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The Process of Incorporation

Extrajurisdictional licensing and filing requirements

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Continuance under the law of another jurisdiction

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The Corporate Constitution

Restrictions

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259: Alteration to articles

260: Shareholders may dissent 🚫

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30 Capacity and powers of company	<ul style="list-style-type: none"> Companies have capacity and powers of a natural person Abolishes CL doctrine of ultra vires
31 Joint tenancy in property	<ul style="list-style-type: none"> Companies can acquire and hold property in joint tenancy in the same way as an individual
32 Extraterritorial capacity	<ul style="list-style-type: none"> Companies have the capacity to carry on business outside BC unless restricted by its charter or by legislation
33 Restricted businesses and powers ⚡★🚫	<ul style="list-style-type: none"> Cs must abide by all restrictions in its NOA/A However, no act is invalid merely because it does violate a restriction Kind of replaces ultra vires doctrine Third parties not deemed to know restrictions Can modify restrictions (s 259), but SHs would be entitled to dissent (s 260), which would trigger appraisal remedy (s 237) Remedies: if amended, s 237, if violated or about to be violated, s 228, if compensation has been paid to someone, directors jointly and severally liable under s 154
154(1)(a) Directors' liability for act contrary to 33	<ul style="list-style-type: none"> Subject to s 157 (good faith reliance), directors are jointly and severally liable if they vote for or consent to a resolution authorizing a restricted act contrary to s 33 for which the company has paid compensation to any person Directors who are present at a meeting are deemed to consent unless their dissent is recorded Directors who are not present are deemed to consent unless their dissent is recorded within seven days of becoming aware of the resolution
228(3)(c) Compliance or restraining orders 🚫	<ul style="list-style-type: none"> If provision in the Act, regulations, or NOA/A about contravened or about to be contravened, the court may make an order to direct a person to comply with or refrain from contravening a provision (3a), prohibit the company from selling or receiving property (3b), requiring compensation to be paid to any party of a contract (3c), or any other order it considers appropriate Standing = SH or any other person the court considers appropriate
259 Alteration to articles	<ul style="list-style-type: none"> Companies can modify its articles by the type of resolution specified by the Act If the Act is silent, by the type specified by the articles If both the Act and the articles are silent, by SR Companies can modify the number of votes required to pass a SR by a SR; number of votes required must be within $\frac{1}{2}$ to $\frac{3}{4}$
260 Shareholders may dissent 🚫	<ul style="list-style-type: none"> A SH is entitled to dissent with respect to any resolution to alter any restrictions This would trigger the appraisal remedy (s 237)
378(2) and 378(4) Effect of registration ★	<ul style="list-style-type: none"> A notation in the corporate register that a foreign entity has been registered as an extraprovincial company is conclusive evidence that it has been duly registered An extraprovincial company may exercise the powers contained in its charter Registration does not entitle the foreign entity to violate its restrictions No act of a foreign entity is invalid merely because it does violate its restrictions No act of a foreign entity is invalid merely because it was not registered at the time of the act

Pre-Incorporation Contracts

Statutory reform

20: Pre-incorporation contracts ✂

<p>20 Pre-incorporation contracts ✂ ✂</p>	<ul style="list-style-type: none"> • If a person purports to enter into a contract on behalf of the company before that company is incorporated, the person is deemed to warrant that the company will become incorporated and adopt the contract within a reasonable time • If this warranty is breached, the person will be liable to the other parties for any damages • Once the company becomes incorporated, it may adopt the contract by any act or conduct signifying its intention to be bound • Once the company adopts the contract, it becomes bound and the person is released from liability • If the company does not adopt the contract within a reasonable time, any party can apply to the court for an order directing the company to restore any benefits received • Whether or not the company adopts the contract, any party may apply to the court for an order to set the obligations as joint and several or to apportion liability between the company and the facilitator; the court may make any order it considers appropriate • The parties may, in writing, release the facilitator from any liability
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Management and Control of the Corporation

