof,
- (e) the information circular or form of proxy shall state that the shares represented by the proxy will be voted and that, when the person whose proxy is solicited specifies a choice with respect to any matter to be acted on pursuant to clause (b), the shares shall, subject to section 159, be voted in accordance with the specifications so made,
- (f) the information circular or form of proxy shall indicate in bold-face type that the shareholder has the right to appoint a person to attend and act for the shareholder and on the shareholder's behalf at the meeting other than the person, if any, designated in the form of proxy, and shall contain instructions as to the manner in which the shareholder may exercise that right, and
- (g) if the form of proxy contains a designation of a named person as nominee, means shall be provided whereby the shareholder may designate in a form of proxy some other person as the shareholder's nominee for the purpose of section 155(1).

RSA 1970 c60 s142

Where vote by ballot not required

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

RSA 1970 c60 s143

Regulations

160 The Lieutenant Governor in Council may make regulations respecting the form and content of an information circular as the

Lieutenant Governor in Council considers necessary or appropriate in the public interest.

RSA 1970 c60 s144

Division 10 Records

Minutes

161(1) Every company shall cause minutes of all proceedings of general meetings, and, when there are directors or managers, of meetings of its directors or managers, to be entered in books kept for that purpose.

(2) Any such minute, if purporting to be signed by the chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, is admissible as evidence of the proceedings.

(3) Until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made, shall be deemed to have been duly held and convened, and all proceedings had thereat to have been duly had, and all appointments of directors, managers, or liquidators shall be deemed to be valid.

(4) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company, and shall, during business hours, subject to any reasonable restrictions that the company may by its articles or in general meeting impose, so that no less than 2 hours in each day be allowed for inspection, be open to the inspection of any member free of charge and any member is entitled to be furnished, within 7 days after the member has made a request in that behalf to the company, with a copy of any such minutes as aforesaid, at a charge not exceeding 50¢ for every 100 words.

(5) Every company that defaults in complying with any requirement of this section is guilty of an offence.

RSA 1970 c60 s145

Division 11 Returns to Registrar

Annual report

162(1) In this section “anniversary month” means the month in each year that is the same as

- (a) the month in which the certificate of incorporation of the company was issued,

- (b) in the case of an amalgamated company, the month in which its certificate of amalgamation was issued, or
- (c) in the case of a company in respect of which a certificate of registration is issued under section 174, the month in which it was incorporated in the jurisdiction other than Alberta.

(2) Every company shall, each year on or before the last day of the month immediately following its anniversary month, make a return to the Registrar containing

- (a) unless the company is a public company, a list of all persons who were members of the company on the last day of its anniversary month in each year setting out
 - (i) the full name and address of each member, and
 - (ii) the number and class of shares held by each member at the date of the return,
- (b) the address of the registered office of the company,
- (c) the number and class of shares outstanding at the date of the return,
- (d) any information respecting the members of the company on the last day of its anniversary month in each year that may be required by regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) in the form and manner prescribed by those regulations, and
- (e) the full names and addresses and occupations of the persons who as of the last day of the company's anniversary month in each year are directors of the company.

(3) Except when the company is a private company, the annual return shall include a written copy, certified by a director or the manager or secretary of the company to be a true copy, of the last balance sheet that has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon, certified as aforesaid, and if a balance sheet is not in English, there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation.

(4) Notwithstanding subsection (3), if the last balance sheet did not comply with the requirements of the law in force at the date of the audit with respect to the form of balance sheets, there shall be made the additions to and corrections in the copy that would have been

required to be made in the balance sheet in order to make it comply with those requirements, and the fact that the copy has been so amended shall be stated thereon.

(5) All returns made under subsection (2) shall be verified by a person having knowledge of the affairs of, and who is authorized by, the company on whose behalf the return is made.

(6) Every company that defaults in complying with any of the requirements of this section is guilty of an offence.

RSA 1980 cC-20 s162;1994 c23 s50

Resolutions

163(1) If no express provision is made by this Act, a copy of every special resolution of a company, and of every ordinary resolution affecting the contents of the articles of a company, shall, within 15 days from the passing thereof, be filed with the Registrar.

(2) Every company that defaults in filing a copy of a resolution with the Registrar as required by this section is guilty of an offence.

RSA 1980 cC-20 s163

Increase in members

164(1) When a company not having a share capital has increased the number of its members beyond the registered number, it shall file with the Registrar, within 15 days after the increase was resolved on or took place, notice of the increase of members, stating their addresses and occupations and the amount of their respective guarantees, and the Registrar shall record the increase.

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

RSA 1980 cC-20 s164

Division 12 Contracts

Powers of company to control

165(1) Contracts on behalf of a company may be made as follows:

- (a) any contract that if made between private persons would be by law required to be in writing, and if made according to the law of Alberta or of Canada to be under seal, may be made on behalf of the company in writing under the common seal of the company, and may in the same manner be varied or discharged;
- (b) any contract that if made between private persons would be by law required to be in writing and signed by the parties to

be charged therewith, may be made on behalf of the company in writing signed by any person acting under its authority, express or implied, and may in the same manner be varied or discharged;

- (c) any contract that if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under its authority, express or implied, and may in the same manner be varied or discharged.

(2) All contracts made according to this section are effectual in law, and bind the company and its successors and all other parties thereto, their heirs, executors, or administrators, as the case may be.

(3) A bill of exchange or promissory note shall be deemed to have been made, accepted, or endorsed on behalf of a company if made, accepted, or endorsed in the name of, or by or on behalf or on account of, the company by any person acting under its authority.

RSA 1980 cC-20 s165

Division 13 Miscellaneous

Representation of company at meetings of another corporation

166 A company that is a member of another company may, by resolution of the directors, authorize any of its officials or any other person to act as its representative at any meeting of that other company, and the person so authorized is entitled to exercise the same powers on behalf of the company the person represents as if the person were an individual shareholder of that other company.

RSA 1980 cC-20 s166

Power of attorney by company

167 A company may, by writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place situated within or outside the limits of Alberta, and every deed signed by the attorney, on behalf of the company and under the attorney's seal, binds the company and has the same effect as if it were under its common seal.

RSA 1980 cC-20 s167

Official seal for use outside Alberta

168(1) A company whose objects require or comprise the transaction of business outside Alberta may, if so authorized by its articles, have for use in any other province, state, or country an official seal, which shall be a facsimile of the common seal of the

company, with the addition on its face of the name of the province, state, or country where it is to be used.

(2) A company having such an official seal may, by writing under its common seal, authorize any person appointed for the purpose in any province, state, or country outside Alberta to affix it to any deed or other document to which the company is party in that province, state, or country.

(3) The authority of any such agent shall, as between the company and any person dealing with the agent, continue during the period, if any, mentioned in the instrument conferring the authority, or if no period is there mentioned, then until notice of the revocation or determination of the agent's authority has been given to the person dealing with him.

(4) The person affixing any such official seal shall, by writing, on the deed or other document to which the seal is affixed, certify the date and place of affixing it.

(5) A deed or other document to which an official seal is duly affixed binds the company as if it had been sealed with the common seal of the company.

RSA 1980 cC-20 s168

Acquisition of shares

169(1) When a scheme or contract involving the transfer of shares or any class of shares in a company (in this section referred to as "the transferor company") to another company, whether a company within the meaning of this Act or not (in this section referred to as "the transferee company"), has within 4 months after the making of the offer in that behalf by the transferee company been approved by the holders of not less than 90% in value of the shares affected, the transferee company may, at any time within 2 months after the expiration of that 4 months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire the shareholder's shares.

(2) When that notice is given, the transferee company, unless on an application made by the dissenting shareholder within one month from the date on which the notice was given the Court thinks fit to order otherwise, is entitled and bound to acquire those shares on the terms on which under the scheme or contract the shares of the approving shareholders are to be transferred to the transferee company.

(3) If a notice has been given by the transferee company under this section, and the Court has not, on an application made by the dissenting shareholder, ordered to the contrary, the transferee

company shall, on the expiration of one month from the date on which the notice has been given, or, if an application to the Court by the dissenting shareholder is then pending, after that application has been disposed of, transmit a copy of the notice to the transferor company and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares that by virtue of this section that company is entitled to acquire, and the transferor company shall thereupon register the transferee company as the holder of those shares.

(4) Any sums received by the transferor company under this section shall be paid into a separate bank account, and those sums and any other consideration so received shall be held by that company on trust for the several persons entitled to the shares in respect of which the sums or other consideration were respectively received.

(5) In this section, “dissenting shareholder” includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer shares to the transferee company in accordance with the scheme or contract.

RSA 1980 cC-20 s169

Compromise

170(1) In this section “arrangement” shall be construed as extending to a reorganization of the share capital of the company by the consolidation of shares of different classes or by the division of shares into shares of different classes or by both those methods.

(2) If a compromise or arrangement is proposed between a company and its creditors or any class of them, or between the company and its members or any class of them, the Court may, on the application of the company or of any creditor or member of the company, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be summoned in a manner the Court directs.

(3) If a majority in number representing 75% in value of the creditors or class of creditors, or members or class of members, as the case may be, present and voting either in person or by proxy at the meeting, agree to any compromise or arrangement, the compromise or arrangement, if sanctioned by the Court, is binding on all the creditors or the class of creditors, or on the members or class of members, as the case may be, and also on the company.

(4) When an order is made under this section, an office copy thereof shall be filed with the Registrar within 15 days from the date of the order or within a further time that the Court may allow,

and the compromise or arrangement does not take effect until a copy has been so filed.

(5) A copy of every order shall be annexed to every copy of the memorandum of the company issued after the order has been made, or, in the case of a company not having a memorandum, of every copy so issued of the instrument constituting or defining the constitution of the company.

(6) If a company defaults in complying with subsection (5) it is guilty of an offence.

RSA 2000 cC-21 s170;2009 c53 s39

Reconstruction of company or amalgamation

171(1) In this section

- (a) “property” includes property, rights and powers of every description;
- (b) “liabilities” includes duties.

(2) When an application is made to the Court under section 170 for the sanctioning of a compromise or arrangement proposed between a company and the persons mentioned in that section, and it is shown to the Court that the compromise or arrangement has been proposed for the purposes of or in connection with a scheme for the reconstruction of any company or companies or amalgamation of any 2 or more companies, and that under the scheme the whole or any part of the undertaking or the property of any company concerned in the scheme (in this section referred to as “a transferor company”) is to be transferred to another company (in this section referred to as “the transferee company”), the Court may, either by the order sanctioning the compromise or arrangement or by any subsequent order, make provision for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of a transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, or other like interests in that company that under the compromise or arrangement are to be allotted or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against a transferor company;

- (d) the dissolution, without winding-up, of a transferor company;
- (e) the provision to be made for any persons who, within the time and in the manner the Court directs, dissent from the compromise or arrangement;
- (f) any incidental, consequential, and supplemental matters necessary to ensure that the reconstruction or amalgamation will be fully and effectively carried out.

(3) If an order under this section provides for the transfer of property or liabilities, that property is by virtue of the order transferred to and vested in, subject in the case of land to the *Land Titles Act*, and those liabilities are by virtue of the order transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, the property is freed from any charge that is by virtue of the compromise or arrangement to cease to have effect.

(4) When an order is made under this section, every company in relation to which the order is made shall cause an office copy thereof to be filed with the Registrar within 7 days after the making of the order.

(5) If a company defaults in complying with subsection (4) it is guilty of an offence.

RSA 1980 cC-20 s171

Amalgamation

172(1) Any 2 or more companies, including holding and subsidiary companies, may amalgamate and continue as one company.

(2) The companies proposing to amalgamate may enter into an amalgamation agreement, which shall prescribe the terms and conditions of the amalgamation and the mode of carrying the amalgamation into effect.

(3) The amalgamation agreement shall further set out

- (a) the memorandum of association of the amalgamated company, in the prescribed form, as schedule A of the agreement,
- (b) the articles of association of the amalgamated company as schedule B of the agreement,
- (c) the names, occupations and places of residence of the first directors of the amalgamated company,

- (d) the date when subsequent directors are to be elected,
 - (e) the manner of converting the authorized and issued capital of each of the companies into that of the amalgamated company,
 - (f) any information respecting the members of the amalgamated company that may be required by regulations under the *Agricultural and Recreational Land Ownership Act* and section 35 of the *Citizenship Act* (Canada) in the form and manner prescribed by those regulations, and
 - (g) any other details that may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company.
- (4) The amalgamation agreement shall be submitted to the shareholders of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement, and if 75% of the votes cast at each meeting are in favour of the amalgamation agreement
- (a) the secretary of each of the amalgamating companies shall certify that fact under the corporate seal thereof, and
 - (b) the amalgamation agreement shall be deemed to have been adopted by each of the amalgamating companies.
- (5) When the amalgamation agreement is deemed to have been adopted, the amalgamating companies may, if a copy of the agreement has been submitted to the Registrar and approved in writing by the Registrar, apply to the Court for an order approving the amalgamation.
- (6) Unless the Court otherwise directs, each amalgamating company shall notify each of its dissentient shareholders, in the manner the Court may direct, of the time and place when the application for the approving order will be made.
- (7) Unless the Court otherwise directs, notice of the time and place of the application for the approving order shall be given to the creditors of an amalgamating company in the manner the Court may direct.
- (8) On the application, the Court shall hear and determine the matter and may approve the amalgamation agreement as presented or may approve it subject to compliance with any terms and conditions it thinks fit, having regard to the rights and interests of all parties including the dissentient shareholders and creditors.

(9) The amalgamation agreement and the approving order shall be filed with the Registrar together with

- (a) notice of the location of the registered office, and
- (b) proof of compliance with any terms and conditions imposed by the Court in the approving order.

(10) On the receipt of the amalgamation agreement, approving order and any other documents required pursuant to subsection (9), the Registrar shall

- (a) issue a certificate of amalgamation under the Registrar's seal of office and certifying that the amalgamating companies have amalgamated, and
- (b) publish in The Alberta Gazette or the Registrar's periodical at the expense of the applicants for amalgamation a notice of the amalgamation setting out
 - (i) the names of the companies that are amalgamated,
 - (ii) the name of the amalgamated company,
 - (iii) the authorized capital and principal objects of the amalgamated company, and
 - (iv) any other information the Registrar considers necessary.

(11) On and from the date of the certificate of amalgamation, the amalgamating companies are amalgamated and are continued as one company hereinafter called the "amalgamated company", having the memorandum and articles of association set out in schedules A and B of the amalgamation agreement.

(12) The amalgamated company thereafter possesses all the property, rights, privileges and franchises and is subject to all the liabilities, contracts and debts of each of the amalgamating companies, and all the provisions of the amalgamation agreement respecting the name of the amalgamated company, its capital and objects shall be deemed to constitute the memorandum of association of the amalgamated company.

