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# Canadian Business Corporations Act

## 2 Definitions

***distributing corporation*** means, subject to subsections (6) and (7), a distributing corporation as defined in the regulations:

in regs part 2: “distributing corporation” = a corporation that is a “reporting issuer under provincial securities legislation that provide that leg’n and, in the case of a corporation that is not a “reporting issuer”, a corporation

1. that has filed a prospectus or registration statement under the prov’l leg’n or under the laws of a jurisdiction o/s Canada, [i.e. subject to securities regulations – i.e. those who sell shares to the public = public companies]
2. Any of the securities which are listed and posted for trading on a stock exchange in or outside Canada, or
3. That is involved in, former for, resulting from or continued after an amalgamation, a reorganization, an arrangement or a statutory procedure, if one of the participating bodies is a corporation to which subparagraph (i) or (ii) applies.

***ordinary resolution*** means a resolution passed by a majority of the votes cast by the shareholders who voted in respect of that resolution

***special resolution*** means a resolution passed by a majority of not less than two-thirds of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution

## 5 (1) Incorporators

One or more individuals not one of whom

(a) is less than eighteen years of age,

(b) is of unsound mind and has been so found by a court in Canada or elsewhere, or

(c) has the status of bankrupt, may incorporate a corporation by signing articles of incorporation and complying with section 7.

**Bodies corporate (2)**One or more bodies corporate may incorporate a corporation by signing articles of incorporation and complying with section 7.

## 6 (1)  Articles of incorporation

Articles of incorporation shall follow the form that the Director fixes and shall set out, in respect of the proposed corporation,

(a) the **name** of the corporation;

 (b) the **province** in Canada where the registered office is to be situated;

(c) the **classes and any maximum number of shares that the corporation is authorized to issue**, and

(i) if there will be two or more classes of shares, the rights, privileges, restrictions and conditions attaching to each class of shares, and

(ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of, and the rights, privileges, restrictions and conditions attaching to, the shares of each series;

(d) if the issue, transfer or ownership of shares of the corporation is to be restricted, a statement to that effect and a statement as to the nature of such restrictions;

(e) the number of directors or, subject to paragraph 107(a), the minimum and maximum number of directors of the corporation; and

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

**Additional provisions in articles (2)**The articles may set out any provisions permitted by this Act or by law to be set out in the by-laws of the corporation.

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

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

## 9 Effect of certificate

 A corporation comes into existence on the date shown in the certificate of incorporation.

## 14 (1) Personal liability

Subject to this section, a person who enters into, or purports to enter into, a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to its benefits.

**Pre-incorporation and pre-amalgamation contracts  (2)**

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

(a) the corporation is bound by the contract and is entitled to the benefits thereof as if the corporation had been in existence at the date of the contract and had been a party thereto; and

(b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

**Application to court  (3)**Subject to subsection (4), whether or not a written contract made before the coming into existence of a corporation is adopted by the corporation, a party to the contract may apply to a court for an order respecting the nature and extent of the obligations and liability under the contract of the corporation and the person who entered into, or purported to enter into, the contract in the name of or on behalf of the corporation. On the application, the court may make any order it thinks fit.

**Exemption from personal liability (4)**If expressly so provided in the written contract, a person who purported to act in the name of or on behalf of the corporation before it came into existence is not in any event bound by the contract or entitled to the benefits thereof.

## 15 (1) Capacity of a corporation

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

(2) A corporation may carry on business throughout Canada.

**Extra-territorial capacity (3)** A corporation has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Canada to the extent that the laws of such jurisdiction permit.

## 16 Powers of a corporation

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

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

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

## 17 No constructive notice

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

[3rd parties have no obligation to check out a company’s docs, even if they’re filed publicly]

## 18 Authority of directors, officers and agents

**(1)** No corporation and no guarantor of an obligation of a corporation may assert against a person dealing with the corporation or against a person who acquired rights from the corporation that

**(a)** the articles, by-laws and any unanimous shareholder agreement have not been complied with;

**[company cannot argue that K void b/c the articles/USA haven’t been complied with)**

**(b)** the persons named in the most recent notice sent to the Director under section 106 or 113 are not the directors of the corporation;

[company cannot argue that any director listed on information is not a director]

**(c)** the place named in the most recent notice sent to the Director under section 19 is not the registered office of the corporation;

**(d)** a person held out by a corporation as a director, officer, agent or mandatary of the corporation has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the corporation or usual for a director, officer, agent or mandatary;

[apparent authority is created if the person is **held out** as agent AND the duties performed are **ordinary biz matters**]

**(e)** a document issued by any director, officer, agent or mandatary of a corporation with actual or usual authority to issue the document is not valid or genuine; or

**(f)** a sale, lease or exchange of property referred to in subsection 189(3) was not authorized.

**Exception (2)** Subsection (1) does not apply in respect of a person who has, or ought to have, knowledge of a situation described in that subsection by virtue of their relationship to the corporation. [3P’s knowledge of lack of approval/authority can be **imputed** by e.g. past transactions]

## 20(1) Corporate records

A corporation shall prepare and maintain, at its registered office or at any other place in Canada designated by the directors, records containing

**(a)** the articles and the by-laws, and all amendments thereto, and a copy of any unanimous shareholder agreement;

**(b)** minutes of meetings and resolutions of shareholders;

**(c)** copies of all notices required by section 106 or 113; and

**(d)** a securities register that complies with section 50.

## 21 Access to corporate records

**21** **(1)** Subject to subsection (1.1), shareholders and creditors of a corporation, their personal representatives and the Director may examine the records described in subsection 20(1) during the usual business hours of the corporation, and may take extracts from the records, free of charge, and, if the corporation is a distributing corporation, any other person may do so on payment of a reasonable fee.

**Requirement for Affidavit (1.1)** Any person described in subsection (1) who wishes to examine the securities register of a distributing corporation must first make a request to the corporation or its agent or mandatary, accompanied by an affidavit referred to in subsection (7). On receipt of the affidavit, the corporation or its agent or mandatary shall allow the applicant access to the securities register during the corporation’s usual business hours, and, on payment of a reasonable fee, provide the applicant with an extract from the securities register

# PART V: Corporate Finance

## 24 (1) Shares

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

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

**Rights attached to Shares (3)** Where a corporation has only one class of shares, the rights of the holders thereof are equal in all respects and include the rights

1. to vote at any meeting of shareholders of the corporation;
2. to receive any dividend declared by the corporation; and
3. to receive the remaining property of the corporation on dissolution.

**Rights to Classes of Shares (4)** The articles may provide for more than one class of shares and, if they so provide,

1. the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out therein; and
2. the rights set out in subsection (3) shall be attached to at least one class of shares but all such rights are not required to be attached to one class.

## 25 Issue of shares

**(1)** Subject to the articles, the by-laws and any unanimous shareholder agreement and to section 28, shares may be issued at such times and to such persons and for such consideration as the directors may determine.

**Shares non-assessable (2)** Shares issued by a corporation are non-assessable and the holders are not liable to the corporation or to its creditors in respect thereof.

**Consideration (3)** A share shall not be issued until the consideration for the share is fully paid in money or in property or past services that are not less in value than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

**Consideration other than money (4)** In determining whether property or past services are the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the corporation.

**Definition of *property* (5)** For the purposes of this section, *property* does not include a promissory note, or a promise to pay, that is made by a person to whom a share is issued, or a person who does not deal at arm’s length, within the meaning of that expression in the [*Income Tax Act*](http://laws-lois.justice.gc.ca/eng/acts/I-3.3), with a person to whom a share is issued.

2 kinds of consideration are unacceptable; non-property assets (like promissory notes) and future services

## 26 (1) Stated capital account

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

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

**Exception for non-arm’s length transactions (3)** Despite subsection (2), a corporation may, subject to subsection (4), add to the stated capital accounts maintained for the shares of classes or series the whole or any part of the amount of the consideration that it receives in an exchange if the corporation issues shares

**(a)** in exchange for

**(i)** property of a person who immediately before the exchange did not deal with the corporation at arm’s length within the meaning of that expression in the [*Income Tax Act*](http://laws-lois.justice.gc.ca/eng/acts/I-3.3),

**(ii)** shares of, or another interest or right in, a body corporate that immediately before the exchange, or that because of the exchange, did not deal with the corporation at arm’s length within the meaning of that expression in the [*Income Tax Act*](http://laws-lois.justice.gc.ca/eng/acts/I-3.3), or

**(iii)** property of a person who, immediately before the exchange, dealt with the corporation at arm’s length within the meaning of that expression in the [*Income Tax Act*](http://laws-lois.justice.gc.ca/eng/acts/I-3.3), if the person, the corporation and all the holders of shares in the class or series of shares so issued consent to the exchange; or

**(b)** pursuant to an agreement referred to in subsection 182(1) or an arrangement referred to in paragraph 192(1)(b) or (c) or to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated body corporate.

**Limit on Addition to Stated Capital Account (4)** On the issue of a share a corporation shall not add to a stated capital account in respect of the share it issues an amount greater than the amount of the consideration it received for the share.

**Constraint on Addition to a Stated Capital Account(5)** Where a corporation proposes to add any amount to a stated capital account it maintains in respect of a class or series of shares, if

1. the amount to be added was not received by the corporation as consideration for the issue of shares, and
2. the corporation has issued any outstanding shares of more than one class or series, the addition to the stated capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than two classes of convertible shares referred to in subsection 39(5).

**Other Additions to Stated Capital (6)** When a body corporate is continued under this Act, it may add to a stated capital account any consideration received by it for a share it issued and a corporation at any time may, subject to subsection (5), add to a stated capital account any amount it credited to a retained earnings or other surplus account.

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

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

 **(9)** For the purposes of subsection 34(2), sections 38 and 42, and paragraph 185(2)(a), when a body corporate is continued under this Act its stated capital is deemed to include the amount that would have been included in stated capital if the body corporate had been incorporated under this Act.

**Restriction (10)** A corporation shall not reduce its stated capital or any stated capital account except in the manner provided in this Act.

**Exception for an open-end mutual fund (11)** Subsections (1) to (10) and any other provisions of this Act relating to stated capital do not apply to an open-end mutual fund.

**Definition of open-end mutual fund (12)** For the purposes of this section, open-end mutual fund means a distributing corporation that carries on only the business of investing the consideration it receives for the shares it issues, and all or substantially all of those shares are redeemable on the demand of a shareholder.

## 27 (1) Shares in series

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

**(a)** fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series; or

**(b)** authorize the directors to fix the number of shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the shares of, each series.

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

**Restrictions on series (3)** No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer on a series a priority in respect of dividends or return of capital over any other series of shares of the same class that are then outstanding.

**Amendment of Articles (4)** If the directors exercise their authority under paragraph (1)(b), they shall, before the issue of shares of the series, send, in the form that the Director fixes, articles of amendment to the Director to designate a series of shares.

**Certificate of Amendment (5)** On receipt of articles of amendment designating a series of shares, the Director shall issue a certificate of amendment in accordance with section 262.

**Effect of Certificate (6)** The articles of the corporation are amended accordingly on the date shown in the certificate of amendment.

## 28 (1) Pre-emptive right

If the articles so provide, no shares of a class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

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

1. for a consideration other than money;
2. as a share dividend; or
3. pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

## 29 (1) Options and rights

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

1. in the certificates, warrants or other evidences; or
2. in certificates evidencing the securities to which the conversion privileges, options or rights are attached.

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

**Reserved Shares (3)** Where a corporation has granted privileges to convert any securities issued by the corporation into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, if the articles limit the number of authorized shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights.

## 34 (1) Acquisition of corporation’s own shares

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

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

1. The corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
2. The realizable value of the corporation’s assets would after the payment be less than the aggregate of its liabilities and stated capital of all classes.

## 35 (1) Alternative acquisition of corporation’s own shares

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

**(a)** settle or compromise a debt or claim asserted by or against the corporation;

**(b)** eliminate fractional shares; or

**(c)** fulfil the terms of a non-assignable agreement under which the corporation has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

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

**(a)** satisfy the claim of a shareholder who dissents under section 190; or

**(b)** comply with an order under section 241.

**Limitation (3)** A corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

**(a)** the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

**(b)** the realizable value of the corporation’s assets would after the payment be less than the aggregate of

**(i)** its liabilities, and

**(ii)** the amount required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid before the holders of the shares to be purchased or acquired, to the extent that the amount has not been included in its liabilities.

## 36 (1) Redemption of shares

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

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

**(a)** the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

**(b)** the realizable value of the corporation’s assets would after the payment be less than the aggregate of

**(i)** its liabilities, and

**(ii)** the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or before the holders of the shares to be purchased or redeemed, to the extent that the amount has not been included in its liabilities.