General

135: If no directors in office

136: Powers and functions of directors ⚡

138: Application of this Act to persons performing functions of a director

143: Validity of acts of directors and officers ★

135 If no directors in office	<ul style="list-style-type: none"> If there are no directors in office: 1) a person may be empowered, by an instrument in writing signed by more than half the voting SHs, to call a meeting to appoint directors, and may appoint interim directors to hold office until the vacancies are filled, or 2) directors may be appointed by a UR of the voting SHs
136 Powers and functions of directors ⚡	<ul style="list-style-type: none"> Directors must manage or supervise the business and affairs of the company A limitation or restriction on the powers of the directors is ineffective against a person who does not have knowledge of that limitation or restriction
138 Application of this Act to persons performing functions of a director	<ul style="list-style-type: none"> If a person who is not a director acts as a director, most of the Act will apply to that person as if he were a director
143 Validity of acts of directors and officers ★	<ul style="list-style-type: none"> An act is of a director or officer is not invalid merely because of an irregularity in her election or a defect in her qualification

The indoor management rule

146: Persons may rely on authority of directors, officers, and agents ❖

146 Persons may rely on authority of directors, officers, and agents ❖	<ul style="list-style-type: none"> A person may not assert that the NOA/A have not been complied with, that an individual listed as a director in the register is not in fact a director, or that a person held out as a director/officer/agent is not in fact a director/officer/agent or has no authority to act as such in an attempt to avoid liability It is not necessary for third parties to inquire into the corporation's internal authorization requirements; they are entitled to rely on actions taken by officers of a corporation on the basis that the actions were within the authority granted to officers in the ordinary course of business The indoor management rule will not apply where an officer takes action outside of the ordinary course of business and accordingly beyond her expected scope of authority
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The audit committee

223: Application

224: Appointment and procedures of audit committee ⚡

225: Duties of audit committee ⚡

226: Provision of financial statements to audit committee ⚡

223 Application	<ul style="list-style-type: none"> This section applies only to widely-held/public companies
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<p>224 Appointment and procedures of audit committee ⌘</p>	<ul style="list-style-type: none"> • Directors must elect an audit committee from among themselves, which must be composed of at least three directors, a majority of which are outside directors (ie not officers or employees of the company) • Quorum for a meeting requires a majority of outside directors • The audit committee must elect a chair and may determine its own procedures • The auditor of a company must be given reasonable notice of and has the right to appear and be heard at each meeting, and must appear if requested to do so • The chair must convene a meeting on the request of the auditor
<p>225 Duties of audit committee ⌘</p>	<ul style="list-style-type: none"> • The audit committee must review and report to the directors on the financial statements of the company and the related auditor's report
<p>226 Provision of financial statements to audit committee ⌘</p>	<ul style="list-style-type: none"> • The directors must provide the financial statements and the related auditor's report to the audit committee with enough time for the committee to review and report on them as required

The sale of the undertaking

301: Powers to dispose of undertaking ⌘

<p>301 Powers to dispose of undertaking ⌘</p>	<ul style="list-style-type: none"> • In order to dispose of all or substantially all of the company's undertaking, it must be: 1) in the ordinary course of business, or 2) authorized by SR • So, if not in the ordinary course of business, directors must take the resolution to do so to the SHs for a SR, and then: 1) if the SR passes, the directors are permitted to carry out the disposition, but are not required to do so, and 2) if the SR does not pass, the directors must not carry out the disposition • SHs are entitled to dissent (s 238), so would trigger appraisal remedy (s 237) • If this has not been complied with, a SH, director, or creditor may apply to the court, which may make an order to prohibit the disposition, set aside the disposition, or make any other order it considers appropriate • A disposition that is not in compliance is not invalid merely because of that fact as long as it is: 1) to a bona fide purchaser for value or 2) ratified by a SR • This section does not apply if the disposition is made to a wholly owned subsidiary, between wholly owned subsidiaries, etc
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Duties of Directors and Officers