(13) If the amalgamation agreement does not provide for the adoption of the articles of one of the amalgamating companies, or for the adoption of new articles, as articles of association for the amalgamated company, the shareholders of the amalgamated company, at a general meeting thereof called for the purpose, may, if approved by 75% of the votes cast thereat, adopt and agree on articles of association for the amalgamated company.

(14) When new articles of association are adopted for the amalgamated company, the articles may be filed with the Registrar at the same time as the amalgamation agreement or subsequently if the articles are certified

- (a) by each secretary of each amalgamating company, when the articles were adopted and agreed on as a provision of the amalgamation agreement, or
- (b) by the secretary of the amalgamated company, when the articles were adopted and agreed on by the shareholders of the amalgamated company.

(15) If articles of an amalgamating company are not adopted by the amalgamation agreement as the articles of the amalgamated company, and new articles are not filed with the Registrar pursuant to subsection (14), the articles contained in Table A in the Schedule apply as the articles of the amalgamated company.

(16) Notwithstanding that articles have been adopted by the amalgamation agreement or filed as articles of the amalgamated company, the articles contained in Table A in the Schedule, insofar as the articles of the amalgamated company do not exclude or modify them, apply in the same manner and to the same extent as if those articles were contained in the articles adopted and agreed on for the amalgamated company.

(17) For the purpose of this section, a company shall be deemed to be another's holding company if, but only if, that other is its subsidiary.

(18) For the purpose of this section, a company shall be deemed to be a subsidiary of another company if, but only if,

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

or

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

(19) An amalgamated company shall, for the purposes of the other provisions of this Act, be deemed to be a company incorporated

under this Act within the meaning of section 1(d), so far as the nature of an amalgamated company will permit.

RSA 1980 cC-20 s172;1983 c21 s8;1994 c23 s50

Amalgamation of Alberta company with extra-provincial company

173(1) In this section,

- (a) “Alberta company” means a company but does not include a company to which Part 9 applies or a company that has been continued under section 175 as if it had been incorporated under the laws of another jurisdiction;
- (b) “wholly-owned subsidiary” means
 - (i) an Alberta company, all of whose outstanding shares are beneficially owned by an extra-provincial company, or
 - (ii) an extra-provincial company, all of whose outstanding shares are beneficially owned by an Alberta company.

(2) An Alberta company may amalgamate with an extra-provincial company if the extra-provincial company is authorized to amalgamate with an Alberta company by the laws of the jurisdiction in which the extra-provincial company is incorporated and either is the wholly-owned subsidiary of the other.

(3) An Alberta company and an extra-provincial company proposing to amalgamate shall enter into an amalgamation agreement prescribing the terms and conditions of the amalgamation.

(4) The amalgamation agreement shall

- (a) comply with section 172(3),
- (b) provide that the shares of the wholly-owned subsidiary shall be cancelled without repayment of issued capital in respect of those shares, and
- (c) provide that no securities shall be issued by the amalgamated company in connection with the amalgamation.

(5) The amalgamation agreement shall be approved by a resolution of the board of directors of the Alberta company and of the board of directors or comparable governing body of the extra-provincial company.

(6) The Alberta company and the extra-provincial company shall file with the Registrar

- (a) certified copies of the resolutions referred to in subsection (5),
 - (b) the amalgamation agreement,
 - (c) declarations under oath of a director of the Alberta company that
 - (i) the Alberta company and the extra-provincial company are able to pay their liabilities as they become due,
 - (ii) the market value of the amalgamated company's assets will not be less than the aggregate of its liabilities and the issued capital of all classes of its shares,
 - (iii) no creditor of the Alberta company or the extra-provincial company will be prejudiced by the amalgamation,
 - (iv) notice has been given to all creditors of the Alberta company and the extra-provincial company has complied with the laws of the jurisdiction in which it was incorporated with respect to creditors, and
 - (v) no creditor objects to the amalgamation,
- and
- (d) if the Alberta company is a public company or the extra-provincial company has distributed any of its securities to the public, the approval of the proposed amalgamation by the Commission.

(7) If a creditor objects to the amalgamation, the Registrar shall refuse to issue a certificate of amalgamation under this section.

(8) If the Registrar refuses under subsection (7) to issue a certificate of amalgamation under this section, the Alberta company or the extra-provincial company may apply by originating notice to the Court for an order directing the Registrar to issue the certificate.

(9) The Court on an application under subsection (8) may order the Registrar to issue the certificate of amalgamation if, in the opinion of the Court, no creditor will be prejudiced by the amalgamation.

(10) If the Alberta company is a public company or the extra-provincial company has distributed any of its securities to the public, the documents referred to in subsection (6)(a), (b) and (c) shall be submitted to the Commission and, if the Commission is

satisfied that no creditor or shareholder will be prejudiced by the amalgamation, the Commission shall approve the amalgamation in writing.

(11) For the purposes of this section, adequate notice is given to a creditor of an Alberta company if notice that the Alberta company intends to amalgamate with an extra-provincial company in accordance with this Act and that a creditor may object to the amalgamation in writing by mailing by registered mail or delivering the objection to the registered office of the Alberta company within 30 days of the last date on which the notice of intention to amalgamate is

- (a) sent by registered mail to each creditor having a claim against the Alberta company that exceeds \$1000, and
- (b) published once in a newspaper published or distributed in the place in Alberta where the Alberta company has its registered office.

(12) After receiving the documents referred to under subsection (6), and

- (a) being satisfied that no creditor objects to the amalgamation, or
- (b) receiving a certified copy of an order under subsection (9),

the Registrar shall

- (c) issue a certificate of amalgamation under his or her seal of office certifying that the Alberta company and the extra-provincial company have amalgamated, and
- (d) publish in The Alberta Gazette or the Registrar's periodical, at the expense of the applicants for amalgamation, a notice of the amalgamation setting out
 - (i) the names of the Alberta company and the extra-provincial company that are amalgamated,
 - (ii) the name of the amalgamated company,
 - (iii) the authorized capital and principal objects of the amalgamated company,
 - (iv) the address of the registered office of the amalgamated company, and
 - (v) any other information the Registrar considers necessary.

(13) An amalgamation agreement may provide that at any time before the issuance of a certificate of amalgamation by the Registrar, the amalgamation agreement may be terminated by the board of directors of the Alberta company or the board of directors or comparable governing body of the extra-provincial company proposing to amalgamate.

(14) When a certificate of amalgamation is issued by the Registrar under subsection (12), the amalgamated company is a company incorporated under this Act.

(15) On and from the date shown on the certificate of amalgamation

- (a) the Alberta company and the extra-provincial company continue as the amalgamated company,
- (b) the amalgamated company has the memorandum and articles of association set out in the amalgamation agreement,
- (c) the registered office of the amalgamated company is the registered office of the former Alberta company until changed pursuant to section 33,
- (d) the property of the former Alberta company and the former extra-provincial company continues to be the property of the amalgamated company,
- (e) the amalgamated company continues to be liable for the obligations of both the former Alberta company and the former extra-provincial company,
- (f) an existing cause of action, claim or liability to prosecution in favour of or against the former Alberta company or the former extra-provincial company continues in favour of or against the amalgamated company,
- (g) a civil, criminal or administrative action or proceeding pending by or against the former Alberta company or the former extra-provincial company may be continued to be prosecuted by or against the amalgamated company, and
- (h) a conviction against, or ruling, order or judgment in favour of or against the former Alberta company or the former extra-provincial company may be enforced by or against the amalgamated company.

RSA 1980 cC-20 s173;1983 c21 s8;1988 c7 s4;1995 c28 s65

Extra-provincial company as an Alberta company

174(1) Subject to subsection (2), a company incorporated under the laws of any jurisdiction other than Alberta may, if it appears to the Registrar to be so authorized by the laws of the jurisdiction in which it was incorporated, apply to the Registrar for registration under this Act, continuing it as if it had been incorporated under this Act, and the Registrar may issue a certificate of registration on application supported by such material as appears satisfactory, and the certificate may be issued on any terms and subject to any limitations and conditions, and contain any provisions, that appear to the Registrar to be proper.

(2) Subsection (1) does not apply to corporations incorporated by private Act, nor to corporations which could not be incorporated under this Act.

(3) The Registrar shall cause notice of issue of a certificate of registration under subsection (1) to be given forthwith to the proper officer of the jurisdiction in which the company was incorporated.

RSA 1980 cC-20 s174

Continuation of Alberta company in other jurisdiction

175 A company incorporated under this Act, or any Act for which this Act is substituted, may, if authorized by special resolution and by the laws of any other jurisdiction, apply to the proper officer of the other jurisdiction for an instrument of continuation continuing the company as if it had been incorporated under the laws of the other jurisdiction, and on and after the date of the instrument of continuation the company becomes a corporation under the laws of such other jurisdiction.

RSA 1980 cC-20 s175

Debts, etc., of continued extra-provincial company

176 All rights of creditors against the property, rights, assets, privileges and franchises of a company continued under section 174, and all liens on its property, rights, assets, privileges and franchises are unimpaired by the continuation, and all debts, contracts, liabilities and duties of the company thenceforth attach to the continued company and may be enforced against it.

RSA 1980 cC-20 s176

**Division 14
Inspection****Inspectors appointed by Court**

177(1) On an application by the shareholders of a company holding shares representing not less than 10% of the issued capital of the company, or on an application of at least 10% of the members of a company without share capital, the Court may

appoint an inspector to investigate the affairs and management of the company or may appoint a person to audit its books.

(2) The application shall be supported by such evidence as the Court requires for the purpose of showing that the applicants have good reason for requiring the investigation or audit, as the case may be.

(3) The Court may require the applicants to give security to cover the probable cost of the investigation or audit and may make rules and prescribe the manner in which and the extent to which the investigation or audit is to be conducted.

(4) The inspector or auditor shall report thereon to the Court and the expense of the investigation shall, in the discretion of the Court, be defrayed by the company or by the applicants or partly by the company and partly by the applicants.

(5) A company may, by resolution passed at an annual meeting or at a general meeting called for that purpose, appoint an inspector to investigate its affairs and management.

(6) The inspector appointed under subsection (5) has the same powers and shall perform the same duties as an inspector appointed under subsection (1) and the inspector shall make a report in a manner and to the persons the company by resolution directs.

(7) All officers and agents of the company shall produce for the examination of any inspector or auditor appointed under this section all books and records in their custody or power.

(8) Any such inspector or auditor may examine on oath the officers, agents and employees of the company in relation to its affairs and management.

(9) Every officer or agent who refuses to produce any book or record referred to in subsection (7) and every person so examined who refuses to answer any question relating to the affairs and management of the company is guilty of an offence and is liable to a fine of not more than \$200.

(10) A copy of the report of the inspector or auditor, as the case may be, authenticated by the Court or under the seal of the company whose affairs and management the inspector or auditor has investigated, is admissible in any legal proceedings as evidence of the opinion of the inspector or auditor in relation to any matter contained in the report.

Inspector appointed by company

178(1) A company may by special resolution appoint inspectors to investigate its affairs.

(2) Inspectors so appointed have the same powers and duties as inspectors appointed by the Lieutenant Governor in Council, except that, instead of reporting to the Lieutenant Governor in Council, they shall report in the manner and to the persons that the company in general meeting may direct.

(3) Directors, managers, officers, and agents of the company in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, are liable to be proceeded against in the same manner as if the inspectors had been appointed by the Lieutenant Governor in Council.

RSA 1980 cC-20 s178

Inspector's reports as evidence

179 A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, is admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report.

RSA 1980 cC-20 s179

Part 7 Provisions Relating to Specially Limited Companies

Personal liability

180 No member of a specially limited company is personally liable for the amount, if any, unpaid on the member's shares or for any debt contracted or payable by the company.

RSA 1980 cC-20 s180

Special marking of shares, etc.

181(1) Every certificate of shares or stock issued by a specially limited company shall bear on the face thereof, distinctly written or printed in red ink, after the name of the company,

- (a) the words: "Issued under Part 7 of the *Companies Act*, respecting specially limited mining companies", and
- (b) if the shares or stock are issued subject to further assessment, the word "Assessable", or if they are issued not subject to further assessment, the word "Non-assessable".

(2) Every specially limited company shall have the words “Non-personal Liability”

- (a) written or printed immediately after or under its name on
 - (i) its certificate of incorporation, memorandum of association, prospectuses, stock certificates, bonds, contracts, agreements, notices, advertisements and other official publications,
 - (ii) all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and
 - (iii) all bills of parcels, invoices, receipts and letterheads of the company,

and

- (b) engraved on its seal.

(3) Every company that defaults in complying with the requirements of this section, and every director, manager, secretary and officer of the company who knowingly and wilfully authorizes or permits the default, is guilty of an offence.

RSA 1980 cC-20 s181

Part 8 Extra-provincial Companies

182 to 199 Repealed 1981 cB-15 s284(5).

Part 9 Provisions Applying to Companies with Objects other than the Acquisition of Gain

Registration of charitable association

200(1) When an association has been or is about to be formed as a limited company, if it proves to the Registrar that it is formed for the purpose of promoting art, science, religion, charity or any other useful object, and that it is the intention of the association to apply the profits, if any, or any other income of the association in promoting its objects and to prohibit the payment of any dividend to the members of the association, the Registrar may direct the association to be registered with limited liability without the addition of the word “limited” to its name and the association may be registered accordingly.

(2) On registration the association shall enjoy all the privileges conferred and be subject to the obligations imposed by this Act on limited companies, with the exception that none of the provisions of this Act that require a limited company to use the word “limited” as a part of its name or to publish its name apply to an association so registered.

(3) The direction by the Registrar may be made on any conditions and subject to any regulations the Registrar thinks fit to impose, and the conditions and regulations are binding on the association and may at the option of the Registrar be inserted in the memorandum and articles of association or in one of those documents.

RSA 1980 cC-20 s200

Use of word “limited”

201 In the case of any association or company formed for the above mentioned purposes or any of them and using the word “limited” as a part of its name, the Registrar may on the application of the association or company authorize the discontinuance of the word “limited” as part of the name, and on the authorization being granted the association or company is entitled to the same benefits and subject to the same liabilities as associations registered under this Part.

RSA 1980 cC-20 s201

Associations for recreation

202(1) When an association has been or is about to be formed as a limited company, if it proves to the satisfaction of the Registrar that it is formed solely for the purpose of promoting recreation among its members and that it is the intention of the association to apply the profits, if any, or any other income of the association in promoting its objects and that it is not formed with gain for its object and that no dividend shall be divided among the members of the association, the Registrar may direct the association to be registered with limited liability without the addition of the word “limited” to its name, and the association may be registered accordingly.

(2) On registration the association shall enjoy all the privileges conferred and be subject to the obligations imposed by this Act on limited companies, with the exception that none of the provisions of this Act that require a limited company to use the word “limited” as a part of its name or to publish its name apply to an association so registered.