## 39 (1) Adjustment of stated capital account

On a purchase, redemption or other acquisition by a corporation under section 34, 35, 36, 45 or 190 or paragraph 241(3)(f), of shares or fractions thereof issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series or fractions thereof purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition. E.g. $100 [Capital received from shares] X 2 [# of shares purchased/redeemed] ÷ 20 [total # of issued shares immediately before the purchase] = $10 deducted from the stated capital account maintained for that class/series

**(2)** A corporation shall deduct the amount of a payment made by the corporation to a shareholder under paragraph 241(3)(g) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

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

**(4)** On a conversion of issued shares of a corporation into shares of another class or series or a change under section 173, 191 or 241 of issued shares of a corporation into shares of another class or series, the corporation shall

**(a)** deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change; and

**(b)** add the result obtained under paragraph (a) and any additional consideration received pursuant to the conversion or change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

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

**Cancellation or Restoration of Shares (6)** Shares or fractions thereof of any class or series of shares issued by a corporation and purchased, redeemed or otherwise acquired by it shall be cancelled or, if the articles limit the number of authorized shares, may be restored to the status of authorized but unissued shares of the class.

**Exception (7)** For the purposes of this section, a corporation holding shares in itself as permitted by subsections 31(1) and (2) is deemed not to have purchased, redeemed or otherwise acquired such shares.

**(8)** For the purposes of this section, a corporation holding shares in itself as permitted by paragraph 32(1)(a) is deemed not to have purchased, redeemed or otherwise acquired the shares at the time they were acquired, but

**(a)** any of those shares that are held by the corporation at the expiration of two years, and

**(b)** any shares into which any of those shares were converted by the corporation and held under paragraph 32(1)(b) that are held by the corporation at the expiration of two years after the shares from which they were converted were acquired are deemed to have been acquired at the expiration of the two years.

**Conversion or Change of Shares (9)** Shares issued by a corporation and converted into shares of another class or series or changed under section 173, 191 or 241 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been converted or changed.

**Effect of Change of Shares on Number of Unissued Shares (10)** Where the articles limit the number of authorized shares of a class of shares of a corporation and issued shares of that class or of a series of shares of that class have become, pursuant to subsection (9), issued shares of another class or series, the number of unissued shares of the first-mentioned class shall, unless the articles otherwise provide, be increased by the number of shares that, pursuant to subsection (9), became shares of another class or series.

**Repayment (11)** Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid.

**Acquisition and Reissue of Debt Obligations (12)** Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the corporation then existing or thereafter incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

## 42 Dividends

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

**(a)** the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

**(b)** the realizable value of the corporation’s assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

## 43 (1) Form of dividend

A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to section 42, a corporation may pay a dividend in money or property.

## 45 (1) Shareholder immunity

The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection 38(4), 118(4) or (5), 146(5) or 226(4) or (5).

## 102 Duty to manage or supervise management

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

**Number of directors (2)** A corporation shall have one or more directors but a distributing corporation, any of the issued securities of which remain outstanding and are held by more than one person, shall have not fewer than three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

## 103 By-laws

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

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

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

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

**Shareholder proposal (5)** A shareholder entitled to vote at an annual meeting of shareholders may, in accordance with section 137, make a proposal to make, amend or repeal a by-law.

## 105 Qualifications of directors

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

**(a)** anyone who is less than eighteen years of age;

**(b)** anyone who is of unsound mind and has been so found by a court in Canada or elsewhere;

**(c)** a person who is not an individual; or

**(d)** a person who has the status of bankrupt.

**Further qualifications (2)** Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.

**Residency (3)** Subject to subsection (3.1), at least twenty-five per cent of the directors of a corporation must be resident Canadians. However, if a corporation has less than four directors, at least one director must be a resident Canadian.

**Exception — Canadian ownership or control (3.1)** If a corporation engages in an activity in Canada in a prescribed business sector or if a corporation, by an Act of Parliament or by a regulation made under an Act of Parliament, is required, either individually or in order to engage in an activity in Canada in a particular business sector, to attain or maintain a specified level of Canadian ownership or control, or to restrict, or to comply with a restriction in relation to, the number of voting shares that any one shareholder may hold, own or control, then a majority of the directors of the corporation must be resident Canadians.

**Clarification (3.2)** Nothing in subsection (3.1) shall be construed as reducing any requirement for a specified number or percentage of resident Canadian directors that otherwise applies to a corporation referred to in that subsection.

**If only one or two directors (3.3)** If a corporation referred to in subsection (3.1) has only one or two directors, that director or one of the two directors, as the case may be, must be a resident Canadian.

**Exception for holding corporation (4)** Despite subsection (3.1), not more than one third of the directors of a holding corporation referred to in that subsection need be resident Canadians if the holding corporation earns in Canada directly or through its subsidiaries less than five per cent of the gross revenues of the holding corporation and all of its subsidiary bodies corporate together as shown in

**(a)** the most recent consolidated financial statements of the holding corporation referred to in section 157; or

**(b)** the most recent financial statements of the holding corporation and its subsidiary bodies corporate as at the end of the last completed financial year of the holding corporation.

## 106 Notice of directors

**(1)** At the time of sending articles of incorporation, the incorporators shall send to the Director a notice of directors in the form that the Director fixes, and the Director shall file the notice.

**Term of office (2)** Each director named in the notice referred to in subsection (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

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

**Staggered terms (4)** It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

**No stated terms (5)** A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following the director’s election.

**Incumbent directors (6)** Notwithstanding subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders the incumbent directors continue in office until their successors are elected.

**Vacancy among candidates (7)** If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the lack of consent, disqualification, incapacity or death of any candidates, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

**Appointment of directors (8)** The directors may, if the articles of the corporation so provide, appoint one or more additional directors, who shall hold office for a term expiring not later than the close of the next annual meeting of shareholders, but the total number of directors so appointed may not exceed one third of the number of directors elected at the previous annual meeting of shareholders.

**Election or appointment as director (9)** An individual who is elected or appointed to hold office as a director is not a director and is deemed not to have been elected or appointed to hold office as a director unless

**(a)** he or she was present at the meeting when the election or appointment took place and he or she did not refuse to hold office as a director; or

**(b)** he or she was not present at the meeting when the election or appointment took place and

**(i)** he or she consented to hold office as a director in writing before the election or appointment or within ten days after it, or

**(ii)** he or she has acted as a director pursuant to the election or appointment.

## 107 Cumulative voting

Where the articles provide for cumulative voting,

**(a)** the **articles shall require a fixed number** and not a minimum and maximum number **of directors**;

**(b)** each shareholder entitled to vote at an election of directors has the **right to cast a number of votes equal to the number of votes attached to the shares held by the shareholder multiplied by the number of directors to be elected**, and **may cast all of those votes in favour of one candidate or distribute them** among the candidates in any manner;

**(c)** a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more persons to be elected by a single resolution;

**(d)** if a shareholder has voted for more than one candidate without specifying the distribution of votes, the shareholder is deemed to have distributed the votes equally among those candidates;

**(e)** if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

**(f)** each director ceases to hold office at the close of the first annual meeting of shareholders following the director’s election;

**(g)** a director may be removed from office only if the number of votes cast in favour of the director’s removal is greater than the product of the number of directors required by the articles and the number of votes cast against the motion; and

**(h)** the number of directors required by the articles may be decreased only if the votes cast in favour of the motion to decrease the number of directors is greater than the product of the number of directors required by the articles and the number of votes cast against the motion.

## 108 Ceasing to hold office

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

**(a)** dies or resigns;

**(b)** is removed in accordance with section 109; or

**(c)** becomes disqualified under subsection 105(1).

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

## 109 Removal of directors

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

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

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

**Resignation (or removal) (4)** If all of the directors have resigned or have been removed without replacement, a person who manages or supervises the management of the business and affairs of the corporation is deemed to be a director for the purposes of this Act.

**Exception (5)**Subsection (4) does not apply to

**(a)** an officer who manages the business or affairs of the corporation under the direction or control of a shareholder or other person;

**(b)** a lawyer, notary, accountant or other professional who participates in the management of the corporation solely for the purpose of providing professional services; or

**(c)** a trustee in bankruptcy, receiver, receiver-manager, sequestrator or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purpose of the realization of security or the administration of a bankrupt’s estate, in the case of a trustee in bankruptcy.

## 111 Filling vacancy

**(1)** Despite subsection 114(3), but subject to subsections (3) and (4), a quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in the number or the minimum or maximum number of directors or a failure to elect the number or minimum number of directors provided for in the articles.

**Calling meeting (2)** If there is not a quorum of directors or if there has been a failure to elect the number or minimum number of directors provided for in the articles, the directors then in office shall without delay call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

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

**(a)** subject to subsection (4), the remaining directors elected by the holders of that class or series of shares may fill the vacancy except a vacancy resulting from an increase in the number or the minimum or maximum number of directors for that class or series or from a failure to elect the number or minimum number of directors provided for in the articles for that class or series; or

**(b)** if there are no remaining directors any holder of shares of that class or series may call a meeting of the holders of shares of that class or series for the purpose of filling the vacancy.

**Shareholders filling vacancy (4)** The articles may provide that a vacancy among the directors shall only be filled by a vote of the shareholders, or by a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series.

**Unexpired term (5)** A director appointed or elected to fill a vacancy holds office for the unexpired term of their predecessor.

## 114 Meeting of directors

**(1)** Unless the articles or by-laws otherwise provide, the directors may meet at any place and on such notice as the by-laws require.

**Quorum (2)** Subject to the articles or by-laws, a majority of the number of directors or minimum number of directors required by the articles constitutes a quorum at any meeting of directors, and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

**Canadian directors present at meetings (3)** Directors, other than directors of a corporation referred to in subsection 105(4), shall not transact business at a meeting of directors unless,

**(a)** if the corporation is subject to subsection 105(3), at least twenty-five per cent of the directors present are resident Canadians or, if the corporation has less than four directors, at least one of the directors present is a resident Canadian; or

**(b)** if tÍhe corporation is subject to subsection 105(3.1), a majority of directors present are resident Canadians or if the corporation has only two directors, at least one of the directors present is a resident Canadian.

**Exception (4)** Despite subsection (3), directors may transact business at a meeting of directors where the number of resident Canadian directors, required under that subsection, is not present if

**(a)** a resident Canadian director who is unable to be present approves in writing, or by telephonic, electronic or other communication facility, the business transacted at the meeting; and

**(b)** the required number of resident Canadian directors would have been present had that director been present at the meeting.

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

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

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

**One director meeting (8)** Where a corporation has only one director, that director may constitute a meeting.

**Participation (9)** Subject to the by-laws, a director may, in accordance with the regulations, if any, and if all the directors of the corporation consent, participate in a meeting of directors or of a committee of directors by means of a telephonic, electronic or other communication facility that permits all participants to communicate adequately with each other during the meeting. A director participating in such a meeting by such means is deemed for the purposes of this Act to be present at that meeting.

## 115 Delegation

**(1)** Directors of a corporation may appoint from their number a managing director who is a resident Canadian or a committee of directors and delegate to such managing director or committee any of the powers of the directors.

**Limits on authority (3)** Notwithstanding subsection (1), no managing director and no committee of directors has authority to

**(a)** submit to the shareholders any question or matter requiring the approval of the shareholders;

**(b)** fill a vacancy among the directors or in the office of auditor, or appoint additional directors;

**(c)** issue securities except as authorized by the directors;

**(c.1)** issue shares of a series under section 27 except as authorized by the directors;

**(d)** declare dividends;

**(e)** purchase, redeem or otherwise acquire shares issued by the corporation;

**(f)** pay a commission referred to in section 41 except as authorized by the directors;

**(g)** approve a management proxy circular referred to in Part XIII;

**(h)** approve a take-over bid circular or directors’ circular referred to in Part XVII;

**(i)** approve any financial statements referred to in section 155; or

**(j)** adopt, amend or repeal by-laws.

## 118 (1) Directors’ liability

Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 25 for a **consideration other than money** are jointly and severally, or solidarily, liable to the corporation **to make good any amount by which the consideration received is less than the fair equivalent** of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

**(2)** Directors of a corporation who vote for or consent to a resolution authorizing any of the following are jointly and severally, or solidarily, liable to restore to the corporation any amounts so distributed or paid and not otherwise recovered by the corporation:

**(a)** a purchase, redemption or other acquisition of shares contrary to section 34, 35 or 36;

**(b)** a commission contrary to section 41;

**(c)** a payment of a dividend contrary to section 42;

**(d)** a payment of an indemnity contrary to section 124; or

**(e)** a payment to a shareholder contrary to section 190 or 241.

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

**(4)** A director liable under subsection (2) is entitled to apply to a court for an order compelling a shareholder or other recipient to pay or deliver to the director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 34, 35, 36, 41, 42, 124, 190 or 241.

**(5)** In connection with an application under subsection (4) a court may, if it is satisfied that it is equitable to do so,

**(a)** order a shareholder or other recipient to pay or deliver to a director any money or property that was paid or distributed to the shareholder or other recipient contrary to section 34, 35, 36, 41, 42, 124, 190 or 241;

**(b)** order a corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares; or

**(c)** make any further order it thinks fit.

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

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

## 119 (1) Liability of directors for wages

Directors of a corporation are jointly and severally, or solidarily, **liable to employees** of the corporation **for all debts not exceeding six months wages payable to each such employee for services performed for the corporation** while they are such directors respectively.

**(2)** A director is **not liable** under subsection (1) unless

**(a)** the corporation has been **sued for the debt within six months after it has become due and execution has been returned unsatisfied** in whole or in part;

**(b)** the corporation has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution; or

**(c)** the corporation has made an assignment or a bankruptcy order has been made against it under the [*Bankruptcy and Insolvency Act*](http://laws-lois.justice.gc.ca/eng/acts/B-3) and a claim for the debt has been proved within six months after the date of the assignment or bankruptcy order.