Statutory reform

142: Duties of directors and officers: duty of care and fiduciary duty ☹

154: Directors' liability ☹☹

157: Good faith reliance ❖

142 Duties of directors and officers: duty of care and fiduciary duty ☹	<ul style="list-style-type: none"> • Directors and officers must, when exercising the powers and performing the functions of a director or officer: 1) act honestly and in good faith with a view to the best interests of the company (fiduciary duty), 2) exercise the care, diligence, and skill that a reasonably prudent person would exercise in comparable circumstances (duty of care), and 3) act in accordance with the Act, regulations, and NOA/A • Directors and officers cannot contract out of the duty to act in accordance with the Act and regulations or out of liability with respect to any negligence or breach of duty in relation to the company
154 Directors' liability ☹☹	<ul style="list-style-type: none"> • Subject to s 157, directors are jointly and severally liable if they vote for or consent to a resolution authorizing a restricted act contrary to s 33 for which the company has paid compensation to any person • Directors who are present at a meeting are deemed to consent unless their dissent is recorded • Directors who are not present are deemed to consent unless their dissent is recorded within seven days of becoming aware of the resolution
157 Good faith reliance ❖	<ul style="list-style-type: none"> • Directors are not liable under s 154 and are deemed to have complied with s 142 (both duty of care and fiduciary duty) if they have relied in good faith on: 1) financial statements represented by an officer or by a written report of the auditor to fairly reflect the financial position of the company, 2) a written report of a lawyer, accountant, engineer, appraiser, or other person whose profession lends credibility to a statement made by that person, 3) a statement of fact represented by an officer to be correct, or 4) any information that the court considers provides reasonable grounds for the actions in question • Directors are not liable under s 154 if they did not know and could not reasonably have known that the act done or authorized was contrary to the Act

Self-dealing (interested contracts)

147: Disclosable interests and exceptions to disclosable interests

148: Obligation to account for profits and disclosure ☹❖

149: Approval of contracts and transactions ❖

150: Powers of court ☹❖

151: Validity of contracts and transactions ★

152: Limitation of obligations of directors and senior officers ❖

153: Disclosure of conflict of office or property ☹

147 Disclosable interests and exceptions to disclosable interests	<ul style="list-style-type: none"> • Directors or senior officers will have a disclosable interest in a contract if it is material to the company, the company has entered or proposes to enter into it, and the director or officer has a material interest in it • Directors or officers will not have a disclosable interest merely because the contract is a security arrangement, relates to indemnity or insurance, relates to the director or officer's remuneration, relates to a loan to the company and the director or officer is a guarantor, or is between affiliated corporations
148 Obligation to account for profits and disclosure ☹❖	<ul style="list-style-type: none"> • Directors or senior officers will be liable to account for any profit resulting from the interested contract unless the court orders otherwise under s 150(1)(a) or one of the exceptions apply • Directors or senior officers may retain the profit if: 1) the contract was approved by the directors in accordance with s 149, after the nature and extent of the interest was disclosed to the directors, 2) the contract is approved by a SR in accordance with s 149, after the nature and extent of the interest was disclosed to the SHs, or 3) whether or not approved in accordance with s 149, the company entered into the contract before the director or officer was in that position, the interest is disclosed, and the director or officer does not vote • There must be evidence of disclosure in a consent resolution, minutes, or a record in the record office • SHs may inspect any records that contain disclosure
149 Approval of contracts and transactions ❖	<ul style="list-style-type: none"> • If disclosure has been made in accordance with s 148, an interested contract may be approved by: 1) a directors' resolution, or 2) a SR • The director with the disclosable interest may not vote on a directors' resolution to approve the contract, unless all the directors have a disclosable interest, in which case any or all of them may vote • The director with the disclosable interest may be counted in the quorum at any meeting at which the contract is considered for approval

150 Powers of court ✂ ✂	<ul style="list-style-type: none"> • A director, senior officer, or SH seeking to retain profits may apply to the court • Standing = director, senior officer, or SH
151 Validity of contracts and transactions ★	<ul style="list-style-type: none"> • A contract is not invalid merely because a director or senior officer has an interest in it or has not disclosed that interest, or has not been approved
152 Limitation of obligations of directors and senior officers ✂	<ul style="list-style-type: none"> • Directors or senior officers are not required to disclose any interest or account for any profit except as provided in this section
153 Disclosure of conflict of office or property ⚖	<ul style="list-style-type: none"> • If a director or senior officer holds an office or possesses property that may result in a conflict of interest, that person must disclose the nature and extent of the conflict