RSA 1980 cC-20 s202

Revocation of direction or authorization

202.1 The Registrar shall not revoke any direction or authorization given by the Registrar under section 200, 201 or 202.
1981 cB-15 s284(5)

203 Repealed 1981 cB-15 s284(5).

**Part 10
Dissolution****Division 1
Cancellation of Incorporation****Cancellation For cause**

204(1) On sufficient cause being shown to the Registrar, the Registrar may issue to the Lieutenant Governor in Council a certificate under the seal of the office of the Registrar declaring that the Registrar is satisfied that the incorporation of any company should be revoked and cancelled.

(2) On receipt of the certificate, the Lieutenant Governor in Council may revoke and cancel the incorporation of the company and declare the company to be dissolved on any conditions and subject to any provisions the Lieutenant Governor in Council considers proper.

(3) Every person who by himself or herself or in association with others, carries on or attempts to carry on the business of a company the incorporation of which has been revoked and cancelled, and that has been declared to be dissolved, is guilty of an offence.

RSA 1980 cC-20 s204

**Division 2
Removal from Register of Companies
Defunct or in Default****Failure to file return**

205(1) If

- (a) a company or an extra-provincial company
 - (i) has failed to file any return, notice or document required to be filed with the Registrar pursuant to this Act for 2 consecutive years after the return, notice or document should have been so filed, or
 - (ii) has not complied with an undertaking it made under section 11(3) to dissolve or change its name within 6

months after the incorporation of another company with a similar name,

or

- (b) the Registrar has reasonable cause to believe that
 - (i) a company is not carrying on business or is not in operation, or
 - (ii) an extra-provincial company has ceased to carry on business in Alberta,

the Registrar shall send by mail to the company or to the extra-provincial company a letter requiring it

- (c) to file any return, notice or document that has not been filed,
- (d) to comply with an undertaking given under section 11(3), or
- (e) to notify the Registrar,
 - (i) in the case of a company, as to whether it is carrying on business or is in operation, or
 - (ii) in the case of an extra-provincial company, as to whether it has ceased to carry on business in Alberta.

(2) If within one month of sending the letter no reply thereto is received by the Registrar, or the company fails to fulfil the lawful requirements of the Registrar, or notifies the Registrar that it is not carrying on business or in operation, the Registrar may, at the expiration of a further 14 days, publish in The Alberta Gazette or the Registrar's periodical a notice that at the expiration of 2 months from the date of that notice the company mentioned therein will, unless cause is shown to the contrary, be struck off the register, and the company will be dissolved, or, in the case of an extra-provincial company, will be deemed to have ceased to carry on business in Alberta.

(3) When a company or extra-provincial company is being wound up, if the Registrar has reasonable cause to believe that no liquidator is acting or that the affairs of the company are fully wound up, or if the returns required to be made by the liquidator have not been made for a period of 3 consecutive months after notice by the Registrar demanding the returns has been sent by post to the registered office of the company, or, in the case of an extra-provincial company, to the attorney of the company appointed under Part 8, and to the liquidator at the liquidator's last known place of business, the Registrar may publish in The Alberta

Gazette or the Registrar's periodical a like notice as is provided in subsection (2).

(4) At the expiration of the time mentioned in a notice prescribed under subsection (2) or (3), and also in any case where a company has by resolution requested the Registrar to strike it off the register, and has filed with the Registrar a statutory declaration of 2 or more directors proving that the company has no debts or liabilities, the Registrar may, unless cause to the contrary is previously shown, strike the company off the register, and shall publish notice thereof in The Alberta Gazette or the Registrar's periodical, and on publication the company is dissolved, or, in the case of an extra-provincial company, shall be deemed to have ceased to carry on business in Alberta effective on the date shown in the notice published in The Alberta Gazette or the Registrar's periodical.

(5) Notwithstanding the striking of a company off the register, the liability, if any, of every director, manager, officer, and member of the company continues and may be enforced as if the company had not been struck off the register.

RSA 1980 cC-20 s205;1983 c21 s8

Restoration of company to register

206(1) If a company or an extra-provincial company or any member or creditor thereof is aggrieved by the company having been struck off the register, the Court, on the application of the company or member or creditor, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the company to be restored to the register, and on a copy of the order being filed with the Registrar the company shall be deemed to have continued in existence, or, in the case of an extra-provincial company, to be still entitled to carry on business in Alberta, as if it had not been struck off, and the Court may by the order give any directions and make any provisions that seem just for placing the company and all other persons in the same position as nearly as possible as if the company had not been struck off, but without prejudice to the rights of parties acquired prior to the date on which the company is restored to the register.

(1.1) An application to the Court to restore a company to the register must be made within 5 years after

- (a) the date on which the company was struck off the register, or
- (b) the coming into force of the *Unclaimed Personal Property and Vested Property Act*,

whichever is later.

(2) When an application to the Court to restore a company to the register is made under this section,

- (a) notice of the application shall be given to the Registrar,
- (b) the Court shall by the order fix a time within which an office copy of the order shall be filed with the Registrar and any lawful requirements, if any, in respect of the company fulfilled, and may extend that time, but no order takes effect until an office copy is so filed and such lawful requirements are so fulfilled,
- (c) on receipt of the office copy of the order the Registrar shall cause notice of the restoration of the company to the register to be published in The Alberta Gazette or the Registrar's periodical and the cost of the advertisement shall be paid to the Registrar by the company,
- (d) if the application is not made within 3 years from the date on which the company was struck off, and another company or extra-provincial company has been incorporated or registered, as the case may be, under the same or a similar name, and the Registrar objects to the restoration of the company under its own name, the Court shall by the order provide that the company be restored under another name approved by the Registrar in writing, and the order subject to clause (b) takes effect in the same manner as if the company had changed its name and the Registrar had issued a certificate thereof in accordance with this Act, but in the case of an extra-provincial company, except a company incorporated by or under an Act of Parliament, the Court shall not make an order unless the company has changed or undertakes to change its name in accordance with its charter and regulations,
- (e) the Court may make an order restoring the company for a limited period or for the purpose of carrying out a particular purpose, and after the expiration of that period, or the execution of that purpose, the company shall forthwith be struck off the register by the Registrar, and
- (f) if the company has requested the Registrar to strike it off the register, the company shall not be restored without the Registrar's written consent.

(3) Where the Registrar receives notice of an application under this section the Registrar may require the applicant to provide to the

Registrar documents relating to corporate names that are prescribed by the regulations.

RSA 2000 cC-21 s206;2007 cU-1.5 s69;
2009 c48 s3

Notices of default, etc.

207 A letter or notice under this Division may be addressed to the company at its registered office, or, in the case of an extra-provincial company, at its head office in Alberta, or, if no office is registered or recorded, as the case may be, to the care of some director or officer of the company, or, in the case of an extra-provincial company, to the attorney of the company appointed under Part 8, or, if there is no director or officer of the company whose name and address are known to the Registrar, the letter or notice in identical form and addressed to the Registrar at the address mentioned in the memorandum, may be sent to each of the persons who subscribed to the memorandum.

RSA 1980 cC-20 s207

Penalty

208 Every person who carries on or attempts to carry on the business of a company or an extra-provincial company that has been struck off the register and has not been restored to the register is guilty of an offence.

RSA 1980 cC-20 s208

Division 3 Winding-up Generally

Preliminary

Modes of winding-up

209(1) The winding-up of a company may be

- (a) by the Court,
- (b) voluntary, or
- (c) subject to the supervision of the Court.

(2) The provisions of this Act with respect to winding-up apply, unless the contrary appears, to the winding-up of a company in any of those modes.

RSA 1980 cC-20 s209

Contributories

Liability as contributories

210(1) In the event of a company being wound up, every present and past member is, subject to this Act, liable to contribute to the

assets of the company to an amount sufficient for payment of its debts and liabilities and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves, with the qualifications following:

- (a) a past member is not liable to contribute if the past member has ceased to be a member for one year or upwards before the commencement of the winding-up;
- (b) a past member is not liable to contribute in respect of any debt or liability of the company contracted after the past member ceased to be a member;
- (c) a past member is not liable to contribute unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them pursuant to this Act;
- (d) in the case of a company limited by shares, or a company incorporated by Special Act of the Legislature and having share capital, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which the member is liable as a present or past member;
- (e) in the case of a specially limited company, no contributions shall be required from any member;
- (f) in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount undertaken to be contributed by the member to the assets of the company in the event of its being wound up;
- (g) a sum due to any member of a company, in the member's character as a member, by way of dividends, profits, or otherwise, shall not be deemed to be a debt of the company and payable to that member in a case of competition between himself or herself and any other creditor not a member of the company, but any such sum may be taken into account for the purpose of the final adjustment of the rights of the contributories among themselves.

(2) In the winding-up of a company limited by guarantee and having a share capital, every member of the company is, in addition to the amount undertaken to be contributed by the member to the assets of the company in the event of its being wound up, liable to contribute to the extent of any sums unpaid on any shares held by the member.

RSA 1980 cC-20 s210

Liability of contributory

211 The liability of a contributory creates a debt, of the nature of a specialty, accruing due from the contributory at the time when his or her liability commenced, but payable at the times when calls are made for enforcing the liability.

RSA 1980 cC-20 s211

Contributories in case of death of member

212(1) If a contributory dies either before or after the contributory has been placed on the list of contributories, the contributory's personal representative and heirs and devisees are liable in due course of administration to contribute to the assets of the company in discharge of the contributory's liability, and shall be contributories accordingly.

(2) If the personal representatives default in paying any money ordered to be paid by them, proceedings may be taken for administering the personal and real estates of the deceased contributory, or either of them, and of compelling payment thereof of the money due.

RSA 1980 cC-20 s212

Liability of trustee in bankruptcy

213 If a contributory becomes bankrupt, either before or after the contributory has been placed on the list of contributories, then

- (a) the trustee in bankruptcy shall represent the contributory for all the purposes of the winding-up, and shall be a contributory accordingly, and may be called on to admit to proof against the estate of the bankrupt, or otherwise to allow to be paid out of the contributory's assets in due course of law, any money due from the bankrupt in respect of his or her liability to contribute to the assets of the company, and
- (b) there may be proved against the estate of the bankrupt the estimated value of the contributory's liability to future calls as well as calls already made.

RSA 1980 cC-20 s213

Division 4 Winding-up by Court

Winding-up by Court

214 A company may be wound up by the Court,

- (a) if the company has by special resolution resolved that the company be wound up by the Court,
- (b) if default is made in filing an annual report or in holding an annual meeting,
- (c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year,
- (d) if the number of members is reduced, in the case of a private company, below 2, or, in the case of any other company, below 3, or
- (e) if the Court is of the opinion that it is just and equitable that the company should be wound up.

RSA 1980 cC-20 s214

Petition to Court for winding-up

215(1) An application to the Court for the winding-up of a company shall be by petition, which shall be presented, subject to this section, either by the company, or by any contributory or contributories, or either of those parties, together or separately.

(2) Notwithstanding subsection (1),

- (a) a contributory is not entitled to present a petition for winding-up a company unless
 - (i) either the number of members is reduced, in the case of a private company, below 2, or, in the case of any other company, below 3, or
 - (ii) the shares in respect of which the person is a contributory, or some of them, either were originally allotted to the person, or have been held by the person and registered in the person's name for at least 6 months during the 18 months before the commencement of the winding-up, or have devolved on the person through the death of a former holder,

and

- (b) a petition for winding-up a company on the ground of default in filing the annual report or in holding the annual meeting shall not be presented by any person except a shareholder, nor before the expiration of 14 days after the last day on which the meeting ought to have been held.

(3) When a company is being wound up voluntarily or is being wound up subject to the supervision of the Court, a petition to have the company wound up by the Court may be presented to the Court by the liquidator, any creditor or any other person authorized to do so under the other provisions of this section, but the Court may make the winding-up order on the petition only if it is satisfied that the voluntary winding-up or winding-up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories.

RSA 1980 cC-20 s215

Winding-up order

216(1) On hearing the petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally, or make any interim order, or any other order that it considers just, but the Court shall not refuse to make a winding-up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) When the petition is presented on the ground of default in filing the annual report or in holding the annual meeting, the Court may, instead of directing that the company be wound up, give directions for the report to be filed or the meeting to be held, or make any other order that may be just, and may order the costs to be paid by any persons who, in the opinion of the Court, are responsible for the default.

RSA 1980 cC-20 s216

Filing winding-up order

217(1) On the making of a winding-up order, an office copy of the order shall, within 15 days from the date of the order, be filed by the liquidator with the Registrar.

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

RSA 1980 cC-20 s217

Commencement of winding-up

218 A winding-up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding-up.

RSA 1980 cC-20 s218

Power to stay or restrain proceedings

219 At any time after the presentation of a petition for winding-up and before a winding-up order has been made, the company or any contributory may

- (a) if any action or proceeding against the company is pending in the Court or Court of Appeal, apply to the court in which the action or proceeding is pending for a stay of proceedings therein, or
- (b) if any other action or proceeding is pending against the company, apply to the court having jurisdiction to wind up the company to restrain further proceedings in the action or proceeding,

and the court to which application is so made may stay or restrain the proceedings accordingly on any terms it thinks fit.

RSA 1980 cC-20 s219

Effect of winding-up order

220 When a winding-up order has been made,

- (a) every disposition of the property, including choses in action, of the company and every transfer of shares or alteration in the status of its members is void, unless the Court otherwise orders,
- (b) no action or proceeding shall be proceeded with or commenced against the company except with the permission of the Court and subject to any terms the Court may impose, and
- (c) any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding-up is void.

RSA 2000 cC-21 s220;2014 c13 s21

Wishes of creditors or contributories

221 The Court may, as to all matters relating to a winding-up by the Court, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

RSA 1980 cC-20 s221

Operation of order in favour of creditors, etc.

222 An order for winding up a company operates in favour of all the creditors and of all the contributories of the company.

RSA 1980 cC-20 s222

Inspection of books

223 After an order for a winding-up, the Court may make any order for inspection, by creditors and contributories of the company, of its books and papers that the Court thinks just, and any books and papers in the possession of the company may be inspected by creditors or contributories accordingly, but not further or otherwise.

RSA 1980 cC-20 s223

Order to stay winding-up

224 The Court may, at any time after an order for a winding-up, and on proof to the satisfaction of the Court that all proceedings in relation to the winding-up ought to be stayed, make an order staying the proceedings, either altogether or for a limited time, on the terms and conditions the Court thinks fit.

RSA 1980 cC-20 s224

Costs

225 The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the costs, charges, and expenses incurred in the winding-up in the order of priority the Court thinks just.

RSA 1980 cC-20 s225

Dissolution of company

226(1) When the affairs of a company have been completely wound up, the Court shall make an order that the company be dissolved from the date of the order, and the company is dissolved accordingly.

(2) An office copy of the order shall be filed by the liquidator with the Registrar within 15 days from the date of the order.

