

Trust and Loan Companies Act

CHAPTER 7 OF THE ACTS OF 1991

as amended by

2004, c. 3, s. 48; 2007, c. 9, s. 41; 2008, c. 2, s. 31;
2009, c. 5, s. 35; 2011, c. 8, s. 31; 2013, c. 3, s. 25; 2015, c. 6, s. 54;
2015, c. 30, ss. 153, 154



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 2015, c. 30, ss. 153, 154

**An Act Respecting
 Trust and Loan Companies**

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Short title

1 This Act may be cited as the *Trust and Loan Companies Act*. 1991, c. 7, s. 1.

Interpretation

2 (1) In this Act,

(a) “accountant” means a person licensed pursuant to the *Public Accountants Act*;

(b) “affairs” means the relationships among a body corporate, its affiliates and the shareholders, directors and officers of those bodies corporate but does not include the business carried on by those bodies corporate;

(c) “affiliate” means an affiliated body corporate within the meaning of subsection (2);

(d) “annual financial statement” means the statement referred to in subsection (3) of Section 139;

(e) “associate”, when used to indicate a relationship with any person, means

(i) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than ten per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing or a currently exercisable option or right to purchase those shares or convertible securities,

(ii) a partner of that person acting on behalf of the partnership of which they are partners,

(iii) a trust or estate in which that person has a substantial beneficial interest or in respect of which that person serves as a trustee or in a similar capacity,

(iv) a spouse or child of that person, and

(v) a relative of that person or of that person’s spouse if that relative has the same residence as that person;

(f) “auditor” means an accountant and includes a partnership of accountants;

(g) “bank” means a bank named in Schedule A or B to the *Bank Act* (Canada);

(h) “bank mortgage subsidiary” means a wholly-owned, except for any directors’ qualifying shares, subsidiary of a bank that receives deposits that are guaranteed by the bank and whose investments in mortgages equal at least eighty-five per cent of its deposits;

(i) “beneficial interest” means an interest arising out of the beneficial ownership of securities;

(j) “beneficial ownership” includes ownership through a trustee, legal representative, agent or other intermediary;

(k) “body corporate” means a body corporate with or without share capital wherever or however incorporated;

(l) “branch” means an office of a company where it offers services to the public or where it provides fiduciary services;

(m) “capital base” means the shareholders’ equity of a company calculated in the manner prescribed by regulation;

(n) “commercial or business loan” includes a loan, investment and other financing in the form of leasing, guarantees, letters of credit or letters of guarantee, but does not include

(i) assets prescribed by regulations made pursuant to Section 49,

(ii) loans which are fully secured by assets prescribed by regulations made pursuant to Section 49,

(iii) letters of credit, letters of guarantee, and guarantees which are fully secured by assets prescribed by regulations made pursuant to Section 49,

(iv) fully secured mortgage loans if the outstanding amount of the loan, together with any prior or equally ranking encumbrances and accrued interest, is either not in excess of seventy-five per cent of the value of the property at the date of the mortgage or the excess is insured,

(v) debt securities and preferred shares that are widely distributed and common shares,

(vi) loans to, loans fully secured by securities issued or guaranteed by, or securities issued or guaranteed by any foreign government that is a member of the Organization for Economic Cooperation and Development, or any of their agencies,

(vii) the aggregate of loans, leasing, conditional sales contracts, letters of credit, guarantees, letters of guarantee and other financing to an individual in an amount of two hundred and fifty thousand dollars or less,

(viii) investments in equity, loans or other commitments that are subordinate to unsecured debt in subsidiaries or associates, and

(ix) investments in real estate;

(o) “common trust fund: means a fund maintained by a trust company in which money, other than deposits, belonging to various estates and trusts in its care is combined for the purpose of facilitating investment;

(p) “company” means both a provincial and an extra-provincial company unless expressly restricted to a provincial company or an extra-provincial company, as the case may be, or unless the context otherwise requires and “licensed company” means both a provincial and an extra-provincial company licensed pursuant to this Act, unless expressly restricted to a licensed provincial company or a licensed extra-provincial company, as the case may be, or unless the context otherwise requires;

(q) “corporation” means a body corporate that is not a loan company, trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor’s estate or a mentally incompetent person’s estate;

(r) “Court” means the Supreme Court of Nova Scotia;

(s) “debt obligation” means a bond, debenture, note or other evidence of indebtedness, whether secured or unsecured;

(t) “deposit”, in relation to a licensed provincial company, means money received by it pursuant to subsection (1) or (2) of Section 37 and includes a deposit within the meaning of the *Canada Deposit Insurance Corporation Act*, and in relation to a licensed extra-provincial company, means money received by it within the meaning of those subsections and includes a deposit within the meaning of that Act;

(u) “director” means a person occupying the position of director of a body corporate by whatever name called;

(v) “extra-provincial company” means a loan company or trust company incorporated under the laws of Canada or a province of Canada other than Nova Scotia or a body corporate authorized pursuant to those laws to execute the office of executor, administrator, trustee or guardian of a minor’s estate or a mentally incompetent person’s estate and “licensed extra-provincial company” means an extra-provincial company licensed pursuant to this Act;

(w) “improved real estate” means real estate

(i) on which there exists a building used or capable of being used for residential, financial, commercial, industrial, educational, professional, institutional, religious, charitable or recreational purposes,

(ii) on which a building capable of being used for residential, commercial, financial, industrial, professional, institutional, educational, religious, charitable or recreational purposes is being or is about to be constructed,

(iii) on which *bona fide* farming operations are being conducted, or

(iv) consisting of vacant land within a municipality that is restricted by law in its use to commercial, industrial or residential purposes by zoning or otherwise;

(x) “individual” means a natural person;

(y) “instrument of incorporation” means original or restated letters patent of incorporation, letters patent of amalgamation, letters patent of continuance and any supplementary letters patent issued and any special Act or charter incorporating a body corporate and any amendments to the special Act or charter;

(z) “lending value”, in relation to real estate, means the market value of the real estate reduced by those amounts that are attributable to contingencies or assumptions the occurrence of which is remote and that have increased the market value of the real estate, multiplied by the lesser of

- (i) seventy-five per cent, and
- (ii) such percentage less than seventy-five per cent as the company has determined in accordance with its prudent investment standards to be appropriate in the circumstances;
- (aa) “licensed trust company” means a trust company or any other body corporate licensed as a trust company pursuant to this Act;
- (ab) “loan company” means a body corporate incorporated or operated for the purpose of receiving deposits from the public and lending or investing those deposits, but does not include a bank, a bank mortgage subsidiary, an insurance corporation, a trust company or a credit union incorporated pursuant to the *Credit Union Act*;
- (ac) “market value” means the amount in terms of cash that would probably be realized for property in an arm’s length sale in an open market under conditions requisite to a fair sale, the buyer and seller each acting knowledgeably and willingly;
- (ad) “Minister” means the Minister of Consumer Affairs;
- (ae) “mortgage” includes a charge or hypothec;
- (af) “mutual fund” includes an issuer of securities that entitle the holder to receive on demand, or within a specified period after demand, an amount computed by reference to the value of a proportionate interest in the whole or in a part of the net assets, including a separate fund or trust account, of the issuer of the securities;
- (ag) “officer” means the chairman and any vice-chairman of the board of directors, the president, any vice-president, the secretary, any assistant secretary, the treasurer, any assistant treasurer, the general manager and any other person designated an officer by by-law or by resolution of the directors and any other individual who performs functions for the company similar to those normally performed by an individual occupying any of those offices;
- (ah) “ordinary resolution” means a resolution passed by a majority of the votes cast by the shareholders who voted at a meeting in respect of that resolution;
- (ai) “provincial company” means a loan company or trust company incorporated or continued pursuant to this Act and includes a loan company, trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor’s estate or a mentally incompetent person’s estate, incorporated pursuant to a special Act of the Legislature after the commencement of this Act, whether or not it is licensed pursuant to this Act, and “licensed provincial company” means a provincial loan company or provincial trust company licensed pursuant to this Act;

(aj) “provincial loan company” means a loan company referred to in the definition “provincial company” and “licensed provincial loan company” means a provincial loan company licensed as a loan company pursuant to this Act;

(ak) “provincial trust company” means a trust company referred to in the definition “provincial company” and “licensed provincial trust company” means a provincial trust company licensed as a trust company pursuant to this Act;

(al) “real estate” includes messuages, lands, rents and hereditaments, whether freehold or of any other tenure, and whether corporeal or incorporeal, and leasehold estates, and any undivided share of them, and any estate, right or interest in them but does not include hydrocarbons or minerals in or under the ground;

(am) “redeemable share” means a share issued by a company

(i) that the company may purchase or redeem on the demand of the company, or

(ii) that the company is required to purchase or redeem at a specified time or upon the demand of a shareholder;

(an) “registered office” means

(i) the office of a provincial company located at the place specified in its instrument of incorporation, and

(ii) in the case of an extra-provincial company, means the office located in the jurisdiction of incorporation of that extra-provincial company at the address specified in the charter or other incorporation document or documents of the extra-provincial company required to be filed by the laws of the incorporator’s jurisdiction and includes the head office;

(ao) “restricted party” means a person who, with respect to a company is

(i) an officer or director of the company,

(ii) a beneficial holder, directly or indirectly, of ten per cent or more of any class of voting shares of the company,

(iii) a beneficial holder of ten per cent or more of any class of non-voting shares of the company,

(iv) a beneficial holder, directly or indirectly, of ten per cent or more of any class of voting shares of an affiliate of the company,

(v) an affiliate of the company other than a subsidiary of the company,

- (vi) an employee of the company,
- (vii) an auditor of the company, if the auditor is a sole practitioner,
- (viii) a partner in the partnership of accountants that are the company's auditors, if the partner is actually engaged in auditing the company,
- (ix) a director or officer of a body corporate described in subclause (ii) or (iii),
- (x) a spouse or child of an individual described in subclauses (i), (ii), (iii) or (iv),
- (xi) any relative of an individual referred to in subclauses (i), (ii), (iii) or (iv) or the spouse of that individual if that relative has the same residence as that individual or the spouse of that individual,
- (xii) a body corporate in which a person described in subclause (i) or (ii) is the beneficial holder, directly or indirectly, of ten per cent or more of any class of voting shares,
- (xiii) a body corporate in which a person described in subclauses (iii), (vi), (vii), (viii), (ix) or (x) is the beneficial holder, directly or indirectly, of more than fifty per cent of any class of voting shares,
- (xiv) a person designated pursuant to Section 180 as a restricted party;
- (ap) "security" means, except where the context otherwise requires, a share of any class of shares or a debt obligation of a body corporate and includes a certificate evidencing such a share or debt obligation and includes a warrant but does not include a deposit or any instrument evidencing a deposit in a company;
- (aq) "send" includes deliver;
- (ar) "series", in relation to shares, means a division of a class of shares;
- (as) "shareholder" includes the personal representative of a shareholder;
- (at) "special resolution" means a resolution passed by 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;
- (au) "spouse" means a person to whom an individual of the opposite sex is married or with whom the person is living in a conjugal relationship outside marriage;

(av) “stated capital” is the aggregate amount of capital in all stated capital accounts;

(aw) “subordinated note” means a note issued pursuant to Section 40;

(ax) “Superintendent” means the Superintendent of Trust and Loan Companies appointed pursuant to Section 13 and includes a deputy superintendent appointed pursuant to that Section to carry out the duties and exercise the powers of the Superintendent pursuant to this Act;

(ay) “total assets” means the assets of a company calculated in the manner prescribed by regulation and includes cash and securities earmarked and set aside pursuant to subsection (5) of Section 37;

(az) “trust company” means a body corporate incorporated or operated for the purpose of offering its services to the public to act as trustee, bailee, agent, executor, administrator, receiver, liquidator, assignee or guardian of a minor’s estate or a mentally incompetent person’s estate and for the purpose of receiving deposits from the public and of lending or investing those deposits;

(ba) “voting share” means a share to which is attached one or more votes that may be cast to elect directors of a body corporate under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing.

(2) For the purpose of this Act,

(a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and

(b) if two bodies corporate are affiliated with the same body corporate at the same time, they shall be deemed to be affiliated with each other.

(3) For the purpose of this Act, a body corporate shall be deemed to be controlled by a person if

(a) securities of the body corporate to which are attached more than fifty per cent of the votes that may be cast to elect directors of the body corporate are held other than by way of security only by or for the benefit of that person; and

(b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

(4) A body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

(5) For the purpose of this Act, a body corporate shall be deemed to be a subsidiary of another body corporate if

- (a) it is controlled by
 - (i) that other,
 - (ii) that other and one or more bodies corporate each of which is controlled by that other, or
 - (iii) two or more bodies corporate each of which is controlled by that other; or
- (b) it is a subsidiary within the meaning of clause (a) of a body corporate that is that other's subsidiary.

(6) For the purpose of this Act, a person shall be deemed to own beneficially securities that are beneficially owned by a body corporate controlled by the person or by an affiliate of such a body corporate.

(7) For the purpose of this Act, where a person or group of persons owns beneficially, directly or indirectly, shares of a body corporate, that person or group of persons shall be deemed to own beneficially that proportion of shares of every other body corporate that is owned beneficially, directly or indirectly, by the first-mentioned body corporate, that is equal to the proportion of shares of the first-mentioned body corporate that is owned beneficially, directly or indirectly, by that person or group of persons. 1991, c. 7, s. 2.

Application of Act

3 This Act applies,

- (a) to every provincial company;
- (b) subject to Section 4, to every loan company, trust company and every other body corporate authorized to execute the office of executor, administrator, trustee, guardian of a minor's estate or a mentally incompetent person's estate, incorporated pursuant to a special or general Act of the Legislature before the commencement of this Act; and
- (c) subject to Section 8, to every extra-provincial company. 1991, c. 7, s. 3.

Requirement for body corporate referred to in clause 3(b)

4 (1) Every body corporate referred to in clause (b) of Section 3 shall, within one year after the commencement of this Act,

- (a) apply for letters patent of continuance in accordance with Section 29;
- (b) subject to Sections 5 and 6, apply to be continued in another jurisdiction; or

(c) apply for a certificate of continuance pursuant Section 32 as if it were a provincial company and that Section applies *mutatis mutandis* to that application.

(2) A body corporate referred to in clause (b) of Section 3 and for which letters patent of continuance, a certificate referred to in subsection (2) of Section 5 or a certificate of discontinuance has not been issued pursuant to this Act within one year after the commencement of this Act, shall be dissolved upon the expiry of that period and shall not be revived and the Superintendent may issue a certificate acknowledging or confirming the dissolution, which certificate shall be dated the date of dissolution.

(3) When a body corporate is dissolved pursuant to subsection (2), Sections 175 to 178 apply *mutatis mutandis* as if the body corporate were a provincial company pursuant to those Sections. 1991, c. 7, s. 4.

Continuance in another jurisdiction

5 (1) Every body corporate referred to in clause (b) of Section 3 that was not issued a certificate to commence business pursuant to the *Trust Companies Act* immediately before the commencement of this Act may, with the consent of the Superintendent, apply to the appropriate official or public body of any other jurisdiction requesting that it be continued as if it had been incorporated pursuant to the laws of that jurisdiction.

(2) Upon receipt of notice satisfactory to the Superintendent that a body corporate referred to in subsection (1) has been continued pursuant to the laws of another jurisdiction, the Superintendent shall file the notice and shall issue a certificate acknowledging or confirming that continuance outside the Province.

(3) This Act and any other Act of the Legislature cease to apply to the body corporate on the date shown in the certificate issued pursuant to subsection (2), which shall be dated the date upon which it is continued pursuant to the laws of another jurisdiction.

(4) Notice of the issue of the certificate referred to in subsection (2) shall be published by the Superintendent in the Royal Gazette. 1991, c. 7, s. 5.

Continuance of clause 3(b) company pursuant to Section 31

6 Every body corporate referred to in clause (b) of Section 3 that was issued a certificate to commence business pursuant to the *Trust Companies Act* immediately before the commencement of this Act may apply to be continued pursuant to the laws of Canada or a province of Canada other than Nova Scotia, in accordance with Section 31, as if it were a provincial company and that Section applies *mutatis mutandis* to that application. 1991, c. 7, s. 6.

Act does not apply

7 This Act, except where it is otherwise expressly provided, does not apply to a body corporate

(a) incorporated pursuant to the *Co-operative Associations Act* or the *Credit Union Act*; or

(b) required to be licensed as an insurer pursuant to the *Insurance Act*. 1991, c. 7, s. 7.

Extra-provincial company

8 An extra-provincial company is subject to Sections 2 to 11 and Sections 192 to 210 and such other provisions of this Act as may be specified in this Act. 1991, c. 7, s. 8.

Applicability of Companies Act

9 The *Companies Act* does not apply to a provincial company to which this Act applies. 1991, c. 7, s. 9.

No revival of certain companies

10 No company that has had its registration revoked pursuant to the *Companies Act*, is wound up pursuant to the *Companies Winding Up Act* or dissolved pursuant to this Act shall be revived pursuant to this Act. 1991, c. 7, s. 10.

Conflict with instrument or other Act

11 Where there is a conflict between this Act or the regulations and the instrument of incorporation of a provincial company or of any other Act of the Legislature in relation to a provincial company, this Act or the regulations, as the case may be, prevail. 1991, c. 7, s. 11.

Supervision of Act

12 The Minister has the general supervision and management of this Act and the regulations. 1991, c. 7, s. 12.

Superintendent of Trust and Loan Companies

13 (1) The Governor in Council shall appoint a person in the public service to be the Superintendent of Trust and Loan Companies and may appoint one or more deputy superintendents to carry out the purpose of this Act.

(2) The Minister or the Superintendent may authorize a deputy superintendent to carry out or exercise any duties or powers that may be carried out or exercised by the Superintendent pursuant to this Act.

(3) Notice of the appointment of the Superintendent and deputy superintendents, if any, shall be published in the Royal Gazette. 1991, c. 7, s. 13.

Issue letters patent

14 (1) On application by one or more persons, the Minister may, subject to subsection (2) and with the approval of the Governor in Council, issue letters patent incorporating a loan company or trust company.

(2) The Minister shall not issue letters patent pursuant to subsection (1) unless

(a) in the case of a loan company, one or more responsible persons have subscribed in good faith for at least three million dollars of common shares;

(b) in the case of a trust company, one or more responsible persons have subscribed in good faith for shares of the company that, when issued and added to the stated capital account and the capital base, will in both cases equal or exceed five million dollars of which at least three million dollars shall be in common shares;

(c) it is shown to the satisfaction of the Minister that

(i) there exists a public benefit and advantage for establishing a loan company or trust company or an additional loan company or trust company,

(ii) the proposed management is fit, both as to character and as to competence, to manage a loan company or trust company,

(iii) each person subscribing for ten per cent or more of any class of shares of the proposed company can demonstrate the adequacy of that person's financial resources and is fit as to character to own ten per cent or more of that class of shares,

(iv) each proposed director is fit, both as to character and as to competence, to be a director of a loan company or trust company,

(v) the proposed plan of operations as a loan company or trust company is feasible, and

(vi) the proposed company intends to offer to the public, initially or within a reasonable time after incorporation, the service set out in the application for incorporation.

(3) Notwithstanding clauses (a) and (b) of subsection (2), the Minister may, with the approval of the Governor in Council, alter the stated capital account and capital base requirements set out in those clauses.

(4) On application by a provincial company, duly authorized by special resolution, the Minister may, subject to subsections (5) and (6) and with the approval of the Governor in Council, issue supplementary letters patent

(a) in the case of a provincial loan company, to continue it as a trust company; or

(b) in the case of a provincial trust company, to continue it as a loan company.

(5) The Minister shall not issue supplementary letters patent pursuant to clauses (a) or (b) of subsection (4) unless the company meets the requirements for incorporating a loan or trust company, as the case may be, set out in subsection (2).

(6) The Minister shall not issue supplementary letters patent pursuant to clause (b) of subsection (4) unless it is shown to the Minister's satisfaction that arrangements have been made to transfer to another licensed trust company the business in relation to which the provincial trust company acted as a fiduciary and those arrangements are adequate to protect the persons in relation to which the provincial trust company acted in a fiduciary capacity.

(7) Subsection (6) does not apply so as to require a trust company that has applied to continue as a loan company to transfer money received by it as deposits.

(8) Supplementary letters patent issued pursuant to clause (a) or (b) of subsection (4) may effect any change in the provisions of the existing instrument of incorporation of the provincial company

(a) that could be made pursuant to subsection (9); and

(b) that was approved by the special resolution of the company authorizing the application for supplementary letters patent.