Competition

153: Disclosure of conflict of office or property ⚖

153 Disclosure of conflict of office or property ⚖	<ul style="list-style-type: none"> • If a director or senior officer holds an office or possesses property that may result in a conflict of interest, that person must disclose the nature and extent of the conflict
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Relief from liability

233(6): Powers of court in relation to derivative actions

142(3): Duties of directors and officers ⚖

157: Good faith reliance ✂

234: Relief in legal proceedings ✂

233(6) Powers of court in relation to derivative actions	<ul style="list-style-type: none"> • No application or legal proceeding may be dismissed merely because an alleged breach has been approved by SHs, but evidence of that approval may be taken into account by the court under s 232 or s 233.
142(3) Duties of directors and officers ⚖	<ul style="list-style-type: none"> • Directors and officers cannot contract out of the duty to act in accordance with the Act and regulations or out of liability with respect to any negligence or breach of duty in relation to the company
157 Good faith reliance ✂	<ul style="list-style-type: none"> • Directors are not liable under s 154 and are deemed to have complied with s 142 (both duty of care and fiduciary duty) if they have relied in good faith on: 1) financial statements represented by an officer or by a written report of the auditor to fairly reflect the financial position of the company, 2) a written report of a lawyer, accountant, engineer, appraiser, or other person whose profession lends credibility to a statement made by that person, 3) a statement of fact represented by an officer to be correct, or 4) any information that the court considers provides reasonable grounds for the actions in question • Directors are not liable under s 154 if they did not know and could not reasonably have known that the act done or authorized was contrary to the Act
234 Relief in legal proceedings ✂	<ul style="list-style-type: none"> • If the court finds that a director or officer is liable in respect of negligence, default, breach of duty, or breach of trust, the court must take all of the circumstances into consideration, including those concerning the person's appointment, and may relieve the person from liability if it appears to the court that despite the finding of liability, the person has acted honestly and reasonably and ought fairly to be excused

Indemnification and insurance

BCBCA PROVISIONS SUMMARY – LIZ PAN

- 159: Definitions
- 160: Indemnification and payment permitted
- 161: Mandatory payment of expenses
- 162: Authority to advance expenses
- 163: Court ordered indemnification
- 164: Court ordered indemnification
- 165: Insurance

159 Definitions	<ul style="list-style-type: none"> • Defines an associated corporation, eligible party, eligible penalty, eligible proceeding, expenses, and proceeding
160 Indemnification and payment permitted	<ul style="list-style-type: none"> • Subject to s 163, a company may indemnify the person against any penalties or pay her expenses after the disposition of the proceeding
161 Mandatory payment of expenses	<ul style="list-style-type: none"> • Subject to s 163, a company must pay the person's expenses after the disposition of the proceeding if she has not been reimbursed and is wholly or substantially successful
162 Authority to advance expenses	<ul style="list-style-type: none"> • A company may pay the person's expenses as they are incurred in advance of the final disposition of the proceeding as long as the company gets an undertaking that the person will repay the amounts advanced if the payment of expenses is prohibited by s 163
163 Court ordered indemnification	<ul style="list-style-type: none"> • A company must not indemnify a person or pay the person's expenses if, inter alia, the person did not act honestly and in good faith with a view to the best interests of the corporation (so company cannot pay costs if person breaches fiduciary duty)
164 Court ordered indemnification	<ul style="list-style-type: none"> • On an application by the company or by the person, the court may order a company to indemnify, order a company to pay some or all expenses, order the enforcement of an indemnification agreement, or make any other order it considers appropriate
165 Insurance	<ul style="list-style-type: none"> • A company may purchase insurance for a person against any liability incurred by reason of that person being a director or officer