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

RSA 1980 cC-20 s226

Contributories, Assets, etc.**Lists of contributories and application of assets**

227(1) As soon as possible after making a winding-up order, the Court shall settle a list of contributories, with power to rectify the register of members in all cases where rectification is required pursuant to this Act, and shall cause the assets of the company to be collected and applied in discharge of its liabilities.

(2) When it appears to the Court that it will not be necessary to make calls on or adjust the rights of contributories, the Court may dispense with the settlement of a list of contributories.

(3) In settling the list of contributories, the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or liable for the debts of others.

RSA 1980 cC-20 s227

Adjustment of rights of contributories

228 The Court shall adjust the rights of the contributories among themselves, and distribute any surplus among the persons entitled thereto.

RSA 1980 cC-20 s228

Calls

229(1) The Court may, at any time after making a winding-up order, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of the contributories to the extent of their liability, for payment of any money that the Court considers necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding-up, and for the adjustment of the rights of the contributories among themselves.

(2) In making a call the Court may take into consideration the probability that some of the contributories may partly or wholly fail to pay the call.

RSA 1980 cC-20 s229

Payment of debts by contributories

230(1) The Court may, at any time after making a winding-up order, make an order on any contributory for the time being settled on the list of contributories to pay, in the manner directed by the order, any money due from the contributory, or from the estate of the person whom the contributory represents, to the company, exclusive of any money payable by the contributory or the estate by virtue of any call pursuant to this Act.

(2) When all the creditors are paid in full, any money due on any account whatever to a contributory from the company may be allowed to the contributory by way of set-off against any subsequent call.

RSA 1980 cC-20 s230

Arrest of absconding contributory

231 The Court, at any time either before or after making a winding-up order, may on proof of probable cause for believing that a contributory is about to leave Alberta, or otherwise to abscond or to remove or conceal any of the contributory's property for the purpose of evading payment of calls or of avoiding

questioning respecting the affairs of the company, cause the contributory to be arrested, and the contributory's books and papers and movable personal property to be seized, and him or her and them to be safely kept until such time as the Court may order.

RSA 2000 cC-21 s231;2009 c53 s39

Delivery of property

232 The Court may, at any time after making a winding-up order, require any contributory for the time being settled on the list of contributories, and any trustee, receiver, banker, agent, director, manager, or officer of the company, to pay, deliver, convey, surrender or transfer forthwith, or within the time the Court directs, to the liquidator any money, property, or books and papers in his or her possession and to which the company is prima facie entitled.

RSA 1980 cC-20 s232

Court summons

233(1) The Court may, after it has made a winding-up order, summon before it any director, manager, or officer of the company or person known or suspected to have in his or her possession any property of the company or supposed to be indebted to the company, or any person whom the Court thinks capable of giving information concerning the trade, dealings, affairs, or property of the company.

(2) The Court may question that person on oath concerning the matter, either by word of mouth or on written interrogatories, and may reduce any answers to writing and require the person to sign them.

(3) The Court may require that person to produce any books and papers in his or her custody or power relating to the company, and, if the person claims any lien on books or papers produced by the person, the production is without prejudice to that lien, but the Court has jurisdiction in the winding-up to determine all questions relating to that lien.

(4) If any person so summoned, after being tendered a reasonable sum for expenses, refuses to come before the Court at the time appointed and does not have a lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may cause the person to be apprehended and brought before the Court for questioning.

RSA 2000 cC-21 s233;2009 c53 s39

Order to pay money into bank

234(1) The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay it into a bank to the account of the liquidator instead of to the liquidator,

and the order may be enforced in the same manner as if it had directed payment to the liquidator.

(2) All money and securities paid or delivered into a bank in the event of a winding-up by the Court are subject in all respects to the orders of the Court.

RSA 1980 cC-20 s234

Conclusiveness of order on contributory

235(1) An order made by the Court on a contributory is, subject to any right of appeal, conclusive proof that the money, if any, thereby appearing to be due or ordered to be paid is due.

(2) All other pertinent matters stated in the order shall be taken to be truly stated as against all persons and in all proceedings, except proceedings against the real estate of a deceased contributory, in which case the order is only prima facie proof for the purpose of charging the contributory's real estate, unless the contributory's heirs or devisees were on the list of contributories at the time of the order being made.

RSA 1980 cC-20 s235

Powers of Court cumulative

236 Any powers by this Act conferred on the Court are in addition to and not in restriction of any existing powers of instituting proceedings against any contributory or debtor of the company, or the estate of any contributory or debtor, for the recovery of any call or other sums.

RSA 1980 cC-20 s236

Proof by Creditors

Proving debts

237 The Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved.

RSA 1980 cC-20 s237

Examination of Promoters, etc.

Public questioning of promoters, etc.

238(1) When an order for winding-up a company has been made by the Court and the liquidator has made a report under this Act stating that in the liquidator's opinion a fraud has been committed by any person in the promotion or formation of the company, or by any director, manager, or officer of the company in relation to the company since its formation, the Court may, after consideration of the report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director,

manager, or officer of the company, attend before the Court on a day appointed by the Court for that purpose and be publicly questioned as to the promotion or formation or the conduct of the business of the company, or as to the person's conduct and dealings as director, manager, or officer thereof.

(2) The liquidator and any creditor or contributory may take part in the questioning, either personally or by solicitor or counsel.

(3) The Court may put any questions to the person questioned that the Court thinks fit.

(4) The person questioned shall be questioned on oath, and shall answer all questions the Court puts or allows to be put to the person.

(5) A person ordered to be questioned under this section shall at the person's own cost, before questioning, be furnished with a copy of the liquidator's report, and may at the person's own cost employ a solicitor with or without counsel who shall be at liberty to question the person for the purpose of enabling the person to explain or qualify any answers given by the person.

(6) Notwithstanding subsection (5), if a person ordered to be questioned is, in the opinion of the Court, exculpated from any charges made or suggested against the person, the Court may allow the person any costs that in its discretion it may think fit.

(7) Notes of the questioning shall be taken down either in shorthand or in writing, and if in writing shall be read over to or by, and signed by, the person questioned, and may thereafter be used in evidence against the person, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(8) The Court may, if it thinks fit, adjourn the questioning from time to time.

(9) Questioning under this section may, if the Court so directs, and subject to the *Alberta Rules of Court*, be held before a clerk of the Court named for the purpose, or any special examiner appointed by the Court, and the powers of the Court under this section as to the conduct of the questioning, but not as to costs, may be exercised by the person before whom the questioning is held.

RSA 2000 cC-21 s238;2009 c53 s39

Prosecution of delinquent directors

239 If it appears to the Court in the course of a winding-up by the Court that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the

company and for which he or she is criminally responsible, the Court may, on the application of any person interested in the winding-up, or of its own motion, direct the liquidator to prosecute for the offence, and may order the costs and expenses to be paid out of the assets of the company.

RSA 1980 cC-20 s239

Liquidators

Appointment, remuneration, title, etc., of liquidators

240(1) For the purpose of conducting the proceedings in winding up a company and performing the duties in reference thereto that the Court may impose, the Court may appoint a liquidator or liquidators.

(2) The Court may at any time after the presentation of a petition, and before the appointment of a liquidator or liquidators, appoint any fit person as a provisional liquidator, and may limit and restrict the person's powers by the order appointing the person.

(3) No liquidator or provisional liquidator is capable of acting as such until he or she has filed with the Registrar a notice of his or her appointment, and given the security in the amount that the Court may direct.

(4) Every liquidator or provisional liquidator shall, within 7 days after his or her appointment, file with the Registrar the notice aforesaid, and if a liquidator defaults in complying with this requirement he or she is guilty of an offence.

(5) If more than one liquidator is appointed by the Court, the Court shall declare whether any act by this Act required or authorized to be done by the liquidator is to be done by all or any one or more of the persons appointed.

(6) A liquidator appointed by the Court may resign or, on cause shown, be removed by the Court.

(7) A vacancy in the office of a liquidator appointed by the Court shall be filled by the Court.

(8) The liquidator shall receive the salary or remuneration by way of percentage or otherwise that the Court may direct, and if more persons than one are appointed liquidators, their remuneration shall be distributed among them in the proportions the Court directs.

(9) A liquidator shall be described by the style of the liquidator of the particular company in respect of which the liquidator is appointed, and not by his or her individual name.

(10) The acts of a liquidator are valid notwithstanding any defects that may afterwards be discovered in the liquidator's appointment or qualification.

RSA 1980 cC-20 s240

Custody of company's property

241(1) In a winding-up by the Court the liquidator or the provisional liquidator, as the case may be, shall take into his or her custody or under his or her control all the property and choses in action to which the company is or appears to be entitled.

(2) In a winding-up by the Court all the property of the company shall be deemed to be in the custody of the Court, if and so long as there is no liquidator.

RSA 1980 cC-20 s241

Application for directions

242 The liquidator may apply to the Court for directions in relation to any particular matter arising under the winding-up.

RSA 1980 cC-20 s242

Powers of liquidator

243(1) The liquidator in a winding-up by the Court may, with the sanction of the Court,

- (a) bring or defend any action or other legal proceeding in the name and on behalf of the company;
- (b) carry on the business of the company, so far as may be necessary for the beneficial winding-up thereof;
- (c) appoint a solicitor to assist the liquidator in the performance of his or her duties;
- (d) employ an agent to do any business that the liquidator is unable to do himself or herself, but the sanction in this case must be obtained before the employment, except in cases of urgency, and in those cases it must be shown that no undue delay took place in obtaining the sanction;
- (e) pay any classes of creditors in full;
- (f) make any compromise or arrangement with any creditors or class of creditors or any persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable;

- (g) make any compromise or arrangement in respect of calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and in respect of all questions in any way relating to or affecting the assets or the winding-up of the company, on the terms agreed, and take any security for the discharge of any call, debt, liability, or claim, and give a complete discharge in respect thereof;
- (h) sell the real and personal property and choses in action of the company by public auction or private contract and transfer the whole thereof to any person or company, or sell it in parcels;
- (i) do all acts, and execute all deeds, receipts, and other documents in the name and on behalf of the company, and for that purpose use, when necessary, the company's seal;
- (j) prove, rank, and claim in the distribution of the estate of any contributory for any balance against his or her estate, and receive dividends in the distribution in respect of that balance, as a separate debt due from the estate of the contributory, and ratably with the other separate creditors;
- (k) draw, accept, make and endorse any bill of exchange or promissory note in the name and on behalf of the company, with the same effect with respect to the liability of the company as if the bill or note had been drawn, accepted, made, or endorsed by or on behalf of the company in the course of its business;
- (l) raise on the security of the assets of the company any money requisite;
- (m) take out in the liquidator's official name letters of administration to any deceased contributory, and do in the liquidator's official name any other act that is necessary for obtaining payment of any money due from a contributory or the contributory's estate and that cannot be conveniently done in the name of the company, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator;
- (n) do all other things that may be necessary for winding up the affairs of the company and distributing its assets.

(2) The Court may provide by any order that the liquidator may exercise any of the powers set out in subsection (1), without the further sanction or intervention of the Court.

(3) A compromise or arrangement under subsection (1)(f) or (g) and affecting all the creditors or a class of creditors is binding on a company if sanctioned by a special resolution of the company, and on all the creditors or the class of creditors if acceded to by 75% in number and value of all the creditors or of the class of creditors.

RSA 1980 cC-20 s243

Forms, rules and regulations

244(1) The Court, or any 3 of the judges thereof, may, from time to time, make and settle the forms, rules and regulations to be followed and observed in proceedings under this Act and may make rules as to the costs, fees and charges which shall or may be had, taken or paid in all such cases by or to solicitors or counsel, and by or to officers of the Court, whether for the officers or for the Crown, and by or to civil enforcement agencies or other persons for whom it may be necessary to provide, and for any service performed or work done under this Act.

(2) Until forms, rules and regulations are so approved, and subject to any that may be approved, the practice under this Act shall, in cases not hereinbefore provided for, be the same, as nearly as possible, as under the *Winding-up Act* (Canada), and the rules of the Court made thereunder or applicable thereto.

RSA 1980 cC-20 s244;1994 cC-10.5 s117

Special manager

245(1) The liquidator of a company that is being wound up by the Court may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself or herself, apply to the Court to, and the Court may on the application, appoint a special manager thereof to act during the time the Court directs, with the powers, including any of the powers of a receiver or manager, entrusted to him by the Court.

(2) The special manager shall give the security and account in the manner and shall receive the remuneration the Court may direct.

RSA 1980 cC-20 s245

Payment into bank by liquidator

246(1) Every liquidator of a company that is being wound up by the Court shall, in the manner and at the times the Court may direct, pay the money received by the liquidator into a bank.

(2) If the liquidator at any time retains for more than 10 days a sum exceeding \$250, or some other amount that the Court in any particular case authorizes the liquidator to retain, then, unless the liquidator explains the retention to the satisfaction of the Court, the liquidator shall pay interest on the amount so retained in excess at the rate of 10% per year, and is liable to disallowance of all or part of the liquidator's remuneration as the Court thinks just, and to be removed from the liquidator's office by the Court, and shall pay any expenses occasioned by reason of the liquidator's default.

(3) A liquidator of a company that is being wound up by the Court shall not pay any sums received by the liquidator as liquidator into the liquidator's private banking account.

RSA 1980 cC-20 s246

Accounts of liquidator

247(1) Every liquidator of a company that is being wound up by the Court shall at the times the Court may order, but not less than once in each year during the liquidator's tenure of office, send to the clerk of the Court an account of the liquidator's receipts and payments as liquidator.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a statutory declaration in the prescribed form.

(3) The Court shall cause the account to be audited, and for the purpose of the audit the liquidator shall furnish the auditor with any vouchers and information the auditor may require, and the auditor may at any time require the production of and inspect any books or accounts kept by the liquidator.

(4) When the account has been audited, one copy thereof shall be filed with the Court, and that copy shall be open to the inspection of any creditor, or of any person interested.

(5) The auditor shall cause the account when audited, or a summary thereof, to be printed or typewritten, and shall send a printed or typewritten copy of the account or summary by post to every creditor and contributory.

RSA 1980 cC-20 s247

Books to be kept by liquidator

248 Every liquidator of a company that is being wound up by the Court shall, in the manner prescribed, keep proper books in which the liquidator shall cause to be made entries or minutes of proceedings at meetings, and of any other matters prescribed, and any creditor or contributory may, subject to the control of the Court, personally or by his or her agent inspect any such books.

Release of liquidator

249(1) When the liquidator of a company that is being wound up by the Court has realized all the property of the company, or so much thereof as can, in the liquidator's opinion, be realized without needlessly protracting the liquidation, and has distributed a final dividend, if any, to the creditors and adjusted the rights of the contributories among themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed from office, the Court shall, on the liquidator's application, cause a report on the liquidator's accounts to be prepared, and, on the liquidator's complying with all the requirements of this Act, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly.