**(3)** A director, unless sued for a debt referred to in subsection (1) while a director or within two years after ceasing to be a director, is not liable under this section.

**(4)** Where execution referred to in paragraph (2)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

**(5)** A director who pays a debt referred to in subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings is entitled to any priority that the employee would have been entitled to and, if a judgment has been obtained, the director is

**(a)** in Quebec, subrogated to the employee’s rights as declared in the judgment; and

**(b)** elsewhere in Canada, entitled to an assignment of the judgment.

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

## 120 Disclosure of interest

**(1)** A director or an officer of a corporation shall disclose to the corporation, in writing or by requesting to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of any interest that he or she has in a material contract or material transaction, whether made or proposed, with the corporation, if the director or officer

**(a)** is a party to the contract or transaction;

**(b)** is a director or an officer, or an individual acting in a similar capacity, of a party to the contract or transaction; or

**(c)** has a material interest in a party to the contract or transaction.

**(2)** The disclosure required by subsection (1) shall be made, in the case of a director,

**(a)** at the **meeting** at which a proposed contract or transaction is **first considered;**

**(b)** if the director was not, at the time of the meeting referred to in paragraph (a), interested in a proposed contract or transaction, **at the first meeting after he or she becomes so interested**;

**(c)** if the director becomes interested after a contract or transaction is made, at the first meeting after he or she becomes so interested; or

**(d)** if an individual who is interested in a contract or transaction later becomes a director, at the **first meeting after he or she becomes a director**.

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

**(a)** **immediately after he or she becomes aware** that the contract, transaction, proposed contract or proposed **transaction is to be considered or has been considered at a meeting**;

**(b)** if the officer becomes interested after a contract or transaction is made, **immediately after he or she becomes so interested**; **or**

**(c)** if an individual who is interested in a contract later becomes an officer, **immediately after he or she becomes an officer**.

**(4)** If a material contract or material transaction, whether entered into or proposed, is one that, in the ordinary course of the corporation’s business, **would no**t require approval by the directors or shareholders, a director or officer shall disclose, in writing to the corporation or request to have it entered in the minutes of meetings of directors or of meetings of committees of directors, the nature and extent of his or her interest immediately after he or she becomes aware of the contract or transaction.

**Voting (5)** A director required to make a disclosure under subsection (1) shall not vote on any resolution to approve the contract or transaction **unless** the contract or transaction

**(a)** **relates primarily to his or her remuneration as a director**, officer, employee, agent or mandatary of the corporation or an affiliate;

**(b)** **is for indemnity or insurance under section 124**; or

**(c)** **is with an affiliate**.

**Continuing Disclosure (6)** For the purposes of this section, a general notice to the directors declaring that a director or an officer is to be regarded as interested, for any of the following reasons, in a contract or transaction made with a party, is a sufficient declaration of interest in relation to the contract or transaction:

**(a)** the director or officer is a director or officer, or acting in a similar capacity, of a party referred to in paragraph (1)(b) or (c);

**(b)** the director or officer has a material interest in the party; or

**(c)** there has been a material change in the nature of the director’s or the officer’s interest in the party.

**Access to Disclosures (6.1)** The shareholders of the corporation may examine the portions of any minutes of meetings of directors or of committees of directors that contain disclosures under this section, and any other documents that contain those disclosures, during the usual business hours of the corporation.

**Avoidance Standards (7)** A contract or transaction for which disclosure is required under subsection (1) is not invalid, and the director or officer is not accountable to the corporation or its shareholders for any profit realized from the contract or transaction, because of the director’s or officer’s interest in the contract or transaction or because the director was present or was counted to determine whether a quorum existed at the meeting of directors or committee of directors that considered the contract or transaction, if

**(a)** **disclosure** of the interest **was made** in accordance with (1) to (6);

**(b)** the **directors approved** the contract or transaction; and

**(c)** the contract or transaction was **reasonable and fair to the corporation** when it was approved.

**Confirmation by Shareholders (7.1)** Even if the conditions of subsection (7) are not met, a director or officer, acting honestly and in good faith, is not accountable to the corporation or to its shareholders for any profit realized from a contract or transaction for which disclosure is required under subsection (1), and the contract or transaction is not invalid by reason only of the interest of the director or officer in the contract or transaction, if

**(a)** the contract or transaction is **approved or confirmed by special resolution at a meeting of the shareholders**;

**(b)** **disclosure** of the interest was **made to the shareholders** in a manner sufficient to indicate its nature **before** the contract or transaction was **approved or confirmed**; and

**(c)** the contract or transaction was **reasonable and fair** **to the corporation** when it was approved or confirmed.

**Application to Court (8)** If a director or an officer of a corporation fails to comply with this section, a court may, on application of the corporation or any of its shareholders, set aside the contract or transaction on any terms that it thinks fit, or require the director or officer to account to the corporation for any profit or gain realized on it, or do both those things

## 121 Officers

Subject to the articles, the by-laws or any unanimous shareholder agreement,

**(a)** the directors may designate the offices of the corporation, appoint as officers persons of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in subsection 115(3);

**(b)** a director may be appointed to any office of the corporation; and

**(c)** two or more offices of the corporation may be held by the same person.

## 122 Duty of care of directors and officers

**(1)** Every director and officer of a corporation in exercising their powers and discharging their duties shall

**(a)** act honestly and in good faith with a view to the best interests of the corporation; and

**(b)** exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**(3)** Subject to subsection 146(5), **no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations** or relieves them from liability for a breach thereof.

## 123 Dissent

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

**(a)** the director requests a dissent to be entered in the minutes of the meeting, or the dissent has been entered in the minutes;

**(b)** the director sends a written dissent to the secretary of the meeting before the meeting is adjourned; or

**(c)** the director sends a dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned.

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

**Dissent of absent director  (3)** A director who was not present at a meeting at which a resolution was passed or action taken is deemed to have consented thereto unless within seven days after becoming aware of the resolution, the director aware or the resolution, the director

**(a)** causes a dissent to be placed with the minutes of the meeting; or

**(b)** sends a dissent by registered mail or delivers it to the registered office of the corporation.

**Defence — reasonable diligence  (4)** A director is not liable under section 118 or 119, and has complied with his or her duties under subsection 122(2), **if** the director **exercised the care, diligence and skill** that a **reasonably prudent person** would have exercised in comparable circumstances, including reliance in good faith on

**(a)** financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation; or

**(b)** a report of a person whose profession lends credibility to a statement made by the professional person.

**Defence — good faith (5)** A director has complied with his or her duties under subsection 122(1) if the director relied in good faith on

**(a)** financial statements of the corporation represented to the director by an officer of the corporation or in a written report of the auditor of the corporation fairly to reflect the financial condition of the corporation; or

**(b)** a report of a person whose profession lends credibility to a statement made by the professional person.

## 124 (1) Indemnification

A corporation may indemnify a director or officer of the corporation, a former director or officer of the corporation or another individual who acts or acted at the corporation’s request as a director or officer, or an individual acting in a similar capacity, of another entity, against all costs, charges and expenses, including an amount paid to settle an action or satisfy a judgment, reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved because of that association with the corporation or other entity.

**(2)** A corporation may advance moneys to a director, officer or other individual for the costs, charges and expenses of a proceeding referred to in subsection (1). The individual shall repay the moneys if the individual does not fulfil the conditions of subsection (3).

**(3)** A corporation may not indemnify an individual under subsection (1) unless the individual

**(a)** **acted honestly and in good faith with a view to the best interests of the corporation**, or, as the case may be, to the best interests of the other entity for which the individual acted as director or officer or in a similar capacity at the corporation’s request; and

**(b)** in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the **individual had reasonable grounds for believing that the individual’s conduct was lawful**.

**(4)** A corporation may with the approval of a court, indemnify an individual referred to in subsection (1), or advance moneys under subsection (2), in respect of an action by or on behalf of the corporation or other entity to procure a judgment in its favour, to which the individual is made a party because of the individual’s association with the corporation or other entity as described in subsection (1) against all costs, charges and expenses reasonably incurred by the individual in connection with such action, if the individual fulfils the conditions set out in subsection (3).

**(5)** Despite subsection (1), an individual referred to in that subsection is entitled to indemnity from the corporation in respect of all costs, charges and expenses reasonably incurred by the individual in connection with the defence of any civil, criminal, administrative, investigative or other proceeding to which the individual is subject because of the individual’s association with the corporation or other entity as described in subsection (1), if the individual seeking indemnity

**(a)** was not judged by the court or other competent authority to have committed any fault or omitted to do anything that the individual ought to have done; and

**(b)** fulfils the conditions set out in subsection (3).

**(6)** A **corporation may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred** by the individual

**(a)** in the individual’s capacity as a director or officer of the corporation; or

**(b)** in the individual’s capacity as a director or officer, or similar capacity, of another entity, if the individual acts or acted in that capacity at the corporation’s request.

**(7)** A corporation, an individual or an entity referred to in subsection (1) may apply to a court for an order approving an indemnity under this section and the court may so order and make any further order that it sees fit.

 **(8)** An applicant under subsection (7) shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

 **(9)** On an application under subsection (7) the court may order notice to be given to any interested person and the person is entitled to appear and be heard in person or by counsel.

## 125 Remuneration

Subject to the articles, the by-laws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

## 133 (1) Calling annual meetings

The directors of a corporation shall call an annual meeting of shareholders

**(a)** not later than eighteen months after the corporation comes into existence; and

**(b)** subsequently, not later than fifteen months after holding the last preceding annual meeting but no later than six months after the end of the corporation’s preceding financial year.

**NB:** the meeting can ∴ be held at a different time…this section only applies to CALLING a meeting, and says nothing about when it needs to be held.

**Calling Special Meetings (2)** The directors of a corporation may at any time call a special meeting of shareholders.

**Order to Delay Calling of Annual Meeting (3)** Despite subsection (1), the corporation may apply to the court for an order extending the time for calling an annual meeting.

## 134 (1) Marginal note:Fixing record date

The directors may, within the prescribed period, fix in advance a date as the record date for the purpose of determining shareholders

**(a)** entitled to receive payment of a dividend;

**(b)** entitled to participate in a liquidation distribution;

**(c)** entitled to receive notice of a meeting of shareholders;

**(d)** entitled to vote at a meeting of shareholders; or

**(e)** for any other purpose.

**No Record date fixed (2)** If no record date is fixed,

**(a)** the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be

**(i)** at the close of business on the day immediately preceding the day on which the notice is given, or

**(ii)** if no notice is given, the day on which the meeting is held; and

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

**When Record Date Fixed (3)** If a record date is fixed, unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fix the record date, notice of the record date must be given within the prescribed period

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

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

## 135 (1) Notice of meeting

Notice of the time and place of a meeting of shareholders shall be sent within the prescribed period to

**(a)** each shareholder entitled to vote at the meeting;

**(b)** each director; and

**(c)** the auditor of the corporation.

**Exception – not a Distributing Corporation:** In the case of a corporation that is not a distributing corporation, the notice may be sent within a shorter period if so specified in the articles or by-laws.

**Shareholders not Registered (2)** A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under paragraph 134(1)(c) or subsection 134(2), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

**Adjournment (3)** If a meeting of shareholders is adjourned for less than thirty days it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the earliest meeting that is adjourned.

**Notice of Adjourned Meeting (4)** If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of thirty days or more, notice of the adjourned meeting shall be given as for an original meeting but, unless the meeting is adjourned by one or more adjournments for an aggregate of more than ninety days, subsection 149(1) does not apply.

**Business (5)** All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements, auditor’s report, election of directors and re-appointment of the incumbent auditor, is deemed to be special business.

**Notice of Business (6)** Notice of a meeting of shareholders at which special business is to be transacted shall state

**(a)** the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment thereon; and

**(b)** the text of any special resolution to be submitted to the meeting.

## 136 Waiver of notice

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

## 137 (1) Proposals

Subject to subsections (1.1) and (1.2), a registered holder or beneficial owner of shares that are entitled to be voted at an annual meeting of shareholders may

**(a)** submit to the corporation notice of any matter that the person proposes to raise at the meeting (a “proposal”); and

**(b)** discuss at the meeting any matter in respect of which the person would have been entitled to submit a proposal.

**Persons eligible to make proposals (1.1)** To be eligible to submit a proposal, a person

**(a)** must be, for at least the prescribed period, the registered holder or the beneficial owner of at least the prescribed number of outstanding shares of the corporation; or

**(b)** must have the support of persons who, in the aggregate, and including or not including the person that submits the proposal, have been, for at least the prescribed period, the registered holders, or the beneficial owners of, at least the prescribed number of outstanding shares of the corporation.

→ 6 mos on shares >$2,000 or comprising 1% of the total # of outstanding voting shares, whichever is less (***CBCRegulations, s. 46***)

**Information to be provided (1.2)** A proposal submitted under paragraph (1)(a) must be accompanied by the following information:

**(a)** the name and address of the person and of the person’s supporters, if applicable; and

**(b)** the number of shares held or owned by the person and the person’s supporters, if applicable, and the date the shares were acquired.