(9) On application by a provincial company, duly authorized by a special resolution and subject to Section 133, the Minister may issue supplementary letters patent to add, change or remove any provision that is permitted by this Act to be or that is set out in the instrument of incorporation of a company, including, without limiting the generality of the foregoing, to

(a) change its name;

(b) change the place in which its registered office is situated;

(c) add, change or remove any restriction upon the business or businesses that the company may carry on;

(d) increase or decrease the number, or minimum or maximum number, of directors;

(e) add, change or remove restrictions on the issue or transfer of shares of any class or series. 1991, c. 7, s. 14.

Application for letters patent

15 (1) An application for letters patent or supplementary letters patent pursuant to Section 14 shall be filed with the Superintendent.

(2) No application for supplementary letters patent referred to in subsection (4) or (9) of Section 14 shall be made, unless it has been authorized by a special resolution of the provincial company and the application has been filed with the Superintendent within three months after the time of the passing of the special resolution.

(3) The directors of a company may, if authorized by the shareholders in the special resolution authorizing an application referred to in subsection (2), abandon the application without further approval of the shareholders.

(4) An application for letters patent referred to in subsection (1) of Section 14 shall set out

(a) the name of the company and the place in the Province where the registered office is to be situated;

(b) the classes and any maximum number of shares that the company is authorized to issue and any maximum aggregate amount for which such shares may be issued, and

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

(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;

(c) if the right to transfer shares of the company is to be restricted, a statement that the right to transfer shares is restricted and the nature of those restrictions;

(d) the full name, address or residence, citizenship and occupation of

(i) each of the first or incumbent directors of the company,

(ii) every person who subscribed for ten per cent or more of any class of shares of the company,

(iii) each of the applicants;

(e) the number, or minimum or maximum number, of directors;

(f) the restrictions, if any, on the powers the company may exercise or the business or businesses it may carry on;

(g) evidence of the requirements for the incorporation of a loan company or trust company, as the case may be, referred to in subsection (2) of Section 14; and

(h) such further information, material or evidence as may be required by the regulations or the Superintendent.

(5) An application for supplementary letters patent referred to in clause (a) or (b) of subsection (4) of Section 14 shall set out

(a) evidence of the requirements for the incorporation of a loan company or trust company, as the case may be, set out in subsection (2) of Section 14; and

(b) such further information, material or evidence as may be required by the regulations or the Superintendent,

and shall be accompanied by an application for a licence pursuant to this Act as a loan company or a trust company, as the case may be, in accordance with Sections 211 to 217.

(6) An application for supplementary letters patent referred to in subsection (9) of Section 14 shall set out

(a) the change in, addition to or deletion from, the existing instrument of incorporation in respect of which the application is made; and

(b) such further information, material or evidence as may be required by the regulations or the Superintendent. 1991, c. 7, s. 15.

Decision of Minister

16 (1) The decision of the Minister to issue or not to issue letters patent or supplementary letters patent is final and not subject to appeal, but nothing in this subsection prevents an applicant from making a new application.

(2) The Superintendent shall immediately notify the applicant in writing of the Minister’s decision referred to in subsection (1). 1991, c. 7, s. 16.

Taxes

16A The annual taxes and taxes for letters patent of incorporation and supplementary letters patent and the taxes in respect of the functions performed by the Superintendent under this Act or the regulations are as follows:

- (a) the tax for
 - (i) filing and processing an application for letters patent or supplementary letters patent\$663.45,

(ii)	letters patent of incorporation for a trust or loan company	\$6,634.75,
(iii)	supplementary letters patent	
(A)	to change a company's name	\$663.45,
(B)	to continue a provincial loan company as a trust company	\$2,653.90,
(C)	to continue a provincial trust company as a loan company	\$2,653.90,
(D)	to change the municipal unit in which the principal place of business of the company is to be located	\$663.45,
(E)	to amalgamate two or more companies and to continue them as one company	\$5,307.80,
(F)	to modify or alter the share structure of the company	\$1,326.95;
(b)	the tax for processing an application for	
(i)	initial licensing of a company	\$1,326.95,
(ii)	changing a loan company to a trust company or changing a trust company to a loan company	\$1,326.95,
(iii)	changing terms, conditions and restrictions of registration	\$1,326.95;
(c)	the annual tax for companies to be paid as of the 30th day of June in each year	
(i)	where the assets of the company do not exceed \$50,000,000	\$3,980.85,
(ii)	where the assets of the company are over \$50,000,000 but do not exceed \$100,000,000	\$5,678.60,

(iii)	where the assets of the company are over \$100,000,000 but do not exceed \$500,000,000.....	\$6,634.75,
(iv)	where the assets of the company are over \$500,000,000 but do not exceed \$1,000,000,000.....	\$7,961.70,
(v)	where the assets of the company are over \$1,000,000,000 but do not exceed \$5,000,000,000.....	\$10,615.60,
(vi)	where the assets of the company are over \$5,000,000,000.....	\$13,269.50,
(vii)	in addition to the amount prescribed in subclause (vi), for every \$1,000,000,000 in assets in excess of \$5,000,000,000.....	\$1,326.95;
(d)	the tax for revival of licence after dissolution.....	\$1,326.95;
(e)	the tax for processing an application for an increase in borrowing multiple.....	\$1,326.95;
(f)	the tax for a copy of a decision of the Superintendent or Appeal Board, per page (minimum fee \$10.00).....	\$2.65;
(g)	the tax for a certificate issued by the Superintendent with respect to the licence of a company.....	\$26.50;
(h)	the tax for copies of extracts from documents filed with the Superintendent, per page (minimum fee \$10.00).....	\$2.65;
(i)	the tax for a certificate issued by the Superintendent other than the certificate referred to in clause (g).....	\$26.50;
(j)	the tax for examining and passing on applications or documents not specifically referred to in the regulations.....	\$1,326.95;
(k)	the tax for an application to obtain consent of the Superintendent to the transfer of shares other than an application referred to in clause (l).....	\$331.75;

- (l) the tax for an application to obtain consent of the Superintendent to the transfer of shares if such transfer results in the change of control of the company \$2,653.90;
- (m) the tax for examining the Loan or Trust Register or the public file of a company, per register or file \$13.30.

2015, c. 6, s. 54.

Contents of letters patent of provincial company

17 (1) The letters patent of a provincial company shall set out the information referred to in clauses (a) to (f) of subsection (4) of Section 15 and may set out any provisions not contrary to this Act that the Minister considers advisable to take into account the particular circumstances of the company being incorporated.

(2) Supplementary letters patent issued pursuant to subsection (4) or (9) of Section 14

(a) shall set out the change in, addition to or deletion from, the existing instrument of incorporation in respect of which the application was made; and

(b) may set out any provisions not contrary to this Act that the Minister considers advisable to take into account the particular circumstances of the company. 1991, c. 7, s. 17.

Notice of issue of letters patent

18 Notice of the issue of letters patent or supplementary letters patent pursuant to Section 14 shall be published by the Superintendent in the Royal Gazette. 1991, c. 7, s. 18.

Effective date, first directors, etc.

19 (1) A provincial company comes into existence on the date shown in its instrument of incorporation.

(2) The first directors of a provincial company shall be those named in its original instrument of incorporation.

(3) The instrument of incorporation of a provincial company expires and ceases to be in force, except for the sole purpose of effecting the liquidation and dissolution of the company,

(a) in the case of a provincial company incorporated pursuant to this Act, at the expiration of a period of two years after the date shown in the letters patent if it does not obtain a licence pursuant to this Act within that period; and

(b) in all cases, at the expiration of a period of two years during which the company has not held a licence pursuant to this Act.

(4) Supplementary letters patent become effective on the date shown in the supplementary letters patent.

(5) No issue of supplementary letters patent pursuant to subsection (4) or (9) of Section 14 affects an existing cause of action or claim or liability to prosecution in favour of or against a company or its directors or officers or any civil, criminal or administrative action or proceeding to which a company is, or its directors or officers are, a party. 1991, c. 7, s. 19.

Name of provincial loan or trust company

20 (1) The words “Loan Corporation”, “Corporation de prêt”, “Loan Corp.”, “Société de prêt”, “Loan Company”, “Compagnie de prêt”, shall be included in the name of every provincial loan company, and the words “Trust Corporation”, “Corporation de fiducie”, “Trust Corp.”, “Trust Co.”, “Trustco”, “Trustee Corp.”, “Compagnie fiduciaire”, “Trustee Company” or “Société fiduciaire” shall be included in the name of every provincial trust company but, notwithstanding its legal name, a company may use and may be legally designated by either the full or the abbreviated form of those words.

(2) The Superintendent may exempt a body corporate continued pursuant to this Act from the provisions of subsection (1).

(3) Subject to subsection (1) of Section 22, the instrument of incorporation may set out the name of the company in an English form, a French form, an English form and a French form or in a combined English and French form and it may use and may be legally designated by any such form, but where the name is set out in an English form and a French form or in a combined English and French form, the company may use and may be legally designated by any one of those forms.

(4) Subject to subsection (1) of Section 22, the instrument of incorporation may, for use outside Canada, set out the name of the company in any language form and it may use and may be legally designated by its name in any such form outside Canada.

(5) A provincial company shall, in accordance with this Section, set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the company.

(6) Subject to subsection (5), a provincial company may carry on business under or identify itself by a name other than its corporate name if it has registered a business name under the *Partnerships and Business Names Registration Act*. 1991, c. 7, s. 20.

Reservation of name

21 The Superintendent may, upon request, reserve for ninety days a name for an intended provincial company or for a provincial company about to change its name. 1991, c. 7, s. 21.

Restrictions on name

22 (1) Subject to the regulations, neither letters patent nor supplementary letters patent shall be issued to a provincial company if the company has a name that

(a) is prohibited by the regulations or contains a word or expression that is prohibited by the regulations;

(b) is identical to the name of

(i) a body corporate incorporated pursuant to the laws of the Province, whether in existence or not,

(ii) an extra-provincial body corporate registered in the Province, or

(iii) a body corporate incorporated by or pursuant to an Act of the Parliament of Canada;

(c) is similar to the name of

(i) a body corporate incorporated pursuant to the laws of the Province,

(ii) and extra-provincial body corporate registered in the Province, or

(iii) a body corporate incorporated by or pursuant to an Act of the Parliament of Canada,

if the use of that name is confusing or misleading;

(d) does not meet the requirements prescribed by the regulations;

(e) in the case of a trust company, does not include “trust” or “fiducie” together with “corporation”, “company”, “compagnie”, “limited”, “limitée” or “société”.

(2) Subject to this Act and the regulations, a provincial company may have a name in an English form, a French form, an English form and a French form or a combined English and French form and it may be legally designated by any such name.

- (3) If, through inadvertence or otherwise, a provincial company
- (a) comes into existence or is continued with a name; or
 - (b) upon an application to change its name, is granted a name,

that violates this Section, the Superintendent may, after giving the company an opportunity to be heard, direct the company to change its name in accordance with subsection (9) of Section 14.

(4) When a provincial company has been directed pursuant to subsection (3) to change its name and has not within sixty days after the service of the directive to that effect changed its name to a name that complies with this Act, the Superintendent may revoke the name of the company and assign to it a name and, until changed in accordance with subsection (9) of Section 14, the name of the company is thereafter the name so assigned.

(5) When a provincial company gives an undertaking to change its name and does not carry out the undertaking or dissolve within the time specified, the Superintendent may, after giving the company an opportunity to be heard, revoke the name of the company and assign to it a name and, until changed in accordance with subsection (9) of Section 14, the name of the company is thereafter the name so assigned.

(6) When a person who is not a provincial company gives an undertaking to change the name under which that person carries on business and does not carry out the undertaking or cease to carry on business under that name within the time specified, the Superintendent may, after giving the company that acquired the name by virtue of the undertaking an opportunity to be heard, revoke the name of the company and assign to it a name and, until changed in accordance with subsection (9) of Section 14, the name of the company is thereafter the name so assigned. 1991, c. 7, s. 22.

Supplementary letters patent showing new name

23 When a provincial company has had its name revoked by the Superintendent and a name assigned to it pursuant to Section 22, the Minister shall, on the recommendation of the Superintendent, issue supplementary letters patent showing the new name of the company and shall immediately give notice of the change of name in the Royal Gazette. 1991, c. 7, s. 23.

Rights and powers of provincial company

24 Subject to this Act and its instrument of incorporation and to any terms, conditions and restrictions imposed on its licence, a provincial company has

- (a) the capacity and the rights, powers and privileges of a natural person; and
- (b) if it holds a licence pursuant to this Act, the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction

outside the Province, subject to any terms, conditions or restrictions imposed on its licence, to the extent that the laws of that jurisdiction permit. 1991, c. 7, s. 24.

Powers and effect of availability of document

25 (1) Unless otherwise provided in this Act, it is not necessary for a by-law to be passed in order to confer any particular power on a provincial company or its directors.

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

(3) No act of a provincial company, including any transfer of property to or by a company, is invalid by reason only that the act or transfer is contrary to its instrument of incorporation.

(4) No person is affected by or shall be deemed to have notice or knowledge of the contents of a document concerning a provincial company by reason only that the document is available for inspection at an office of the company or has been filed with the Superintendent. 1991, c. 7, s. 25.

No assertion unless knowledge of facts

26 A provincial company, a guarantor of an obligation of the company or a person claiming through the company may not assert against a person dealing with the company or dealing with any person who has acquired rights from the company that

(a) the instrument of incorporation or by-laws have not been complied with;

(b) the persons named in the most recent notice of directors filed with the Superintendent are not the directors of the company;

(c) a person held out by the company as a director, an officer or an agent of the company

(i) has not been duly appointed, or

(ii) has no authority to exercise a power or perform a duty which the director, officer or agent might reasonably be expected to exercise or perform; or

(d) a document issued by a director, officer or agent of the company with actual or usual authority to issue the document is not valid or not genuine,

unless the person has, or by virtue of that person's position with or relationship to the company ought to have, knowledge of those facts at the relevant time. 1991, c. 7, s. 26.

Restated letters patent

27 (1) In this Section, “restated letters patent” means a consolidation of existing letters patent.

(2) A provincial company may at any time, and shall when reasonably so directed by the Superintendent, apply for restated letters patent.

(3) An application for restated letters patent shall be made to the Superintendent in the form prescribed by regulation and shall be filed with the Superintendent.

(4) Upon receipt of the application, the Superintendent shall issue restated letters patent.

(5) Restated letters patent are effective on the date shown in the restated letters patent and supersede the original instrument of incorporation and all amendments to it. 1991, c. 7, s. 27.

Letters patent of continuance of extra-provincial company

28 (1) An extra-provincial company that is carrying on the business of a loan or trust company may apply to the Superintendent, in accordance with Section 15, for letters patent of continuance continuing it as if it had been incorporated pursuant to Section 14.

(2) On application by a company referred to in subsection (1), the Minister may, subject to subsections (2) and (6) of Section 14 and with the approval of the Governor in Council, issue letters patent of continuance continuing the company as a loan company or trust company, as the case may be.

(3) Letters patent of continuance may be issued in respect of a company only if it is authorized pursuant to the laws of Canada or the province of Canada in which it was incorporated to apply for letters patent continuing it as if it had been incorporated pursuant to an Act of the Legislature.

(4) When letters patent of continuance are issued, the Superintendent shall send a notice of the issue of the letters patent to the appropriate official or public body of the jurisdiction in which the company was incorporated. 1991, c. 7, s. 28.

Letters patent of continuance of certain bodies corporate

29 (1) A loan company or trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor’s estate or a mentally incompetent person’s estate, incorporated pursuant to a special or general Act of the Legislature before the commencement of this Act may, if it is duly authorized by special resolution, apply to the Superintendent in accordance with Section 15, for letters patent of continuance continuing it as if it had been incorporated pursuant to Section 14.

(2) On application by a company or any other body corporate referred to in subsection (1), the Minister may, subject to subsections (2) and (6) of Section 14, issue letters patent of continuance continuing the company as a loan company or trust company, as the case may be. 1991, c. 7, s. 29.

Effect of continuance

30 (1) On the date shown in the letters patent of continuance issued in respect of a body corporate pursuant to Section 28 or 29

(a) the body corporate becomes a provincial company to which this Act applies as if it had been incorporated pursuant to this Act;

(b) the letters patent of continuance are deemed to be the instrument of incorporation of the continued provincial company; and

(c) no Act that applied to the body corporate before that date applies to the provincial company on and after that date to any greater extent than it would apply if the body corporate had been incorporated pursuant to this Act.

(2) When a body corporate is continued as a provincial company pursuant to Section 28 or 29

(a) the property of the body corporate continues to be the property of the provincial company;

(b) the provincial company 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 or its directors or officers may be continued to be prosecuted by or against the provincial company or its directors or officers; and

(e) a conviction against, or a ruling, order or judgment in favour of or against, the body corporate or its directors or officers may be enforced by or against the provincial company or its directors or officers.

(3) Letters patent of continuance issued pursuant to Section 28 or 29 may effect any change in the existing instrument of incorporation of the company being continued

(a) that could be made pursuant to subsection (9) of Section 14; and

(b) that was approved by the special resolution of the company authorizing the application for letters patent of continuance,

and shall set out any amendments to the existing instrument of incorporation necessary to comply with this Act.

(4) Sections 14 to 19 apply *mutatis mutandis* to an application for letters patent of continuance pursuant to Section 28 or 29 as if it were an application for letters patent or supplementary letters patent, as the case may be, pursuant to Section 14. 1991, c. 7, s. 30.

Application for continuance of provincial company

31 (1) Subject to subsection (8), a provincial company may, if it is authorized by the shareholders in accordance with this Section, and is established to the satisfaction of the Superintendent that its proposed continuance in another jurisdiction will not adversely affect creditors, shareholders or depositors of the company or persons for whom the company acts in a fiduciary capacity, apply to the appropriate officials or public body of another jurisdiction in Canada requesting that the company be continued as if it had been incorporated pursuant to the laws of Canada or a province of Canada other than Nova Scotia, as the case may be.

(2) Each share of the company carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote. (3) An application for continuance pursuant to subsection (1) becomes authorized when the shareholders voting on it have approved of the continuance by a special resolution.

(4) The directors of a company may, if authorized by the shareholders at the time of approving an application for continuance pursuant to this Section, abandon the application without further approval of the shareholders.

(5) Subject to subsection (1), upon receipt of notice satisfactory to the Superintendent that the company has been continued pursuant to the laws of another jurisdiction, the Superintendent shall file the notice and issue a certificate of discontinuance.

(6) This Act and any special Act of the Legislature incorporating the company or body corporate cease to apply to the company or body corporate on the date shown in the certificate of discontinuance, which shall be dated the date upon which the company or body corporate is continued pursuant to the laws of another jurisdiction.

(7) Notice of the issue of the certificate of discontinuance shall be published by the Superintendent in the Royal Gazette.

(8) A provincial company shall not apply pursuant to subsection (1) to be continued as a body corporate pursuant to the laws of another jurisdiction unless those laws provide in effect that

(a) the property of the provincial company continues to be the property of the body corporate;

(b) the body corporate continues to be liable for the obligations of the provincial company;

(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 provincial company may be continued to be prosecuted by or against the body corporate; and

(e) a conviction against the provincial company may be enforced against the body corporate or a ruling, order or judgment in favour of or against the company may be enforced by or against the body corporate. 1991, c. 7, s. 31.

Continuance pursuant to Companies Act

32 (1) A provincial company may, with the approval in writing of the Superintendent, apply to the Registrar of Joint Stock Companies for a certificate of continuance pursuant to Section 133 of the *Companies Act*.

(2) The Superintendent shall not give approval pursuant to subsection (1) unless satisfied that

(a) the application for a certificate of continuance pursuant to the the *Companies Act* has been authorized by a special resolution; and

(b) the company is not carrying on the business of a loan company, trust company or any other body corporate authorized to execute the office of executor, administrator, trustee or guardian of a minor's estate or a mentally incompetent person's estate.

(3) On the date shown in the certificate of continuance issued pursuant to the *Companies Act*, that Act applies and this Act and any special Act of the Legislature incorporating the company or the body corporate cease to apply to the corporation thereby continued.

(4) Upon receipt of notice satisfactory to the Superintendent that the company has been continued pursuant to the *Companies Act*, the Superintendent shall issue a certificate of discontinuance which shall be dated the date shown in the certificate of continuance referred to in subsection (3). 1991, c. 7, s. 32.