(2) If the release of a liquidator is withheld, the Court may, on the application of any creditor or contributory, or person interested, make any order it thinks just, charging the liquidator with the consequences of any act or default that the liquidator may have done or made contrary to his or her duty.

(3) An order of the Court releasing the liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the company, or otherwise in relation to the liquidator's conduct as liquidator, but the order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact, or may be reversed on appeal to the Court of Appeal.

(4) If the liquidator has not previously resigned or been removed, the liquidator's release operates as a removal of the liquidator from his or her office.

Control of Court over liquidators

250(1) The Court shall take cognizance of the conduct of liquidators of companies that are being wound up by the Court, and if a liquidator does not faithfully perform the liquidator's duties and duly observe all the requirements imposed on the liquidator by statute, general rules, or otherwise with respect to the performance of the liquidator's duties, or if any complaint is made to the Court by any creditor or contributory in regard thereto, the Court shall inquire into the matter, and take any action thereon it thinks expedient.

(2) The Court may at any time require any liquidator of a company that is being wound up by the Court to answer any inquiry in relation to any winding-up in which the liquidator is engaged, and may if it thinks fit, order that the liquidator or any other person be questioned on oath concerning the winding-up before a clerk of the Court named for the purpose, or any special examiner appointed by the Court.

(3) The Court may also direct a local investigation to be made of the books and vouchers of the liquidator.

RSA 2000 cC-21 s250;2009 c53 s39

Committee of Inspection, Meetings of Creditors, etc.

Meetings of creditors and contributories

251(1) When a winding-up order has been made by the Court, the liquidator may, and on a request in writing to do so by 10% in value of the creditors or contributories, shall forthwith, summon separate meetings of the creditors and contributories of the company for the purpose of determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

(2) The Court may make any appointment and order required to give effect to any such determination, and, if there is a difference between the determinations of the meetings of the creditors and contributories, the Court shall decide the difference and make any order thereon the Court thinks fit.

RSA 1980 cC-20 s251

Members of committee of inspection

252(1) A committee of inspection appointed pursuant to this Act shall consist of creditors and contributories of the company or persons holding general powers of attorney from creditors or contributories in the proportions agreed on by the meetings of creditors and contributories, or as, in case of difference, may be determined by the Court.

(2) The committee shall meet at the times it from time to time appoints, and, failing such appointment, at least once a month, and the liquidator or any member of the committee may also call a meeting of the committee as and when he or she thinks necessary.

(3) The committee may act by a majority of its members present at a meeting, but shall not act unless a majority of the committee are present.

- (4) Any member of the committee may resign by notice in writing signed by the member and delivered to the liquidator.
- (5) If a member of the committee becomes bankrupt or insolvent or compounds or arranges with the member's creditors, or is absent from 5 consecutive meetings of the committee without the leave of those members who together with the member represent the creditors or contributories, as the case may be, the member's office thereupon becomes vacant.
- (6) Any member of the committee may be removed by an ordinary resolution at a meeting of creditors, if the member represents creditors, or of contributories, if the member represents contributories, of which 7 days' notice has been given, stating the object of the meeting.
- (7) On a vacancy occurring in a committee the liquidator shall forthwith summon a meeting of creditors or of contributories, as the case may be, to fill the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.
- (8) The continuing members of the committee, if not less than 2, may act notwithstanding any vacancy in the committee.

RSA 1980 cC-20 s252

Directions of creditors

253(1) Subject to this Act, the liquidator of a company that is being wound up by the Court shall, in the administration of the assets of the company and in the distribution thereof among its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions given by the creditors or contributories at any general meeting shall, in case of conflict, be deemed to override any directions given by the committee of inspection.

(2) The liquidator may summon general meetings of the creditors or contributories for the purpose of ascertaining their wishes, and the liquidator shall summon meetings at the times the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by 10% in value of the creditors or contributories, as the case may be.

RSA 1980 cC-20 s253

Division 5 Voluntary Winding-up

Resolution to Wind up and Effect

Voluntary winding-up

254 A company may be wound up voluntarily

- (a) when the period, if any, fixed for the duration of the company by the articles expires, or the event, if any, occurs on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a special resolution requiring the company to be wound up,
- (b) if the company resolves by special resolution that the company be wound up voluntarily, or
- (c) if the company resolves by special resolution that by reason of its liabilities it is advisable to wind up.

RSA 1980 cC-20 s254

Notice of resolution

255(1) When a company has resolved by special resolution to wind up voluntarily, it shall publish a notice of the resolution in The Alberta Gazette.

(2) Every company that defaults in complying with this section is guilty of an offence.

RSA 1980 cC-20 s255

Commencement of winding-up

256 A voluntary winding-up shall be deemed to commence at the time of the passing of the resolution authorizing the winding-up.

RSA 1980 cC-20 s256

Procedure in voluntary winding-up

257(1) When a company is wound up voluntarily,

- (a) the company shall, from the commencement of the winding-up, cease to carry on its business, except so far as may be required for the beneficial winding-up thereof, but the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until it is dissolved;
- (b) the company in general meeting shall appoint one or more liquidators for the purpose of winding-up the affairs and

distributing the assets of the company, and may fix the remuneration to be paid to them;

- (c) on the appointment of a liquidator all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanctions the continuance thereof;
- (d) subject to section 283, the property of the company shall be applied in satisfaction of its liabilities *pari passu*, and, subject thereto, shall, unless the memorandum or articles otherwise provide, be distributed among the members according to their rights and interests in the company;
- (e) all costs, charges, and expenses properly incurred in the voluntary winding-up of a company, including the remuneration of the liquidator, are payable out of the assets of the company in priority to all other claims.

(2) Every transfer of shares, except transfers made to or with the sanction of the liquidator, and every alteration in the status of the members of the company, made after the commencement of the winding-up, are void.

RSA 1980 cC-20 s257

Appointment of Liquidators

Appointment of liquidators

258(1) Every liquidator in a voluntary winding-up shall, within 7 days after his or her appointment, file with the Registrar a notice of his or her appointment in the prescribed form, and shall within a like period file with the Registrar a notice in the prescribed form if he or she resigns his or her appointment or for any other reason ceases to act as liquidator.

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

RSA 1980 cC-20 s258

Vacancies

259(1) If a vacancy occurs by death, resignation or otherwise in the office of liquidator appointed by the company in a voluntary winding-up, the company in general meeting may, subject to any arrangement with its creditors, fill the vacancy.

(2) For that purpose a general meeting may be convened by any contributory or, if there were more liquidators than one, by the continuing liquidator or liquidators.

(3) The meeting shall be held in the manner prescribed by the articles, or in the manner that on application by any contributory or by the continuing liquidators, is determined by the Court.

RSA 1980 cC-20 s259

Court may appoint or remove liquidator

260(1) If from any cause whatever there is no liquidator acting, the Court may, on the application of a contributory, appoint a liquidator.

(2) The Court may, on cause shown, remove a liquidator, and appoint another liquidator.

RSA 1980 cC-20 s260

Delegation of power to appoint liquidators

261(1) A company about to be or in course of being wound up voluntarily may, by special resolution, delegate to its creditors, or to any committee of them, the power of appointing liquidators, or any of them, and of supplying vacancies among the liquidators, or enter into any arrangement with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised.

(2) Any act done by creditors pursuant to any such delegated power has the same effect as if it had been done by the company.

RSA 1980 cC-20 s261

Several liquidators

262 When several liquidators are appointed, every power hereby given may be exercised by such one or more of them as may be determined at the time of their appointment, or in default of such determination, by any number not less than 2.

RSA 1980 cC-20 s262

Powers of Liquidator

Powers of liquidator

263(1) The liquidator may, without the sanction of the Court, exercise all powers by this Act given to the liquidator in a winding-up by the Court.

(2) The liquidator may exercise the powers of the Court under this Act of settling a list of contributories and making calls, and shall pay the debts of the company, and adjust the rights of the contributories among themselves, and the list of contributories is proof, in the absence of evidence to the contrary, of the liability of the persons named therein to be contributories.

RSA 1980 cC-20 s263

Sanction of company required in certain cases

264(1) The liquidator may, with the sanction of a special resolution of the company,

- (a) pay any class of creditors in full,
- (b) make any compromise or arrangement with any creditors or class of creditors or any persons claiming to be creditors, or having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable, and
- (c) make any compromise or arrangement in respect of calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and a contributory, or alleged contributory, or other debtor or person apprehending liability to the company, and in respect of all questions in any way relating to or affecting the assets or the winding-up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.

(2) Subject to section 274, a compromise or arrangement under subsection (1)(b) and affecting all the creditors or a class of creditors is binding on all the creditors or the class of creditors if acceded to by 75% in number and value of all the creditors or the class of creditors.

RSA 1980 cC-20 s264

General meetings of company

265 When a company is being wound up voluntarily, the liquidator may summon general meetings of the company for the purpose of obtaining the sanction of the company by special resolution, or for any other purposes the liquidator may think fit.

RSA 1980 cC-20 s265

Consideration for sale of company's business, etc.

266(1) When a company (in this section called "the transferor company") is proposed to be, or is in course of being, wound up voluntarily, and the whole or part of its business or property is proposed to be transferred or sold to another corporation, wheresoever incorporated (in this section called "the transferee company"), the liquidator of the transferor company may, with the sanction of a special resolution of that company, conferring either a general authority on the liquidator or an authority in respect of any

particular arrangement, receive, in compensation or part compensation for the transfer or sale, shares, debentures, or other like interests in the transferee company, for distribution among the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, instead of receiving cash, shares, debentures, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

(2) Any transfer, sale, or arrangement pursuant to this section is binding on the members of the transferor company.

(3) Notwithstanding subsections (1) and (2), any member of the transferor company who did not vote in favour of the special resolution and who dissents to the resolution in writing addressed to the liquidator, and left at the registered office of the company within 7 days after the passage of the resolution, may require the liquidator either to abstain from carrying the resolution into effect, or to purchase the dissident member's interest at a price to be determined by agreement or by arbitration in the manner provided by this section.

(4) If the liquidator elects to purchase the dissident member's interest, the purchase money shall be paid before the company is dissolved, and be raised by the liquidator in the manner determined by special resolution.

(5) A special resolution is not invalid for the purposes of this section by reason that it is passed before or concurrently with a resolution for winding up the company or for appointing liquidators, but if an order for winding up the company by the Court is made within one year from the date of the resolution for winding up, the special resolution is not valid unless sanctioned by the Court.

(6) For the purpose of an arbitration under this section, the provisions of the *Arbitration Act* shall be taken to be incorporated with this Act, and any appointment under that Act may be made under the hand of the liquidator, or, if there is more than one liquidator, then of any 2 or more of the liquidators.

RSA 1980 cC-20 s266

Prosecution of delinquent directors

267 If it appears to the liquidator in the course of a voluntary winding-up that any past or present director, manager, officer, or member of the company has been guilty of any offence in relation to the company and for which he or she is criminally responsible, the liquidator, with the previous sanction of the Court, may prosecute the offender, and all expenses properly incurred by the

liquidator in the prosecution are payable out of the assets of the company in priority to all other liabilities.

RSA 1980 cC-20 s267

Duties of Liquidators

Meeting of creditors

268(1) Every liquidator appointed by a company in a voluntary winding-up shall, within 7 days from the appointment, send notice by post to all persons who appear to the liquidator to be creditors of the company that a meeting of the creditors of the company will be held on a date, not being less than 14 nor more than 42 days after the appointment, and at a place and hour to be specified in the notice, and shall also advertise notice of the meeting once in The Alberta Gazette and once at least in a local newspaper circulating in the district where the registered office or principal place of business of the company was situated.

(2) Every liquidator who fails to comply with the requirements of subsection (1) is guilty of an offence.

(3) At the meeting to be held pursuant to subsection (1) the creditors shall determine whether an application should be made to the Court for the appointment of any person as liquidator in the place of or jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection, and, if the creditors so resolve, an application may be made accordingly to the Court at any time, not later than 14 days after the date of the meeting, by any creditor appointed for the purpose by the meeting.

(4) On the application the Court may make an order either for the removal of the liquidator appointed by the company and for the appointment of some other person as liquidator or for the appointment of some other person to act as liquidator jointly with the liquidator appointed by the company, or for the appointment of a committee of inspection either together with or without any such appointment of a liquidator, or any other order that, having regard to the interests of the creditors and contributories of the company, seems just.

(5) No appeal lies from any order of the Court on an application under this section.

(6) The Court shall make any order as to the costs of the application it thinks fit, and if it is of the opinion that, having regard to the interests of the creditors in the liquidation, there were reasonable grounds for the application, may order the costs of the application to be paid out of the assets of the company,

notwithstanding that the application is dismissed or otherwise disposed of adversely to the applicant.

RSA 1980 cC-20 s268

General meetings

269(1) In the event of a voluntary winding-up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year from the commencement of the winding-up, and at the end of each succeeding year, or as soon thereafter as may be convenient, and shall lay before the meeting an account of the liquidator's acts and dealings and of the conduct of the winding-up during the preceding year, and shall, within 7 days from the date for which the meeting is summoned, file with the Registrar a verified summary of the liquidator's receipts and payments during that year.

(2) Every liquidator who fails to comply with the requirements of this section is guilty of an offence.

RSA 1980 cC-20 s269

Disposal of unclaimed or undistributed assets

270(1) If a liquidator is unable to distribute the property of a company ratably among the members because, after reasonable inquiry,

- (a) the identity of any member is unknown,
- (b) the address of any member is unknown, or
- (c) any member has failed to claim his or her share of the property within a reasonable time,

the liquidator shall deliver or convey to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* that share of the property of the company belonging to the member to be held in trust for the member in accordance with that Act.

(2) A delivery or conveyance under subsection (1) is a distribution among the members according to their rights and interests for the purposes of section 257(1)(d).

(3) If the liquidator is unable to pay all the debts of the company because, after reasonable inquiry,

- (a) the identity of a creditor is unknown, or
- (b) the address of a creditor is unknown,

the liquidator shall pay to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* an amount

equal to the amount of the debt due to the creditor to be held in trust for the creditor in accordance with that Act.

(4) A payment under subsection (3) is a payment in satisfaction of the debt for the purposes of section 257(1)(d).

(5) to (9) Repealed 2007 cU-1.5 s69.

RSA 2000 cC-21 s270;2006 c23 s20;2007 cU-1.5 s69

Liquidator's account and notice of a final meeting

271(1) In the case of every voluntary winding-up the liquidator shall, as soon as the affairs of the company are fully wound up, make up an account of the winding-up, showing how the winding-up has been conducted and the property of the company has been disposed of, and thereupon shall call a general meeting of the company for the purpose of laying before it the account, and giving any explanation thereof, and a notice of the meeting specifying the time, place and object thereof shall be published in 2 consecutive issues of The Alberta Gazette.

(2) If within half an hour from the time appointed for the meeting a quorum of members is not present, the liquidator shall adjourn the meeting to the same day in the next week, and if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting shall for the purposes of this section be deemed to have been duly held by the liquidator.