**Information not part of proposal (1.3)** The information provided under subsection (1.2) does not form part of the proposal or of the supporting statement referred to in subsection (3) and is not included for the purposes of the prescribed maximum word limit set out in subsection (3).

**Proof may be required (1.4)** If requested by the corporation within the prescribed period, a person who submits a proposal must provide proof, within the prescribed period, that the person meets the requirements of subsection (1.1).

**Information Circular (2)** A corporation that solicits proxies shall set out the proposal in the management proxy circular required by section 150 or attach the proposal thereto.

**Supporting Statement (3)** If so requested by the person who submits a proposal, the corporation shall include in the management proxy circular or attach to it a statement in support of the proposal by the person and the name and address of the person. The statement and the proposal must together not exceed the prescribed maximum number of words.

**Nomination for Director (4)** A proposal may include nominations for the election of directors if the proposal is signed by one or more **holders of shares** representing in the aggregate not less than five per cent of the shares or **five percent** of the shares of a class of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude **nominations made at a meeting of shareholders.** → allows SHs to ambush the board with a nomination from the floor of the meeting (unless the bylaws/articles prevent this)

→ Holders of shares = registered SHs *only*; if it wants to include beneficial SHs, they include it **explicitly** ∴ only registered SHs are allowed to nominate directors.

→ also req’s a higher ownership ratio: 5%

**Exemptions (5)** A corporation is not required to comply with subsections (2) and (3) if

**(a)** the proposal is not submitted to the corporation at least the prescribed number of days before the anniversary date of the notice of meeting that was sent to shareholders in connection with the previous annual meeting of shareholders;

**(b)** it clearly appears that the primary purpose of the proposal is to enforce a personal claim or redress a personal grievance against the corporation or its directors, officers or security holders;

**(b.1)** it clearly appears that the proposal does not relate in a significant way to the business or affairs of the corporation;

**(c)** not more than the prescribed period before the receipt of a proposal, a person failed to present, in person or by proxy, at a meeting of shareholders, a proposal that at the person’s request, had been included in a management proxy circular relating to the meeting;

**(d)** substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident’s proxy circular relating to a meeting of shareholders held not more than the prescribed period before the receipt of the proposal and did not receive the prescribed minimum amount of support at the meeting; or

**(e)** the rights conferred by this section are being abused to secure publicity.

**Corporation may refuse to include proposal (5.1)** If a person who submits a proposal fails to continue to hold or own the number of shares referred to in subsection (1.1) up to and including the day of the meeting, the corporation is not required to set out in the management proxy circular, or attach to it, any proposal submitted by that person for any meeting held within the prescribed period following the date of the meeting.

**Immunity (6)** No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

**Notice of refusal (7)** If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within the prescribed period after the day on which it receives the proposal or the day on which it receives the proof of ownership under subsection (1.4), as the case may be, notify in writing the person submitting the proposal of its intention to omit the proposal from the management proxy circular and of the reasons for the refusal.

**Person may apply to court (8)** On the application of a person submitting a proposal who claims to be aggrieved by a corporation’s refusal under subsection (7), a court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it thinks fit.

**Corporation’s application to court (9)** The corporation or any person claiming to be aggrieved by a proposal may apply to a court for an order permitting the corporation to omit the proposal from the management proxy circular, and the court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

**Director entitled to notice (10)** An applicant under subsection (8) or (9) shall give the Director notice of the application and the Director is entitled to appear and be heard in person or by counsel.

## 138 (1) List of shareholders entitled to receive notice

A corporation shall prepare an alphabetical list of its shareholders entitled to receive notice of a meeting, showing the number of shares held by each shareholder,

**(a)** if a record date is fixed under paragraph 134(1)(c), not later than ten days after that date; or

**(b)** if no record date is fixed, on the record date established under paragraph 134(2)(a).

**Voting List – If Record Date Fixed (2)** If a record date for voting is fixed under paragraph 134(1)(d), the corporation shall prepare, no later than ten days after the record date, an alphabetical list of shareholders entitled to vote as of the record date at a meeting of shareholders that shows the number of shares held by each shareholder.

**Voting List – if No Record Date Fixed (3)** If a record date for voting is not fixed under paragraph 134(1)(d), the corporation shall prepare, no later than ten days after a record date is fixed under paragraph 134(1)(c) or no later than the record date established under paragraph 134(2)(a), as the case may be, an alphabetical list of shareholders who are entitled to vote as of the record date that shows the number of shares held by each shareholder.

**Entitlement to Vote (3.1)** A shareholder whose name appears on a list prepared under subsection (2) or (3) is entitled to vote the shares shown opposite their name at the meeting to which the list relates.

**Examination of List (4)** A shareholder may examine the list of shareholders

**(a)** during usual business hours at the registered office of the corporation or at the place where its central securities register is maintained; and

**(b)** at the meeting of shareholders for which the list was prepared.

## 139 (1) Quorum

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

**Opening Quorum Sufficient (2)** If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

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

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

## 140 (1) Right to vote

Unless the articles otherwise provide, each share of a corporation entitles the holder thereof to one vote at a meeting of shareholders.

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

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

**Joint Shareholders (4)** Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

## 142 (1) Resolution in lieu of meeting

Except where a written statement is submitted by a director under subsection 110(2) or by an auditor under subsection 168(5),

**(a)** a resolution in writing signed by all the shareholders entitled to vote on that resolution at a meeting of shareholders is as valid as if it had been passed at a meeting of the shareholders; and

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

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

**Evidence (3)** Unless a ballot is demanded, an entry in the minutes of a meeting to the effect that the chairperson of the meeting declared a resolution to be carried or defeated is, in the absence of evidence to the contrary, proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

## 143 (1) Requisition of meeting

The holders of not less than five per cent of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

**Form (2)** The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the corporation.

**Directors Calling Meeting (3)** On receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition, unless

**(a)** a record date has been fixed under paragraph 134(1)(c) and notice of it has been given under subsection 134(3);

**(b)** the directors have called a meeting of shareholders and have given notice thereof under section 135; or

**(c)** the business of the meeting as stated in the requisition includes matters described in paragraphs 137(5)(b) to (e).

**Shareholder Calling Meeting (4)** If the directors do not within twenty-one days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

**Procedure (5)** A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Part and Part XIII.

**Reimbursement (6)** Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation shall reimburse the shareholders the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

## 144 (1) Meeting called by court

A court, on the application of a director, a shareholder who is entitled to vote at a meeting of shareholders or the Director, may order a meeting of a corporation to be called, held and conducted in the manner that the court directs, if

**(a)** it is impracticable to call the meeting within the time or in the manner in which those meetings are to be called;

**(b)** it is impracticable to conduct the meeting in the manner required by this Act or the by-laws; or

**(c)** the court thinks that the meeting should be called, held and conducted within the time or in the manner it directs for any other reason.

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

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

## 145.1 Pooling agreement

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

## 146 Unanimous shareholder agreement

**146** **(1)** An otherwise lawful written agreement among all the shareholders of a corporation, or among all the shareholders and one or more persons who are not shareholders, that restricts, in whole or in part, the powers of the directors to manage, or supervise the management of, the business and affairs of the corporation is valid.

###### Declaration by single shareholder

**(2)** If a person who is the beneficial owner of all the issued shares of a corporation makes a written declaration that restricts in whole or in part the powers of the directors to manage, or supervise the management of, the business and affairs of the corporation, the declaration is deemed to be a unanimous shareholder agreement.

###### Constructive party

**(3)** A purchaser or transferee of shares subject to a unanimous shareholder agreement is deemed to be a party to the agreement.

###### When no notice given

**(4)** If notice is not given to a purchaser or transferee of the existence of a unanimous shareholder agreement, in the manner referred to in subsection 49(8) or otherwise, the purchaser or transferee may, no later than 30 days after they become aware of the existence of the unanimous shareholder agreement, rescind the transaction by which they acquired the shares.

###### Rights of shareholder

**(5)** To the extent that a unanimous shareholder agreement restricts the powers of the directors to manage, or supervise the management of, the business and affairs of the corporation, parties to the unanimous shareholder agreement who are given that power to manage or supervise the management of the business and affairs of the corporation have all the rights, powers, duties and liabilities of a director of the corporation, whether they arise under this Act or otherwise, including any defences available to the directors, and the directors are relieved of their rights, powers, duties and liabilities, including their liabilities under section 119, to the same extent.

###### Discretion of shareholders

**(6)** Nothing in this section prevents shareholders from fettering their discretion when exercising the powers of directors under a unanimous shareholder agreement.

## 147 Definitions

In this Part,

**form of proxy** means a written or printed form that, on completion and execution or, in Quebec, on signing by or on behalf of a shareholder, becomes a proxy;

**intermediary** means a person who holds a security on behalf of another person who is not the registered holder of the security, and includes

1. a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction;
2. a securities depositary;
3. a financial institution;
4. in respect of a clearing agency, a securities dealer, trust company, bank or other person, including another clearing agency, on whose behalf the clearing agency or its nominees hold securities of an issuer;
5. a trustee or administrator of a self-administered retirement savings plan, retirement income fund, education savings plan or other similar self-administered savings or investment plan registered under the [*Income Tax Act*](http://laws-lois.justice.gc.ca/eng/acts/I-3.3);
6. a nominee of a person referred to in any of paragraphs (a) to (e); and
7. a person who carries out functions similar to those carried out by individuals or entities referred to in any of paragraphs (a) to (e) and that holds a security registered in its name, or in the name of its nominee, on behalf of another person who is not the registered holder of the security. (*intermédiaire*)

**proxy** means a completed and executed or, in Quebec, signed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on the shareholder’s behalf at a meeting of shareholders; (*procuration*)

**solicit** or **solicitation**

**(a)** includes

**(i)** a request for a proxy whether or not accompanied by or included in a form of proxy,

**(ii)** a request to execute or not to execute or, in Quebec, to sign or not to sign a form of proxy or to revoke a proxy,

**(iii)** the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and

**(iv)** the sending of a form of proxy to a shareholder under section 149; but

**(b)** does not include

**(i)** the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,

**(ii)** the performance of administrative acts or professional services on behalf of a person soliciting a proxy,

**(iii)** the sending by an intermediary of the documents referred to in section 153,

**(iv)** a solicitation by a person in respect of shares of which the person is the beneficial owner,

**(v)** a public announcement, as prescribed, by a shareholder of how the shareholder intends to vote and the reasons for that decision,

**(vi)** a communication for the purposes of obtaining the number of shares required for a shareholder proposal under subsection 137(1.1), or

**(vii)** a communication, other than a solicitation by or on behalf of the management of the corporation, that is made to shareholders, in any circumstances that may be prescribed; (*sollicitation*)

**solicitation by or on behalf of the management of a corporation** means a solicitation by any person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of the directors.

## 149 (1) Mandatory solicitation

Subject to subsection (2), the management of a corporation shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy in prescribed form to each shareholder who is entitled to receive notice of the meeting.

**Exception (2)** The management of the corporation is not required to send a form of proxy under subsection (1) if it

**(a)** is not a distributing corporation; and

**(b)** has fifty or fewer shareholders entitled to vote at a meeting, two or more joint holders being counted as one shareholder.

**Offence (3)** If the management of a corporation fails to comply, without reasonable cause, with subsection (1), the corporation is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

**Officers, etc. of corporations (4)** Where a corporation commits an offence under subsection (3), any director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both, whether or not the corporation has been prosecuted or convicted.

## 150 (1) Soliciting proxies

A person shall not solicit proxies unless

**(a)** in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular in prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting, or

**(b)** in the case of any other solicitation, a dissident’s proxy circular in prescribed form stating the purposes of the solicitation

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

**Exception – Solicitation to Fifteen or fewer shareholders (1.1)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the corporation, without sending a dissident’s proxy circular, if the total number of shareholders whose proxies are solicited is fifteen or fewer, two or more joint holders being counted as one shareholder.

**Exception – solicitation by public broadcast (1.2)** Despite subsection (1), a person may solicit proxies, other than by or on behalf of the management of the corporation, without sending a dissident’s proxy circular if the solicitation is, in the prescribed circumstances, conveyed by public broadcast, speech or publication.

## 151 (1) Exemption

On the application of an interested person, the Director may exempt the person, on any terms that the Director thinks fit, from any of the requirements of section 149 or subsection 150(1), which exemption may have retrospective effect.

**Publication (2)** The Director shall set out in a publication generally available to the public the particulars of exemptions granted under this section together with the reasons for the exemptions.

## 155(1) Annual financial statements

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

**(a)** comparative financial statements as prescribed relating separately to

**(i)** the period that began on the date the corporation came into existence and ended not more than six months before the annual meeting or, if the corporation has completed a financial year, the period that began immediately after the end of the last completed financial year and ended not more than six months before the annual meeting, and

**(ii)** the immediately preceding financial year;

**(b)** the report of the auditor, if any; and

**(c)** any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

## REGULATION s. 72 Contents of Financial Statements

**(1)** The financial statements referred to in section 155 of the Act shall include at least

**(a)** a statement of financial position or a balance sheet;

**(b)** a statement of comprehensive income or an income statement;

**(c)** a statement of changes in equity or a statement of retained earnings; and

**(d)** a statement of cash flows or a statement of changes in financial position.

**(2)** Financial statements need not be designated by the names set out in paragraphs (1)(a) to (d).

## 159 Copies to shareholders

**159** **(1)** A corporation shall, not less than twenty-one days before each annual meeting of shareholders or before the signing of a resolution under paragraph 142(1)(b) in lieu of the annual meeting, send a copy of the documents referred to in section 155 to each shareholder, except to a shareholder who has informed the corporation in writing that he or she does not want a copy of those documents.