Meeting of directors

33 (1) On or after the day on which a provincial company is incorporated pursuant to this Act, a meeting of the directors shall be held at which the directors may, subject to this Act,

(a) make by-laws;

(b) adopt forms of share certificates and corporate records;

(c) authorize the issue of securities of the company;

- (d) appoint officers;
- (e) appoint an auditor to hold office until the first meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business necessary to organize the company.

(2) An applicant for letters patent incorporating a provincial company or a director named in the letters patent may call the meeting of the directors referred to in subsection (1) by giving not less than five day's notice of the meeting to each director, stating the time and place of the meeting. 1991, c. 7, s. 33.

Meeting of shareholders

34 (1) When the minimum amount of capital required by this Act has been received from the issue of its shares by a provincial company incorporated pursuant to this Act, the directors shall call a meeting of the shareholders of the company in accordance with the procedure set out in Section 126.

(2) The shareholders of a company shall, by ordinary resolution at the meeting of shareholders referred to in subsection (1),

- (a) approve, amend or reject any by-laws made by the directors;
- (b) subject to Section 101, elect directors to hold office until the first annual meeting of shareholders following the election; and
- (c) appoint an auditor to hold office until the first annual meeting of shareholders.

(3) An auditor appointed pursuant to clause (e) of subsection (1) of Section 33 is eligible for appointment pursuant to subsection (2).

(4) A director named in the letters patent of a provincial company holds office until the election of directors at the meeting of shareholders referred to in subsection (1). 1991, c. 7, s. 34.

Restrictions on provincial company

35 (1) Except as provided by or pursuant to this Act, no provincial company shall, directly or indirectly, through a subsidiary or otherwise

- (a) deal in goods, wares and merchandise or engage in any trade or business;
- (b) guarantee on behalf of any person other than itself the payment or repayment of any sum of money unless

(i) the sum of money is a fixed sum of money, with or without interest, and

(ii) the person on whose behalf the guarantee is given has an unqualified obligation to reimburse the company for the full amount of the payment or repayment to be guaranteed; or

(c) issue notes of the company payable to bearer on demand and intended for circulation.

(2) Subsection (1) does not apply in respect of an indemnification given pursuant to Section 118. 1991, c. 7, s. 35.

Duty in making investment decisions

36 (1) A licensed provincial company shall adhere to prudent investment standards in making investment decisions.

(2) For the purpose of this Act, prudent investment standards are those that would be applied by a person exercising the judgement and care that a person of prudence and discretion would exercise as a trustee of the property of others. 1991, c. 7, s. 36.

Debtor-creditor relationship

37 (1) A licensed provincial loan company and any other licensed loan company that has capacity to do so may, in a debtor and creditor relationship for the purpose of investment, receive money repayable

(a) on demand or after notice; or

(b) upon the expiry of a fixed term,

and the company may issue debentures or other evidences of indebtedness in respect thereof, appropriate to the debtor and creditor relationship created thereby.

(2) A licensed provincial trust company and any other licensed trust company that has capacity to do so may, for the purpose of investment, receive money repayable

(a) on demand or after notice; or

(b) upon the expiry of a fixed term,

and the company may issue investment certificates or other evidences of the money received, appropriate to the trust relationship created thereby.

(3) Money received by a trust company pursuant to subsection (2) is deemed to be held by it in trust for its depositors and it is deemed to guarantee the repayment thereof.

(4) Notwithstanding subsection (3), a trust company may retain the interest and profit resulting from the investment of money received by it pursu-

ant to subsection (2) in excess of the amount of interest payable to its depositors in respect thereof.

(5) Every trust company receiving money as authorized by subsection (2) shall earmark in respect thereof securities, or cash and securities, equal to the full aggregate amount thereof and, for the purpose of this subsection, “cash” includes money on deposit and “securities” includes investments authorized pursuant to Sections 44 to 48 and 52.

(6) An investment certificate or other evidence of money received, issued by a trust company, shall indicate in a clearly visible manner that it is guaranteed only as against the assets of the company earmarked and set aside pursuant to subsection (5). 1991, c. 7, s. 37.

Requirement for receiving money as deposit and power to borrow

38 (1) No licensed provincial company shall receive money as a deposit unless the company is a member institution within the meaning of the *Canada Deposit Insurance Corporation Act*, or the deposit is insured by some other public agency approved by the Superintendent.

(2) A company may, with the approval of the Superintendent, borrow money from the Canada Deposit Insurance Corporation or other similar public agency approved by the Superintendent, and for such purpose, the company may mortgage the cash and securities earmarked and set aside pursuant to Section 37. 1991, c. 7, s. 38.

Maintenance of capital base

39 (1) A provincial company shall maintain a capital base that meets the leverage ratio and risk weighed average ratio requirements and any other requirements as to the adequacy of the corporation’s capital base set out in the regulations.

(2) A licensed company shall maintain its capital base at not less than the levels required pursuant to Section 14. 1991, c. 7, s. 39.

Issue of subordinated notes

40 (1) A licensed provincial company may borrow money by way of the issue of subordinated notes having a denomination of at least an amount prescribed by regulation.

(2) A subordinated note issued pursuant to this Section is subject to the following provisions:

(a) the money borrowed by way of the issue of a subordinated note is not a deposit of the issuing company and is not insured by the Canada Deposit Insurance Corporation or other similar public agency; and

(b) in the event of the insolvency or liquidation of the company, the ~~indebtedness~~ [indebtedness] evidenced by each subordinated note ranks equally with the indebtedness evidenced by all other subordinated notes of the company and is subordinated in right of payment to all other indebtedness of the company.

(3) A subordinated note shall be evidenced by a certificate in a form approved for the company by the Superintendent and containing a statement of the terms set out in clauses (a) and (b) of subsection (2) and such other information as the Superintendent may require.

(4) A subordinated note shall not be issued by a licensed provincial company except on application to the secretary of the company.

(5) No licensed provincial company or person acting on its behalf, in any offering circular, advertisement, correspondence or literature relating to a subordinated note issued or to be issued by the company, shall refer to the note otherwise than as a subordinated note and the company or person, as the case may be, shall indicate clearly therein that the money borrowed by way of the issue of the subordinated note is not a deposit that is insured by the Canada Deposit Insurance Corporation or other similar public agency. 1991, c. 7, s. 40.

Pledge of assets as security

41 (1) A licensed provincial company may pledge any of its own assets as security for a debt obligation of the company if the debt obligation is issued in respect of money borrowed to enable the company to meet short term requirements for liquid funds arising from its operations and if the total debt obligation of the company in relation to which assets are so pledged does not exceed fifty per cent of the capital base.

(2) Subsection (1) does not apply so as to prevent a pledge of assets to the Government of Canada with respect to the sale of Canada Savings Bonds or any other transactions as may be prescribed by regulation.

(3) A company pledging an asset pursuant to subsection (1) shall immediately notify the Superintendent, in writing, of the amount so secured and of the nature of the asset pledged as security.

(4) A licensed provincial company shall not borrow money except from a bank or a licensed company unless it is borrowing

(a) by way of the issue of subordinated notes; or

(b) money as authorized by subsection (1).

(5) Except with respect to assets pledged as security pursuant to subsection (1) or (2), any agreement under which a creditor of a licensed provincial company is authorized to appoint a receiver or acquire control of the company or of

any asset of the company by reason of the failure of the company to make payment in respect of a debt obligation is void.

(6) A licensed provincial company shall not pledge any of its assets to a restricted party of the company. 1991, c. 7, s. 41.

Requirement to maintain liquidity

42 A licensed provincial company shall at all times maintain liquidity in the form and amount and in the manner prescribed by regulation or, notwithstanding any regulation, as may be ordered by the Superintendent. 1991, c. 7, s. 42.

Prudent investment standards

43 (1) Notwithstanding any other provision of this Act, a licensed trust company shall, with respect to funds held by it as a fiduciary, other than deposits, adhere to the prudent investment standards set out in Section 36 with respect to those funds.

(2) No licensed provincial company shall, with respect to its total assets, participate in or enter into an investment or pledge any of those assets except in accordance with Sections 44 to 54.

(3) Notwithstanding subsection (2), a licensed provincial company shall, with respect to its total assets, adhere to the prudent investment standards set out in Section 36 with respect to its total assets.

(4) No licensed provincial company shall purchase, directly or indirectly,

(a) shares or subordinated notes of any other company except pursuant to Sections 51 or 158; or

(b) shares of any bank unless the shares are listed on a stock exchange prescribed by regulation. 1991, c. 7, s. 43.

Investment

44 (1) A licensed provincial company may invest by way of purchase of or loans on the security of

(a) mortgages on improved real estate in Canada if the amount paid for or advanced on any mortgage, together with the amount of indebtedness under any mortgages, on the real estate ranking equally with or prior to the mortgage in which the purchase or loan is made, does not exceed the lending value of the real estate to which the mortgage relates unless

(i) the loan for which the mortgage is security is an approved loan or an insured loan pursuant to the *National Housing Act* (Canada), or

(ii) the excess is guaranteed or insured through an agency of the Government of Canada or the government of a province or is insured by a policy of mortgage insurance issued by an insurance company licensed or registered pursuant to the *Canadian and British Insurance Companies Act* (Canada), the *Foreign Insurance Companies Act* (Canada), the *Insurance Act* or similar legislation of any province;

(b) bonds, debentures or other evidences of indebtedness

(i) of or guaranteed by the Government of Canada or the government of a province,

(ii) of or guaranteed by a foreign country or state forming part of such foreign country where the interest on the securities of such foreign country or state has been paid regularly when due for the previous ten years,

(iii) of a municipality or school board in Canada or guaranteed by a municipality in Canada, or secured by rates or taxes levied pursuant to the laws of any province on property in such province and collectable by or through the municipality or school board for the jurisdiction in which the property is situated,

(iv) of a corporation that are secured by a mortgage to a trust company in Canada, either singly or jointly with another trustee on improved real estate of that corporation or other assets of that corporation of the classes in clause (a) or subclauses (i), (ii), (iii) or (v),

(v) of a corporation that are secured by the assignment to a trustee of payments that the Government of Canada has agreed to make, if those payments are sufficient to meet the interest as it falls due on the bonds, debentures or other evidences of indebtedness outstanding and to meet the principal amount of the bonds, debentures or other evidences of indebtedness upon maturity,

but if the investment is by way of loan, the amount of the loan shall not exceed, at the date of the loan, the market value of the security given as collateral;

(c) unless those securities are prohibited by regulation, securities of or guaranteed by any corporation, but if the investment is by way of a loan, the amount of the loan shall not exceed at the date of the loan the market value of the security given as collateral;

(d) mortgages or assignments of life insurance policies but only by way of loan and only if at the date of the loan such policy has an ascertained cash surrender value admitted by the insurer at least equal to the amount of the loan;

(e) deposits in or receipts, deposit notes, certificates of deposit, acceptances and other similar instruments issued or endorsed by a bank, but if the investment is by way of loan, the amount of the loan shall not exceed at the date of the loan the market value of security given as collateral;

(f) deposits in a licensed company or in a credit union incorporated pursuant to the *Credit Union Act* or any former *Credit Union Act*, but if the investment is by way of loan, the amount of the loan shall not exceed at the date of the loan the market value of the security given as collateral;

(g) investments by way of purchase of personal property and the lease of it to a lessee or by way of loan to a lessee or conditional purchaser where the evidence of the investment is a lease of personal property or an instrument similar to a lease of personal property or a conditional sales contract, but only if the investment is for a fixed term and the lessee or conditional purchaser is the Government of Canada or the government of a province or any agency of that government or any municipality in Canada; and

(h) such other investments as may be prescribed by regulation.

(2) A licensed provincial company may invest

(a) if designated as a bank or a lender, as the case may be, pursuant to the *Canada Student Loans Act* (Canada), the *Farm Improvement Loans Act* (Canada), the *Fisheries Improvement Loans Act* (Canada), the *Small Businesses Loans Act* (Canada) or pursuant to any other Act of the Parliament of Canada or of a province designated by the regulations, by lending money by way of guaranteed loans pursuant to and in accordance with the Acts for which it has been designated;

(b) by making personal loans to individuals, with or without security, not exceeding such amounts as may be prescribed by regulation;

(c) by making commercial or business loans not authorized by any other provision of this Act payable on demand or in less than one year to corporations, partnerships, sole proprietorships and joint ventures; and

(d) by way of purchase of personal property and the lease of it to a lessee or by way of loan to a lessee or conditional purchaser where the evidence of the investment is a lease of personal property or an instrument similar to a lease of personal property or a conditional sales contract, but only if the investment is for a fixed term and the lessee or conditional purchaser is

(i) a corporation, partnership, sole proprietorship or joint venture, or

(ii) an individual and the balance payable under the lease or instrument does not exceed such amounts as may be prescribed by regulation.

- (3) A licensed provincial company shall not make investments
- (a) pursuant to clause (b) or (c) of subsection (2) or subclause (i) or (ii) of clause (d) of subsection (2) unless
- (i) it is authorized by its licence to make that class of investments, and
- (ii) it complies with the terms, conditions and restrictions, if any, imposed on its licence with respect to that class of investments;
- (b) pursuant to clause (b) of subsection (2) or subclause (ii) of clause (d) of subsection (2) unless the aggregate total of such investments is twenty per cent or less of the total assets of the company or such other percentage as may be authorized by its licence; or
- (c) pursuant to clause (c) of subsection (2) or subclause (i) of clause (d) of subsection (2) unless the aggregate total of such investments is twenty per cent or less of the total assets of the company or such other percentage as may be authorized by its licence.
- 1991, c. 7, s. 44.

Investment in real estate

45 (1) A licensed provincial company may, by way of purchase, invest in improved real estate in Canada for the production of income.

(2) The total book value on a gross basis of all investments in real estate pursuant to this Section and Section 46, whether by a company or by a subsidiary of the company, shall not exceed ten per cent of the total assets of the company and not more than one per cent of the total assets of the company may be invested in any one parcel of real estate purchased pursuant to this Section. 1991, c. 7, s. 45.

Real estate for own use

46 (1) Subject to subsection (2) of Section 45, a licensed provincial company may, by way of purchase, invest in improved real estate in Canada that is or is to be occupied by the company for its own use.

(2) For the purpose of this Section, real estate purchased by a subsidiary of a licensed provincial company that is occupied and used by the subsidiary for either or both its own purposes and the purposes of the company shall be deemed to be real estate purchased by the company pursuant to this Section. 1991, c. 7, s. 46.

Mortgaged real estate

47 (1) The book value of real estate that has been mortgaged to a company or any of its subsidiaries and that has been acquired by the company or the subsidiary to protect its investment and of real estate that has been conveyed to it or any of its subsidiaries in satisfaction of debts previously contracted in the course of the company's business or that of the subsidiary need not be included in determining total book value of real estate for the purpose of subsection (2) of Section 45.

(2) Where real estate has been mortgaged to a company or any of its subsidiaries and the real estate has been acquired by the company or the subsidiary to protect its investment, the company or subsidiary may sell the real estate and take back a mortgage of it even though the mortgage does not satisfy the requirements of clause (a) of subsection (1) of Section 44. 1991, c. 7, s. 47.

Investments not authorized by Sections 44 to 46

48 (1) A licensed provincial company may, by way of purchase or loan, make investments not authorized by Sections 44 to 46 if the investment is not prohibited pursuant to any other provision of this Act or the regulations, but the total book value of investments made pursuant to this Section and held by the company shall not exceed five per cent of the total assets of the company.

(2) Subsection (1) does not apply so as to

(a) enlarge the authority conferred by this Act to invest in ~~mortgages~~ [mortgages], or to lend on the security of real estate; or

(b) affect the limit of ten per cent of the total assets that may be invested in real estate pursuant to Section 45.

(3) Where a company is authorized by its licence to make the class of investments set out in clause (b) or (c) of subsection (2) of Section 44 or subclause (i) or (ii) of clause (d) of subsection (2) of Section 44, the company shall not make any such investments pursuant to subsection (1). 1991, c. 7, s. 48.

Restrictions on investments

49 (1) Notwithstanding any other provision of this Act, a licensed provincial company shall, at all times, except where the Minister has approved the purchase of shares pursuant to Section 158, maintain at least such per cent, as is prescribed in the regulations, of its total assets, excluding assets of subsidiaries, in such investments as are prescribed in the regulations.

(2) Investments by a licensed provincial company in third and subsequent mortgages shall be limited to two per cent of the total assets of the company.

(3) For the purpose of subsection (2), an investment in a third or subsequent mortgage by a subsidiary of a licensed provincial company shall be deemed to be an investment in the mortgage by the company.

(4) No licensed provincial company shall make an investment in securities of a corporation if, after the investment, its holding of securities of all corporations carried on its books would exceed twenty-five per cent of its total assets.

(5) For the purpose of subsection (4), an investment in shares, bonds or debentures by a subsidiary of a licensed provincial company, other than a mutual fund or securities dealer subsidiary, shall be deemed to be an investment by the company. 1991, c. 7, s. 49.

Prohibited investments

50 (1) No licensed provincial company shall, directly or indirectly,

(a) invest, by way of purchases from or loans to any one person or to two or more persons that to the knowledge of the company are associated, an amount exceeding the greater of two hundred and fifty thousand dollars or one per cent of the company's total assets; or

(b) subject to clause (f) of Section 52, make an investment the effect of which will be that the company will hold more than ten per cent of the issued and outstanding shares of a class of voting shares of any one body corporate other than a subsidiary or associated company as defined in Section 51.

(2) Clause (a) of subsection (1) does not apply so as to restrict investments in

(a) securities issued or guaranteed by the Government of Canada, including ~~mortgages~~ [mortgages] insured pursuant to the *National Housing Act* (Canada), by the government of any province or by any municipality in Canada; or

(b) debt instruments issued or endorsed by a bank.

(3) For the purpose of this Section, a person is associated with

(a) a body corporate which that person controls and every affiliate of that body corporate;

(b) a partner of that person who has an interest of fifty per cent or more in a partnership in which that person has an interest of fifty per cent or more;

(c) a trust or estate in which that person has a substantial beneficial interest or in respect of which that person serves as trustee or in a similar capacity;

(d) a spouse or child of that person;

(e) a relative or in-law of that person or of that person's spouse if that relative or in-law has the same residence as that person. 1991, c. 7, s. 50.

Establishment of company as subsidiary

51 (1) In this Section,

(a) “associated company” means a corporation more than ten per cent and less than fifty-one per cent of the voting shares of which are owned by a licensed provincial company;

(b) “subsidiary” means a corporation fifty-one per cent or more of the voting shares of which are owned by a licensed provincial company.

(2) Subject to such terms and conditions concerning subsidiaries as may be prescribed by regulation, a licensed provincial company may establish or acquire as a subsidiary or associated company such companies as are prescribed by regulation.

(3) A subsidiary described in subsection (2) shall not invest its funds except as provided for licensed provincial companies in this Act.

(4) A licensed company shall not make an investment in or guarantee an obligation of a subsidiary of the company if, after the making of the investment or the giving of the guarantee, the total book value of all of those investments and guarantees will exceed five per cent of the total assets of the company.

(5) Subsection (4) does not apply to a trust company or a loan company. 1991, c. 7, s. 51.

Authorization of assets not fulfilling requirements

52 The Superintendent may authorize the acceptance by a licensed provincial company of bonds, notes, shares, debentures or other assets not fulfilling the requirements of this Act

(a) obtained in payment or part payment for securities sold by the company;

(b) obtained pursuant to a *bona fide* arrangement for the reorganization of a body corporate whose securities were previously owned by or pledged to the company;

(c) obtained pursuant to an amalgamation with another body corporate of the body corporate whose securities were previously owned by the company;

(d) obtained for the *bona fide* purpose of protecting investments of the company;

(e) obtained by virtue of the purchase by the company of the assets of another company; or

(f) obtained by virtue of realizing on the security for a loan where the security is shares in a body corporate and the effect of realizing on the security is that the licensed provincial company will hold more than ten per

cent of the issued and outstanding shares of a class of voting shares in any one body corporate,

but the bonds, notes, shares or debentures or other assets whose acceptance is so authorized shall be sold and disposed of within five years after their acquisition or such longer period not exceeding one year as the Superintendent may order, unless it can be shown to the satisfaction of the Superintendent that the bonds, notes, shares, debentures or other assets whose acceptance is so authorized are not inferior in status or value to the securities for which they have been substituted. 1991, c. 7, s. 52.