(3) Within 7 days after the meeting, the liquidator shall file with the Registrar a copy of the account and a return, in the prescribed form, of the holding of the meeting and of its date, and in default of so doing is guilty of an offence.

(4) If a quorum is not present at the meeting or the adjournment thereof, the liquidator shall, instead of the return hereinbefore mentioned, make a return that the meeting was duly summoned and that no quorum was present thereat, and upon that return being made the provisions of subsection (3) as to the making of the return shall be deemed to have been complied with.

(5) The Registrar on receiving the return shall forthwith register it, and on the expiration of 3 months from the registration of the return the company shall be deemed to be dissolved.

(6) Notwithstanding subsection (5), the Court may, on the application of the liquidator or of any other person who appears to the Court to be interested, make an order deferring the date at which the dissolution of the company is to take effect, for a time the Court thinks fit.

(7) When an order is made under this section, the liquidator or other person on whose application the order is made shall, within 7 days after the making of the order, file with the Registrar an office copy thereof, and if the liquidator or other person fails to do so the liquidator or other person is guilty of an offence.

RSA 1980 cC-20 s271

Dispensing with meetings

272(1) The Court may, on application by a liquidator and on being satisfied that

- (a) no useful purpose will be served by the convening of a meeting of members under section 269 or 271, and
- (b) no liabilities of the company remain undischarged and no member of the company will be prejudiced thereby,

make an order dispensing with the convening of any such meeting of the members.

(2) The liquidator shall file an office copy of the order with the Registrar within 7 days after the making thereof.

(3) If the order dispenses with the holding of a final meeting under section 271, the liquidator shall file with the order a copy of the liquidator's final account of the winding-up and a return in the prescribed form.

(4) The Registrar on receiving the return shall forthwith register it, and on the expiration of 3 months from the registration of the return the company shall be deemed to be dissolved.

RSA 2000 cC-21 s272;2009 c53 s39

Applications to the Court

Determination of question

273(1) When a company is being wound up voluntarily, the liquidator or any contributory or creditor may apply to the Court to determine any question arising in the winding-up, or to exercise, as respects the enforcing of calls, or any other matter, all or any of the powers that the Court might exercise if the company were being wound up by the Court.

(2) The Court, if satisfied that the determination of the question or the required exercise of power will be just and beneficial, may accede wholly or partially to the application on any terms and conditions the Court thinks fit, or may make any other order on the application that the Court thinks just.

RSA 1980 cC-20 s273

Appeal from compromise or arrangement

274 Any creditor or contributory may, within 2 weeks from the date when a compromise or arrangement is entered into under section 264, appeal to the Court against it, and the Court may thereupon, as it thinks just, amend, vary, or confirm the compromise or arrangement.

RSA 1980 cC-20 s274

Right to have company wound up by Court

275 The voluntary winding-up of a company does not bar the right of any creditor or contributory to have it wound up by the Court, if the Court is of the opinion that the rights of the creditors or that the rights of the contributories will be prejudiced by a voluntary winding-up.

RSA 1980 cC-20 s275

Adoption of voluntary winding-up proceedings

276 When a company is being wound up voluntarily, and an order is made for winding-up by the Court, the Court may, if it thinks fit, by the same or any subsequent order, provide for the adoption of all or any of the proceedings in the voluntary winding-up.

RSA 1980 cC-20 s276

Division 6 Winding-up Subject to Supervision of Court

Order for supervision

277 When a company has by special resolution resolved to wind up voluntarily, the Court may make an order continuing the voluntary winding-up but subject to such supervision of the Court and with such liberty for creditors, contributories, or others to apply to the Court, and generally on such terms and conditions as the Court thinks just.

RSA 1980 cC-20 s277

Petition for continuance of voluntary winding-up

278 A petition for the continuance of a voluntary winding-up subject to the supervision of the Court shall, for the purpose of giving jurisdiction to the Court over actions, be deemed to be a petition for winding-up by the Court.

RSA 1980 cC-20 s278

Wishes of creditors

279 The Court may, in deciding between a winding-up by the Court and a winding-up subject to supervision, in the appointment of liquidators, and in all other matters relating to the winding-up

subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence.

RSA 1980 cC-20 s279

Additional liquidator

280(1) If an order is made for winding-up subject to supervision, the Court may by the same, or any subsequent order, appoint any additional liquidator.

(2) A liquidator appointed by the Court under this section has the same powers, is subject to the same obligations, and in all respects stands in the same position as if the liquidator had been appointed by the company.

(3) The Court may remove a liquidator so appointed by the Court, or any liquidator continued under the supervision order and fill any vacancy occasioned by the removal or by death or resignation.

RSA 1980 cC-20 s280

Difference between supervision and winding-up by Court

281(1) When an order is made for a winding-up subject to supervision, the liquidator may, subject to any restrictions imposed by the Court, exercise all the liquidator's powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up voluntarily.

(2) A winding-up subject to the supervision of the Court is not a winding-up by the Court for the purpose of sections 240(1) to (9), 238, 243 to 248 and 251 to 253, but, subject as aforesaid, an order for a winding-up subject to supervision shall for all purposes, including the staying of actions and other proceedings, the making and enforcement of calls, and the exercise of all other powers, be deemed to be an order for winding-up by the Court.

RSA 1980 cC-20 s281;1983 c21 s7

Division 7 Winding-up

General Provisions

Debts admissible in proof

282 In every winding-up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, are admissible in proof against the company, a just estimate being made, so far as possible, of the value of those debts or claims that may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value.

RSA 1980 cC-20 s282

Preferential payments

283(1) Subject to sections 109 and 111 of the *Employment Standards Code*, in a winding-up there shall be paid in priority to all other debts

- (a) all Government or property taxes and rates assessed on or due by the company up to January 1 next before the date mentioned in subsection (6), but in respect of any particular tax or rate not exceeding in the whole one year's assessment, and
- (b) unless the company is being wound up voluntarily merely for the purpose of reconstruction or of amalgamation with another company, the amount of any assessment under the *Workers' Compensation Act*, the liability for which accrued before that date.

(2) The foregoing debts

- (a) rank equally among themselves and shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions, and
- (b) insofar as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

(3) Subject to the retention of the sums that may be necessary for the costs and expenses of the winding-up, the foregoing debts shall be discharged forthwith so far as the assets are sufficient to meet them.

(4) In the event of the landlord or other person distraining or having distrained on any goods or effects of the company within one month next before that date, the debts to which priority is given by this section are a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof, but in respect of any money paid under any such charge the landlord or other person has the same rights of priority as the person to whom the payment is made.

(5) If any payment on account of wages or salary has been made to any clerk, servant, worker or labourer in the employment of a company out of money advanced by some person for that purpose, that person has in a winding-up a right of priority in respect of the money so advanced and paid up to the amount by which the sum in

respect of which that clerk, servant, worker or labourer would have been entitled to priority in the winding-up has been diminished by reason of the payment having been made.

(6) The date hereinbefore in this section referred to is

- (a) in the case of a company that is ordered to be wound up by the Court and that had not previously commenced to be wound up voluntarily, the date of the winding-up order, and
- (b) in any other case, the date of the commencement of the winding-up.

RSA 1980 cC-20 s283;RSA 1980 cE-10.1 s117;1988 cE-10.2 s125;
1994 cM-26.1 s642(9);1996 cE-10.2 s142

Fraudulent preference

284 Any conveyance, mortgage, delivery of goods, payment, execution or other act relating to property and that would, if made or done by or against an individual, be deemed a fraudulent preference shall, if made or done by or against a company, be deemed, in the event of its being wound up, a fraudulent preference of its creditors and is invalid accordingly.

RSA 1980 cC-20 s284

Books, etc., as evidence

285 When any company is being wound up, all books and papers of the company and of the liquidators are, as between the contributories of the company, in the absence of evidence to the contrary, as proof of the truth of all matters purporting to be therein recorded.

RSA 1980 cC-20 s285

Power of Court to call meetings

286(1) Where by this Act the Court is authorized, in relation to winding-up, to have regard to the wishes of creditors or contributories as proved to it by any sufficient evidence, the Court may, if it thinks fit, for the purpose of ascertaining those wishes, direct meetings of the creditors or contributories to be called, held, and conducted in a manner the Court directs, and may appoint a person to act as chair of any such meeting, and to report the result thereof to the Court.

(2) In the case of creditors, regard shall be had to the value of each creditor's debt.

(3) In the case of contributories, regard shall be had to the number of votes conferred on each contributory by the articles.

RSA 1980 cC-20 s286

Power of Court to compel delinquent directors, etc., to compensate company

287(1) When in the course of winding up a company it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, or liquidator or any officer of the company, has misapplied or retained or become liable or accountable for any money or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the liquidator, or of any creditor or contributory, examine into the conduct of the promoter, director, manager, liquidator or officer, and compel him or her to repay or restore the money or property or any part thereof, with interest at a rate the Court thinks just, or to contribute a sum to the assets of the company, by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust that the Court thinks just.

(2) This section applies notwithstanding that the offence is one for which the offender is criminally responsible.

RSA 1980 cC-20 s287

Disposal of company books

288(1) When a company has been wound up and is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of as follows:

- (a) in the case of a winding-up by the Court, in the way the Court directs;
- (b) in the case of a voluntary winding-up, in the way the company by special resolution directs.

(2) After 2 years from the dissolution of the company, or a shorter period, not being less than one year, that may be fixed by the Court or by special resolution under subsection (1), neither the company nor any liquidator nor any person to whom the custody of the books and papers has been committed, has any responsibility by reason of the books and papers not being forthcoming to any person claiming to be interested therein.

RSA 1980 cC-20 s288

Power of Court to declare dissolution of company void

289(1) When a company has been dissolved, the Court may at any time within one year of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, on any terms the Court thinks fit, declaring the dissolution to have been void, and thereupon any

proceedings may be taken that might have been taken if the company had not been dissolved.

(2) The person on whose application the order was made shall, within 7 days after the making of the order, file with the Registrar an office copy of the order, and if that person fails to do so he or she is guilty of an offence.

RSA 1980 cC-20 s289

Enforcement of orders of Court

290 Orders made by the Court under this Act may be enforced in the same manner as orders made in any action pending in the Court.

RSA 1980 cC-20 s290

Appeals from orders

291 Subject to the *Alberta Rules of Court*, an appeal from any order or decision made or given in the winding-up of a company by the Court under this Act lies in the same manner and subject to the same conditions as an appeal from any order or decision of the Court in cases within its ordinary jurisdiction.

RSA 1980 cC-20 s291

Report of proceedings under Winding-up Act or Bankruptcy Act

292 When proceedings in respect of a company have been taken under the *Winding-up Act* (Canada) or under the *Bankruptcy and Insolvency Act* (Canada), every clerk of the Court and every registrar in bankruptcy shall furnish to the Registrar from time to time at the Registrar's request any report of the proceedings that the Registrar requires.

RSA 1980 cC-20 s292;1994 c23 s51

Notice of liquidation

293(1) When a company is being wound up, whether by the Court or voluntarily, or when a receiver or manager of the property of a company has been appointed, every invoice, order for goods, or business letter issued by or on behalf of the company or a liquidator of the company or the receiver or manager, being a document on or in which the name of the company appears, shall contain a statement that the company is in liquidation, or that a receiver or manager has been appointed, as the case may be.

(2) If default is made in complying with the requirements of this section, the company and every director, manager, secretary or other officer of the company and every liquidator of the company and every receiver or manager, who knowingly and wilfully authorizes or permits the default is guilty of an offence.

RSA 1980 cC-20 s293

Disclaimer

294(1) If any part of the property of a company in liquidation consists of land of any tenure burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the liquidator of the company, notwithstanding that the liquidator has endeavoured to sell or has taken possession of the property or exercised any act of ownership in relation thereto, may, with the permission of the Court and subject to this section, by writing signed by the liquidator, at any time within 12 months after the commencement of the winding-up or any extended period allowed by the Court, disclaim the property.

(2) Notwithstanding subsection (1), if any such property has not come to the knowledge of the liquidator within one month after the commencement of the winding-up, the power under this section of disclaiming the property may be exercised at any time within 12 months after the liquidator has become aware thereof or any extended period allowed by the Court.

(3) The disclaimer operates to determine, as from the date of disclaimer, the rights, interests and liabilities of the company, and the property of the company, in or in respect of the property disclaimed, but does not, except so far as is necessary for the purpose of releasing the company and the property of the company from liability, affect the rights or liabilities of any other person.

(4) The Court, before or on granting permission to disclaim, may require such notices to be given to persons interested, and impose such terms as a condition of granting permission, and make such other order in the matter as the Court thinks just.

(5) The liquidator is not entitled to disclaim any property under this section in any case where an application in writing has been made to the liquidator by any persons interested in the property requiring the liquidator to decide whether the liquidator will or will not disclaim, and the liquidator has not, within a period of 28 days after the receipt of the application or a further period allowed by the Court, given notice to the applicant that the liquidator intends to apply to the Court for permission to disclaim, and, in the case of a contract, if the liquidator, after an application, does not within that period or further period, disclaim the contract, the company shall be deemed to have adopted it.

(6) The Court may, on the application of any person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order

rescinding the contract on any terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the Court thinks just, and any damages payable under the order to any such person may be proved by the person as a debt in the winding-up.

(7) The Court may, on an application by any person who either claims any interest in any disclaimed property or is under any liability not discharged by this Act in respect of any disclaimed property, and on hearing any such persons as it thinks fit, make an order for the vesting of the property in or the delivery of the property to any persons entitled thereto, or to whom it may seem just that the property should be delivered by way of compensation for such liability as aforesaid, or a trustee for the person, and on such terms as the Court thinks just, and on a vesting order being made, the property comprised therein vests accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose.

(8) Notwithstanding subsection (7), if the property disclaimed is of a leasehold nature, the Court shall not make a vesting order in favour of any person claiming under the company, whether as under-lessee or as mortgagee by demise, except on the terms of making that person

- (a) subject to the same liabilities and obligations as those to which the company was subject under the lease in respect of the property at the commencement of the winding-up, or
- (b) if the Court thinks fit, subject only to the same liabilities and obligations as if the lease had been assigned to that person at that date,

and in either event, if the case so requires, except as if the lease had comprised only the property comprised in the vesting order, and any mortgagee or under-lessee declining to accept a vesting order on those terms is excluded from all interest in and security on the property, and, if there is no person claiming under the company who is willing to accept an order on those terms, the Court may vest the estate and interest of the company in the property in any person liable, either personally or in a representative character, and either alone or jointly with the company, to perform the lessee's covenants in the lease, freed and discharged from all estates, encumbrances and interests created therein by the company.

(9) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the company to the amount of the injury and may accordingly prove the amount as a debt in the winding-up.