Shareholder Rights

Voting rights

173: Voting

174: Participation at meetings of SHs

173 Voting	<ul style="list-style-type: none"> A SH has one vote per share and may vote in person or by proxy unless the NOA/A provide otherwise Any action that can be authorized by SHs may be so authorized by an ordinary resolution unless the Act or NOA/A provide otherwise
174 Participation at meetings of SHs	<ul style="list-style-type: none"> A SH or proxy holder may participate in a meeting in person, by phone, or by other communications medium, as long as they are all able to communicate with each other, unless the NOA/A provide otherwise

Shareholder meetings

166: Location of general meetings

167: Requisitions for general meetings

168: No liability

169: Notice of general meetings ☹

170: Waiver of notice ❖

171: Setting record dates

172: Quorum for SH meetings

173: Voting

174: Participation at meetings of SHs

175: Pooling agreements

176: Date of resolution

177: Subsidiary not to vote

178: Election of chair

179: Minutes ☹

180: Consent resolutions of SHs

181: Rules applicable to GMs apply to other SH meetings

182: AGMs ☹

185: Information for SHs ☹

186: Court-ordered meetings ☹

166 Location of general meetings	<ul style="list-style-type: none"> GMs must be held in BC unless 1) the location is provided for in the articles, 2) the articles do not restrict a location outside BC and the location is approved by resolution, or 3) the location is approved in writing by the registrar
167 Requisitions for general meetings	<ul style="list-style-type: none"> See page 9
168 No liability	<ul style="list-style-type: none"> See page 9
169 Notice of general meetings ☹	<ul style="list-style-type: none"> A company must send notice of a GM in accordance with the requirements of the Act The accidental omission to send notice will not invalidate the proceedings at that meeting
170 Waiver of notice ❖	<ul style="list-style-type: none"> A SH or any other person entitled to notice of a SH meeting may waive that entitlement or may agree to reduce the notice period This does not need to be in writing
171 Setting record dates	<ul style="list-style-type: none"> Directors may set a date as the record date under this section for any purpose

172 Quorum for SH meetings	<ul style="list-style-type: none"> The quorum is that established by the NOA/A, and if the NOA/A are silent, then quorum is two voting SHs If the number of voting SHs is less than in those two situations, then quorum is all of the voting SHs (even if there is only one voting SH) If a quorum is not present, the meeting may be adjourned but no business may be transacted unless the NOA/A provide otherwise
173 Voting	<ul style="list-style-type: none"> A SH has one vote per share and may vote in person or by proxy unless the NOA/A provide otherwise Any action that can be authorized by SHs may be so authorized by an ordinary resolution unless the Act or NOA/A provide otherwise
174 Participation at meetings of SHs	<ul style="list-style-type: none"> A SH or proxy holder may participate in a meeting in person, by phone, or by other communications medium, as long as they are all able to communicate with each other, unless the NOA/A provide otherwise
175 Pooling agreements	<ul style="list-style-type: none"> Two or more SHs may, in a written agreement, agree that they will vote in accordance with the terms of that agreement
176 Date of resolution	<ul style="list-style-type: none"> A resolution is deemed to have been passed on the date that it was in fact passed
177 Subsidiary not to vote	<ul style="list-style-type: none"> If a subsidiary is a SH of its (BC) holding corporation, the subsidiary is not entitled to vote at a SH meeting of that holding corporation
178 Election of chair	<ul style="list-style-type: none"> The voting SHs present at a meeting may elect any voting SH as chair, unless the NOA/A provide otherwise
179 Minutes ⚠	<ul style="list-style-type: none"> A company must ensure that minutes are kept of all SH meetings
180 Consent resolutions of SHs	<ul style="list-style-type: none"> A consent resolution of SHs is deemed to be a proceeding at a meeting of those SHs and is deemed to be as valid and effective as if it had been passed as a meeting that satisfies all requirements
181 Rules applicable to GMs apply to other SH meetings	<ul style="list-style-type: none"> The provisions of the Act, regulations, and NOA/A governing GMs apply to all other SH meetings
182 AGMs ⚠	<ul style="list-style-type: none"> A company must hold its first AGM within 18 months of its recognition and at least once in each calendar year after its first annual reference date
185 Information for SHs ⚠	<ul style="list-style-type: none"> Directors holding an AGM must place any required financial statements and any required auditor's report before that meeting, and must send any of these required documents to a requesting SH
186 Court-ordered meetings ⚠	<ul style="list-style-type: none"> The court may, on its own motion or on the application of the company, a director, or a voting SH, order that a SH meeting be held if 1) if unfeasible for the company to do so as required, 2) if the company fails to do so as required, or 3) for any other reason the court considers appropriate Standing = the company, a director, a voting SH, or the court on its own motion