Property as collateral security

53 A licensed provincial company may take real or personal property as collateral security for any advance or for any debt due to the company in addition to any other security for the advance or debt required by this Act. 1991, c. 7, s. 53.

Single loan considered as separate loans

54 A single loan, that is secured by two or more assets or classes of assets that, but for this Section, would not be an investment of the licensed provincial company permitted by or pursuant to this Act, may be divided into different amounts and considered as separate loans with respect to each asset or class of assets for the purpose of determining whether the loan is permitted by or pursuant to this Act. 1991, c. 7, s. 54.

Common trust fund

55 (1) Notwithstanding this or any other Act, every licensed provincial trust company may, unless the trust instrument otherwise directs, invest money held by it as a fiduciary, other than deposits, in one or more common trust funds of the trust company.

(2) No licensed provincial trust company shall include in a common trust fund authorized pursuant to subsection (1) any money in relation to a trust established exclusively for savings plans registered pursuant to the *Income Tax Act* (Canada).

(3) No licensed provincial trust company shall establish or operate a common trust fund except as provided for in the regulations.

(4) A licensed provincial trust company may at any time and shall, when required in writing by the Superintendent to do so pursuant to subsection (5), file with the Superintendent and pass an account of its dealings with respect to a common trust fund in the Court and the Court on the passing of the account has, subject to this Section, the same duties and powers as the probate court would have in the case of the passing of personal representatives' accounts.

(5) An account filed with the Superintendent in accordance with the regulations, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the

trust company's administration of the common trust fund for the period covered by the account, unless within six months after the date upon which the account is so filed, the Superintendent requires, in writing, that the account be filed and passed in the Court.

(6) Notwithstanding any other Act, a licensed provincial trust company shall not be required to render an account of its dealings with a common trust fund except as provided in this Section or the regulations.

(7) Upon the filing of an account pursuant to this Section, the Court shall fix a time and place for the passing of the account, and the trust company shall cause a written notice of the appointment and a copy of the account to be served upon the Superintendent at least fourteen days before the date fixed for the passing, and the trust company shall not be required to give any other notice of the appointment.

(8) For the purpose of an accounting pursuant to this Section, an account may be filed in the form of audited accounts filed with the Superintendent in accordance with the regulations.

(9) Upon the passing of an account pursuant to this Section, the Superintendent shall represent all persons having an interest in the funds invested in the common trust fund, but any interested person is entitled at that person's own expense to appear and be heard in person or to be separately represented.

(10) Where an account filed pursuant to this Section has been approved by the Court, the approval, except so far as mistake or fraud is shown, is binding and conclusive upon all interested persons as to all matters shown in the account and as to the trust company's administration of the common trust fund for the period covered by the account.

(11) The costs of passing an account pursuant to this Section shall be charged to principal and income of the common trust fund in such proportions as the Court considers proper. 1991, c. 7, s. 55.

Mutual funds, brokers or salesmen and securities

56 (1) No licensed provincial trust company or subsidiary of a licensed provincial trust company shall promote or operate a mutual fund unless the company or subsidiary

(a) gives notice to the Superintendent at least ninety days before starting to promote or operate the mutual fund and provides such information respecting the mutual fund as the Superintendent may require; and

(b) has received the approval of the Superintendent and the company or subsidiary complies with any terms or conditions imposed with respect to the approval by the Superintendent.

(2) No licensed provincial company or subsidiary of a licensed provincial company shall be registered as a broker, salesman or sub-agent pursuant to the *Securities Act* or the regulations pursuant to that Act unless the company or subsidiary has received the approval of the Superintendent and the company or subsidiary complies with any terms or conditions imposed with respect to the approval by the Superintendent.

(3) Where a certificate of the Registrar pursuant to the *Securities Act* is required pursuant to that Act, no provincial company shall trade in its securities where that trade would be in the course of a primary distribution to the public of its securities unless the company has received the approval of the Superintendent. 1991, c. 7, s. 56.

Trust company as executor, trustee, receiver, etc.

57 (1) The liability of a trust company to persons interested in an estate held by the trust company as executor, administrator, trustee, receiver, liquidator, assignee or guardian is the same as if the estate had been held by an individual in the like capacity, and the company's powers are the same.

(2) Where a licensed trust company is authorized to execute the office of executor, administrator, trustee, receiver, liquidator, assignee or guardian, every court or judge having authority to appoint such an officer may, with the consent of the company, appoint the company to exercise any of those offices in respect of any estate or person under the authority of that court or judge, or may grant to the company probate of any will in which the company is named as an executor.

(3) A licensed trust company may

(a) except where the trust instrument otherwise requires, be appointed to be a sole trustee;

(b) be appointed to any of the offices mentioned in subsection (2) jointly with another person,

and the appointment may be made whether the trustee is required pursuant to a deed, will or document creating a trust or whether the appointment is pursuant to the *Judicature Act* or any other Act of the Legislature.

(4) Notwithstanding any rule, practice or statutory provision, it is not necessary for a licensed trust company to give security for the due performance of its duty as executor, administrator, trustee, receiver, liquidator, assignee or guardian unless so ordered by a court or judge.

(5) No court or judge shall appoint a body corporate other than a licensed trust company to execute the office of executor, administrator, trustee or guardian. 1991, c. 7, s. 57.

Duty respecting deposit

58 (1) A licensed company is not bound to see to the execution of any trust, whether express, implied or constructive, to which any of its deposits are subject, other than a trust to which the company is a party.

(2) The receipt of the person in whose name any deposit stands in the books of a licensed company is a sufficient discharge to the company for any payment made in respect of the deposit, and a direction to transfer, signed by the person in whose name any such deposit stands in the books of the company, is sufficient authority to the company for any transfer made in respect of the deposit, notwithstanding any trust to which the same may then be subject and whether the company has or has not had notice of the trust.

(3) A company is not bound to see to the application of any money paid upon a receipt pursuant to subsection (2). 1991, c. 7, s. 58.

Registered office

59 (1) A provincial company shall at all times have a registered office in the place within the Province specified in its instrument of incorporation.

(2) The directors of a provincial company may change the place of the registered office by applying for supplementary letters patent pursuant to subsection (9) of Section 14.

(3) The directors of a provincial company may change the address of the registered office within the place specified in the instrument of incorporation.

(4) A provincial company shall file with the Superintendent, within fifteen days after any change of address of its registered office, a notice in the form prescribed by regulation. 1991, c. 7, s. 59.

Preparation and maintenance of records

60 (1) A provincial company shall prepare and maintain at its registered office or at any other place in the Province designated by the directors and approved by the Superintendent, records containing

(a) copies of its instrument of incorporation and the by-laws and all amendments to them;

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

(c) a share register in accordance with Section 42 of the *Companies Act*; and

(d) the names and addresses of all persons who are or have been directors of the company with the several dates at which each became or ceased to be a director.

(2) In addition to the records referred to in subsection (1), a provincial company shall prepare and maintain

(a) adequate accounting records as required by this Act or the regulations;

(b) minutes of meetings and resolutions of the directors, the audit committee, the investment committee and any other committee of the board;

(c) a record of all investments held by the company;

(d) copies of all returns to the Superintendent required by this Act or the regulations;

(e) a record of all depositors, their names and addresses as far as are known and the sums deposited by the depositors;

(f) where the company is a trust company, full and adequate records relating to the fiduciary activities of the company, the names and addresses as far as are known of all persons for whom the company acts in a fiduciary capacity and the sums received and held in trust by the company on their behalf; and

(g) a copy of the written procedures referred to in Section 121.

(3) For the purpose of subsections (1) and (2), where a body corporate is continued pursuant to this Act, “records” includes similar records required by law to be maintained by the body corporate before it was so continued.

(4) The records referred to in subsection (2) shall be kept at the registered office of the provincial company or at any other place the directors think fit and that is approved by the Superintendent. 1991, c. 7, s. 60.

Examination of records

61 (1) The directors and shareholders of a provincial company, their agents, their legal representatives and the Superintendent or the Minister may examine the records referred to in subsection (1) of Section 60 during the usual business hours of the company without charge.

(2) A shareholder of a provincial company is entitled upon request and without charge to one copy of the instrument of incorporation and the by-laws and amendments to them.

(3) A creditor of a provincial company or a judgment creditor of a shareholder and any agent or legal representative of that creditor or judgment creditor may examine the records referred to in clauses (a), (c) and (d) of subsection (1) of Section 60 during the usual business hours of the company upon payment of a reasonable fee and may make copies of those records.

(4) The directors of a provincial company and the Superintendent or the Minister may examine the records referred to in subsection (2) of Section 60 during the usual business hours of the company without charge. 1991, c. 7, s. 61.

Form of records

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

(2) A provincial company and its agents shall take reasonable precautions to

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

the registers, financial statements and other records required by this Act or the regulations to be prepared and maintained.

(3) A person who without reasonable cause violates this Section is guilty of an offence.

(4) An instrument or agreement executed on behalf of a provincial company by a director, an officer or an agent of the company is not invalid merely because a corporate seal is not affixed to it. 1991, c. 7, s. 62.

Duty to provide information

63 A provincial company shall, at the times prescribed by regulation, provide to the Superintendent such financial or other information, including unconsolidated financial statements, as may be prescribed by regulation. 1991, c. 7, s. 63.

Annual return

64 (1) A provincial company shall prepare annually for the information of the Superintendent an annual return, in the form prescribed by regulation, outlining the financial condition and affairs of the company for the financial year of the company and the return shall be filed with the Superintendent within ninety days after the end of the period to which it relates.

(2) The return referred to in subsection (1) shall have attached to it the financial statements for the year to which the annual return relates.

(3) The return referred to in subsection (1) shall have attached to it a report of the auditor, which report shall be prepared in accordance with the regulations.

(4) The return referred to in subsection (1) shall be accompanied by a certified copy of a resolution of the directors showing that the return was approved by the directors. 1991, c. 7, s. 64.

Duty to file financial statements furnished to shareholders

65 Except as otherwise provided in this Act, a provincial company shall file with the Superintendent a copy of every statement of a financial nature furnished to its shareholders within seven days after the distribution of the statement to the shareholders. 1991, c. 7, s. 65.

Duty to file documents

66 A provincial company shall file with the Superintendent copies of

(a) all applications and supporting documents of any nature made pursuant to the laws of Canada or any province for any change in its licensing or registration status and shall also file with the Superintendent a copy of any approval or refusal of that application within seven days after filing or receipt, as the case may be; and

(b) any changes made in its licence or registration pursuant to the laws of Canada or any province within seven days after the effective date of the change. 1991, c. 7, s. 66.

Duty to make annual return

67 (1) A provincial company shall, within fifteen days after each annual meeting, make a return to the Superintendent showing the

(a) name and address of each director holding office immediately following the meeting;

(b) bodies corporate of which each director referred to in clause (a) is an officer or director and the partnerships of which each director is a member;

(c) name of the chief executive officer, the name of the chairman of the board of directors, the name of the president and the name of any other officer of the company who is a director of the company; and

(d) name of any director who is a full-time employee of the company.

(2) Where any information relating to a director of a provincial company shown in the latest return made to the Superintendent pursuant to subsection (1), other than information referred to in clause (b) of subsection (1), becomes inaccurate or incomplete or a vacancy in the board of directors of the company occurs or is filled, the company shall immediately file a notice with the Superintendent. 1991, c. 7, s. 67.

Duty to send by-laws

68 Except where otherwise provided, a provincial company shall send to the Superintendent a copy of all by-laws and amendments to them within fifteen days after their making. 1991, c. 7, s. 68.

Additional information on request

69 In addition to the statements and returns required by this Act or the regulations, a provincial company shall, when requested to do so by the Superintendent or the Minister, furnish the Superintendent or the Minister with such additional statements and information, at such times and in such form as the Superintendent or Minister considers necessary, to enable the Superintendent or Minister to ascertain whether the company is complying with this Act and the regulations or any requirement, order, direction or other request made pursuant to this Act or the regulations. 1991, c. 7, s. 69.

File on each licensed company

70 (1) The Superintendent shall maintain a file on each licensed company which shall contain such information as may be prescribed by regulation.

(2) Upon payment of the fee prescribed by regulation, any person, during usual office hours, may examine the registers referred to in Section 217 and the file referred to in subsection (1) and may take extracts from, or obtain copies of, the registers and the file. 1991, c. 7, s. 70.

Deposits deemed to be liability

71 For the purpose of Sections 79, 80 and 86, deposits in a company shall be deemed to be a liability of the company notwithstanding that the deposit is held by it as trustee. 1991, c. 7, s. 71.

Shares

72 (1) Shares of a provincial company may be with nominal or par value or without nominal or par value or of both kinds.

(2) A provincial company shall have one class of shares in which the rights of the holders of those shares are equal in all respects and include the rights to

- (a) vote at any meeting of shareholders of the company;
- (b) receive any dividends declared by the company on those shares; and
- (c) receive the remaining property of the company on dissolution,

and those shares shall be designated as common shares.

(3) The instrument of incorporation of a provincial company may provide for classes of shares in addition to those referred to in subsection (2), and if

it so provides, the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the instrument of incorporation, but those shares shall not be designated as common shares or by words of like import.

(4) No class of shares shall be designated as preference shares or by words of like import unless that class has attached to it a preference or right over some other class of shares.

(5) The shares of a company are personal property.

(6) Subject to subsection (2) of Section 73, shares issued by a provincial company shall be fully paid in Canadian currency and are non-assessable and the holders are not liable to the company or to its creditors in respect of those shares. 1991, c. 7, s. 72.

Share issue

73 (1) Subject to this Act and the instrument of incorporation, shares of a provincial company may be issued at such times, to such persons and for such consideration as the directors may determine.

(2) No share of any class of shares of a provincial company shall be issued until it is fully paid for in money unless that share is issued

(a) pursuant to the exercise of conversion privileges, options or rights previously granted by the company;

(b) as a share dividend;

(c) in accordance with the terms of an amalgamation pursuant to Sections 151 to 178;

(d) by way of consideration in accordance with the terms of a sale agreement pursuant to Section 156;

(e) by way of consideration in any purchase of shares pursuant to Section 158.

(3) Where shares of any class of shares of a provincial company have a nominal or par value, the company shall not issue those shares

(a) except for a consideration at least equal to the par value of those shares; or

(b) if, after the issue, the total number of issued and outstanding shares of that class would be in excess of the maximum number of shares set out in the company's instrument of incorporation for that class of shares.

(4) Where shares of any class of shares of a provincial company are without nominal or par value, the company shall not issue those shares if, after the issue

(a) the total number of issued and outstanding shares of that class would be in excess of the maximum number of shares set out in the company's instrument of incorporation for shares of that class; or

(b) the aggregate consideration received by the company from the issue of shares of that class would be in excess of the aggregate consideration set out in the company's instrument of incorporation for which all the shares of that class may be issued.

(5) On the issue of a share, a provincial company 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. 1991, c. 7, s. 73.

Separate stated capital account

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

(2) A provincial company shall add to the appropriate stated capital account the full amount of any consideration it receives for any shares it issues with or without par value including the full amount of any consideration it receives in excess of the par value for any shares it issues with par value.

(3) A body corporate continued pursuant to this Act

(a) shall add to a stated capital account any consideration received by it for a share it issued without nominal or par value; and

(b) may add to that account any amount it credited to a retained earnings account or other surplus account.

(4) When a body corporate is continued pursuant to 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 body corporate is so continued.

(5) When a body corporate is continued pursuant to 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.

(6) A company shall not reduce its stated capital or any stated capital account except in the manner provided in this Act. 1991, c. 7, s. 74.

Class of shares other than common shares

75 (1) The instrument of incorporation may authorize the issue of any class of shares other than common shares in one or more series and may authorize the directors to fix the number of shares in, and to determine the designation,

rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the instrument of incorporation.

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

(3) No rights, privileges, restrictions or conditions attached to a series of shares 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 outstanding.

(4) Before the issue of shares of a series authorized pursuant to this Section, the directors shall send to the Minister an application for supplementary letters patent in the form prescribed by regulation to designate a series of shares.

(5) Upon receipt of an application for supplementary letters patent designating a series of shares, the Minister shall issue supplementary letters patent. 1991, c. 7, s. 75.

Right to purchase shares or other securities

76 (1) In this Section,

(a) “equity shares” means shares of any class, whether or not preferred as to dividends or assets, which have unlimited dividend rights;

(b) “preemptive right” means the right to purchase shares or other securities to be issued or subjected to rights or options to purchase, as such right is defined in this Section;

(c) “unlimited dividend right” means the right without limitation as to the amount either to all or to a share of the balance of any dividends after the payment of dividends on any shares entitled to a preference, and includes the right to all or to a share of the balance of any surplus upon winding up after the repayment of capital;

(d) “voting right” means the right to vote for the election of one or more directors excluding a right to vote which is dependent on the happening of an event specified in the instrument of incorporation or this Act;

(e) “voting shares” means the shares of any class which have voting rights as defined in this Section.

(2) Except as otherwise provided in the instrument of incorporation and except as provided in this Section, the holders of equity shares of any class, in the case of the proposed issuance by the provincial company of, or the proposed granting by the company of rights or options to purchase, its equity shares of any class or any shares or other securities convertible into or carrying rights or options

to purchase its equity shares of any class shall, if the issuance of the equity shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the unlimited dividend rights of such holders, have the right during a reasonable time and on reasonable conditions, both to be fixed by the board of directors, to purchase such shares or other securities in such proportions as shall be determined as provided in this Section.

(3) Except as otherwise provided in the instrument of incorporation and except as provided in this Section, the holders of voting shares of any class, in the case of the proposed issuance by the provincial company of, or the proposed granting by the company of rights or options to purchase, its voting shares of any class, or any shares or options to purchase its voting shares of any class shall, if the issuance of the voting shares proposed to be issued or issuable upon exercise of such rights or options or upon conversion of such other securities would adversely affect the voting rights of such holders, have the right during a reasonable time and on reasonable conditions, both to be fixed by the board of directors, to purchase such shares or other securities in such proportions as shall be determined as provided in this Section.

(4) The preemptive right provided for in subsections (2) and (3) shall entitle shareholders having such rights to purchase the shares or other securities to be offered or optioned for sale as nearly as practicable in such proportions as would, if such preemptive right were exercised, preserve the relative unlimited dividend rights and voting rights of such holders and at a price or prices not less favourable at which such shares or other securities are proposed to be offered for sale to others, without deduction of such reasonable expenses of and compensation for the sale, underwriting or purchase of such shares or other securities by underwriters or dealers as may lawfully be paid by the provincial company.

(5) In case each of the shares entitling the holders of the shares to preemptive rights does not confer the same unlimited dividend right or voting right, the board of directors shall apportion the shares or other securities to be offered or optioned for sale among the shareholders having the preemptive rights to purchase them in such proportions as, in the opinion of the board, preserve as far as practicable the relative unlimited dividend rights and voting rights of the holders at the time of such offering.

(6) The apportionment made by the board of directors shall, in the absence of fraud or bad faith, be binding upon all shareholders.

(7) Notwithstanding subsection (2) or (3), a shareholder has no preemptive right in respect of shares to be issued

(a) where the issue of shares to the shareholder is prohibited by this Act;

(b) pursuant to the exercise of conversion privileges, options or rights previously granted by the company;

- (c) as a share dividend;
- (d) in accordance with the terms of an amalgamation pursuant to Sections 151 to 178;
- (e) by way of consideration in accordance with the terms of a sale agreement pursuant to Section 156;
- (f) by way of consideration in any purchase of shares pursuant to Section 158. 1991, c. 7, s. 76.

Issue of warrants or options

77 (1) Subject to Sections 73 and 76 and in accordance with the requirements of subsection (7) concerning the consideration payable for converted shares on the exercise of any outstanding options or rights issued pursuant to subsection (3), a provincial company may issue certificates, warrants or other evidences of conversion privileges and shall set out the conditions of those privileges

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

(2) Conversion privileges may be made transferable or non-transferable.

(3) Subject to Sections 73 and 76, a provincial company may issue options or rights to acquire shares of the company to

- (a) the officers and employees engaged by the company during the first five years following the issue of a first licence to the company if such options or rights are issued before the end of that five-year period; and
- (b) the person or persons named in the application for incorporation of the company, if such options or rights are issued before the end of the five-year period referred to in clause (a),

but no option or right may be issued pursuant to this subsection where the company exists on the commencement of this Act or by reason of an amalgamation pursuant to Sections 151 to 178.