RSA 2000 cC-21 s294;2014 c13 s21

Part 11 Miscellaneous

Division 1 Office of Registrar

Appointment of Registrar

295 In accordance with the *Public Service Act* there shall be appointed a Registrar of Companies, a Deputy Registrar of Companies and any other employees necessary for the proper administration of this Act.

RSA 1980 cC-20 s295

Action against Registrar

296 No action or proceeding shall without the leave of the Minister of Justice and Solicitor General be brought or taken against the Registrar for anything done or omitted to be done in the performance or intended or supposed performance of the Registrar's duties.

RSA 2000 cC-21 s296;2013 c10 s34

Questioning of Registrar

297 The Registrar in his or her official capacity is not bound to attend out of his or her office as a witness for questioning, or to produce out of office any document kept, filed, or registered by the Registrar under this or any other Act, pursuant to any subpoena, order or summons issued from any court in Alberta, whether the subpoena, order or summons is directed to the Registrar personally or in his or her official capacity, but the Registrar may be questioned and documents produced under a commission or otherwise at his or her office.

RSA 2000 cC-21 s297;2009 c53 s39

Performance of Registrar's duties

298 Whenever any act is by this Act directed to be done to or by the Registrar, it shall, until the Minister otherwise directs, be done to or by the existing Registrar or to or by some person the Minister authorizes.

RSA 1980 cC-20 s298

Registrar's seal of office

299(1) The Lieutenant Governor in Council may direct a seal to be prepared for use by the Registrar in the performance of the Registrar's duties.

(2) All documents issued by the Registrar under the Registrar's hand or sealed with the Registrar's seal of office in the performance of the Registrar's duties shall be received in evidence and deemed to have been so issued, unless the contrary is shown, and it is not necessary to prove the handwriting, seal of office, or official position of the person certifying the documents.

RSA 1980 cC-20 s299

Failure to file return

300 Notwithstanding anything in this Act, if a company or extra-provincial company has not

- (a) filed a return, notice or document required to be filed under this Act, or
- (b) complied with an undertaking made under section 11(3),

the Registrar shall not issue any certificate under this Act in respect of that company or that extra-provincial company, unless, in the opinion of the Registrar, exceptional circumstances exist that warrant the issuance of the certificate.

RSA 1980 cC-20 s300

Fee for copy or extract

301(1) On the demand of any person and the payment of the prescribed fee, the Registrar may provide a copy or extract of any document permitted or required to be filed with the Registrar pursuant to this Act or part thereof and, if so required by the person, certify the copy or extract to be a true copy or extract.

(2) A copy of or extract from any such document, certified to be a true copy under the hand and seal of office of the Registrar, is, in all legal proceedings, admissible in evidence as of equal validity with the original document.

RSA 1980 cC-20 s301

Refusal to register documents

302 If a document submitted for registration to the office of the Registrar

- (a) is not in all respects legible,

- (b) is for any reason, in the opinion of the Registrar, not capable of being copied by microfilm, duplicating or other similar process, or
- (c) is in any manner insufficient in the opinion of the Registrar for the purpose of registration,

the Registrar may refuse to register the document.

RSA 1980 cC-20 s302

Certificate of status

303 On the payment of the prescribed fee, the Registrar may issue under the Registrar's seal of office a certificate stating that, according to the Registrar's records, the company named therein

- (a) is or is not registered under this Act on the date of issue of the certificate, or
- (b) was or was not registered under this Act on the day or during the period specified in the certificate.

RSA 1980 cC-20 s303

Division 2 Fees

Fees

304 There shall be paid in respect of proceedings under this Act in relation to the winding-up of companies the fees, other than filing fees, that the Lieutenant Governor in Council directs, and the Lieutenant Governor in Council may further direct by whom and in what manner the fees are to be paid.

RSA 1980 cC-20 s304

Agreement re payment of fees

305(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 shall, except for the purposes of section 306, be 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.

RSA 1980 cC-20 s305

No service if fees unpaid

306 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.

RSA 1980 cC-20 s306

Division 3 Regulations

Regulations

307 The Lieutenant Governor in Council may make regulations

- (a) prescribing the forms to be used under this Act;
- (a.1) prescribing the documents referred to in sections 25(2), 32(1.1) and 206(3);
- (b) prescribing that fees are payable to the Registrar in respect of any matter under this Act;
- (c) prescribing the fees payable in respect of any matter required or permitted to be done or given under this Act or the regulations;
- (d) prescribing the form and content of offering circulars to be used pursuant to Part 4, Division 2.

RSA 1980 cC-20 s307;1984 c12 s3;1984 c46 s2

Division 4 Service and Authentication of Documents

Service of documents

308 A document may be served on a company by leaving it at or sending it by registered post to the registered office of the company, or by serving any director, manager, or other officer of the company.

RSA 1980 cC-20 s308

Authentication of documents

309 A document or proceeding requiring authentication by a company may be signed by a director, secretary, or other authorized officer of the company, and need not be under its common seal.

RSA 1980 cC-20 s309

**Division 5
Proceedings in Court****Security for costs**

310 When a company is plaintiff in an action or other legal proceedings, the Court may, if it appears by credible testimony that there is reason to believe that the company will be unable to pay the costs of the defendant if successful in his or her defence, require sufficient security to be given for those costs, and may stay all proceedings until the security is given.

RSA 1980 cC-20 s310

Relief for breach of trust

311 If in any proceeding against a director of a company for negligence or breach of trust it appears to the Court that the director is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably, and ought fairly to be excused for the negligence or breach of trust, the Court may relieve the director, either wholly or partly, from the director's liability on any terms the Court thinks proper.

RSA 1980 cC-20 s311

**Division 6
Violations of the Act****Number of members**

312(1) A public company shall not carry on business with fewer than 3 members nor a private company with fewer than 2 members, and if at any time a company carries on business for more than 6 months with fewer than 3 members or 2 members, as the case may be, every person who is a member of the company during the time that it so carries on business after those 6 months, and is cognizant of the fact that it is so carrying on business, is severally liable for the payment of all the debts of the company contracted during that time, and may be sued for them, without joinder in action of any other member.

(2) Subsection (1) does not apply to a company formed pursuant to section 15(4) or (5).

RSA 1980 cC-20 s312

Penalties

313(1) Every director, manager, secretary or other officer of a company or extra-provincial company who knowingly and wilfully authorizes or permits any act, default, or refusal in respect of which the company is by this Act declared to be guilty of an offence, is also guilty of an offence.

(2) Every company, extra-provincial company or person guilty of an offence for which no penalty is specified is liable to a fine not exceeding \$500.

RSA 1980 cC-20 s313

Application of penalties

314 The Court imposing any penalty under this Act may direct that the whole or any part thereof be applied in or towards payment of the costs of the proceedings, or in or towards rewarding the person on whose information or at whose suit the penalty is recovered, and subject to any such direction, all penalties under this Act shall, notwithstanding anything in any other Act, be paid into the General Revenue Fund.

RSA 1980 cC-20 s314

Remission of penalties

315 The Lieutenant Governor in Council may at any time and either absolutely or on condition, remit or grant relief from any penalty imposed, or to which a company may be liable, for the infraction of this Act.

RSA 1980 cC-20 s315

Laying information

316 An information in respect of an offence against this Act may be laid within 2 years from the time when the matter of the information arose but not thereafter.

RSA 1980 cC-20 s316

Schedule**Table A****Articles of Association of, Limited.**

1. In these regulations, unless the context otherwise requires, expressions defined in the *Companies Act*, or any statutory modification thereof in force at the date at which these regulations become binding on the Company, shall have the meanings so defined.
2. In these regulations, unless the context otherwise requires words importing the singular shall include the plural, and vice versa, and words importing the masculine gender shall include females and words importing persons shall include corporations.

Shares

3. No share shall be offered to the public for subscription except on the terms that the amount payable on application shall be at least 5% of the nominal amount or par value of the share, or, in the case of a share without nominal or par value, of the price of the share; and the directors shall, as regards any allotment of shares, duly comply with such of the provisions of the *Companies Act* as may be applicable thereto.
4. Every member shall, without payment, be entitled to a certificate signed by the secretary and one other officer of the Company containing the statements required by the *Companies Act*; provided that, in respect of a share or shares held jointly by several persons, the Company shall not be bound to issue more than one certificate, and delivery of a certificate for a share to one or several joint holders shall be sufficient delivery to all.
5. If a share certificate is defaced, lost, or destroyed, it may be renewed on payment of such fee, if any, not exceeding 50¢, and on such terms, if any, as to evidence and indemnity as the directors think fit.
6. No part of the funds of the Company shall be employed in the purchase of, or in loans upon the security of, the Company's shares.

Lien

7. The Company shall have a lien on every share (not being a fully paid share) for all money (whether presently payable or not) called or payable at a fixed time in respect of that share, and the Company

shall also have a lien on all shares standing registered in the name of a single person for all money presently payable by the person or the person's estate to the Company; but the directors may at any time declare any share to be wholly or in part exempt from the provisions of this clause. The Company's lien, if any, on a share shall extend to all dividends payable thereon.

8. The Company may sell, in such manner as the directors think fit, any shares on which the Company has a lien, but no sale shall be made unless some sum in respect of which the lien exists is presently payable, nor until the expiration of 14 days after a notice in writing, stating and demanding payment of such part of the amount in respect of which the lien exists as is presently payable, has been given to the registered holder for the time being of the share, or the person entitled by reason of the holder's death or bankruptcy to the share.

9. The proceeds of the sale shall be applied in payment of such part of the amount in respect of which the lien exists as is presently payable, and the residue shall (subject to a like lien for sums not presently payable as existed upon the shares prior to the sale) be paid to the person entitled to the shares at the date of the sale. The purchaser shall be registered as the holder of the shares, and the purchaser shall not be bound to see to the application of the purchase-money, nor shall the purchaser's title to the shares be affected by any irregularity or invalidity in the proceedings in reference to the sale.

Calls on Shares

10. The directors may from time to time make calls upon the members in respect of any moneys unpaid on their shares: Provided that no call shall exceed 1/4 of the nominal amount of the share, or, in the case of a share without nominal or par value, of the price at which the share is issued, or be payable at less than one month from the last call; and each member shall (subject to receiving at least 14 days' notice specifying the time or times of payment) pay to the Company at the time or times so specified the amount called on the member's shares.

11. The joint holders of a share shall be jointly and severally liable to pay all calls in respect thereof.

12. If a call or instalment of a call is not paid before or on the day appointed for payment thereof, the person from whom the call is due shall pay interest thereon at the rate of 8% per year from the day appointed for the payment thereof to the time of the actual payment, but the directors shall be at liberty to waive payment of that interest wholly or in part.

13. The directors may make arrangements on the issue of shares for a difference between the holders in the amount of calls to be paid and in the times of payment.

14. The directors may, if they think fit, receive from any member willing to advance it all or any part of the money uncalled and unpaid on any shares held by the member, and on all or any of the money so advanced may (until the same would, but for such advance, become presently payable) pay interest at such rate (not exceeding, without the sanction of an ordinary resolution, whether previous notice thereof has been given or not, 6%) as may be agreed upon between the member paying such money in advance and the directors.

Transfer and Transmission of Shares

15. The instrument of transfer of any shares in the Company shall be executed both by the transferor and transferee, and the transferor shall be deemed to remain the holder of the shares until the name of the transferee is entered in the register of members in respect thereof.

16. Shares in the Company shall be transferred in the following form, or in any usual or common form which the directors shall approve:

I, A. B. , of , in consideration of the sum of \$. paid to me by C. D. , of (hereinafter called the "said transferee"), do hereby transfer to the said transferee the share *or* shares numbered in the undertaking called the Company, Limited, to hold unto the said transferee, the transferee's executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said transferee, do hereby agree to take the said share *or* shares subject to the conditions aforesaid.

As witness our hands the day of.
Witness to the signatures of, etc.

17. The directors may decline to register any transfer of shares, not being fully paid shares, to a person of whom they do not approve, and may also decline to register any transfer of shares on which the Company has a lien. The directors may also suspend the registration of transfers during the 14 days immediately preceding the ordinary general meeting in each year. The directors may decline to recognize any instrument of transfer unless

- (a) a fee not exceeding 50¢ is paid to the Company in respect thereof, and
- (b) the instrument of transfer is accompanied by the certificate of the shares to which it relates, and such other evidence as the directors may reasonably require to show the right of the transferor to make the transfer.

18. The executors or administrators of a deceased sole holder of a share shall be the only persons recognized by the Company as having any title to the share. In the case of a share registered in the names of 2 or more holders, the survivors or survivor, or the executors or administrators of the deceased survivor, shall be the only persons recognized by the Company as having any title to the share.

19. Any person becoming entitled to a share in consequence of the death or bankruptcy of a member shall, on such evidence being produced as may from time to time be required by the directors, have the right either to be registered as a member in respect of the share, or, instead of being registered, to make such transfer of the share as the deceased or bankrupt person could have made; but the directors shall, in either case, have the same right to decline or suspend registration as they would have had in the case of a transfer of the share by the deceased or bankrupt person before the death or bankruptcy.

20. A person becoming entitled to a share by reason of the death or bankruptcy of the holder shall be entitled to the same dividends and other advantages to which the person would be entitled if the person were the registered holder of the share, except that the person shall not, before being registered as a member in respect of the share, be entitled in respect of it to exercise any right conferred by membership in relation to meetings of the Company.

Forfeiture of Shares

21. If a member fails to pay any call or instalment of a call on the day appointed for the payment thereof, the directors may, at any time thereafter during such time as any part of such call or instalment remains unpaid, serve a notice on the member requiring payment of so much of the call or instalment as is unpaid, together with any interest which may have accrued.

22. The notice shall name a further day (not earlier than the expiration of 14 days from the date of the notice) on or before which the payment required by the notice is to be made, and shall state that in the event of non-payment at or before the time

appointed the shares in respect of which the call was made will be liable to be forfeited.

23. If the requirements of any such notice as aforesaid are not complied with, any share in respect of which the notice has been given may at any time thereafter, before the payment required by the notice has been made, be forfeited by a resolution of the directors to that effect.

24. A forfeited share may be sold or otherwise disposed of on such terms and in such manner as the directors think fit, and at any time before a sale or disposition the forfeiture may be cancelled on such terms as the directors think fit.

25. A person whose shares have been forfeited shall cease to be a member in respect of the forfeited shares.

26. A statutory declaration in writing that the declarant is a director of the Company, and that a share in the Company has been duly forfeited on a date stated in the declaration, shall be conclusive proof of the facts therein stated as against all persons claiming to be entitled to the share, and that declaration, and the receipt of the Company for the consideration, if any, given for the share on the sale or disposition thereof, shall constitute a good title to the share, and the person to whom the share is sold or disposed of shall be registered as the holder of the share and shall not be bound to see to the application of the purchase-money, if any, nor shall the person's title to the share be affected by any irregularity or invalidity in the proceedings in reference to the forfeiture, sale, or disposal of the share.