**Offence (2)** A corporation that, without reasonable cause, fails to comply with subsection (1) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars.

## 161(1) Qualification of auditor

Subject to subsection (5), a person is disqualified from being an auditor of a corporation **if the person is not independent** of the corporation, **any of its affiliates**, or the **directors or officers of any such corporation or its affiliates**.

## 163 (1) Dispensing with auditor

The shareholders of a corporation that is **not a distributing corporation** may resolve not to appoint an auditor.

## 164 (1) Ceasing to hold office

An auditor of a corporation ceases to hold office when the auditor

**(a)** dies or resigns; or

**(b)** is **removed pursuant to section 165.**

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

## 165 (1) Removal of auditor

The shareholders of a corporation **may by ordinary resolution at a special meeting** **remove from office the auditor other than an auditor appointed by a court** under section 167.

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

## 166 (1) Filling vacancy

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

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

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

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

## 167 (1) Court appointed auditor

If a corporation does not have an auditor, **the court may, on the application of a shareholder or the Director, appoint and fix the remuneration of an auditor** who holds office **until an auditor is appointed by the shareholders**.

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

## 168 (1) Right to attend meeting

The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard on matters relating to the auditor’s duties.

**Duty to attend (2)** If a director or shareholder of a corporation, whether or not the shareholder is entitled to vote at the meeting, gives written notice not less than ten days before a meeting of shareholders to the auditor or a former auditor of the corporation, the auditor or former auditor shall attend the meeting at the expense of the corporation and answer questions relating to their duties as auditor.

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

 **4)** An auditor or former auditor of a corporation who fails without reasonable cause to comply with subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

**Statement of Auditor (5)** An auditor is **entitled to submit** to the corporation **a written statement giving reasons for resigning or for opposing any proposed action or resolution** when the auditor

* 1. resigns;
	2. receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the auditor from office;
	3. receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of the resignation or removal of the incumbent auditor or because the auditor’s term of office has expired or is about to expire; or
	4. receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 163 is to be proposed.

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

**(a)** the **corporation shall make a statement on the reasons** for the proposed replacement; and

**(b)** the proposed replacement auditor may make a statement in which he or she comments on the reasons referred to in paragraph (a).

**(6)** The corporation shall send a copy of the statements referred to in subsections (5) and (5.1) without delay to every shareholder entitled to receive notice of a meeting referred to in subsection (1) and to the Director, unless the statement is included in or attached to a management proxy circular required by section 150.

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

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

**(9)** Unless subsection (8) applies, an appointment as auditor of a corporation of a person who has not complied with subsection (7) is void.

## 169 (1) Examination

An auditor of a corporation shall make the examination that is in their opinion necessary to enable them to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except such financial statements or part thereof that relate to the period referred to in subparagraph 155(1)(a)(ii).

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

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

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

## 171 Audit committee

**(1)** Subject to subsection (2), a corporation described in subsection 102(2) shall, and any other corporation may, have an audit committee composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates.

**Exemption (2)** The Director may, on the application of a corporation, authorize the corporation to dispense with an audit committee, and the Director may, if satisfied that the shareholders will not be prejudiced, permit the corporation to dispense with an audit committee on any reasonable conditions that the Director thinks fit.

**Duty of committee (3)** An audit committee shall review the financial statements of the corporation before such financial statements are approved under section 158.

**Auditor’s attendance (4)** The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard thereat; and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

**Calling meeting (5)** The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

**Notice of errors (6)** A director or an officer of a corporation shall forthwith notify the audit committee and the auditor of any error or mis-statement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor has reported on.

**Error in financial statements (7)** An auditor or former auditor of a corporation who is notified or becomes aware of an error or mis-statement in a financial statement on which they have reported, if in their opinion the error or mis-statement is material, shall inform each director accordingly.

**Duty of directors (8)** When under subsection (7) the auditor or former auditor informs the directors of an error or mis-statement in a financial statement, the directors shall

**(a)** prepare and issue revised financial statements; or

**(b)** otherwise inform the shareholders and, if the corporation is one that is required to comply with section 160, it shall inform the Director of the error or mis-statement in the same manner as it informs the shareholders.

**Offence (9)** Every director or officer of a corporation who knowingly fails to comply with subsection (6) or (8) is guilty of an offence and liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding six months or to both.

## 173 (1) Amendment of articles

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

1. change its name;
2. change the province in which its registered office is situated;
3. add, change or remove any restriction on the business or businesses that the corporation may carry on;
4. change any maximum number of shares that the corporation is authorized to issue;
5. create new classes of shares;
6. reduce or increase its stated capital, if its stated capital is set out in the articles;
7. change the designation of all or any of its shares, and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its shares, whether issued or unissued;
8. change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series or into the same or a different number of shares of other classes or series;
9. divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
10. authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions thereof;
11. authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
12. revoke, diminish or enlarge any authority conferred under paragraphs (j) and (k);
13. increase or decrease the number of directors or the minimum or maximum number of directors, subject to sections 107 and 112;
14. add, change or remove restrictions on the issue, transfer or ownership of shares; or
15. add, change or remove any other provision that is permitted by this Act to be set out in the articles.

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

**Amendment of Number Name (3)** Notwithstanding subsection (1), where a corporation has a designating number as a name, the directors may amend its articles to change that name to a verbal name.

## 176 (1) Class vote

The holders of shares of a class or, subject to subsection (4), of a series are, unless the articles otherwise provide in the case of an amendment referred to in paragraphs (a), (b) and (e), entitled to vote separately as a class or series on a proposal to amend the articles to

**(a)** increase or decrease any maximum number of authorized shares of such class, or increase any maximum number of authorized shares of a class having rights or privileges equal or superior to the shares of such class;

**(b)** effect an exchange, reclassification or cancellation of all or part of the shares of such class;

**(c)** add, change or remove the rights, privileges, restrictions or conditions attached to the shares of such class and, without limiting the generality of the foregoing,

**(i)** remove or change prejudicially rights to accrued dividends or rights to cumulative dividends,

**(ii)** add, remove or change prejudicially redemption rights,

**(iii)** reduce or remove a dividend preference or a liquidation preference, or

**(iv)** add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of a corporation, or sinking fund provisions;

**(d)** increase the rights or privileges of any class of shares having rights or privileges equal or superior to the shares of such class;

**(e)** create a new class of shares equal or superior to the shares of such class;

**(f)** make any class of shares having rights or privileges inferior to the shares of such class equal or superior to the shares of such class;

**(g)** effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of such class; or

**(h)** constrain the issue, transfer or ownership of the shares of such class or change or remove such constraint.

**Exception (2)** Subsection (1) does not apply in respect of a proposal to amend the articles to add a right or privilege for a holder to convert shares of a class or series into shares of another class or series that is subject to a constraint permitted under paragraph 174(1)(c) but is otherwise equal to the class or series first mentioned.

**Deeming Provision (3)** For the purpose of paragraph (1)(e), a new class of shares, the issue, transfer or ownership of which is to be constrained by an amendment to the articles pursuant to paragraph 174(1)(c), that is otherwise equal to an existing class of shares shall be deemed not to be equal or superior to the existing class of shares.

**Limitation (4)** The holders of a series of shares of a class are entitled to vote separately as a series under subsection (1) only if such series is affected by an amendment in a manner different from other shares of the same class.

**Right to Vote (5)** Subsection (1) applies whether or not shares of a class or series otherwise carry the right to vote.

**Separate Resolutions (6)** A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately thereon as a class or series have approved such amendment by a special resolution.

## 183 (1) Shareholder approval

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

**Notice of Meeting (2)** A notice of a meeting of shareholders complying with section 135 shall be sent in accordance with that section to each shareholder of each amalgamating corporation, and shall

**(a)** include or be accompanied by a copy or summary of the amalgamation agreement; and

**(b)** state that a dissenting shareholder is entitled to be paid the fair value of their shares in accordance with section 190, but failure to make that statement does not invalidate an amalgamation.

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

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

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

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

## 187 (1) Continuance (import)

* A body corporate incorporated otherwise than by or under an Act of Parliament may, if so authorized by the laws of the jurisdiction where it is incorporated, **apply to the Director** for a certificate of continuance.
*
* **Amendments in articles of continuance (2)**A body corporate that applies for continuance under subsection (1) may, without so stating in its articles of continuance, effect by those articles any amendment to its Act of incorporation, articles, letters patent or memorandum or articles of association if the amendment is an amendment a corporation incorporated under this Act may make to its articles.
*
* **Articles of continuance (3)**Articles of continuance in the form that the

Director fixes shall be sent to the Director together with the documents required by sections 19 and 106.

* **Certificate of continuance (4)**On receipt of articles of continuance, the Director shall issue a certificate of continuance in accordance with section 262.
*
* **Effect of certificate (5)**On the date shown in the certificate of continuance

**(a)** the body corporate becomes a corporation to which this Act applies as if it had been incorporated under this Act;

**(b)** the articles of continuance are deemed to be the articles of incorporation of the continued corporation; and

**(c)** the certificate of continuance is deemed to be the certificate of incorporation of the continued corporation.

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

**Rights preserved (7)**When a body corporate is continued as a corporation under this Act,

**(a)** the property of the body corporate continues to be the property of the corporation;

**(b)** the corporation continues to be liable for the obligations of the body corporate;

**(c)** an existing cause of action, claim or liability to prosecution is unaffected;

**(d)** a civil, criminal or administrative action or proceeding pending by or against the body corporate may be continued to be prosecuted by or against the corporation; and

**(e)** a conviction against, or ruling, order or judgment in favour of or against, the body corporate may be enforced by or against the corporation.

* **Issued shares (8)**Subject to subsection 49(8), a share of a body corporate issued before the body corporate was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share; and continuance under this section does not deprive a holder of any right or privilege that the holder claims under, or relieve the holder of any liability in respect of, an issued share.
* **Exception in case of convertible shares (9)**Where a corporation continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to bearer form, the corporation may, if a holder of such a share certificate exercises the conversion privilege attached thereto, issue a share certificate in bearer form for the same number of shares to the holder.
*
* **Definition of share (10)**For the purposes of subsections (8) and (9), *share* includes an instrument referred to in subsection 29(1), a share warrant as defined in the [*Canada Corporations Act*](http://laws-lois.justice.gc.ca/eng/acts/C-1.8), chapter C-32 of the Revised Statutes of Canada, 1970, or a like instrument.
* **Where continued reference to par value share permissible (11)**Where the Director determines, on the application of a body corporate, that it is not practicable to change a reference to the nominal or par value of shares of a class or series that the body corporate was authorized to issue before it was continued under this Act, the Director may, notwithstanding subsection 24(1), permit the body corporate to continue to refer in its articles to those shares, whether issued or unissued, as shares having a nominal or par value.
*
* **Limitation (12)**A corporation shall set out in its articles the maximum number of shares of a class or series referred to in subsection (11) and may not amend its articles to increase that maximum number of shares or to change the nominal or par value of those shares.
*

## 188 (1) Continuance — Export

* Subject to subsection (10), a corporation may apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction if the corporation
	+ **(a)** is **authorized by the shareholders** in accordance with this section to make the application; and
	+ **(b)** **establishes to the satisfaction of the Director that its proposed continuance in the other jurisdiction will not adversely affect creditors or shareholders** of the corporation.
* **Continuance — other federal Acts (2)**A corporation that is authorized by the shareholders in accordance with this section may apply to the appropriate Minister for its continuance under the [*Bank Act*](http://laws-lois.justice.gc.ca/eng/acts/B-1.01), the [*Canada Cooperatives Act*](http://laws-lois.justice.gc.ca/eng/acts/C-1.7), the [*Cooperative Credit Associations Act*](http://laws-lois.justice.gc.ca/eng/acts/C-41.01), the [*Insurance Companies Act*](http://laws-lois.justice.gc.ca/eng/acts/I-11.8) or the [*Trust and Loan Companies Act*](http://laws-lois.justice.gc.ca/eng/acts/T-19.8).
*
* **Notice of meeting (3)**A notice of a meeting of shareholders complying with section 135 shall be sent in accordance with that section to each shareholder and shall state that a dissenting shareholder is entitled to be paid the fair value of their shares in accordance with section 190, but failure to make that statement does not invalidate a discontinuance under this Act.
* **Right to vote (4) Each share of the corporation carries the right to vote in**

**respect of a continuance whether or not it otherwise carries the right to vote**.

* **Shareholder approval (5)**An application for continuance becomes
* authorized when the shareholders voting thereon have approved of the

continuance by a special resolution.