(4) Subject to subsection (5), no option or right issued pursuant to subsection (3) may be transferred or transmitted.

(5) Where the holder of an option or right issued pursuant to subsection (3) dies, becomes bankrupt or is declared mentally incompetent or incapable of managing the holder's own affairs and a person is appointed as the holder's representative, the option or right vests in the administrator of the holder's estate, trustee in bankruptcy or appointed representative for a period of two years after the date of death, bankruptcy or appointment, at the end of which period the option or right lapses.

(6) Where shares subject to an option or right issued pursuant to subsection (3) are split or consolidated into a greater or lesser number of similar shares, the holder of the option or right is entitled, after completion of the split or consolidation, to a proportionately lesser or greater consideration per share.

(7) Where shares subject to an option or right issued pursuant to subsection (3) are converted to an equal, greater or lesser number of different shares, the holder of the option or right is entitled, after completion of the conversion, to the same or a proportionately greater or lesser number of the different shares, and the consideration payable for that number of different shares is the consideration set for the unconverted shares under the option agreement.

(8) The Minister may specify the manner in which the options or rights may be issued pursuant to subsection (3), the maximum number of options and rights that may be so issued and any conditions attaching to such options or rights.

(9) Where a provincial company has granted privileges to convert any securities issued by the company into shares, or into shares of another class or series, or has issued or granted options or rights, whether conditional or unconditional, to acquire shares, the company shall reserve sufficient authorized shares to meet the exercise of such conversion privileges, options and rights. 1991, c. 7, s. 77.

Restriction on holding own or parent's shares

78 (1) Except as provided in Sections 79 and 80, a provincial company shall not

(a) hold shares in itself or in its holding body corporate;
and

(b) permit any of its subsidiaries to hold shares in the company or in the holding body corporate of the company.

(2) Subsection (1) does not apply to shares held in contravention of subsection (1) immediately before the coming into force of this Act. 1991, c. 7, s. 78.

Restriction on purchase or redemption of own shares

79 (1) Except as provided in this Section or Section 80, a provincial company shall not purchase, redeem or otherwise acquire shares issued by it.

(2) Where the instrument of incorporation of a ~~provincial~~ [provincial] company authorizes it to issue redeemable shares, the company may, subject to subsection (4), redeem such shares at prices not exceeding the redemption price stated in the terms of issue.

(3) Subject to subsection (4), a provincial company may purchase or otherwise acquire shares issued by it to

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

(4) A provincial company shall not make a payment to purchase or redeem or otherwise acquire shares issued by it if there are reasonable grounds for believing that

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due;
- (b) after the payment, the realizable value of the company's assets would be less than the aggregate of its
 - (i) liabilities, and
 - (ii) stated capital of all classes; or
- (c) the effect of the purchase, redemption or acquisition would be to cause the company to be in violation of this Act or the regulations. 1991, c. 7, s. 79.

Reduction of stated capital

80 (1) Notwithstanding Section 79 but subject to Section 133, a provincial company may, by special resolution, reduce the stated capital of the company.

(2) A company shall not reduce its stated capital pursuant to subsection (1) if there are reasonable grounds for believing that

- (a) the company is or, after the taking of such action, would be unable to pay its liabilities as they become due;
- (b) after the taking of such action, the realizable value of the company's assets would be less than the aggregate of its ~~liabilities~~ [liabilities]; or
- (c) the effect of the reduction would be to cause the company to be in violation of this Act or the regulations.

(3) A special resolution pursuant to this Section has no effect until it is approved, in writing, by the Minister.

(4) No approval shall be given by the Minister pursuant to subsection (3) unless application for the approval is made within three months after the time of the passing of the special resolution.

(5) A special resolution pursuant to this Section shall specify the stated capital account or accounts from which the reduction of capital effected by the special resolution will be deducted.

(6) In addition to evidence of the passing of the special resolution pursuant to this Section, statements showing in respect of the company

- (a) the number of its shares issued and outstanding;
- (b) the number of its shares of the class or classes to which the special resolution applies represented by the shareholders who voted for the special resolution;
- (c) its assets and liabilities; and
- (d) the reason why the reduction is sought,

shall be submitted to the Minister at the time of the application for approval of the special resolution.

(7) Nothing in this Section precludes the Minister from refusing to approve a special resolution pursuant to this Section.

(8) The stated capital of the company shall not be reduced below the amount stated in its instrument of incorporation and required before a licence may be issued to it pursuant to Sections 211 to 217.

(9) A shareholder, creditor or depositor of a provincial company may apply to the Court for an order compelling a shareholder or other recipient to pay or deliver to the company any money that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of the stated capital made contrary to this Section.

(10) An action to enforce a liability imposed by this ~~Section~~ [Section] shall not be commenced after two years after the date of the act complained of.

(11) This Section does not affect a liability that arises pursuant to Section 115. 1991, c. 7, s. 80.

Adjustment of stated capital account

81 (1) On a purchase, redemption or other acquisition by a provincial company pursuant to Section 79 of shares issued by it, the company 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 fraction 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.

(2) In like manner to the manner referred to in subsection (1), a provincial company shall adjust its stated capital account or accounts in accordance with a special resolution referred to in subsection (1) of Section 80. 1991, c. 7, s. 81.

Conversion or change of shares

82 (1) Upon a conversion of shares or a change pursuant to subsection (9) of Section 14 or Section 252 of issued shares of a provincial company into shares of another class or series or kind, the company 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 changed, divided by the number of issued shares of that class or series immediately before the change; and

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

(2) For the purpose of subsection (1) and subject to its instrument of incorporation, if a provincial company issues two classes of shares without nominal or par value and there is attached to each class a right to convert a share of the one class into a share of the other class and a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share of either class is the aggregate of the share capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

(3) Shares issued by a provincial company and converted or changed pursuant to subsection (9) of Section 14 or Section 252 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been changed.

(4) Where the instrument of incorporation limits the number of authorized shares of a class or series of shares of a provincial company and issued shares of that class or series have become, pursuant to subsection (3), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the supplementary letters patent otherwise provide, be increased by the number of shares that, pursuant to subsection (3), became shares of another class or series. 1991, c. 7, s. 82.

Cancellation of shares

83 Shares or fractions of shares issued by a provincial company and purchased, redeemed or otherwise acquired by it may be cancelled or, if the instrument of incorporation limits the number of authorized shares, may be restored to the status of authorized but unissued shares. 1991, c. 7, s. 83.

Contract to purchase own shares

84 (1) A contract with a provincial company providing for the purchase by it of its own shares is specifically enforceable against it except to the extent that it cannot perform the contract without being in breach of Section 79 or 80.

(2) In an action brought on a contract referred to in subsection (1), the provincial company has the burden of proving that performance of the contract is prevented by Section 79 or 80.

(3) Until the provincial company has fully performed a contract referred to in ~~subsection~~ [subsection] (1), the other party to the contract retains the status of a claimant entitled to be paid as soon as the company is lawfully able to do so or in a liquidation to be ranked subordinate to the rights of depositors, creditors and holders of subordinated notes but in priority to the other shareholders. 1991, c. 7, s. 84.

Commission for purchase of shares

85 The directors of a provincial company may authorize the company to pay a reasonable commission to any person in consideration of the person's purchasing or agreeing to purchase shares of the company from the company or from any other person, or procuring or agreeing to procure purchasers for any such shares. 1991, c. 7, s. 85.

Declaration or payment of dividend

86 A provincial company may declare or pay a dividend unless there are reasonable grounds for believing that

- (a) the company is or, after the payment, would be unable to pay its liabilities as they become due;
- (b) after the payment, the realizable value of the company's assets would be less than the aggregate of
 - (i) its liabilities, and
 - (ii) its stated capital of all classes; or
- (c) the effect of the payment would be to cause the company to be in violation of this Act or the regulations. 1991, c. 7, s. 86.

Manner of payment of dividend

87 (1) Subject to Section 86, a provincial company may pay a dividend in money or property or by issuing fully-paid shares of the company.

(2) If shares of a provincial company are issued in payment of a dividend, the amount of the dividend stated as an amount in money shall, in accordance with Section 74, be added to the stated capital account maintained or to be maintained for the shares of the class or series issued in payment of the dividend. 1991, c. 7, s. 87.

Acceptance of share as gift

88 A provincial company may accept from any shareholder a share of the company surrendered to it as a gift. 1991, c. 7, s. 88.

Liability of shareholders

89 The shareholders of a provincial company are not, as shareholders, liable for any liability, act or default of the company, except pursuant to subsection (9) of Section 80 or subsection (5) of Section 175. 1991, c. 7, s. 89.

Restriction on entry in share register

90 (1) No transfer or issue of voting shares of a provincial company shall be entered in its share register until the consent of the Superintendent has been received by the company if

(a) when the total number of shares of a class of voting shares of the company held by a person and by other shareholders who are associates of the person, if any, exceeds ten per cent of the total number of the issued and outstanding shares of that class, the transfer or issue would increase the percentage of shares that class held by such person and by other shareholders who are associates of the person, if any; or

(b) when the total number of shares of a class of voting shares of the provincial company held by a person and by other shareholders who are associates of the person, if any, is ten per cent or less of the total number of issued and outstanding shares of that class, the transfer or issue would cause the total number of shares of that class held by such person and by other shareholders who are associates of the person, if any, to exceed ten per cent of the issued and outstanding shares of that class,

and until the consent of the Superintendent is received by the company, no person shall, in person or by proxy, exercise the voting rights pertaining to any of the voting shares that are held by or in the name of the shareholder or by or in the name of any person who is an associate of the shareholder.

(2) Notwithstanding subsection (1), where a consent is given pursuant to subsection (1) with respect to a person and other persons related to him, no consent pursuant to subsection (1) is required with respect to those persons in respect of a subsequent transfer or issue of voting shares unless, as a result of the entry of the transfer or issue, the shareholdings or beneficial ownership of those persons calculated pursuant to subsection (1) would undergo an increase of more than five per cent from the shareholdings or beneficial ownership calculated immediately after the previous consent was given.

(3) The exception set out in subsection (2) does not apply

(a) to a transfer or issue of shares that would result in a change of control of the provincial company;

(b) where, since the previous consent was given pursuant to this Section, the shareholdings or beneficial ownership of the person and other persons related to him calculated pursuant to subsection (1) have decreased by more than five per cent from the shareholdings or beneficial ownership calculated immediately after the previous consent was given.

(4) A person to whom shares are to be transferred or issued in circumstances that require the consent of the Superintendent may apply in writing for the consent and, for the purpose of the application, the person shall provide the Superintendent with any information the Superintendent may request.

(5) On an application pursuant to subsection (4), the Superintendent may refuse consent where, in the Superintendent's opinion, it would be in the public interest to do so, and without limiting the generality of the foregoing, the Superintendent may refuse consent where the shareholder or any person who is an associate of the shareholder

(a) is or has been bankrupt;

(b) has been convicted of a criminal offence, an offence pursuant to this Act or an offence pursuant to the *Securities Act* or any similar legislation of another jurisdiction;

(c) is or has been subject to a cease trading order or an injunction from trading pursuant to the *Securities Act* or any similar legislation of another jurisdiction;

(d) is subject to an examination pursuant to Section 226 or an investigation pursuant to Section 248;

(e) is violating a provision of this Act or the regulations or any similar legislation of another jurisdiction or an undertaking given or an agreement made with the Superintendent pursuant to this Act; or

(f) has failed to provide the information requested pursuant to subsection (4).

(6) The consent of the Superintendent pursuant to this Section takes effect on the date shown in the consent and the effective date may be a date before the date the consent is given. 1991, c. 7, s. 90.

Requirement for declaration

91 The Superintendent may, from time to time, in writing, direct a provincial company to obtain from any person in whose name a share of the company is held or beneficially owned a declaration containing information

(a) concerning the ownership or beneficial ownership of such share;

- (b) as to whether such share is held or beneficially owned by a person who is an associate of any other person and the name of that other person where applicable;
- (c) concerning the ownership or beneficial ownership of the shares of a holding corporation; and
- (d) concerning such other matters as are specified by the Superintendent,

and as soon as possible after the receipt of a direction from the Superintendent pursuant to this Section, the directors of the company shall comply with the direction and every person who is requested by the company to provide a declaration in the form prescribed by regulation containing information referred to in this Section shall immediately comply with the request by submitting the completed declaration to the company and the Superintendent. 1991, c. 7, s. 91.

Appeal of refusal to consent under Section 88

92 (1) Where the Superintendent proposes to refuse consent pursuant to Section 88, the Superintendent shall advise the applicant of the right to appeal.

(2) Upon the petition of the applicant, filed with the Minister within twenty-eight days after the decision of the Superintendent, the Minister may

- (a) confirm, vary or rescind the whole or any part of the decision; or
- (b) hold a public hearing on the whole or any part of the application upon which the decision of the Superintendent was made,

and the decision of the Minister after the public hearing pursuant to clause (b) is not subject to petition pursuant to this Section.

(3) Except as provided in subsection (2), a decision of the Minister pursuant to this Section is final and that decision or the decision as confirmed or varied pursuant to subsection (2) is not subject to appeal. 1991, c. 7, s. 92.

Exemption from Section 90

93 The Superintendent may, by order, exempt any provincial company or other person from the application of Section 90, in whole or in part, on such terms and conditions as are set out in the order, and where any such order is filed with the company named in the order, it shall be deemed to be a consent of the Superintendent for the purpose of Section 90, if the terms and conditions of the order have been complied with. 1991, c. 7, s. 93.

By-laws respecting shareholders

- 94 (1)** The directors of a provincial company may make by-laws
- (a) requiring any person holding any voting share of the company to submit written declarations

- (i) with respect to the ownership of a share of the company or of the holding body corporate,
 - (ii) with respect to the place in which the shareholder and any person for whose use or benefit the share is held are ordinarily resident,
 - (iii) as to whether the shareholder is associated with any other shareholder, and
 - (iv) with respect to such other matters as the directors consider relevant for the purpose of Sections 90 and 91;
- (b) prescribing the times at which and the manner in which any declarations required pursuant to clause (a) are to be submitted; and
- (c) requiring any person desiring to have a transfer of a share to the person entered in the securities register of the company to submit such a declaration as may be required pursuant to this Section in the case of a shareholder.

(2) Where, pursuant to a by-law made pursuant to subsection (1), a declaration is required to be submitted by a shareholder or person in respect of the transfer of any share, the directors may prohibit the entry of the transfer in the securities register of the company until the required declaration has been submitted.

(3) In determining for the purpose relevant to the performance of their duties pursuant to Sections 90 and 91, the directors of the provincial company and any other person acting as proxy for a shareholder of the provincial company may rely upon any statement made in any declarations or rely upon their own knowledge of the circumstances and the directors and any such person are not liable in action for anything done or omitted by them in good faith as a result of any conclusions made by them on the basis of any such statements or knowledge. 1991, c. 7, s. 94.

Share transfer prohibited by regulation

95 No transfer or issue of voting shares of a provincial company shall be entered in its share register if the transfer or issue of such shares is prohibited by regulation. 1991, c. 7, s. 95.

Application of Companies Act

96 Except where the provisions of the *Companies Act* dealing with share certificates, transfers and registers are inconsistent with this Act, those provisions apply *mutatis mutandis* to share certificates, transfers and registers in respect of the shares of a provincial company as if that company were a corporation pursuant to that Act. 1991, c. 7, s. 96.

Restrictions on shares

97 A provincial company shall not impose restrictions on the issue, transfer or ownership of shares of any class or series except those transactions as are authorized by its instrument of incorporation and this Act. 1991, c. 7, s. 97.

Prohibition respecting list of shareholders

98 No person shall offer for sale or sell or purchase or otherwise traffic in a list or a copy of a list of all or any of the holders of shares of a provincial company. 1991, c. 7, s. 98.

Management of provincial company by directors

99 (1) Subject to this Act, the directors shall manage the business and affairs of a provincial company.

(2) The number of directors shall not be fewer than five.

(3) Subject to the instrument of incorporation and subsection (2), the number of directors shall be as from time to time specified by the by-laws. 1991, c. 7, s. 99.

Disqualification from being director

100 (1) The following persons are disqualified from being a director of a provincial company:

- (a) a person who is not an individual;
- (b) an individual who is less than nineteen years of age;
- (c) an individual who is of unsound mind and has been so found by a court in Canada or elsewhere;
- (d) an individual who has the status of a bankrupt;
- (e) an individual convicted of an offence pursuant to the *Criminal Code* (Canada) or the criminal law of any jurisdiction outside of Canada,
 - (i) in connection with the promotion, formation or management of a body corporate, or
 - (ii) involving fraud,

unless five years have elapsed since the expiration of the period fixed for suspension of the passing of sentence without sentencing or since a fine was imposed, or unless the term of imprisonment and probation imposed, if any, was concluded, whichever is the latest, but the disability imposed by this clause ceases upon a pardon being granted;

- (f) an individual who is a Minister of Her Majesty in right of Canada or in right of a province;

(g) an individual who is an agent or employee of Her Majesty in right of Canada or a province;

(h) an individual who is an employee of the government of a foreign state or any political subdivision of that state;

(i) an individual who is a director of a trust or loan company not affiliated with the company of which the individual wishes to become a director; and

(j) such other individuals as may be prescribed by regulation.

(2) A director of a provincial company is not required to hold shares issued by the company.

(3) A person who is elected or appointed a director is not a director unless

(a) the person was present at the meeting when the person was elected or appointed and did not refuse to act as a director; or

(b) if the person was not present at the meeting when the person was elected or appointed

(i) the person consented, in writing, to act as a director before the election or appointment or within ten days after the election or appointment, or

(ii) the person has acted as a director pursuant to the election or appointment. 1991, c. 7, s. 100.

Election of directors

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

(2) 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.

(3) If a shareholder has voted for more than one candidate without specifying the distribution of the votes among the candidates, the shareholder shall be deemed to have distributed the votes equally among the candidates for whom the shareholder voted.

(4) 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.

(5) Each director ceases to hold office at the close of the first annual meeting of shareholders following the director's election.

(6) Notwithstanding subsection (5), if directors are not elected at a meeting of shareholders the incumbent directors continue in office until their successors are elected.

(7) A director may not be removed from office if the votes cast against the removal would be sufficient to elect the director and such votes could be voted pursuant to subsection (1) at an election at which the same total number of votes were cast and the number of directors required by the by-laws or the instrument of incorporation or pursuant to Section 99 were then being elected. 1991, c. 7, s. 101.

Approval of and restrictions on election or appointment

102 (1) The election or appointment of a person to the board of directors of a provincial company does not take effect until the company has satisfied the Superintendent that the person is fit, both as to character and competence, to be a director of a company and the Superintendent has approved the election or appointment of the person as a director.

(2) The Superintendent may require a provincial company to provide such information, material and evidence as the Superintendent may consider necessary to decide the fitness of a person to be a director.

(3) If the Superintendent does not notify a company within thirty days of being asked to approve the appointment or election of a proposed director, that the Superintendent is satisfied that the proposed director is fit to be a director or give notice of the time and place of a hearing on the matter, the Superintendent shall be deemed to be satisfied as to the person's fitness to be a director.

(4) Subsections (1) to (3) do not apply

(a) to a person who, on the day this Section comes into force, is a director of a company so long as that person remains a director of the company; or

(b) to a person who has been approved pursuant to this Section so long as that person remains a director of the company.

(5) At least two of the directors of a provincial company must be ordinarily resident in the Province and a majority of the directors shall be ordinarily resident in Canada.

(6) At least one third of the directors of a provincial company shall be outside directors unless the Superintendent otherwise directs.

(7) For the purpose of Sections 99 to 122, an individual is not eligible to be an outside director if the individual

(a) holds more than ten per cent of the voting shares of the company or of any of its affiliates;

(b) is an officer or employee of the company or any of its affiliates or has been an officer or employee of the company or any of its affiliates within two years of the date on which the individual would become or became a director;

(c) is a spouse or child of an individual described in clause (a) or (b); or

(d) is one prescribed by regulation.

(8) The election or appointment of any person as a director of a provincial company is void if the composition of the board of directors would, as a result of the election or appointment, fail to comply with subsections (5) or (6).

(9) If a meeting of shareholders fails to elect the number of directors required by the by-laws or the instrument of incorporation or pursuant to Section 99 by reason of the disqualification, incapacity or death of any candidate, the directors elected at that meeting may exercise all the powers of the directors if the number so elected constitutes a quorum. 1991, c. 7, s. 102.