Shareholder proposals

187: Definitions and application

188: Requirements for valid proposals

189: **Rights and obligations arising from proposal** ⚠❖

190: No liability ❖

191: **Refusal to process proposal** ⚠❖⚠

187 Definitions and application	<ul style="list-style-type: none"> Proposal: written notice setting out a matter that the submitted wishes to have considered at the next AGM Qualified SH (QSH): registered or beneficial voting SH who has owned one or more voting shares for at least two years Submitter: QSH This section only applies to widely-held corporations
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188 Requirements for valid proposals	<ul style="list-style-type: none"> A proposal is valid if: 1) it is signed by the submitter, 2) it is signed by QSHs who collectively own at least 1% of the company's issued voting shares or have a fair market value in excess of that amount, 3) it is received in accordance with the requirements of the Act, and 4) is accompanied by a declaration signed by the submitter and each supporter A proposal must not be longer than 1,000 words
189 Rights and obligations arising from proposal ❖❖	<ul style="list-style-type: none"> A company that receives a proposal must send it every person entitled to notice of the AGM in accordance with the requirements of the Act The company must allow a submitter to present the proposal at the AGM in relation to which the proposal was made The company is not required to process a proposal in the following circumstances: 1) the directors have called and sent notice for an AGM that is to be held after the date the proposal is received, 2) the same proposal has already been submitted to SHs and did not receive the required support at the meeting, 3) the proposal does not relate in a significant way to the business or affairs of the company, 4) the primary purpose for the proposal is either securing publicity or enforcing a personal claim/redressing a personal grievance against the company or its directors, 5) the proposal has already been implemented, 6) implementing the proposal would result in the company committing an offence, or 7) the proposal deals with matters beyond the company's power to implement
190 No liability ❖	<ul style="list-style-type: none"> No liability will be incurred merely because the company or a person sends notice of a proposal or allows it to be presented in accordance with s 189
191 Refusal to process proposal ❖❖	<ul style="list-style-type: none"> A company that does not intend to process a proposal on the ground that one of the exceptions in s 189 applies must send written notice of the decision and a written explanation as to the company's reason for that decision, including a specific reference to the provision of s 189 that it is relying on in refusing to process the proposal and the reasons why the company believes that provision applies The submitter may apply to the court for a review of the company's decision

Requisitioned meetings

167: Requisitions for general meetings ❖❖

168: No liability ❖

167 Requisitions for general meetings ❖❖	<ul style="list-style-type: none"> SHs holding at least 5% of the company's issued voting shares may requisition a GM for the purpose of transacting any business that may be transacted at a GM The requisition must: 1) state the business to be transacted, including any SR or ER to be submitted, in 1,000 words or less, 2) must be signed by all the requisitioning SHs, and 3) must be delivered in accordance with the requirements of the Act On receiving a requisition that complies with these requirements, the directors must call a GM to be held within four months of receipt to transact the business stated in the requisition and must send it to every person entitled to notice in accordance with the requirements of the Act The company is not required to call a GM in the following circumstances: 1) the directors have called and sent notice for a GM that is to be held after the date the requisition is received, 2) the same business has already been submitted to SHs and any resolution did not receive the required support at the meeting, 3) the business stated in the requisition does not relate in a significant way to the business or affairs of the company, 4) the primary purpose for the requisition is either securing publicity or enforcing a personal claim/redressing a personal grievance against the company or its directors, 5) the business stated in the requisition has already been implemented, 6) implementing the business stated in the requisition would result in the company committing an offence, or 7) the requisition deals with matters beyond the company's power to implement If the directors do not comply with this section, the requisitioning SHs may send notice of a GM to be held to transact the business stated in the requisition, and the company must reimburse them for doing so, unless the SHs resolve otherwise by an OR at the GM called
168 No liability ❖	<ul style="list-style-type: none"> No liability will be incurred merely because the company or a person sends notice of a requisition in accordance with s 167