* **Termination (6)**The directors of a corporation may, if authorized by the shareholders at the time of approving an application for continuance under this section, abandon the application without further approval of the shareholders.
* **Discontinuance (7)**On receipt of a notice satisfactory to the Director that the corporation has been continued under the laws of another jurisdiction or under one of the Acts referred to in subsection (2.1), the Director shall file the notice and issue a certificate of discontinuance in accordance with section 262.
* **Notice deemed to be articles (8)**For the purposes of section 262, a notice referred to in subsection (7) is deemed to be articles that are in the form that the Director fixes.
* **Rights preserved (9)**This Act ceases to apply to the corporation on the date shown in the certificate of discontinuance.
* **Prohibition (10)**A corporation shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that
	+ **(a)** the property of the corporation continues to be the property of the body corporate;

**(b)** the body corporate continues to be liable for the obligations of the corporation;

* + **(c)** an existing cause of action, claim or liability to prosecution is unaffected;
	+ **(d)** a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate; and

**(e)** a conviction against, or ruling, order or judgment in favour of or against, the corporation may be enforced by or against the body corporate.

## 189 Borrowing Powers

**Extraordinary Sale, Lease or Exchange (3)** A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (4) to (8).

**Notice of Meeting (4)** A notice of a meeting of shareholders complying with section 135 shall be sent in accordance with that section to each shareholder and shall

**(a)** include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and

**(b)** state that a dissenting shareholder is entitled to be paid the fair value of their shares in accordance with section 190, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (3).

**Shareholder Approval (5)** At the meeting referred to in subsection (4), the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of the terms and conditions thereof.

**Right to Vote (6)** Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (3) whether or not it otherwise carries the right to vote.

**Class Vote (7)** The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (3) only if such class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

**Shareholder Approval (8)** A sale, lease or exchange referred to in subsection (3) is adopted when the holders of each class or series entitled to vote thereon have approved of the sale, lease or exchange by a special resolution.

##  211 Proposing liquidation and dissolution

**(1)** The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 137, make a proposal for, the voluntary liquidation and dissolution of a corporation.

**Notice of Meeting (2)** Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms thereof.

**Shareholders resolution (3)** A corporation may liquidate and dissolve by special resolution of the shareholders or, where the corporation has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

# 238 Remedies, Offences, Punishment: Definitions

**action** means an action under this Act; (*action*)

**complainant** means

**(a)** a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,

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

**(c)** the Director, or

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

## 239 (1) Commencing derivative action

Subject to subsection (2), a complainant may apply to a court for leave to bring an action in the name and on behalf of a corporation or any of its subsidiaries, or intervene in an action to which any such body corporate is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the body corporate.

**(2)** No action may be brought and no intervention in an action may be made under subsection (1) unless the court is satisfied that

**(a)** the complainant has given notice to the directors of the corporation or its subsidiary of the complainant’s intention to apply to the court under subsection (1) not less than fourteen days before bringing the application, or as otherwise ordered by the court, if the directors of the corporation or its subsidiary do not bring, diligently prosecute or defend or discontinue the action;

**(b)** the complainant is acting in good faith; and

**(c)** it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

## 240 Powers of court

In connection with an action brought or intervened in under section 239, the court may at any time make any order it thinks fit including, without limiting the generality of the foregoing,

**(a)** an order authorizing the complainant or any other person to control the conduct of the action;

**(b)** an order giving directions for the conduct of the action;

**(c)** an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and

**(d)** an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

## 241 (1) Application to court re oppression

A complainant may apply to a court for an order under this section.

**Grounds (2)** If, on an application under subsection (1), the court is satisfied that in respect of a corporation or any of its affiliates

**(a)** any act or omission of the corporation or any of its affiliates effects a result,

**(b)** the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or

**(c)** the powers of the directors of the corporation or any of its affiliates are or have been exercised **in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer**, the court may make an order to rectify the matters complained of.

**Powers of court (3)** In connection with an application under this section, the court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing,

**(a)** an order restraining the conduct complained of;

**(b)** an order appointing a receiver or receiver-manager;

**(c)** an order to regulate a corporation’s affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;

**(d)** an order directing an issue or exchange of securities;

**(e)** an order appointing directors in place of or in addition to all or any of the directors then in office;

**(f)** an order directing a corporation, subject to subsection (6), or any other person, to purchase securities of a security holder;

**(g)** an order directing a corporation, subject to subsection (6), or any other person, to pay a security holder any part of the monies that the security holder paid for securities;

**(h)** an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;

**(i)** an order requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 155 or an accounting in such other form as the court may determine;

**(j)** an order compensating an aggrieved person;

**(k)** an order directing rectification of the registers or other records of a corporation under section 243;

**(l)** an order liquidating and dissolving the corporation;

**(m)** an order directing an investigation under Part XIX to be made; and

**(n)** an order requiring the trial of any issue.

**Duty of Directors (4)** If an order made under this section directs amendment of the articles or by-laws of a corporation,

1. the directors shall forthwith comply with subsection 191(4); and
2. no other amendment to the articles or by-laws shall be made without the consent of the court, until a court otherwise orders.

**Exclusion (5)** A shareholder is not entitled to dissent under section 190 if an amendment to the articles is effected under this section.

**Limitation (6)** A corporation shall not make a payment to a shareholder under paragraph (3)(f) or (g) if there are reasonable grounds for believing that

**(a)** the corporation is or would after that payment be unable to pay its liabilities as they become due; or

**(b)** the realizable value of the corporation’s assets would thereby be less than the aggregate of its liabilities.

**Alternative Order (7)** An applicant under this section may apply in the alternative for an order under section 214.

## 242 (1) Evidence of shareholder approval not decisive

An application made or an action brought or intervened in under this Part **shall not be stayed or dismissed** by reason **only that it is shown that an alleged breach** of a right or duty owed to the corporation or its subsidiary h**as been or may be approved by the shareholders** of such body corporate, but **evidence of approva**l by the shareholders **may be taken into account** by the court in making an order under section 214, 240 or 241.

**Court Approval to Discontinue (2)** An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution or, in Quebec, failure to respect the agreement between the parties as to the conduct of the proceeding without the approval of the court given on any terms that the court thinks fit and, if the court determines that the interests of any complainant may be substantially affected by such stay, discontinuance, settlement, dismissal or failure, the court may order any party to the application or action to give notice to the complainant.

**(3)** A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

**Interim Costs (4)** In an application made or an action brought or intervened in under this Part, the court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for such interim costs on final disposition of the application or action.

# Partnership Act

**"business"** includes every trade, occupation or profession;

**"firm"** is the collective term for persons who have entered into partnership with one another;

**"general partnership"** means a partnership that

(a) has British Columbia as its governing jurisdiction, and

(b) is neither a limited partnership nor a limited liability partnership;

**"sole proprietorship"** means a person who under section 88 (1) is required to file a registration statement;

## 1.1 "partnership property"

means property and rights and interests in property

(a) originally brought into the partnership stock,

(b) acquired, whether by purchase or otherwise, on account of the firm, or

(c) acquired for the purposes and in the course of the partnership business.

## 2  Partnership defined

Partnership is the relation which subsists between persons carrying on business in common with a view of profit.

## 4  Rules for determining partnership

In determining **whether a partnership does or does not exist**, regard must be had to the following rules:

(a) joint tenancy, tenancy in common, joint property, common property or **part ownership does not of itself create a partnership** as to any property that is so held or owned, **whether** the tenants or owners **do or do not share any profits** made by the use of the property;

(b) the **sharing of gross returns does not** of itself create a partnership, whether the persons sharing the returns have or have not a joint or common right or interest in property from which or from the use of which the returns are derived;

(c) the **receipt by a person of a share of the profits of a business** is **proof in the absence of evidence to the contrary** that he or she is a **partner in the business**, but the receipt of a share, or of a payment contingent on or varying with the profits of a business, **does not of itself make him or her a partner in the business**, and **in particular**

(i) the receipt by a person of a **debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business** does not of itself make him or her a partner in the business or liable as a partner,

(ii) a **contract for the remuneration of an employee** or agent of a person engaged in a business by a share of the profits of the business does not of itself make the employee or agent a partner in the business or liable as a partner,

(iii) the **spouse or child of a deceased partner who receives by way of annuity a portion of the profits made in the business** in which the deceased person was a partner is not merely because of the receipt a partner in the business or liable as a partner,

(iv) the advance of money by way of loan to a person engaged or about to engage in a business, on a contract between that person and the lender under which the lender is to receive a rate of interest varying with the profits or is to receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person carrying on the business or liable as a partner, as long as the contract is in writing and signed by or on behalf of all the parties to it, and

(v) a person receiving by way of **annuity** or otherwise a **portion of the profits** of a business in consideration of the sale by him or her of the goodwill (intangible assets i.e. intellectual property, brand, reputation, etc.) of the business is not, merely because of the receipt, a partner in the business or liable as a partner

## 7  Liability of partners

(1) A **partner is an agent of the firm** and the other partners for the purpose of the business of the partnership.

(2) The acts of every partner who does any act for carrying on **in the usual way business** of the kind carried on by the firm of which he or she is a member **bind the firm and his or her partners**, unless

(a) the partner so acting has in fact **no authority** to act for the firm in the particular matter, and

(b) the **person with whom he or she is dealing either knows that the partner has no authority, or does not know or believe him or her to be a partner.**

## 8  Acts or instruments in firm name

(1) An act or instrument relating to the business of the firm and done or **executed in the firm name**, or in any other manner **showing an intention to bind the firm**, by any person **authorized** to do so, **whether a partner or not, is binding on the firm and all the partners**.

(2) This section does not affect any general rule of law relating to the execution of deeds or negotiable instruments.

## 9  No pledge of credit for nonfirm business

(1) If **one partner pledges the credit of the firm for a purpose apparently not connected** with the firm's ordinary course of business, the firm is **not bound unless** the partner is in fact **specially authorized** by the other partners.

(2) This section does not affect any personal liability incurred by an individual partner.

## 10 Notice of restriction of power of partner

If it has been agreed between the partners that a **restriction is to be placed on the power of any one or more of them to bind the firm**, an **act done in contravention of the agreement is not binding** on the firm **with respect to persons having notice of the agreement**.

Ss 7-10, in sum: is the partnership bound by the K entered into by a partner?

* Actually authorized to do so → bound (s. 8)
* If the transaction is an ordinary business matter of the partnership ∴ creates apparent authority → bound, unless no actual authority and 3P knows it (s. 7)
* If the transaction is apparently unrelated to the business of the partnership (∴ no apparent authority created) → partnership not bound, unless actually authorized to do so (s. 9)
* The partnership may impose restriction on authority ∴ no actual authority → Partnership not bound, if 3P knows that there is no such authority (s. 10)

## 11  Liability of partners for firm debts

A partner in a firm is **liable jointly with the other partners for all debts and obligations of the firm incurred while he or she is a partner**, and after his or her death his or her **estate is also severally liable** in a due course of administration for those debts and obligations, so far as they remain unsatisfied, but **subject to the prior payment of his or her separate debts**.

## 12  Liability of firm

If, by any **wrongful act or omission of any partner acting in the ordinary course** of the business of the firm or **with the authority** of his or her partners, **loss or injury** is caused to any person who is not a partner in the firm or any penalty is incurred, the **firm is liable for that loss, injury or penalty to the same extent as the partner so acting or omitting to act**.

## 14  Liability under 2 preceding sections

A partner is jointly and severally liable with his or her partners for everything for which the firm, while he or she is a partner in it, becomes liable under either section 12 or 13.

## 16  Person representing himself or herself as partner

(1) A person who, by words spoken or written, or by conduct, represents himself or herself, or who knowingly allows himself or herself to be represented, as a partner in a particular firm is liable as a partner to any one who has, on the faith of any such representation, given credit to the firm.

(2) Subsection (1) applies whether the representation has or has not been made or communicated to the person so giving credit by or with the knowledge of the apparent partner making the representation or allowing it to be made.

(3) If, after a partner's death, the partnership business is continued in the old firm name, the continued use of that name, or of the deceased partner's name, as part of it does not of itself make his or her executor's or administrator's estate or effects liable for any partnership debts contracted after his or her death.

## 19  Liability of partners

(1) A person who is admitted as a partner into an existing firm **does not become liable to the creditors of the firm for anything done before he or she became a partner.**

(2) A **partner who retires from a firm does not cease to be liable for partnership debts or obligations incurred before his or her retirement.**

(3) A **retiring partner may be discharged from any existing liabilities by an agreement** to that effect between the **retiring partner** and the **members of the firm** as newly constituted and the **creditors**.

(4) An agreement under subsection (3) **may be either express or inferred** as a fact **from the course of dealing** between the creditors and the firm as newly constituted.

## 21  Variation of rights and duties by consent

The mutual rights and duties of partners, whether ascertained by agreement or defined by this Part, may be varied by the consent of all the partners and the consent may be either express or inferred from a course of dealing.

## 22  Fairness and good faith

(1) A partner must act with the **utmost fairness and good faith** towards the other members of the firm in the business of the firm.

(2) The duties imposed by this section are **in addition to, and not in derogation of**, any enactment or rule of law or equity relating to the duties or liabilities of partners.

General fiduciary duty which cannot be contracted out of.

## 23  Application of partnership property

(1) Subject to subsection (2), all partnership property must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

## 24  Property bought with firm money

Unless the contrary intention appears, property bought with money belonging to a firm is deemed to have been bought on account of the firm.