Director ceases to hold office

103 (1) A director of a provincial company ceases to hold office when the director

(a) dies or resigns;

(b) is removed in accordance with Section 104; or

(c) becomes disqualified pursuant to subsection (1) of Section 100.

(2) The resignation of a director shall be in writing and becomes effective at the time the resignation is sent to the company or at the time specified in the resignation, whichever is later. 1991, c. 7, s. 103.

Removal of director and filling of vacancy

104 (1) Subject to subsection (7) of Section 101, the shareholders of a provincial company may by ordinary resolution at a special meeting remove any director from office.

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

(3) Subject to subsections (1) and (4) of Section 101, 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 pursuant to Section 106. 1991, c. 7, s. 104.

Entitlement of director respecting meeting of shareholders

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

(2) A director who

(a) resigns;

(b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing the director from office; or

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

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

(3) A provincial company shall immediately send a copy of the statement referred to in subsection (2) to shareholders entitled to receive notice of any meeting referred to in subsection (1) and to the Superintendent.

(4) No provincial company or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3). 1991, c. 7, s. 105.

Filling of vacancy among directors

106 (1) Subject to subsections (3), (4) and (5), a quorum of directors may fill a vacancy among the directors, except a vacancy among the directors resulting from an increase in the number of directors or from a failure to elect the number of directors required by the by-laws or the instrument of incorporation or pursuant to Section 99.

(2) If there is not a quorum of directors, or if there has been a failure to elect the number of directors required by the by-laws or the instrument of incorporation or pursuant to Section 99, the directors then in office shall immediately call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting, the meeting may be called by any shareholder.

(3) Where the holders of any class or series of shares of a provincial company have an exclusive right to elect one or more directors and a vacancy occurs among those directors

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

(b) if there are no such remaining directors and, by reason of the vacancy, the composition of the board of directors fails to meet the requirement of subsection (5) of Section 102, the remaining directors may fill that vacancy; and

(c) if there are no such remaining directors and clause (b) does not apply, any holder of shares of that class or series may call a meeting of the holders of those shares for the purpose of filling the vacancy, and if no such holder of shares calls a meeting, the meeting may be called by the directors then in office.

(4) The by-laws of a company 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.

(5) Notwithstanding subsection (4), where by reason of a vacancy the composition of the board of directors fails to meet the requirement of subsection (5) of Section 102, the directors who in the absence of any by-law would be empowered to fill that vacancy shall do so immediately.

(6) A director appointed or elected to fill a vacancy holds office for the unexpired term of the director's predecessor. 1991, c. 7, s. 106.

Number of directors

107 (1) Subject to this Act and the instrument of incorporation, the directors of a provincial company shall by by-law determine the number of directors.

(2) The by-law enacted pursuant to subsection (1) that provides for the number of directors may provide that the number of directors to be elected at any annual meeting of the shareholders shall be such number as is fixed by the directors before the annual meeting and may provide that the directors may at any time appoint a director to fill any vacancy existing because the number of directors is less than the number fixed by the by-law.

(3) A by-law or an amendment or a repeal of a by-law made pursuant to subsection (1) is not effective and shall not be acted on until it has been submitted to the shareholders at the next meeting of shareholders following its enactment, and at such meeting the shareholders may by ordinary resolution confirm, reject or amend the by-law, amendment or repeal.

(4) The shareholders of a company may amend the instrument of incorporation or by-laws to increase or, subject to subsection (5), to decrease the number of directors, or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

(5) The number of directors required by the by-laws or the instrument of incorporation or pursuant to Section 99 may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director and such votes could be voted in accordance with subsection (1) of Section 101 at an election at which the same total number of votes were cast and the number of directors required by the by-laws or the instrument of incorporation or pursuant to Section 99 were then being elected. 1991, c. 7, s. 107.

Meeting of directors

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

(2) Subject to the by-laws and instrument of incorporation of a provincial company, a majority of the directors required by the by-laws or the instrument of incorporation or pursuant to Section 99 constitutes a quorum at any meeting of directors and, notwithstanding any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

(3) A notice of a meeting of directors shall specify each matter referred to in subsection (3) of Section 110 that is to be dealt with at the meeting, but, unless the by-laws otherwise provide, need not otherwise specify the purposes of or the business to be transacted at the meeting.

(4) 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 a meeting except where a director attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

(5) 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.

(6) If authorized by by-law, a meeting of directors or of a committee of directors may be held by means of such telephone or other communications facilities as permit all persons participating in the meeting to hear each other, and a director participating in such a meeting by such means shall be deemed, for the purpose of this Act, to be present at that meeting. 1991, c. 7, s. 108.

Making, amendment or repeal of by-laws

109 (1) Unless the instrument of incorporation or the by-laws otherwise provide, the directors may, by resolution, make, amend or repeal any by-laws

that regulate the business or affairs of the company in any respect that is not contrary to this Act or to anything set out in the instrument of incorporation.

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

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

(4) If a by-law, amendment or repeal is rejected by the shareholders, or if the directors do not submit a by-law, amendment or repeal to the shareholders as required pursuant to subsection (2), the by-law, amendment or repeal ceases to be effective and no subsequent resolution of the directors, within two years after the date on which the by-law, amendment or repeal ceases to be effective, to enact, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed by the shareholders.

(5) A shareholder may, in accordance with Section 128, make a proposal to make, amend or repeal a by-law.

(6) Subject to subsection (7), where a by-law of a provincial company is in effect on the coming into force of this Section, it shall continue in effect until amended or repealed unless it is contrary to a provision of this Act.

(7) A by-law of a provincial company respecting the remuneration of the directors of the company, as directors, in effect on the coming into force of this Section shall cease to have effect after that day on which the first annual meeting following the coming into force of this Section is held. 1991, c. 7, s. 109.

Chairman and executive committee

110 (1) The directors of a provincial company shall elect from their number a chairman and, subject to subsections (3) and (4), may delegate to that chairman any of the powers of the directors.

(2) Where the by-laws of a company so provide, the directors may appoint from their number an executive committee of not fewer than three directors, at least one of whom, unless the Superintendent otherwise directs, is an outside director, and subject to subsection (3), may delegate to that committee any of the powers of the directors.

(3) A chairman or executive committee appointed pursuant to this Section has no authority to

- (a) submit to the shareholders a question or matter requiring the approval of the shareholders;
- (b) fill a vacancy among the directors or a committee of directors or in the office of auditor;
- (c) issue or cause to be issued securities except in the manner and on terms authorized by the directors;
- (d) declare a dividend;
- (e) purchase, redeem or otherwise acquire shares issued by the company;
- (f) pay a commission referred to in Section 85;
- (g) except as provided in subsection (4) of Section 139, approve a financial statement referred to in Section 139;
- (h) adopt, amend or repeal by-laws;
- (i) approve the written procedures described in Section 121; or
- (j) approve any item requiring approval of the board of directors pursuant to Sections 179 to 191.

(4) The election of a chairman or the appointment of an executive committee of directors does not relieve the directors of a provincial company from any liability imposed by law.

(5) Subject to the instrument of incorporation and where authorized to do so by a special resolution, the directors of a provincial trust company may delegate, with or without the power of sub-delegation, to the chairman of the company the exercise of all or any of the powers or authorities, whether discretionary or otherwise, that may arise through the performance by the company of its responsibilities under any will, trust, deed, contract or other instrument and the exercise of any such power or authority by the chairman or a delegate of the chairman, if any, shall in all instances constitute a performance by the company of its responsibilities under the will, trust, deed, contract or other instrument, as the case may be. 1991, c. 7, s. 110.

Audit committee and investment committee

111 The directors of a provincial company shall appoint, in accordance with Sections 119 and 120, an audit committee and an investment committee which committees shall fulfill those duties required pursuant to this Act and the regulations. 1991, c. 7, s. 111.

Offices and officers

112 (1) The directors of a provincial company may, subject to the by-laws, designate the offices of the company, appoint officers to those offices, specify

the duties of those officers and delegate to them powers, except the powers referred to in subsection (3) of Section 110.

(2) Where the regulations prescribe the qualifications for appointment as an officer, the directors shall not appoint a person who does not have those qualifications.

(3) Two or more offices of a provincial company may be held by the same person. 1991, c. 7, s. 112.

Remuneration of directors, officers and employees

113 (1) Subject to subsection (2) and the by-laws, the directors of a provincial company may fix the remuneration of the directors, officers and employees of the company.

(2) No remuneration shall be paid to a director as director until a by-law fixing the aggregate of all amounts that may be paid to all directors in respect of that remuneration during a fixed period of time has been confirmed by special resolution. 1991, c. 7, s. 113.

Action valid notwithstanding irregularity

114 An act of a director or officer of a provincial company is valid notwithstanding an irregularity in the election or appointment of, or a defect in the qualifications of, the director or officer. 1991, c. 7, s. 114.

Liability of directors

115 (1) Directors of a provincial company who vote for or consent to a resolution authorizing

- (a) a purchase, redemption or other acquisition of shares contrary to Section 79;
- (b) a reduction in the stated capital of the company contrary to Section 80;
- (c) a commission contrary to Section 85;
- (d) a payment of a dividend contrary to Section 86;
- (e) a payment of an indemnity contrary to Section 118;
- (f) an investment or other transaction contrary to Sections 179 to 191;
- (g) a payment to a shareholder contrary to an order pursuant to Section 252; or
- (h) any other payment to a shareholder, director or officer of the company the effect of which is to reduce the capital base of the company to an amount that is less than that required pursuant to this Act,

are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company.

(2) A director who has satisfied a judgment rendered pursuant to 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.

(3) A director liable pursuant to subsection (1) is entitled to apply to the 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 Sections 79, 80, 85, 86, 118 or 252 or Sections 179 to 191.

(4) Where an application is made to the Court pursuant to subsection (3), the Court may, where 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;

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

(c) make any further order it thinks fit.

(5) An action to enforce a liability imposed pursuant to this Section shall not be commenced after two years after the date of the resolution authorizing the action complained of. 1991, c. 7, s. 115.

Duties of directors and officers

116 (1) For the purpose of this Section, a director or officer includes a person acting in a capacity similar to, or performing functions of, a director or officer.

(2) Every director and officer of a provincial company in exercising the powers of, and in discharging the duties of, director or officer shall

(a) act honestly and in good faith with a view to the best interests of the company as a whole; and

(b) exercise the care, diligence and skill of a reasonably prudent director or officer under comparable circumstances.

(3) In considering whether a particular transaction or course of action is in the best interests of the provincial company as a whole, a director or officer shall have due regard to the interests of the depositors as well as the shareholders of the company and, in the case of a trust company, shall also have due regard to the interests of the persons for whom it acts in a fiduciary capacity.

(4) Every director and officer of a provincial company shall comply with this Act and the regulations and the company's instrument of incorporation and by-laws.

(5) No provision in a contract, the instrument of incorporation or the by-laws or a resolution relieves a director or officer of a provincial company from the duty to act in accordance with this Act and the regulations or relieves the director or officer from liability for a breach of this Act or the regulations. 1991, c. 7, s. 116.

Deemed consent by director

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

(a) requests that a dissent be entered or the director's dissent is entered in the minutes of the meeting;

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

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

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

(3) A director who is not present at a meeting at which a resolution is passed or action taken shall be deemed to have consented to the resolution or action unless, within seven days after becoming aware of the resolution or action, 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 company.

(4) A director is not liable pursuant to Section 115 if the director reasonably relies in good faith on

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

(b) a report of an accountant, lawyer, appraiser or other person whose profession lends credibility to a statement made by the accountant, lawyer, appraiser or other person. 1991, c. 7, s. 117.

Indemnification of director, officer, etc.

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

(a) the person acted honestly and in good faith with a view to the best interests of the company as a whole; and

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

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

(3) Notwithstanding anything in this Section, a person referred to in subsection (1) is entitled to indemnity from the company in respect of all costs, charges and expenses reasonably incurred by the person in connection with the defence of any civil, criminal or administrative action or proceeding to which the person is made a party by reason of being or having been a director or officer of the company or body corporate, if the person seeking indemnity

(a) was substantially successful on the merits in the defence of the action or proceeding;

(b) fulfills the conditions set out in clauses (a) and (b) of subsection (1); and

(c) is fairly and reasonably entitled to indemnity.

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

(a) in the person's capacity as a director or officer of the company, except where the liability relates to the failure to act honestly and in good faith with a view to the best interests of the company; or

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

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

(6) An applicant pursuant to subsection (5) shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel.

(7) On an application pursuant to subsection (5), the Court may order notice to be given to any interested person and such person is entitled to appear and be heard in person or by counsel. 1991, c. 7, s. 118.

Audit committee

119 (1) Subject to subsection (2), the directors of a provincial company shall appoint from among their number a committee to be known as the audit committee to be composed of not fewer than three directors, of whom the majority, unless the Superintendent otherwise directs, shall be outside directors, to hold office for one year or such additional period for which any of its members are re-appointed.

(2) Where there are fewer than ten directors, a provincial company may apply to the Superintendent to dispense with an audit committee, and the Superintendent may, if satisfied that the public interest will not be prejudiced, authorize the company to dispense with an audit committee on such conditions as the Superintendent thinks fit.

(3) Where the Superintendent authorizes the company to dispense with an audit committee pursuant to subsection (2), the board of directors shall act in the place and stead of the audit committee in accordance with this Section.

(4) The audit committee shall meet at least twice each year to review

- (a) any financial statements distributed to the shareholders;
- (b) the annual return of the company filed with the Superintendent pursuant to subsection (1) of Section 64;
- (c) all reports of the auditor pursuant to Section 147; and
- (d) any reports of transactions required by the regulations to be reviewed by the audit committee.

(5) In the case of statements and returns that by or pursuant to this Act must be approved by the board of directors of a provincial company, the audit committee shall report on those statements and returns to the board before the approval is given. 1991, c. 7, s. 119.

Investment committee

120 (1) Subject to subsection (2), the directors of a provincial company shall appoint from among their number a committee to be known as the investment committee to be composed of not fewer than three directors, of whom the majority, unless the Superintendent otherwise directs, shall be outside directors, to hold office for one year or such additional period for which its members are re-appointed.

(2) Where there are fewer than ten directors, a company may apply to the Superintendent for authority to dispense with an investment committee, and the Superintendent may, if satisfied that the public interest will not be prejudiced, authorize the company to dispense with an investment committee on such conditions as the Superintendent thinks fit.

(3) Where the Superintendent authorizes the company to dispense with an investment committee pursuant to subsection (2), the board of directors shall act in the place and stead of the investment committee in accordance with Section 121. 1991, c. 7, s. 120.

Establishment of procedures

121 (1) Subject to this Act and the regulations, a provincial company shall establish

(a) written procedures to ensure that prudent investment standards are applied by the company in making investment decisions;

(b) written review and approval procedures to be followed by the company to ensure compliance with Sections 179 to 191;

(c) such systems and written procedures as may be necessary to define the levels of authority and responsibility of its officers and employees with respect to an investment or other financial decision of the company and to ensure that those systems and procedures are communicated to its officers and employees; and

(d) such other procedures as may be prescribed by regulation.

(2) The procedures and systems referred to in subsection (1) shall be developed by the investment committee of the board of directors of the company and shall be reviewed at least twice each year by the investment committee.

(3) The investment committee shall report on its review and its recommendations, if any, with respect to the procedures and systems referred to in subsection (1) to the board of directors.

(4) The procedures referred to in subsection (1) shall be subject to the approval of the board of directors and the board, upon receipt of a report or recommendations from the investment committee, shall review such procedures and systems and make such changes as may be necessary. 1991, c. 7, s. 121.

Record of directors' attendance at meetings

122 (1) A provincial company shall keep a record of the total number of meetings of the directors and of the audit and investment committees and the number of such meetings attended by each director.

(2) A summary of the record kept pursuant to subsection (1) shall be sent to each shareholder and to the Superintendent with the notice of the annual meeting and shall be available on request to any depositor of the company. 1991, c. 7, s. 122.

Place of shareholders' meetings

123 (1) Meetings of shareholders of a provincial company shall be held at the place within the Province provided in the by-laws or, in the absence of such provision, at the place within the Province that the directors determine.

(2) Notwithstanding subsection (1), a meeting of shareholders of a provincial company may be held outside the Province if all the shareholders entitled to vote at that meeting so agree, and a shareholder who attends a meeting of shareholders held outside the Province shall be deemed to have so agreed, except when the shareholder attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held. 1991, c. 7, s. 123.

Annual and special meetings

124 (1) The directors of a provincial company

(a) shall call an annual meeting of shareholders to be held not later than fifteen months after the first organizational meeting of shareholders held pursuant to Section 34 and subsequent annual meetings not later than fifteen months after holding the last preceding annual meeting; and

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

(2) Notwithstanding subsection (1), the company may apply to the Court for an order extending the time within which the first or a subsequent annual meeting of the company shall be held.

(3) A shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by means of telephone or other com-

munication facilities that permit all persons participating in the meeting to hear each other if

- (a) the by-laws so provide; or
- (b) subject to the by-laws, all the shareholders entitled to vote at the meeting consent,

and a person participating in such a meeting by those means shall be deemed for the purpose of this Act to be present at the meeting. 1991, c. 7, s. 124.

Record date

125 (1) For the purpose of determining shareholders

- (a) entitled to receive payment of a dividend; or
- (b) entitled to participate in a liquidation distribution,

or for any other purpose except the right to receive notice of or to vote at a meeting, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than fifty days the particular action to be taken.

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

(3) If no record date is fixed

- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be
 - (i) at the close of business on the 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 a 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. 1991, c. 7, s. 125.

Notice of shareholders' meeting

126 (1) Notice of the time and place of a meeting of shareholders shall be sent not fewer than twenty-one days nor more than fifty days before the meeting

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director;

- (c) to the auditor; and
- (d) in the case of the annual meeting, to the Superintendent.

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the company or its transfer agent on the record date determined pursuant to subsection (2) or (3) of Section 125, but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

(3) If a meeting of shareholders is adjourned by one or more adjournments for an aggregate of sixty days or more, notice of the adjourned meeting shall be given as for an original meeting.

(4) 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 reappointment of the incumbent auditor and remuneration of the directors and auditor, shall be deemed to be special business.

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

- (a) the nature of the business in sufficient detail to permit the shareholder to form a reasoned judgment on it; and
- (b) the text of any special resolution to be submitted to the meeting. 1991, c. 7, s. 126.

Waiver of notice of shareholders' meeting

127 A shareholder and any other person entitled to attend a meeting of shareholders may in any manner, either before or after the meeting, waive notice of a meeting of shareholders and attendance of any such person at a meeting of shareholders is a waiver of notice of the meeting, except where that person 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. 1991, c. 7, s. 127.

Power of shareholders

128 (1) A shareholder entitled to vote at an annual meeting of shareholders may

- (a) submit to the provincial company notice of any matter that the shareholder proposes to raise at the meeting, referred to in this Section as a proposal; and
- (b) discuss at the meeting any matter in respect of which the shareholder would have been entitled to submit a proposal.

(2) A provincial company shall set out the proposal in the notice of meeting required by Section 126 or attach the proposal to the notice.

(3) If so requested by the shareholder, the company shall include in the notice of meeting or attach to the notice a statement by the shareholder of not more than two hundred words in support of the proposal and the name and address of the shareholder.

(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 per cent of the shares of a class of shares of the company 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.

(5) A provincial company is not required to comply with subsections (2) and (3) if

(a) the proposal is not submitted to the company at least ninety days before the anniversary date of the previous annual meeting of shareholders;

(b) it appears to the directors that the proposal is submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or its directors, officers or shareholders, or for a purpose that is not related in any significant way to the business or affairs of the company;

(c) the company, at the shareholder's request, included a proposal in a notice of meeting relating to a meeting of shareholders held within two years preceding the receipt of such request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting;

(d) substantially the same proposal was submitted to shareholders in a notice of meeting relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or

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

(6) No provincial company or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this Section.

(7) If a provincial company refuses to include a proposal in a notice of meeting, the company shall, within ten days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the notice of meeting and send to the shareholder a statement of the reasons for the refusal.

(8) On the application of a shareholder claiming to be aggrieved by a company's refusal pursuant to subsection (7), the Court may restrain the hold-

ing of the meeting to which the proposal is sought to be presented and make any other or further order it thinks fit.

(9) The company or any person claiming to be aggrieved by a proposal may apply to the Court for an order permitting the company to omit the proposal from the notice of meeting, and the Court, if it is satisfied that subsection (5) applies, may make such order as it thinks fit.