Removal of directors

128(3): When directors cease to hold office

131(a): Vacancies among directors

<p>128(3) When directors cease to hold office</p>	<ul style="list-style-type: none"> • A director ceases to hold office when: 1) his term expires, 2) he dies or resigns, or 3) he is removed in accordance with this section • A director may be removed by a SR or by the resolution or method specified by the NOA/A
<p>131(a) Vacancies among directors</p>	<ul style="list-style-type: none"> • If a vacancy occurs as a result of a removal, it may be filled by the SHs at the SH meeting at which the director is removed, by the SHs, or by the remaining directors

Shareholder Remedies

The derivative action

232: Derivative actions ✂

233: Powers of court in relation to derivative actions ✂

<p>232 Derivative actions ✂</p>	<ul style="list-style-type: none"> Complainant: a SH or director SH: registered or beneficial SH or any other person whom the court considers to be an appropriate person to make an application under this section A complainant may, with leave of the court, prosecute a legal proceeding in the name of and on behalf of a company to enforce a right or duty owed to the company or to obtain damages for any breach of a right or duty owed to the company A complainant may, with leave of the court, in the name of and on behalf of a company, defend a legal proceeding brought against the company Standing = a SH, a director, or any other person whom the court considers to be an appropriate person
<p>233 Powers of court in relation to derivative actions ✂</p>	<ul style="list-style-type: none"> The court may grant leave if the complainant has made reasonable efforts to persuade the directors to pursue the action, notice of the application for leave has been given to the company, the complainant is acting in good faith, and the court determines that the action is in the best interests of the company The court may make any order concerning costs that it considers appropriate No action under this section may be discontinued, settled, or dismissed without the court's approval (response to remedy the mischief caused by strike suits) No application or legal proceeding may be dismissed merely because an alleged breach has been approved by SHs, but evidence of that approval may be taken into account by the court under s 232 or s 233.

The oppression remedy

227: The oppression remedy ✂

<p>227 The oppression remedy ✂</p>	<ul style="list-style-type: none"> SH: registered or beneficial SH or any other person whom the court considers to be an appropriate person to make an application under this section A SH may apply to the court for an order on the following grounds: 1) the affairs of the company are being conducted or the powers of the directors are being exercised in a manner oppressive to one or more of the SHs, or 2) some act has been done or some resolution has been passed that is unfairly prejudicial to one or more of the SHs The court may make any order it considers appropriate, including an order: 1) directing or prohibiting any act, 2) regulating the conduct of the company's affairs, 3) appointing a receiver, 4) appointing or removing directors, 5) directing a company to purchase shares of a SH, 6) varying or setting aside a transaction and directing compensation to be paid to any party to that transaction, 8) varying or setting aside a resolution, 9) directing the company to compensate an aggrieved person, or 10) directing that the company be liquidated or dissolved Standing = SH or any other person whom the court considers to be an appropriate person
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Compliance and restraining orders

19(3): Effect of NOA/A ✂

228: Compliance or restraining orders ✂

<p>19(3) Effect of NOA/A ✂</p>	<ul style="list-style-type: none"> A company and its SHs are bound by its NOA/A
<p>228 Compliance or restraining orders ✂</p>	<ul style="list-style-type: none"> If a provision in the Act, regulations, or NOA/A has been contravened or is about to be contravened, the court may make an order to direct a person to comply with or refrain from contravening a provision (3a), prohibit the company from selling or receiving property (3b), requiring compensation to be paid to any party of a contract (3c), or any other order it considers appropriate Standing = SH or any other person the court considers appropriate