## 27  Rules for determining rights and duties of partners in relation to partnership

Subject to any agreement express or implied between the partners, the **interests of partners in the partnership property and their rights and duties** in relation to the partnership **must be determined by the following rules:**

(a) all the **partners are entitled to share equally in the capital and profits of the business and must contribute equally towards the losses**, whether of capital or otherwise, sustained by the firm;

(b) the **firm must indemnify every partner in respect of payments made and personal liabilities incurred** by him or her

(i) in the **ordinary and proper conduct** of the business of the firm, or

(ii) in or about **anything necessarily done for the preservation of the business or property** of the firm;

(c) a **partner making, for the purpose of the partnership, any actual payment or advance beyond** the amount of capital that he or she has agreed to subscribe is **entitled to interest at a fair rate** from the date of the payment or advance;

(d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him or her;

(e) every partner may take part in the management of the partnership business;

(f) a **partner is not entitled to remuneration** for acting in the partnership business;

(g) a **person may not be introduced as a partner without the consent** of all existing partners;

(h) any **difference arising as to ordinary matters** connected with the partnership business **may be decided by a majority** of the partners, but **no change may be made in the nature of the partnership business without the consent of all** existing partners;

(i) the partnership books are to be kept at the place of business of the partnership, or the principal place, if there is more than one, and every partner may, when he or she thinks fit, have access to and inspect and copy any of them;

(j) a partner may refer a difference concerning the interpretation or application of the partnership agreement to arbitration for a final and binding decision under the [*Arbitration Act*](http://www.bclaws.ca/civix/document/id/complete/statreg/96055_01).

## 28  Majority cannot expel partner

A majority of the partners can not expel any partner unless a power to do so has been conferred by express agreement between the partners and the power is exercised in good faith.

## 29  Ending the partnership

(1) If no set term has been agreed on for the duration of the partnership, any partner may end the partnership at any time on giving notice to all the other partners of his or her intention to do so.

(2) If the partnership has originally been constituted by deed, a notice in writing, signed by the partner giving it, is sufficient for this purpose.

## 31  Partners must render accounts

Partners are bound to render **true accounts and full information** of all things affecting the partnership to any partner or his or her legal representatives.

À la agency law – duty of disclosure

## 32  Partner must account for benefits

(1) A partner **must account to the firm for any benefit** derived by the partner **without the consent** of the other partners from any transaction concerning the partnership, or from any use by the partner of the partnership property, name or business connection.

(2) This section applies also to transactions undertaken, after a partnership has been dissolved by the death of a partner and before the affairs of the partnership have been completely wound up, by any surviving partner or by the representatives of the deceased partner.

## 33  Profits of partner carrying on similar business

If a partner, **without the consent** of the other partners, carries on any business of the same nature as and **competing** with that of the firm, the partner **must account for and pay over to the firm all profits** made by him or her in that business.

## 35  Dissolution of partnership

(1) Subject to any agreement between the partners, a partnership is dissolved

(a) if entered into for a set term, by the expiration of that term,

(b) if entered into for a single adventure or undertaking, by the termination of that adventure or undertaking, or

(c) if entered into for an undefined time, by any partner giving notice to the other or others of his or her intention to dissolve the partnership.

(2) In a case referred to in subsection (1) (c) the partnership is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice.

## 36 Dissolution by bankruptcy, death, dissolution of partner or charging order

(1) On the **death, bankruptcy or dissolution of a partner**,

(a) a partnership of 2 partners is dissolved, and

(b) subject to agreement among the partners, a partnership of more than 2 partners is dissolved as between the bankrupt, dead or dissolved partner and the other partners.

(2) If the share in the partnership property of a partner is charged under section 26 for the separate debt of the partner, the other partners may by notice in writing to the partner whose share is charged,

(a) dissolve the partnership, or

(b) if there are 3 or more partners, dissolve the partnership as between the partner whose share is charged and the other partners.

(3) A notice under subsection (2) takes effect at the time specified in the notice or immediately if no time is specified.

## 37  Dissolution by event making business unlawful

A partnership is in every case **dissolved** by the happening of any event which makes it **unlawful** for the business of the firm to be carried on, or for the members of the firm to carry it on, in partnership.

## 38  Power of court to decree dissolution in certain cases

(1) **On application by a partner**, the court may decree a dissolution of the partnership in any of the following cases:

(a) if a partner is declared under the [*Patients Property Act*](http://www.bclaws.ca/civix/document/id/complete/statreg/96349_01) to be incapable of managing his or her affairs or if it is shown that a partner is, because of mental infirmity, incapable of discharging his or her duties as a partner;

(b) when a partner, other than the partner suing, becomes in any other way permanently incapable of performing his or her part of the partnership contract;

(c) when a partner, other than the partner suing, has been guilty of conduct that, in the opinion of the court, regard being had to the nature of the business, is calculated to affect prejudicially the carrying on of the business;

(d) when a partner, other than the partner suing, wilfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself or herself in matters relating to the partnership business that it is not reasonably practicable for the other partner or partners to carry on the business in partnership with him or her;

(e) when the business of the partnership can only be carried on at a loss;

(f) whenever circumstances have arisen that, in the opinion of the court, render it just and equitable that the partnership be dissolved.

## 42  Application of assets on dissolution

(1) On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm and all persons claiming through them in respect of their interests as partners,

(a) to have the property of the partnership applied in payment of the debts and liabilities of the firm, and

(b) to have the surplus assets after the payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm.

(2) For the purposes of subsection (1), any partner or the partner's representatives may, on the termination of the partnership, apply to the court to wind up the business and affairs of the firm.

## 49  Application of Part

The provisions of this Act must in the case of limited partnerships be read subject to this Part.

## 50  Limited partnership

(1) Subject to this Part, a limited partnership may be formed to carry on any business that a partnership without limited partners may carry on.

(2) A limited partnership consists of

(a) one or more persons who are general partners, and

(b) one or more persons who are limited partners.

## 51  Formation of limited partnership

(1) A limited partnership is formed when there is **filed with the registrar a certificate**, **signed by each person** who is, on the formation of the partnership, **to be a general partner.**

(2) A certificate must state the following:

(a) the **business name** under which the limited partnership is to be conducted;

(b) the **general nature of the business** carried on or intended to be carried on;

(c) the **full name and residential address** of each general partner or, in the case of a general partner other than an individual, the name and address in British Columbia;

(d) the **term** for which the limited partnership is **to exist**;

(e) the **aggregate amount of cash** and the **nature and fair value** of any other **property to be contributed by all of the limited partners**;

(f) the **aggregate amount of any additional contributions** agreed to be made by limited partners and the times at which or events on the happening of which the additional contributions are to be made;

(g) the **basis on which limited partners are to be entitled to share profits or receive other compensation** by way of income on their contributions.

(3) A certificate may state the full name and last known residential address of a limited partner or, in the case of a limited partner other than an individual, the name and address in British Columbia.

(4) If a partnership agreement contains provisions respecting any of the following, the **certificate** filed in respect of that agreement must also contain provisions **respecting those matters**:

(a) the times when contributions of limited partners are to be returned;

(b) the right of a limited partner to substitute an assignee as contributor in his or her place, and the terms and conditions of the substitution;

(c) the right to admit additional limited partners;

(d) the extent to which one or more of the limited partners has greater rights than the others;

(e) the right of a remaining general partner to continue the business on the bankruptcy, death, retirement, mental incompetence or dissolution of a general partner;

(f) the right of a limited partner to demand and receive property other than cash in return for his contribution;

(g) the right of the limited partners or any of them to admit an additional general partner to the partnership or to permit or require a general partner to retire from the partnership.

## 52  General and limited partners

(1) A person **may be a general partner and a limited partner** **at the same time** in the same limited partnership.

(2) A person who is at the same time a general partner and a limited partner has the **same rights and powers and is subject to the same restrictions as a general partner** but in respect of the person's **contribution as a limited partner, the person has the rights against the other partners that the person would have had** if he or she were not also a general partner.

(i.e. a LP/GP is a GP except they get to be treated as LP in matters related to capital contributions; **does not affect liability**)

## 53  Name of partnership

(1) The firm name of each limited partnership must end with the words "Limited Partnership" in full or the French language equivalent.

(2) The surname of a limited partner must not appear in the firm name of the limited partnership unless

(a) that surname is also the surname of one of the general partners, or

(b) the business of the limited partnership has been carried on under that name before the admission of that partner as a limited partner.

(3) The corporate name or a significant part of the corporate name of a limited partner must not appear in the firm name of a limited partnership unless the business of the limited partnership has been carried on under that name before the admission of that corporate partner as a limited partner.

(4) A limited partner whose **surname** or **corporate name appears in the firm name** contrary to subsection (2) or (3) is **liable as a general partner** **to any creditor** of the limited partnership who has extended the credit **without actual knowledge** that the limited partner is **not** a general partner.

## 55 Contribution of limited partner

(1) A limited partner may contribute **money and other property** to the limited partnership, but **not services**.

(2) A limited partner's **interest in the limited partnership is personal property**.

## 56  Rights of general partners

A general partner in a limited partnership has all the rights and powers and is subject to all the restrictions and liabilities of a **partner in a partnership without limited partners exce**pt that, **without the written consent** to or ratification of the specific act by all the limited partners, a general partner has **no authority** to do any of the following:

(a) to do **an act which makes it impossible** to carry on the **business** of the limited partnership;

(b) to **consent to a judgment against the limited partnership**;

(c) to **possess limited partnership property**, or to dispose of any rights in limited partnership property, for **other than a partnership purpose**;

(d) to **admit a person** as a general partner or to admit a person as a limited partner, unless the right to do so is given in the certificate;

(e) to **continue the business** of the limited partnership on the bankruptcy, death, retirement, mental incompetence or dissolution of a general partner, unless the right to do so is given in the certificate.

## 57  Liability of limited partner

Except as provided in this Part, a **limited partner is not liable for the obligations of the limited partnership except in respect of the amount of property he or she contributes or agrees to contribute** to the capital of the limited partnership.

## 58  Rights of limited partner

(1) Subject to subsection (2), a limited partner has the same right as a general partner to do any of the following:

(a) to inspect and make copies of or take extracts from the limited partnership **books** at all times;

(b) to be given, on demand, true and full information of all things affecting the limited partnership and to be given a formal account of **partnership affairs** whenever circumstances render it just and reasonable;

(c) to **obtain dissolution and winding up of the limited partnership by court order**.

(2) The **executive director** may, in whole or in part, **exempt** a limited partnership from the rights granted under subsection (1) (a) or (b) or both if the executive director considers that it is **in the public interest** to do so.

[These activities are allowed and will not constitute management, for the purposes of s. 64]

## 59  Share of profits

(1) Subject to this Act and the partnership agreement, a **limited partner** has the right

(a) to a **share of the profits or other compensation** by way of income, and

(b) to have his or her **contribution to the limited partnership returned**.

(2) A limited partner may receive from the limited partnership the share of the profits or the compensation by way of income stipulated for in the certificate if, after payment is made, whether from the property of the limited partnership or that of a general partner, the limited partnership assets exceed all the limited partnership liabilities, except liabilities to limited partners on account of their contributions and to general partners.

## 60  Business dealings by partner with partnership

(1) A limited partner may **lend money to, borrow money from and transact business with** the limited partnership.

(2) Unless the limited partner is also a general partner, a limited partner having, with respect to anything done under subsection (1), a claim against the assets of the limited partnership may receive a proportionate share of the assets along with other creditors.

(3) For the purposes of this section, a claim described in subsection (2) does not include a claim for a return of capital contributions.

## 61  Limited partners' rights as between themselves

(1) Subject to subsection (2), **limited partners, in relation to one another, share in the limited partnership assets** in respect of

(a) their claims

(i) for capital, and

(ii) for profits or compensation by way of income on their contributions in proportion to the respective amounts of their claims, and

(b) all claims, other than those referred to in paragraph (a), equally.

(2) If there is **more than one limited partner**, the partnership **agreement may provide that one or more of the limited partners is to have greater rights** than the other limited partners as to

(a) the return of contributions,

(b) profits or compensation by way of income on their contributions, or

(c) any other matter.

## 62  Return of limited partner's contribution

(1) A limited partner **is not entitled** **to receive** from a general partner or out of the limited partnership property any part of his or her **contribution** **until**

(a) **all liabilities** of the limited partnership, excepting liabilities to general partners and to limited partners on account of their contributions, **have been paid** or there remains sufficient limited partnership property to pay them,

(b) the **consent of all partners** is obtained, unless the return of the contribution may be rightfully demanded under subsection (2), and

(c) the **certificate is cancelled or amended to reflect the withdrawal or reduction.**

(2) Subject to subsection (1), a limited partner may **rightfully demand** the return of his or her contribution

(a) on the **dissolution** of the limited partnership,

(b) when the **time specified** in the certificate for its return has arrived, or

(c) after he or she has given **6 months' notice** in writing to all other partners, if no time is specified in the certificate either for the return of the contribution or for the dissolution of the limited partnership.

(3) A limited partner has, despite the nature of his or her contribution, **only the right to demand and receive cash in return** for it, unless

(a) there is a statement to the contrary in the certificate, or

(b) **all the partners consent to some other manner** of returning the contribution.