(10) An applicant pursuant to subsection (8) or (9) shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel. 1991, c. 7, s. 128.

List of shareholders

129 (1) A provincial company shall prepare a list of shareholders entitled to receive notice of a meeting, arranged in alphabetical order and showing the number of shares held by each shareholder

(a) if a record date is fixed pursuant to subsection (2) of Section 125, not later than ten days after that date; or

(b) if no record date is fixed

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

(ii) where no notice is given, on the day on which the meeting is held.

(2) Where a company fixed a record date pursuant to subsection (2) of Section 125, a person named in the list prepared pursuant to clause (a) of subsection (1) is entitled to vote the shares shown opposite that person's name at the meeting to which the list relates, except to the extent that

(a) that person has transferred the ownership of any of those shares after the record date; and

(b) subject to subsection (1) of Section 90 and Section 95, the transferee of those shares

(i) produces a certificate in the transferee's name or properly endorsed share certificates, or

(ii) otherwise establishes that the transferee owns the shares,

and demands, not later than ten days before the meeting or such shorter period before the meeting as the by-laws of the company may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

(3) Where a company does not fix a record date pursuant to subsection (2) of Section 125, a person named in a list prepared pursuant to clause (b) of subsection (1) is entitled to vote the shares shown opposite that person's name at the meeting to which the list relates except to the extent that

(a) that person has transferred the ownership of any of that person's shares after the date on which a list referred to in subclause (i) of clause (b) of subsection (1) is prepared; and

(b) subject to subsection (1) of Section 90 and Section 95, the transferee of those shares

(i) produces a share certificate in the transferee's name or properly endorsed share certificates, or

(ii) otherwise established that the transferee owns the shares,

and demands, not later than ten days before the meeting or such shorter period before the meeting as the by-laws of the company may provide, that the transferee's name be included in the list before the meeting,

in which case the transferee is entitled to vote those shares at the meeting.

(4) A shareholder may examine the list of shareholders

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

(b) at the meeting of shareholders for which the list was prepared. 1991, c. 7, s. 129.

Quorum at shareholders' meeting

130 (1) Unless the by-laws otherwise provide, the holder or holders of the majority of the shares entitled to vote at a meeting of shareholders present in person or by proxy constitute a quorum.

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present in person or represented by proxy may proceed with the business of the meeting, notwithstanding that a quorum is not present throughout the meeting.

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present in person or represented by proxy may adjourn the meeting to a fixed time and place but not transact any other business. 1991, c. 7, s. 130.

Entitlement to vote

131 (1) Unless the instrument of incorporation otherwise provides, each share of a provincial company entitles the holder of that share to one vote at a meeting of shareholders.

(2) If a body corporate or association is a shareholder of a provincial company, the company 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 company.

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

(4) 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. 1991, c. 7, s. 131.

Voting by show of hands

132 (1) Voting at a meeting of shareholders shall be by show of hands, except where a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

(2) A shareholder or proxyholder may demand a ballot either before or after any vote by show of hands. 1991, c. 7, s. 132.

Vote on special resolution

133 (1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the instrument of incorporation otherwise provides in the case of an amendment referred to in clause (a), (b) or (e), entitled to vote separately as a class or series on a special resolution to authorize an application pursuant to subsection (9) of Section 14 for the issue of supplementary letters patent to

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

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

(c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class or series 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 rights, or rights to acquire securities of a company or sinking fund provisions;
- (d) increase the rights or privileges of any class or series of shares having rights or privileges equal or superior to the shares of that class or series;
- (e) create a new class of shares equal or superior to the shares of that class or series;
- (f) make any class of shares having rights or privileges inferior to the shares of that class or series equal or superior to the shares of that class or series;
- (g) effect an exchange or create a right of exchange of all or part of the shares of another class or series into shares of that class or series; or
- (h) add, change or remove restrictions on the transfer or issue of that class or series.

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

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

(4) A special resolution referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the special resolution as a class or series have approved the resolution. 1991, c. 7, s. 133.

Resolution signed by all shareholders entitled to vote

134 (1) Except where a written statement is submitted by a director pursuant to subsection (2) of Section 105 or where representations in writing are submitted by an auditor pursuant to subsection (6) of Section 144, 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.

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

(3) A copy of every resolution or counterpart of a resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders. 1991, c. 7, s. 134.

Requisition to call meeting of shareholders

135 (1) On notice to the Superintendent, the holders of not less than five per cent of the issued shares of a provincial company 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 purpose stated in the requisition.

(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 company.

(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 pursuant to subsection (2) of Section 125;

(b) the directors have called a meeting of shareholders and have given notice of the meeting pursuant to Section 126; or

(c) the business of the meeting as stated in the requisition includes matters described in clauses (b) to (e) of subsection (5) of Section 128.

(4) Except where subsection (3) applies, 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.

(5) A meeting called pursuant to this Section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws and Sections 123 to 138.

(6) Unless the shareholders otherwise resolve at a meeting called by requisitionists pursuant to subsection (4), the company shall

(a) reimburse the requisitionists the expenses reasonably incurred by them in requisitioning, calling and holding the meeting unless they have not acted in good faith and in the interest of the shareholders of the company generally; and

(b) withhold rateably the amount the requisitionists were reimbursed from money due or to become due by way of fees or other remuneration to each director who was in default in not calling the meeting. 1991, c. 7, s. 135.

Meeting of shareholders by order of court

136 (1) If for any reason it is impracticable to call a meeting of shareholders of a provincial company in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the manner prescribed by the by-laws or by this Act, or if for any reason the Court thinks fit, the Court, on the application of a director, a shareholder entitled to vote at the meeting or the Superintendent, may order a meeting to be called, held and conducted in any manner the Court directs.

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

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

(4) A director or shareholder who makes an application to the Court pursuant to subsection (1) shall give notice to the Superintendent before the hearing and deliver a copy of the Court's order, if any, to the Superintendent. 1991, c. 7, s. 136.

Application to determine controversy respecting election or appointment

137 (1) A provincial company, a director or shareholder of a provincial company or the Superintendent may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the company.

(2) On an application pursuant to this Section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing, an order

(a) restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;

(b) declaring the result of the disputed election or appointment;

(c) requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the company until a new election is held or appointment made;

(d) determining the voting rights of shareholders and of persons claiming to own shares.

(3) A provincial company or a director or shareholder who makes an application to the Court pursuant to subsection (1) shall give notice to the Superintendent before the hearing and deliver a copy of the Court's order, if any, to the Superintendent. 1991, c. 7, s. 137.

Proxy

138 (1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder or one or more alternate proxyholders who are not required to be shareholders, which proxyholders shall have all the rights of the shareholder to attend and act at the meeting in the place and stead of the shareholder except to the extent limited by the proxy.

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

(3) A proxy is valid at

(a) the meeting in respect of which it is given or any adjournment thereof; or

(b) any meeting held during the period specified in a proxy which period shall not exceed fourteen months but a proxy shall be valid for only one annual meeting during that period.

(4) A shareholder may revoke a proxy

(a) by depositing a written instrument of revocation or a proxy of later date executed by the shareholder or by the shareholder's attorney authorized in writing

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

(ii) with the chairman of the meeting on the day of the meeting or an adjournment thereof; or

(b) in any other manner permitted by law.

(5) The directors may specify in a notice calling a meeting of shareholders a time not exceeding forty-eight hours, excluding Saturdays and holidays, preceding the meeting or adjournment thereof before which time proxies to be used at the meeting must be deposited with the provincial company or its agent.
1991, c. 7, s. 138.

Financial year and statements

139 (1) Subject to subsection (2), the financial year of a provincial company ends on the expiration of the thirty-first day of December in each year, but when a company obtains a first licence after the first day of July in any year, the first financial year of the company shall be a twelve-month period ending on the expiration of the thirty-first day of December in the next calendar year.

(2) A provincial company may, by by-law that has been confirmed by a special resolution and approved in writing by the Superintendent, pro-

vide that the financial year of the company shall end at the expiration of the last day of any month.

(3) The directors of a provincial company shall place before each annual meeting of the shareholders

(a) an annual financial statement consisting of financial statements in consolidated form for the financial year ending immediately preceding the annual meeting, including

- (i) a statement of income for the year,
- (ii) a statement of retained earnings for the year,
- (iii) a statement of changes in financial position for the year,
- (iv) a balance sheet as at the end of the year, and
- (v) for the second and subsequent financial years, the comparative figures for the preceding year;

(b) the report of the auditor to the shareholders on the statements referred to in subclauses (i) to (iv) of clause (a);

(c) the financial statement of the company in consolidated form;

(d) the financial statement in consolidated form of every subsidiary of the company, which statements may be presented in condensed form; and

(e) any further information respecting the financial position and the business and affairs of the company and the results of its operations required by its instrument of incorporation or its by-laws or by this Act or the regulations.

(4) The financial statements of a provincial company shall be approved by the board of directors and the approval shall be evidenced by the signature at the foot of the balance sheet by two of the directors duly authorized to sign, at least one of whom shall be a member of the audit committee, and the auditor's report shall be attached to or accompany the financial statements.

(5) A provincial company shall not issue, publish or circulate copies of an annual financial statement unless it is

- (a) approved and signed in accordance with subsection (4); and
- (b) accompanied by the report of the auditor of the company.

(6) A provincial company that violates subsection (5) commits an offence and every director, officer or employee or a company who wilfully participates in an offence committed by the company pursuant to that subsection is,

whether or not that company has been prosecuted or convicted for the offence, a party to the offence and guilty of an offence.

(7) A provincial company shall send without charge a copy of the annual financial statement and the report of the auditor to every depositor who, in writing, requests a copy. 1991, c. 7, s. 139.

Copies of statements and information to shareholder

140 (1) A provincial company shall, at least twenty-one days before the date of each annual meeting send to each shareholder at the shareholder's recorded address a copy of the statements and information referred to in subsection (3) of Section 139.

(2) Where a provincial company fails to send to each shareholder who is entitled to receive notice of a meeting pursuant to subsection (1) or (2) of Section 126, a copy of the statements and information referred to in subsection (3) of Section 139, as required by subsection (1), at least twenty-one days before the date of the annual meeting at which the statements and information are to be considered, the meeting shall be adjourned until such time as the requirement has been complied with. 1991, c. 7, s. 140.

Generally accepted accounting principles

141 The financial statements required pursuant to this Act shall be prepared in accordance with this Act and the regulations and, except as otherwise required by this Act and the regulations, in accordance with generally accepted accounting principles including the accounting recommendations found in the CPA Canada Handbook. 1991, c. 7, s. 141; 2015, c. 30, s. 153.

Auditor

142 (1) The shareholders of a provincial company shall, by ordinary resolution at the first annual meeting of shareholders and at each succeeding annual meeting, appoint an auditor to hold office until the next annual meeting.

(2) An auditor appointed pursuant to subsection (2) of Section 34 is eligible for appointment pursuant to subsection (1).

(3) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, or if the auditor is appointed by the directors or the Minister pursuant to subsection (6) of Section 143, may be fixed by the directors or the Minister, as the case may be.

(4) A person is disqualified from being an auditor of a provincial company if the person is not an accountant and if the person is not independent of

- (a) the company and its affiliates; and
- (b) the directors and officers of the company and its affiliates.

- (5) For the purpose of subsection (4),
- (a) independence is a question of fact; and
 - (b) a person shall be deemed not to be independent of a company if that person, any business partner of that person or any member of a partnership of accountants of which that person is a member
 - (i) is a director, an officer or an employee of the company or of an affiliate of the company, or is a business partner of a director, officer or employee of the company or of an affiliate of the company,
 - (ii) beneficially owns or controls, directly or indirectly, a material interest in the shares of the company or of an affiliate of the company, or
 - (iii) has been a liquidator, trustee in bankruptcy, receiver or receiver-manager of an affiliate of the company within two years of the proposed appointment as auditor of the company.

(6) No person shall be disqualified from acting as the auditor of a provincial company solely on the grounds that the person is a depositor in the company.

(7) An auditor who ceases to be qualified pursuant to this Section shall resign immediately after becoming aware that the auditor has ceased to be so qualified.

(8) An interested person or the Superintendent may apply to the Court for an order declaring an auditor to have ceased to be qualified pursuant to this Section and the office of auditor to be vacant. 1991, c. 7, s. 142.

Auditor ceases to hold office

143 (1) Except where the auditor has been appointed by the Minister pursuant to subsection (6), the shareholders of a provincial company may, by ordinary resolution at a special meeting, revoke the appointment of an auditor.

(2) A vacancy created by the revocation of the appointment of an auditor may be filled at the meeting at which the appointment was revoked pursuant to subsection (1) and, if not so filled, may be filled by the directors pursuant to subsection (5).

(3) An auditor of a provincial company ceases to hold office when

- (a) the auditor resigns or, in the case of an individual, dies;
- or

(b) the appointment of the auditor is revoked pursuant to this Section.

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

(5) Subject to subsection (2), where a vacancy occurs in the office of the auditor of a provincial company or where the shareholders fail to appoint an auditor pursuant to subsection (1) of Section 142, the directors shall immediately fill the vacancy or make the appointment and the auditor so appointed holds office until the next annual meeting.

(6) Where the directors fail to fill a vacancy or make the appointment in accordance with subsection (5), the Minister may fill the vacancy or make the appointment and the auditor so appointed holds office until the next annual meeting.

(7) A provincial company shall immediately after the appointment of a person as auditor give written notice of the appointment to the person and to the Superintendent.

(8) Where a provincial company has a vacancy in the office of auditor, it shall immediately give notice of the vacancy to the Superintendent. 1991, c. 7, s. 143.

Attendance of auditor at meetings of shareholders

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

(2) If a director or shareholder of a provincial company, whether or not the shareholder is entitled to vote at the meeting, gives written notice not fewer than ten days before a meeting of shareholders to an auditor or former auditor of the company, the auditor or former auditor shall attend the meeting at the expense of the company and answer questions relating to the auditor's duties.

(3) An auditor is not required to comply with subsection (2) where it clearly appears that the request pursuant to that subsection is made primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the company or any of its directors, officers or security holders, or for a purpose that is not relating in any significant way to the auditor's duties.

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

(5) Before calling a special meeting for the purpose specified in subsection (1) of Section 143 or an annual or special meeting where the board is not

recommending the re-appointment of the incumbent auditor, the company shall, fifteen days or more before the mailing of the notice of the meeting, give to the auditor

- (a) written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be mailed; and
- (b) a copy of all material proposed to be sent to shareholders in connection with the meeting.

(6) An auditor of a provincial company has the right to make to the company, three days or more before the mailing of the notice of the meeting, representations in writing concerning

- (a) the auditor's proposed removal;
- (b) the appointment or election of another person to fill the office of auditor; or
- (c) the auditor's resignation,

and the company, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting and to the Superintendent.

(7) No person shall accept appointment or consent to be appointed as auditor of a provincial company if the person is replacing 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 reasons why, in the auditor's opinion, the auditor is to be replaced.

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

(9) A person receiving a statement pursuant to subsection (7) shall immediately deliver a copy of the statement to the Superintendent and if no statement is received from the auditor being replaced within fifteen days after the request referred to in subsection (7), the persons requesting the statement shall immediately give notice to the Superintendent of this fact.

(10) Any interested person may apply to the Court for an order declaring the office of auditor of a provincial company to be vacant if the auditor has not complied with subsection (7) unless subsection (8) applies with respect to the appointment of the auditor.

(11) The auditor of a provincial company shall be the auditor of any subsidiary of the company and the company shall take all necessary steps to ensure that its auditor is appointed auditor of its subsidiaries but this Section does not apply in the case of a subsidiary that carries on its operations in a country other

than Canada if the law of that country makes provision with respect to auditors. 1991, c. 7, s. 144.

Examination of financial statements by auditor

145 (1) The auditor of a provincial company shall make the examination that is, in the auditor's opinion, necessary to enable the auditor to report on

(a) the annual financial statement and any other financial statements required by this Act or the regulations to be placed before the shareholders; and

(b) the annual return to be filed with the Superintendent pursuant to subsection (1) of Section 64,

and the auditor shall report in accordance with this Act and the regulations and generally accepted auditing standards including the auditing recommendations found in the CPA Canada Handbook.

(2) On the demand of the auditor of a provincial company, the current or former directors, officers, employees or agents of the company and the former auditors of the company shall

(a) permit access to such records, minutes, accounts, cash, securities, documents and vouchers of the company or any subsidiary of the company, and to any security held by the company; and

(b) furnish such information and explanations,

as are, in the opinion of the auditor, necessary to enable the auditor to perform the auditor's duties and that the directors, officers, employees or agents or former auditors are reasonably able to furnish.

(3) On the demand of the auditor of a provincial company, the directors of the company shall

(a) obtain from the current or former directors, officers, employees and agents or former auditors of any subsidiary of the company, the information and explanations that the current or former directors, officers or employees and agents or former auditors are reasonably able to furnish and that are, in the opinion of the auditor, necessary to enable the auditor to perform the auditor's duties; and

(b) furnish the information and explanations so obtained to the auditor.

(4) A person who in good faith makes an oral or written communication pursuant to subsections (2) or (3) shall not be liable in any civil action arising from the communication. 1991, c. 7, s. 145; 2015, c. 30, s. 154.

Report of auditor

146 (1) The auditor of a provincial company shall, in accordance with this Act and the regulations, make a report in writing on

(a) the annual return to the Superintendent on or before the day that the return is required pursuant to subsection (1) of Section 64;

(b) the annual financial statement referred to in Section 139, to the shareholders of the company not fewer than twenty-one days before the date of the annual meeting of the shareholders; and

(c) any other financial statement required by this Act or the regulations to be placed before the shareholders on or before the date that the statement is distributed.

(2) In each report required pursuant to subsection (1), the auditor shall state whether, in the auditor's opinion, the financial statement or return referred to in the report presents fairly the financial position of the company as at the end of the financial year or other period to which it relates and the results of its operation for that year or other period and whether

(a) the auditor has obtained all the information and explanations required;

(b) the examination has been made in accordance with generally accepted auditing standards;

(c) reliance has been placed on the reports of other auditors.

(3) A director or an officer of a provincial company shall immediately notify the audit committee and the auditor or the former auditor, if applicable, of any error or mis-statement of which the director or officer becomes aware in a financial statement or return filed with the Superintendent that the auditor or the former auditor has reported upon if the error or mis-statement in all the circumstances appears to be material.

(4) If an auditor or former auditor of a provincial company is notified or becomes aware of an error or mis-statement in a financial statement or return filed with the Superintendent upon which the auditor or former auditor has reported, and if in the opinion of the auditor or former auditor the error or mis-statement is material, the auditor or former auditor shall inform each director.

(5) When, pursuant to subsection (4), the auditor or former auditor informs the directors of an error or mis-statement in a financial statement, the directors shall immediately prepare and issue revised financial statements or otherwise inform the shareholders and the Superintendent.

(6) When, pursuant to subsection (4), the auditor or former auditor informs the directors of an error or mis-statement in a return filed with the Superintendent, the directors shall immediately notify the Superintendent. 1991, c. 7, s. 146.

Report by auditor to board of directors

147 (1) The auditor of a provincial company shall report to the board of directors of the company whenever, in the auditor's opinion, there has been

- (a) any change in the circumstances of the company that might materially and adversely affect the financial position of the company or the company's ability to carry on or transact business;
- (b) a violation of this Act or the regulations; or
- (c) a violation of the *Criminal Code* (Canada), the *Income Tax Act* (Canada) or the *Securities Act*.

(2) The auditor shall make a report pursuant to subsection (1) immediately upon becoming aware of a change or violation referred to in that subsection.

(3) The auditor shall report to the Superintendent any matter dealt with in a report pursuant to subsection (1), which, in the opinion of the auditor, could affect the well-being of the provincial company and has not been corrected or appropriately responded to by the board of directors within thirty days after the day that the matter was reported to the board of directors.

(4) An auditor is not required to make a report pursuant to this Section unless the auditor becomes aware of the change or violation described in subsection (1) in the ordinary course of the auditor's duties. 1991, c. 7, s. 147.

Power of Superintendent respecting auditor

148 (1) The Superintendent may, at any time, in writing, require that the auditor of a provincial company report to the Superintendent on the adequacy of the procedure adopted by the company for the safety of its creditors, shareholders, depositors and persons for whom the company acts in a fiduciary capacity and the auditor shall comply with any such requirements by the Superintendent.

(2) The Superintendent may, at any time, in writing, require that the scope of an annual audit of a provincial company be enlarged or extended in any manner that the Superintendent thinks fit.