Alteration of Capital and Shares

27. The company may by special resolution alter the conditions of its memorandum so as to increase its authorized share capital

- (a) by the creation of such number of new shares of such amount, or
- (b) by the creation of such number of new shares without nominal or par value if the Company is authorized to issue such shares,

as the special resolution shall prescribe.

28. All new shares shall, before issue, be offered to such persons, if any, as the resolution may direct. The offer shall be made by notice specifying the number of shares offered, and limiting a time within which the offer, if not accepted, will be deemed to be

declined, and after the expiration of that time, or on the receipt of an intimation from the person to whom the offer is made that the person declines to accept the shares offered, the directors may dispose of them in such manner as they think most beneficial to the Company. The directors may likewise so dispose of any new shares which, by reason of the ratio which the new shares bear to shares held by persons entitled to an offer of new shares, cannot, in the opinion of the directors, be conveniently offered under this article.

29. The new shares shall be subject to the same provisions with reference to the payment of calls, lien, transfer, transmission, forfeiture, and otherwise as the existing shares in the Company.

General Meetings

30. The first annual general meeting shall be held within 16 months from the date on which the Company is entitled to commence business, and thereafter an annual general meeting shall be held once in every calendar year at such time, not being more than 16 months after the holding of the last preceding annual general meeting, and place as may be prescribed by the Company in general meeting, or, in default, at such time in the month following that in which the anniversary of the Company's last annual general meeting occurs, and at such place as the directors shall appoint. In default of the meeting being so held, the meeting shall be held in the month next following, and may be convened by any 2 members in the same manner as nearly as possible as that in which meetings are to be convened by the directors.

31. The annual general meetings shall be called ordinary meetings; all other general meetings shall be called extra-ordinary.

32. The directors may, whenever they think fit, convene an extra-ordinary general meeting, and extra-ordinary general meetings shall also be convened on such requisition, or, in default, may be convened by such requisitionists, as provided by the *Companies Act*. If at any time there are not within Alberta sufficient directors capable of acting to form a quorum, any director or any 2 members of the Company may convene an extra-ordinary general meeting in the same manner as nearly as possible as that in which meetings may be convened by the directors.

Proceedings at General Meeting

33. Seven days' notice at the least, exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given, specifying the place, the day, and the

hour of meeting, and, in case of special business, the general nature of that business, shall be given in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by ordinary resolution, whether previous notice thereof has been given or not, to such persons as are, under the regulations of the Company, entitled to receive such notices from the Company; but the non-receipt of the notice by any member shall not invalidate the proceedings of any general meeting.

34. All business shall be deemed special that is transacted at an extra-ordinary meeting and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend, the consideration of the accounts, balance sheets, and the ordinary report of the directors and auditors, the election of directors and other officers, and the fixing of the remuneration of the auditors.

35. No business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business; save as herein otherwise provided, a quorum shall be members personally present, not being less than 2 in number, and holding or representing by proxy not less than 10% of the issued capital of the Company.

36. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting, if convened on the requisition of members, shall be dissolved; in any other case it shall stand adjourned to the same day in the next week, at the same time and place, and, if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the members present shall be a quorum.

37. The president or, in the president's absence, the vice-president, if any, of the Company shall preside as chair at every general meeting of the Company.

38. If there is no president or vice-president, or if at any meeting the president or vice-president is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act as chairman, the members present shall choose some one of their number to be chair.

39. The chair may, with the consent of any meeting at which a quorum is present, and shall if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for 10 days or more, notice of the adjourned meeting shall be given as in the case of an original meeting. Save as aforesaid, it shall not be

necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

40. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands, unless a poll is, before or on the declaration of the result of the show of hands, demanded by at least one member entitled to vote, and, unless a poll is so demanded, a declaration by the chair that a resolution has, on a show of hands, been carried, or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book of the proceedings of the Company, shall be conclusive proof of the fact, without proof of the number or proportion of the votes recorded in favour of, or against, that resolution.

41. If a poll is duly demanded it shall be taken within 24 hours and in such manner as the chair directs, and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded.

42. In the case of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting at which the show of hands takes place, or at which the poll is demanded, shall be entitled to a second or casting vote.

43. A poll demanded on the election of a chair, or on a question of adjournment, shall be taken forthwith. A poll demanded on any other question shall be taken at such time as the chair of the meeting directs.

Votes of Members

44. On a show of hands every member present in person shall have one vote. On a poll every member shall have one vote for each share of which the member is the holder.

45. In the case of joint holders the vote of the senior who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

46. A member of unsound mind, or in respect of whom an order has been made by any Court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by the member's committee, curator bonis, or other person in the nature of a committee or curator bonis appointed by that Court, and any such committee, curator bonis, or other person may, on a poll, vote by proxy.

47. No member shall be entitled to vote at any general meeting unless all calls presently payable by the member in respect of shares in the Company have been paid.
48. On a poll votes may be given either personally or by proxy.
49. The proxy appointing a nominee shall be in writing under the hand of the appointer or of the appointer's attorney duly authorized in writing, or, if the appointer is a corporation, either under the common seal or under the hand of an officer or attorney so authorized.
50. The proxy appointing a nominee and the power of attorney or other authority, if any, under which it is signed, or a notarially certified copy of that power or authority, shall be deposited with the company, or an agent thereof, within the period of time preceding any meeting or adjourned meeting fixed by the directors and not exceeding 48 hours, excluding Saturdays and holidays, and which is specified in the notice calling the meeting or in the information circular relating thereto.

Directors

51. Until otherwise determined by a general meeting, the number of the directors shall not be less than 2 nor more than 7.
52. The number and names of the first directors may be determined in writing by a majority of the subscribers of the memorandum of association, and until so determined the subscribers of the memorandum shall for all purposes be deemed to be the directors of the Company.
53. The remuneration of the directors shall from time to time be determined by ordinary resolution, whether previous notice thereof has been given or not.
54. The qualification of a director shall be the holding of at least one share in the Company, and it shall be the director's duty to comply with the provisions of the *Companies Act*.

Powers and Duties of Directors

55. The business of the Company shall be managed by the directors, who may pay all expenses incurred in getting up and registering the Company, and may exercise all such powers of the Company as are not, by the *Companies Act*, or any statutory modification thereof for the time being in force, or by these articles, required to be exercised by the Company in general meeting, subject nevertheless to any regulation of these articles, to

the provisions of the said Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by ordinary resolution, whether previous notice thereof has been given or not; but no regulations made by ordinary resolution shall invalidate any prior act of the directors which would have been valid if that regulation had not been made.

56. The directors may from time to time appoint one or more of their body to the office of managing director or manager or any other office for such term and at such remuneration, whether by way of salary, fee, commission, participation in profits, or otherwise, as they may think fit; but the director's appointment shall be subject to determination at the pleasure of the directors.

57. The amount for the time being remaining undischarged of money borrowed or raised by the directors for the purposes of the Company, otherwise than by the issue of capital, shall not at any time exceed the paid-up capital of the Company without the sanction of an ordinary resolution.

58. The management and directors shall duly comply with the provision of the *Companies Act*, or any statutory modification thereof for the time being in force, and in particular with the provisions in regard to the registration of mortgages and to keeping registers of directors and members and to mailing of forms of proxy and information circulars, and to filing with the Registrar an annual report, and copies of special and other resolutions, and of any change in the registered office or of directors.

59. The directors shall cause minutes to be made in books provided for the purpose,

- (a) of all appointments of officers made by the directors,
- (b) of the names of the directors present at each meeting of the directors and of any committee of the directors,
- (c) of all resolutions and proceedings at all meetings of the Company, and of the directors, and of committees of directors.

The Seal

60. The seal of the Company shall not be affixed to any instrument, except by authority of a resolution of the board of directors or of an ordinary resolution, whether previous notice thereof has been given or not, and in the presence of such officers of the Company as may be prescribed in and by any such

resolution, or, if no officers are prescribed by the resolution, in the presence of

- (a) 2 directors of the Company and the secretary,
- (b) the chair of the directors or the president, if any, of the Company and the secretary, or
- (c) the chair of the directors or the president, if any, of the Company and the treasurer;

and such officers shall sign every instrument to which the seal of the Company is so affixed in their presence.

Disqualification of Directors

61. The office of director shall be vacated if the director

- (a) by notice in writing to the Company resigns his or her office;
- (b) ceases to be a director by virtue of section 89 of the *Companies Act*;
- (c) becomes bankrupt;
- (d) is found lunatic or becomes of unsound mind; or
- (e) is concerned or participates in the profits of any contract with the Company;

Provided, however, that where a director has made a full disclosure of the director's interest in any contract at a meeting of the directors, the director shall not be required to vacate office by reason of being a member of a company that has entered into contracts with or done any work for the company of which he or she is a director; but a director shall not vote in respect of any such contract or work and if the director does so vote the director's vote shall not be counted.

Election, etc., of Directors

62. At each annual general meeting of the Company the whole of the directors shall retire from office, and the Company shall elect directors to fill the offices vacated.

63. A retiring director shall be eligible for re-election.

64. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place, and if at the adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall be deemed to have been re-elected at the adjourned meeting.

65. The Company may from time to time increase or reduce the number of directors by ordinary resolution, whether previous notice thereof has been given or not.

66. Any casual vacancy occurring in the board of directors may be filled up by the directors.

67. The directors shall have power at any time, and from time to time, to appoint a person as an additional director.

68. The Company may by special resolution remove any director before the expiration of the director's period of office, and may by an ordinary resolution appoint another person in the director's stead.

Proceedings of Directors

69. The directors may meet together for the dispatch of business, adjourn and otherwise regulate their meetings, as they think fit. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes the chair shall have a 2nd or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors.

70. The quorum necessary for the transaction of the business of the directors may be fixed by the directors, and unless so fixed shall be a majority of the board.

71. The continuing directors may act notwithstanding any vacancy in their body, but, if and so long as their number is reduced below the number fixed by or pursuant to the regulations of the Company as the necessary quorum of directors, the continuing directors may act for the purpose of increasing the number of directors to that number, or of summoning a general meeting of the Company, but for no other purpose.

72. The president of the Company shall be chair of the board of directors, and in the president's absence the vice-president, if any, of the Company, and if there is no president or vice-president, or if at any meeting the president or vice-president is absent, the

directors may elect a chair of their meetings and determine the period for which the chair is to hold office; but, if no such chair is elected, or if at any meeting the chair is not present within 5 minutes after the time appointed for holding it, the directors present may choose one of their number to be chair of the meeting.

73. The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit; any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

74. A committee may elect a chair of their meetings; if no such chair is elected, or if at any meeting the chair is not present within 5 minutes after the time appointed for holding it, the members present may choose one of their number to be chair of the meeting.

75. A committee may meet and adjourn as the members think proper. Questions arising at any meeting shall be determined by a majority of votes of the members present, and in case of an equality of votes the chair shall have a 2nd or casting vote.

76. All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Dividends and Reserve

77. The Company may by ordinary resolution, whether previous notice thereof has been given or not, declare dividends, but no dividend shall exceed the amount recommended by the directors.

78. The directors may from time to time pay to the members such interim dividends as appear to the directors to be justified by the profits of the Company.

79. No dividend shall be paid otherwise than out of profits.

80. Subject to the rights of persons, if any, entitled to shares with special rights as to dividends, all dividends shall be declared and paid according to the amounts paid on the shares; but, if and so long as nothing is paid up on any of the shares in the Company, dividends may be declared and paid according to the amounts of the shares, or, in the case of shares without nominal or par value, the number of shares held. No amount paid on a share in advance

of calls shall, while carrying interest, be treated for the purposes of this article as paid on the share.

81. The directors may, before recommending any dividend, set aside out of the profits of the Company such sums as they think proper as a reserve or reserves, which shall, at the discretion of the directors, be applicable for meeting contingencies, or for equalizing dividends, or for any other purpose to which the profits of the Company may be properly applied, and pending such application may, at the like discretion, either be employed in the business of the Company or be invested in such investments, other than shares of the Company, as the directors may from time to time think fit.

82. If several persons are registered as joint holders of any share, any one of them may give effectual receipts for any dividend payable on the share.

83. Notice of any dividend that may have been declared shall be given in the manner hereinafter mentioned to the persons entitled to share therein.

84. No dividend shall bear interest against the Company.

Accounts

85. The directors shall cause true accounts to be kept

- (a) of all sums of money received and disbursed by the Company and the matters in respect of which such receipt and expenditure took place,
- (b) of all sales and purchases of goods by the Company,
- (c) of the assets and liabilities of the Company, and
- (d) all other transactions affecting the financial position of the company.

86. The books of account shall be kept at the registered office of the Company, or at such other place as the directors determine by resolution, and shall always be open to inspection by the directors.

87. The directors shall from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounts and books of the Company or any of them shall be open to the inspection of members not being directors, and no member, not being a director, shall have any right of inspecting any account or book or document of the Company except as conferred by law or authorized by the directors

or by ordinary resolution, whether previous notice thereof has been given or not.

88. Once at least in every year the directors shall lay before the company at its annual general meeting a financial statement for the period since the preceding statement, or, in the case of the first financial statement, since the incorporation of the company, made up to a date not more than 6 months before the meeting.

89. The financial statement shall be accompanied by the report of the auditors and by a report of the directors as to the state of the company's affairs, and the amount which they recommend to be paid by way of dividend, and the amount, if any, which they propose to carry to a reserve fund.

90. A copy of the financial statement and report shall, not less than 10 days before the meeting, be sent to all persons entitled to receive notices of general meetings in the manner in which notices are to be given hereunder.

Audit

91. Auditors shall be appointed and their duties regulated in accordance with the *Companies Act*, or any statutory modification thereof for the time being in force.

Notices

92. A notice may be given by the Company to any member either personally or by sending it by mail to the member's registered address, or, if the member has no registered address in Alberta, to the address, if any, within Alberta supplied by the member to the Company for the giving of notices.

Where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected on the day following the date of posting.

93. A notice may be given by the Company to the joint holders of a share by giving the notice to the joint holder named first in the register in respect of the share.

94. A notice may be given by the Company to the persons entitled to a share in consequence of the death or bankruptcy of a member by sending it through the post in a prepaid letter addressed to them by name, or by the title of representatives of the deceased, or trustee of the bankrupt, or by any like description, at the address, if

any, in Alberta supplied for the purpose by the persons claiming to be so entitled.

95. Notice of every general meeting shall be given in some manner hereinbefore authorized to

- (a) every member of the Company except those members who, having no registered address within Alberta, have not supplied to the Company an address within Alberta for the giving of notices to them, and also to
- (b) every person entitled to a share in consequence of the death or bankruptcy of a member, who, but for the member's death or bankruptcy, would be entitled to receive notice of the meeting.

No other person shall be entitled to receive notices of general meetings.

RSA 1980 cC-20 Sched.



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