(4) A limited partner is **entitled** to have the limited partnership and its affairs **wound up if**

(a) the limited partner **rightfully but unsuccessfully demands the return** of his or her contribution, or

(b) the other liabilities of the limited partnership have not been paid, or the limited partnership property is insufficient for their payment as required by subsection (1) (a), and the limited partner seeking dissolution would otherwise be entitled to the return of his or her contribution.

(5) If one or more partners of a limited partnership make an application seeking to have the partnership dissolved and wound up, and if the court considers that the applicant is entitled to the relief sought, the court may, in addition to any other relief it may give, order on terms it considers appropriate that, instead of dissolution and winding up, the interest in the partnership of each partner making the application be purchased by the partnership.

## 63  Limited partner's liability to partnership

(1) A limited partner is liable to the limited partnership

(a) **for the difference, if any, between the amount of his or her contribution as actually made and the amount stated in the certificate as having been made**, and

(b) for any **unpaid contribution** that he or she agreed in the certificate to make in the future at the time and on the conditions, if any, stated in the certificate.

(2) A limited partner holds as trustee for the limited partnership

(a) specific property stated in the certificate as contributed by him or her but that has not in fact been contributed or that has been wrongfully returned, and

(b) money or other property wrongfully paid or conveyed to him or her on account of his or her contribution.

(3) Subject to subsection (4), the **liabilities of a limited partner as set out in this section may be waived or compromised**, only with the **consent of all partners**.

(4) A waiver or compromise agreed to under subsection (3) does not affect the right of a creditor of the limited partnership to enforce a liability arising from credit that was extended or a claim that arose

(a) subsequent to the filing of the certificate by which the limited partnership was formed, but

(b) before the cancellation or amendment of the certificate by which the waiver or compromise was effected.

(5) If a limited partner has rightfully received the return, in whole or in part, of the capital of his or her contribution, he or she is nevertheless liable to the limited partnership for any sum, not in excess of that return with interest, necessary to discharge the limited partnership's liabilities to all creditors who extended credit or whose claims otherwise arose before the return.

## 64  Liability to creditors

A limited partner is not liable as a general partner unless he or she takes part in the **management of the business**.

## 65  Admission of additional limited partners

An additional limited partner must not be admitted to a limited partnership except in **accordance with the partnership agreement** and by **entry in the registe**r under section 54(2)(a).

## 66  Assignments

(1) A limited partner **must not assign his or her interest**, in whole or in part, in the limited partnership **unless**

(a) **all** the limited partners and all the general partners **consent or the partnership agreement permits it**, and

(b) the assignment is **made in accordance with the terms of the consent or partnership agreement**.

(2) An **assignee** of the interest, in whole or in part, of a limited partner **does not become a limited partner** in the limited partnership **until his or her ownership** of the assigned interest **is entered in the register** referred to in section 54 (2) (a), and until so entered he or she has **none of the rights** of a limited partner **exercisable against** the partnership or against any of the partners **other than the assignor**.

(3) Subject to subsection (4), on becoming a limited partner, an assignee acquires the rights and powers and is subject to all the restrictions and liabilities that his or her assignor had in respect of the assigned interest immediately before the assignment.

(4) On becoming a limited partner, an assignee does not acquire the liabilities of the assignor of which the assignee is unaware and which are not specified in the certificate or in the partnership agreement.

(5) Subject to subsection (6), an assignor is not released from liability under section 63 or 74 or from a liability referred to in subsection (4).

(6) Subject to subsection (4), if a limited partnership is not a reporting issuer and an interest, in whole or in part, is assigned and at the time that the assignment is entered under subsection (2) an unpaid contribution in respect of it

(a) is not due, and

(b) has no due date set, the assignee is solely liable for that unpaid contribution.

(7) If a limited partnership is a reporting issuer and an interest, in whole or in part, is to be assigned and at the time that the assignment is to be entered under subsection (2) an unpaid contribution in respect of it

(a) is not due, and

(b) has no due date set,

the executive director must require the assignor to observe any requirement of the executive director to make the assignee aware of that unpaid contribution, and the assignee is solely liable if the assignor complies with that requirement, but the assignee is not liable in any other case.

## 67  Dissolution of limited partnership

The bankruptcy, retirement, death, mental incompetence or dissolution of a general partner dissolves a limited partnership unless the business is continued by the remaining general partners

(a) under a right specified in the certificate, or

(b) with the consent of all the remaining partners.

## 68  Death of limited partner

(1) The executor or administrator of the estate of a deceased limited partner has

(a) all the rights and powers of a limited partner for the purpose of settling the estate of the deceased limited partner, and

(b) the powers under section 66 that the deceased person held.

(2) The estate of a deceased limited partner is liable for all his or her liabilities as a limited partner.

## 69  Cancellation of certificate

A certificate must be cancelled when

(a) the limited partnership is wound up, or

(b) no person remains a limited partner in the partnership.

## 70  Amendment of certificate

(1) A certificate must be amended when any of the following circumstances occur:

(a) there is a change in the firm name of the limited partnership or in the amount or character of the contributions of limited partners not provided for in the certificate;

(b) a person is added as a general partner;

(c) a general partner becomes bankrupt, retires, dies, becomes mentally incompetent or is dissolved and the business is continued under section 67;

(d) there is a change in the nature of the business of the limited partnership;

(e) a false or erroneous statement is discovered in the certificate;

(f) there is a change in the time as stated in the certificate for the dissolution of the limited partnership or for the return of a contribution;

(g) a time is set for the dissolution of the limited partnership or for the return of a contribution, no time having been specified in the certificate;

(h) it is necessary to reflect accurately the partnership agreement as amended from time to time.

(2) An amendment to a certificate with respect to matters referred to in subsection (1) or section 51 (2), (3) or (4) is not effective until a revised form of certificate incorporating the amendment and certified as correct under subsection (3) of this section is filed with the registrar.

(3) For the purposes of subsection (2), certification as correct or as being a true copy must be made by

(a) every general partner who is not withdrawing involuntarily, and

(b) in the case of an amendment to substitute or add a general partner, the person to be substituted or added.

## 71  Order directing cancellation or amendment of certificate

(1) If a person designated by section 70 as being a person who must sign a notice to cancel or amend a certificate refuses to do so, a person desiring the cancellation or amendment may apply to the Supreme Court for an order directing the cancellation or amendment.

(2) On hearing an application brought under subsection (1), the court, if it finds that the applicant is entitled to have the notice in question signed, must by order direct the registrar to record the cancellation or amendment of the certificate as set out in the order.

## 72  Time cancellation or amendment takes effect

A certificate is cancelled or amended when there is filed with and recorded in the office of the registrar

(a) a notice signed as required by this Part, or

(b) a certified copy of a court order made under section 71.

## 73  Settling accounts on dissolution

If accounts are settled after the dissolution of a limited partnership, the liabilities of the partnership to **creditors**, excepting

(a) to limited partners on account of their contributions, and

(b) to general partners

**must be paid first and then**, **subject to a statement in the certificate or to subsequent agreement**, the other liabilities of the partnership must be paid in the following order:

(c) to **limited partners in respect of the capital of their contributions**;

(d) to limited partners in **respect of their share of the profits and other compensation by way of income on their contributions**;

(e) to **general partners other than for capital and profits**;

(f) to general partners **in respect of capital**;

(g) to general partners **in respect of profits**.

## 81  Duty of general partnership to file registration statement

(1) All persons associated in partnership for trading, manufacturing or mining purposes must, unless the firm has been registered as a limited liability partnership under Part 6, cause to be filed with the registrar a registration statement.

(2) Any person who has received the approval of all of the partners of a firm to do so may, on behalf of the partners, submit, in the prescribed manner, a registration statement to the registrar for filing in relation to the firm.

(3) If a registration statement submitted to the registrar for filing under subsection (2) is satisfactory to the registrar, the registrar must

(a) maintain the information contained in the registration statement,

(b) send, by mail, fax or electronic means, to each of the persons identified in the registration statement as partners of the firm, a notice setting out the information contained in the registration statement, and

(c) acknowledge receipt and filing of the registration statement, and the date it was filed, by sending an acknowledgement by mail, fax or electronic means to the person who submitted the registration statement for filing.

## 88  Duty of sole proprietorship to file registration statement

(1) A person who is engaged in business for trading, manufacturing or mining purposes and who is not associated in partnership with any other person or persons but who uses as his or her business name some name or designation other than his or her own name or who in his or her business name uses his or her own name with the addition of "and Company" or some other word or phrase indicating a plurality of members in the business, must file with the registrar within 3 months after the day when the business name is first used, a  registration statement in the prescribed form.

## 89 Names similar to corporation

(1) The registrar must not file a certificate under section 51 or a registration statement under section 81, 88, 96 (2) or 115 (2) that contains a business name that

(a) is the name by which a corporation is incorporated, registered or continued in British Columbia, or

(b) so nearly resembles that name that in the opinion of the registrar it is likely to confuse or mislead or is a name of which the registrar, in the registrar's discretion, disapproves.

(2) The registrar may file a certificate or a registration statement referred to in subsection (1) if

(a) the corporation consents in writing, or

(b) the business name was used by the applicant for registration before the corporation first used its name.

# Part 6 — Limited Liability Partnerships

## 94 Definitions

**"limited liability partnership"** means a partnership registered as a limited liability partnership under this Part;

## 95 Application of Part

 (1) Subject to subsection (2), Parts 1, 2, 4 and 5 apply to limited liability partnerships.

(2) Subject to section 129 (5), sections 11, 14, 80.1 to 88, 90 and 90.3 (a) (ii) do not apply to limited liability partnerships.

## 96 Application for registration

(1) Subject to this Part, the **partners of a partnership**, including, without limitation, the partners of a limited partnership, **may apply to register the partnership as a limited liability partnership**.

(2) In order for a partnership to be registered as a limited liability partnership, there must be filed with the registrar, on behalf of the partnership, a registration statement in the form established by the registrar.

(3) A registration statement may be filed on behalf of the partnership under subsection (2) by

(a) a **person who has received the approval of all of the partners** to do so, or

(b) if the **partnership agreement authorizes** the filing of a registration statement for the partnership under subsection (2), any person.

(4) A registration statement referred to in subsection (2) must

(a) set out

(i) the business name of the partnership, and

(ii) the name that is to be the business name of the partnership after it is registered as a limited liability partnership,

(b) set out the mailing address and delivery address of the office that is to be the registered office of the partnership after it is registered as a limited liability partnership,

(c) if the partnership is a professional partnership,

(i) indicate that fact, and

(ii) confirm that the partnership is authorized, within the meaning of section 97, to register as a limited liability partnership,

(d) if the partnership is a limited partnership or a registered general partnership, indicate that fact,

(e) contain a statement that

(i) the person submitting the registration statement for filing has received the approval of all of the partners to file that registration statement, or

(ii) the partnership agreement authorizes the filing of a registration statement for the partnership under subsection (2), and

(f) set out any other information required by the regulations.

(5) The allegations contained in a registration statement filed under this section are evidence of the information contained in those allegations.

## 97  Professional partnerships

If a partnership that wishes to register as a limited liability partnership is a **professional partnership**, that partnership **must not register as a limited liability partnership unless**

(a) members of that profession are **expressly authorized under the Act by which that profession is governed** to carry on the practice of the profession **through a limited liability partnership**, and

(b) **any prerequisites** to that authorization that have been established **under that Act have been met** by the partnership.

## 102  Professional partnerships

A change in the partnership does not affect the partnership's status as a limited liability partnership.

## 104  Limited liability for partners

(1) Except as provided in this Part, in another Act or in a partnership agreement, a **partner in a limited liability partnership**

(a) **is not personally liable for a partnership obligation merely because that person is a partner**,

(b) is **not personally liable for an obligation under an agreement between the partnership and another person**, and

(c) is **not personally liable to the partnership or another partner for an obligation to which paragraph (a) or (b) applies**.

(2) **Subsection (1) does not relieve a partner** in a limited liability partnership from personal liability

(a) for the **partner's own negligent or wrongful act or omission**, or

(b) for the **negligent or wrongful act or omission of another partner or an employee of the partnership** **if** the partner seeking relief

(i) knew of the act or omission, and

(ii) **did not take the actions** that a **reasonable person** would take **to prevent it**.

(3) Subsection (1) **does not protect a partner's interest in the partnership property from claims against the partnership respecting a partnership obligation**.

## 105  Partners subject to same obligations as corporate directors

(1) Partners in a limited liability partnership are **personally liable for a partnership obligation if and to the same extent that they would be liable for the obligation if**

(a) the obligation was an **obligation of a corporation**, and

(b) **they were directors** of that corporation.

(2) Nothing in subsection (1) imposes on partners the duties imposed on directors of corporations at common law or under section 142 of the [*Business Corporations Act*](http://www.bclaws.ca/civix/document/id/complete/statreg/02057_00).

(3) **If a corporation is a partner in a limited liability partnership, the directors of the corporation are jointly and severally liable for any liability** imposed on the corporation under subsection (1) of this section or section 104 (2).

(4) Subsection **(3) does not apply to a director who dissented to, or took the actions a reasonable person** would take to **prevent, the act or omission that resulted in the liability**.

## 106  Previous obligations

Nothing in this Part limits the liability of partners in a limited liability partnership in respect of any partnership obligation that

(a) **arose before** the partnership **became a limited liability** partnership, or

(b) **arose out of a contract entered into before** the partnership became a limited liability partnership.