Remedying corporate mistakes

229: Remedying corporate mistakes ✂

229 Remedying corporate mistakes ✂	<ul style="list-style-type: none"> Corporate mistake: an omission, defect, error, or irregularity that has occurred that has resulted in an innocent breach of the Act, regulations, or NOA/A The court, on its own motion or on the application of any interested person, may make an order to correct, nullify, or modify the consequences in law of a corporate mistake or to validate any act rendered invalid by a corporate mistake, without prejudice to the rights of any third party bona fide purchaser for value
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The appraisal remedy

237: Definitions and application ✂

238: Right to dissent ✂

239: Waiver of right to dissent ❖

240: Notice of resolution

241: Notice of court orders

242: Notice of dissent

243: Notice of intention to proceed

244: Completion of dissent

245: Payment for notice shares

246: Loss of right to dissent

247: SHs entitled to return of shares and rights

237 Definitions and application ✂	<ul style="list-style-type: none"> Dissenter: SH who sends notice of dissent as required by the Act Notice shares: the shares in respect of which dissent is being exercised Payout value: 1) in the case of a resolution, the fair value that the notice shares had immediately before the passing of that resolution, 2) in the case of an arrangement, the fair value that the notice shares had immediately before the passing the resolution adopting the arrangement, or 3) in the case of a court order, the fair value that the notice shares had at the time specified by the court order
238 Right to dissent ✂	<ul style="list-style-type: none"> A voting or non-voting SH is entitled to dissent with respect to a resolution to: 1) alter the restrictions in the articles (see s 33), 2) adopt an amalgamation agreement, 3) approve an amalgamation, 4) approve an arrangement that permits dissent, 5) authorize the sale of all or substantially all of the company's undertaking (see s 301), 6) authorize continuation into another jurisdiction A voting or non-voting SH is also entitled to dissent with respect to any other resolution that permits dissent or any court order that permits dissent A SH wishing to dissent must do so in accordance with the procedural requirements of the Act (ss 240-247)
239 Waiver of right to dissent ❖	<ul style="list-style-type: none"> A SH may waive the right to dissent with respect to a particular corporate action, but may not waive the right to dissent generally
240 Notice of resolution	<ul style="list-style-type: none"> The company must give notice of a resolution for which a SH is entitled to dissent
241 Notice of court orders	<ul style="list-style-type: none"> The company must give notice of a court order for which a SH is entitled to dissent
242 Notice of dissent	<ul style="list-style-type: none"> A SH intending to dissent must comply with requirements in providing notice of dissent
243 Notice of intention to proceed	<ul style="list-style-type: none"> A company that receives notice of dissent must comply with requirements in providing notice of intention to proceed
244 Completion of dissent	<ul style="list-style-type: none"> A dissenter who receives notice of intention to proceed must send a written statement that he requires the company to purchase all of his notice shares A dissenter who completes his dissent in compliance with this section may not vote or exercise any rights of a SH with respect to the notice shares

245 Payment for notice shares	<ul style="list-style-type: none"> The payout value for the notice shares may be determined by agreement between the company and the dissenter or by determination by the court The company must then pay this amount to the dissenter in a timely manner
246 Loss of right to dissent	<ul style="list-style-type: none"> The right to dissent may terminate in several situations, eg the resolution is not in fact going to be implemented
247 SHs entitled to return of shares and rights	<ul style="list-style-type: none"> If the right to dissent terminates, the dissenter regains his rights as a SH

Winding-up

324: Court may order company to be liquidated and dissolved ☞

324 Court may order company to be liquidated and dissolved ☞	<ul style="list-style-type: none"> On an application by the company, a registered or beneficial SH, a director, or any other person, including a creditor, whom the court considers to be an appropriate person, the court may order that the company be liquidated and dissolved if: 1) an event occurs upon which the NOA/A provides that the company is to liquidated and dissolved, or 2) the court considers it just and equitable to do so Standing = the company, a SH, a director, a creditor, any other person the court considers an appropriate person
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SH agreements

175: Pooling agreements ☞

175 Pooling agreements ☞	<ul style="list-style-type: none"> Two or more SHs may, in a written agreement, agree that they will vote in accordance with the terms of that agreement
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