(3) The Superintendent may, at any time, in writing, require the auditor of a provincial company to inspect or audit the accounts of the company for the purpose of determining whether the company is complying with this Act and the regulations and any terms, conditions and restrictions imposed on its licence.

(4) The company shall pay the costs and expenses incurred in connection with a report or audit required pursuant to subsection (1), (2) or (3). 1991, c. 7, s. 148.

Attendance of auditor at meetings of audit committee and board

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

(2) The auditor of a provincial company may call a meeting of the audit committee at any time.

(3) The auditor of a provincial company is entitled to attend and be heard at meetings of the board of directors on matters relating to the auditor's duties.

(4) The board of directors and the audit committee of a provincial company shall give reasonable notice of their meetings to the company's auditor.
1991, c. 7, s. 149.

Liability of auditor

150 (1) An auditor or former auditor of a provincial company who in good faith makes an oral or written statement or report pursuant to this Act shall not be liable in any civil action arising from the statement or report.

(2) Subsection (1) does not relieve an auditor or former auditor from liability in connection with a report referred to in subsection (1) of Section 145 or clause (b) of subsection (3) of Section 139. 1991, c. 7, s. 150.

Agreement to amalgamate companies

151 (1) Two or more provincial companies may, with the prior approval of the Superintendent, enter into an agreement to amalgamate and continue as one company but no such agreement is effective until it is confirmed by letters patent issued pursuant to subsection (1) of Section 154.

(2) An amalgamation agreement shall set out the terms and means of effecting the amalgamation and, in particular, shall set out

(a) the provisions that are required to be included in letters patent pursuant to subsection (1) of Section 17;

(b) subject to subsection (3), the basis upon which and manner in which the holders of the issued shares of each amalgamating company are to receive

(i) securities of the amalgamated company,

(ii) money, and

(iii) securities of any body corporate other than the amalgamated company,

in the amalgamation;

(c) the manner of payment of money in lieu of the issue of fractional shares of the amalgamated company or of any other body corporate the securities of which are to be received in the amalgamation;

(d) whether the by-laws of the amalgamated company are to be those of one of the amalgamating companies and, if not, a copy of the proposed by-laws; and

(e) details of any other matter necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated company.

(3) If shares of one of the amalgamating companies are held by or on behalf of another of the amalgamating companies other than in a fiduciary capacity, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares, and no provision shall be made in the agreement for the conversion of those shares into shares of the amalgamated company. 1991, c. 7, s. 151.

Approval of amalgamation agreement

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

(2) A notice of a meeting of shareholders complying with subsection (1) of Section 126 shall be sent in accordance with that subsection to each shareholder of each amalgamating company and the Superintendent and shall include or be accompanied by a copy of the amalgamation agreement.

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

(4) The holders of shares of a class or series of shares of an amalgamating company are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in an application for supplementary letters patent, would entitle the holders to vote separately as a class or series pursuant to Section 133.

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

(6) An amalgamation agreement may provide that at any time before letters patent confirming the agreement are issued pursuant to subsection (1) of Section 154, the agreement may be terminated by the directors of an amalgamat-

ing company, notwithstanding the adoption of the agreement by the shareholders of all or any of the amalgamating companies. 1991, c. 7, s. 152.

Application for letters patent of amalgamation

153 (1) Unless an amalgamation agreement is terminated in accordance with subsection (6) of Section 152, the amalgamating companies shall, within six months after the approval of the agreement in accordance with subsection (5) of Section 152, jointly apply for letters patent of amalgamation confirming the amalgamation agreement amalgamating the companies and continuing them as one provincial company.

(2) An application for letters patent of amalgamation amalgamating two or more provincial companies shall be filed with the Superintendent.

(3) No application for the issue of letters patent of amalgamation pursuant to subsection (1) may be made unless

(a) notice of intention to make application has been published in the Royal Gazette and at least once a week for two consecutive weeks in a newspaper published or distributed in the place where each amalgamating company has its registered office; and

(b) one of the amalgamating companies has sent to the Superintendent

(i) a certified copy of the agreement,

(ii) certified copies of the reports on which the agreement is founded,

(iii) verification by the secretary, or other officer designated for the purpose by the directors, of each amalgamating company that the ~~amalgamation~~ [amalgamation] agreement has been approved at a meeting of shareholders in accordance with subsection (5) of Section 152, and

(iv) evidence by the directors of one of the amalgamating companies that

(A) there exists a public benefit and advantage for the amalgamation of the companies,

(B) the proposed management is fit, both as to character and as to competence, to manage the amalgamated company,

(C) each person who will be a holder of ten per cent or more of any class of shares of the amalgamated company immediately after the amalgamation can demonstrate the adequacy of that person's financial resources and is fit as to character to own ten per cent or more of that class of shares,

(D) each proposed director is fit as to character and as to competence to be a director of the amalgamated company,

(E) the proposed plan of operations for the amalgamated company is feasible,

(F) the amalgamated company intends to offer to the public, initially or within a reasonable time after the amalgamation, the services set out in the amalgamation agreement,

(G) where one of the parties to the agreement is a trust company and the amalgamated company is a loan company, the arrangements referred to in Section 157 are adequate to protect the persons for whom the amalgamating trust company is acting in a fiduciary capacity, and

(H) where

(I) the amalgamated company is a loan company, the amalgamated company immediately after the amalgamation will have a capital base of at least three million dollars,

(II) the amalgamation company is a trust company, the amalgamated company immediately after the amalgamation will have a capital base of at least five million dollars. 1991, c. 7, s. 153.

Issue of letters patent of amalgamation

154 (1) Where an application has been made to the Superintendent pursuant to subsection (2) of Section 153, the Minister may, subject to subsection (2), issue letters patent confirming the amalgamation agreement and amalgamating the companies and continuing them as one company.

(2) The Minister shall not issue letters patent pursuant to subsection (1), unless the evidence referred to in subclause (iv) of clause (b) of subsection (3) of Section 153 establishes to the satisfaction of the Minister that the requirements set out in that subclause have been met.

(3) Notwithstanding subparagraphs (I) and (II) of paragraph (H) of subclause (iv) of clause (b) of subsection (3) of Section 153, the Minister may, with the approval of the Governor in Council, alter the capital base requirements specified in those subparagraphs.

(4) The Superintendent shall publish notice of the issue of letters patent pursuant to subsection (1) in the Royal Gazette. 1991, c. 7, s. 154.

Effect of letters patent of amalgamation

155 On the date shown in the letters patent issued pursuant to subsection (1) of Section 154

- (a) the amalgamation of the amalgamating companies and their continuance as one company becomes effective;
- (b) the property of each amalgamating company continues to be the property of the amalgamated company;
- (c) the amalgamated company continues to be liable for the obligations of each amalgamating company;
- (d) an existing cause of action, claim or liability to prosecution is unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating provincial company may be continued to be prosecuted by or against the amalgamated company;
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating company may be enforced by or against the amalgamated company;
- (g) where a licence has been issued pursuant to this Act to one or more of the amalgamating companies, a licence shall be deemed to have been issued to the amalgamated company on the earliest date that one of the amalgamating companies was issued a licence and the Superintendent shall issue the appropriate licence for which the amalgamated company would qualify pursuant to subsection (1) of Section 213;
- (h) if any director or ~~officer~~ [officer] of an amalgamating company continues as a director or officer of the amalgamated company, any disclosure by that director or officer of an interest in an investment or other transaction made to the amalgamating company pursuant to Section 186 shall be deemed to be disclosure to the amalgamated company and any such disclosure shall be recorded in the minutes of the first meeting of directors of the amalgamated company; and
- (i) the letters patent of amalgamation shall be deemed to be the instrument of incorporation of the amalgamated company. 1991, c. 7, s. 155.

Sale or acquisition of business or property

156 (1) A provincial company may enter into an agreement to

- (a) sell or otherwise dispose of all or any part of its business, rights and property to any other body corporate for such consideration as the company thinks fit; or
- (b) acquire all or any part of the business, rights and property of any other body corporate the business of which the company is authorized to carry on and to assume such duties, obligations and liabilities of that body corporate with respect to such business, rights

and property as are not performed by, or not applicable to, the other body corporate.

(2) An agreement entered into pursuant to subsection (1) is not effective until it is approved, in writing, by the Minister.

(3) This Section does not apply to the purchase or sale by a company of an asset made in the ordinary course of business of the company.

(4) Where a company enters into an agreement pursuant to clause (a) of subsection (1), subsections (1) to (5) of Section 152 apply *mutatis mutandis* to and in respect of the company as if the company were an amalgamating company and the agreement were an amalgamation agreement and for the purpose of subsection (2) of Section 152, a summary of the agreement may be sent to the shareholders.

(5) Notwithstanding anything in this Act, the consideration for a sale or disposal of all or any part of the business, rights and property of a company pursuant to subsection (1) may be fully paid shares of the purchasing body corporate or in part cash and in part fully paid shares of the purchasing body corporate or such other consideration as may be provided for in the agreement.

(6) The consideration for the acquisition of all or any part of the business, rights and property of a body corporate pursuant to subsection (1) may be cash or shares of the company or in part shares of the company or such other consideration as may be provided for in the agreement. 1991, c. 7, s. 156.

Transfer to another trust company

157 Where

(a) one or more of the companies that are parties to an amalgamation is a trust company and the amalgamated company is not a trust company; or

(b) a trust company has entered into an agreement pursuant to clause (a) of subsection (1) of Section 156 and the purchasing body corporate is not a trust company,

the parties to the transaction shall make such arrangements as may be necessary to transfer to another trust company the business in relation to which the trust company acted as a fiduciary, but this Section does not apply so as to require the trust company to transfer to another trust company money received by it as deposits. 1991, c. 7, s. 157.

Purchase of shares of another body corporate

158 (1) Notwithstanding anything in this Act, a provincial company may, for the purpose of amalgamating with another provincial company or for the purpose of acquiring all or substantially all of the business, rights and property of another body corporate, purchase not less than sixty-seven per cent of the voting

shares and any number of the shares of any other class of shares of the other company or other body corporate, subject to the following provisions:

(a) no shares shall be purchased by the company until approved, in writing, by the Minister;

(b) the Minister shall not approve the purchase unless satisfied that

(i) there exists a public benefit and advantage for the purchase,

(ii) the management of the purchasing company is fit both as to character and as to competence, to manage the company as it will exist after it completes the purchase of the business, rights and property of the body corporate or the amalgamation,

(iii) each person who holds ten per cent or more of any class of shares of the purchasing company can demonstrate the adequacy of that person's financial resources and is fit as to character to own ten per cent or more of that class of shares,

(iv) each director is fit as to character and as to competence to be a director of the company as it will exist after it completes the purchase of the business, rights and property of the body corporate or the amalgamation, and

(v) the proposed plan of operations for the company as it will exist after it completes the purchase of the business, rights and property of the body corporate or the amalgamation is feasible;

(c) the Minister may approve the purchase where an offer to purchase has been made to all the holders of voting shares of the company or other body corporate and has been accepted by the holders of at least sixty-seven per cent of the outstanding voting shares of the company or other body corporate, the evidence of such acceptance being

(i) in the form of written agreements,

(ii) in the form of a resolution signed by or on behalf of the holders of voting shares of the other company or body corporate voting on the resolution, in person or by proxy, at a meeting of shareholders of that company or body corporate, or

(iii) partly in one such form and partly in the other;

(d) when a provincial company has purchased shares of a company or any other body corporate pursuant to this Section, the company shall

(i) amalgamate with the company pursuant to Sections 151 to 178, or

(ii) acquire all or substantially all the business, rights and property and assume the related obligations and liabilities of the company or other body corporate, as the case may be,

within a period of two years after the purchase has been authorized by the Minister, but, on being satisfied that the circumstances so warrant, the Minister may extend that period from time to time; and

(e) after the expiration of the period referred to in clause (d) or any extension of that period given by the Minister, the shares shall not be allowed as assets of the purchasing company in the calculation of the capital base and the Minister may, in writing, require the company to sell or otherwise dispose of the shares.

(2) Nothing in this Section shall be construed as authorizing a provincial company to purchase or acquire its own shares. 1991, c. 7, s. 158.

Take-over bids

159 (1) Subject to subsection (2), the provisions of the *Securities Act* dealing with take-over bids apply *mutatis mutandis* to a take over bid made in respect of a provincial company.

(2) No take over bid referred to in subsection (1) shall be made except with the prior written approval of the Minister. 1991, c. 7, s. 159.

Bankruptcy or insolvency

160 (1) Sections 160 to 178 do not apply to a provincial company that is bankrupt within the meaning of the *Bankruptcy Act* (Canada).

(2) Any proceedings taken pursuant to this Act to dissolve or to liquidate and dissolve a provincial company shall be stayed if the company is at any time found to be insolvent in a proceeding pursuant to the *Winding-Up Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or any Act of Canada or the Province that provides for the dissolution of a body corporate. 1991, c. 7, s. 160.

Furnishing of information to Superintendent by liquidator

161 A liquidator appointed to liquidate the business of a provincial company shall furnish the Superintendent with the information, in the form, relating to the business and affairs of the company, as the Superintendent may require. 1991, c. 7, s. 161.

Payment to Minister of Finance before final liquidation

162 (1) Where the business of a provincial company is being liquidated, the liquidator or the company shall, subject to Section 177, pay to the Minis-

ter of Finance on demand and in any event before the final liquidation of the business of the company, any amount that is payable by the liquidator or the company to a creditor or shareholder of the company to whom payment of the amount has not, for any reason, been made.

(2) Payment by a liquidator or a company to the Minister of Finance pursuant to this Section discharges the liquidator and the company in respect of which the amount is made from all liability for the amount so paid. 1991, c. 7, s. 162.

Letters patent to dissolve provincial company

163 (1) A provincial company that has no property and no liabilities may, if authorized by a special resolution of the shareholders, or where it has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote, or if there are no shareholders, by a resolution of the directors, apply to the Superintendent for letters patent dissolving the company.

(2) Where the Superintendent has received an application pursuant to subsection (1) and is satisfied that all the circumstances so warrant, the Minister may issue letters patent dissolving the company.

(3) A company in respect of which letters patent are issued pursuant to subsection (2) ceases to exist on the date shown in the letters patent. 1991, c. 7, s. 163.

Dissolution of provincial company where instrument of incorporation expires

164 Where the instrument of incorporation of a provincial company expires and ceases to be in force in accordance with subsection (3) of Section 19, the Minister may

(a) dissolve the company by issuing letters patent dissolving the company; or

(b) apply to the Court for an order dissolving the company, in which case Section 167 applies. 1991, c. 7, s. 164.

Proposal for voluntary liquidation and dissolution

165 (1) The directors of a provincial company may propose or a shareholder who is entitled to vote at an annual meeting of shareholders of the company may make a proposal for the voluntary liquidation and dissolution of the company.

(2) Notice of a meeting of shareholders at which voluntary liquidation and dissolution are to be proposed shall set out the terms of the proposal.

(3) A provincial company proposing voluntary liquidation and dissolution may, if authorized by a special resolution of the shareholders ratifying a proposal or, where the company has issued more than one class of shares, by special

resolutions of holders of each class, whether or not they are otherwise entitled to vote, apply to the Superintendent for letters patent dissolving the company.

(4) No action directed toward the voluntary liquidation and dissolution of a provincial company shall be taken by a company, other than as provided in subsections (1) to (3), until an application made by the company pursuant to subsection (3) has been approved by the Superintendent.

(5) Where the Superintendent is satisfied on the basis of an application made by the company pursuant to subsection (3) that the circumstances warrant the voluntary liquidation and dissolution of the company, the Minister may, in writing, approve the application.

(6) Where the Minister has approved an application made by a company pursuant to subsection (3), the company shall not carry on business except to the extent necessary to complete the voluntary liquidation of the company.

(7) Where the Minister has approved an application made pursuant to subsection (3), the company shall

(a) cause notice of the Minister's approval of its application to be sent to each known claimant against and creditor of the company;

(b) publish notice of the Minister's approval of the application in the Royal Gazette and at least once a week for four consecutive weeks in a newspaper published or distributed in the place where the company has its registered office;

(c) proceed to collect its property, dispose of properties that are not to be distributed in kind to its shareholders, discharge all its obligations and do all other acts required to liquidate its business; and

(d) after giving the notice required pursuant to clause (a) and (b) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property, either in money or in kind, among its shareholders according to their respective rights.

(8) Unless the Court has made an order in accordance with Section 166, the Minister may, if satisfied that the company has complied with subsection (7) and that all the circumstances so warrant, issue letters patent dissolving the company.

(9) A provincial company in respect of which letters patent are issued pursuant to subsection (8) ceases to exist on the date shown in the letters patent. 1991, c. 7, s. 165.

Liquidation under court supervision

166 (1) The Superintendent or an interested person may, at any time during the liquidation of a company, apply to the Court for an order that the liquidation be continued under the supervision of the Court in accordance with Sections 167 to 172 and on such application the Court may so order and make any further order it thinks fit.

(2) An application to the Court to supervise a voluntary liquidation and dissolution pursuant to subsection (1) shall state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation and dissolution.

(3) An applicant pursuant to subsection (1), other than the Superintendent, shall give the Superintendent notice of the application and the Superintendent is entitled to appear and be heard in person or by counsel.

(4) Where the Court makes an order applied for pursuant to subsection (1), the liquidation and dissolution of the company shall continue under the supervision of the Court in accordance with this Act.

(5) The liquidation of a company pursuant to an order made pursuant to subsection (1) commences on the date the order is made. 1991, c. 7, s. 166.

Powers of court regarding liquidation

167 In connection with the liquidation and dissolution of a provincial company, the Court may, if it is satisfied that the company is able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit including, without limiting the generality of the foregoing,

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing the liquidator's remuneration or replacing a liquidator;
- (c) in the case of a trust company, an order appointing another licensed trust company as trustee for the purpose of administering any funds, other than deposits, held in trust by the company;
- (d) an order appointing inspectors or referees, specifying their powers, fixing their remuneration or replacing inspectors or referees;
- (e) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (f) an order determining the validity of any claims made against the company;
- (g) an order, at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising any of their powers, or

- (ii) collecting or receiving any debt or other property of the company, and from paying out or transferring any property of the company, except as permitted by the Court;
- (h) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder,
 - (i) to the company, or
 - (ii) for an obligation of the company;
- (i) an order approving the payment, satisfaction or compromise of claims against the company and the retention of assets for such purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the company, whether liquidated, unliquidated, future or contingent;
- (j) an order disposing of or destroying the documents and records of the company;
- (k) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (l) after notice has been given to all interested parties, an order relieving the liquidator from any omission or default on such terms as the Court thinks fit and confirming any act of the liquidator;
- (m) subject to subsections (5) to (10) of Section 171, an order approving any proposed, interim or final distribution to shareholders in money or in property;
- (n) an order disposing of any property belonging to creditors and shareholders who cannot be found;
- (o) on the application of any director, officer, shareholder, creditor or the liquidator,
 - (i) an order staying the liquidation on such terms and conditions as the Court thinks fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the company all its remaining property; or
- (p) after the liquidator has rendered the final account to the Court, an order directing the company to apply to the Superintendent for letters patent dissolving the company. 1991, c. 7, s. 167.

Effect of order for liquidation

168 (1) If the Court makes an order for liquidation of a provincial company,

(a) the company continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and

(b) the powers of the directors, officers and shareholders, cease and vest in the liquidator, except as specifically authorized by the Court.

(2) The liquidator may delegate any of the powers vested in the liquidator by clause (b) of subsection (1) to the directors or shareholders, if any. 1991, c. 7, s. 168.

Court appointment of liquidator

169 (1) When making an order for the liquidation of a company or at any time after the making of an order, the Court may appoint any person, including a director, an officer or a shareholder of the company or any other body corporate, as liquidator of the company.

(2) Where an order for the liquidation of a company has been made and the office of liquidator is or becomes vacant, the property of the company is under the control of the Court until the office of liquidator is filled. 1991, c. 7, s. 169.

Duties of liquidator

170 A liquidator shall

(a) immediately after the liquidator's appointment give notice of the appointment to the Superintendent and to each claimant and creditor known to the liquidator;

(b) immediately after the liquidator's appointment publish a notice once in the Royal Gazette and at least once a week for four consecutive weeks in a newspaper published or distributed in the place in which the company has its registered office and in such other places and manner as the Court may direct, requiring any person

(i) indebted to the company, to render an account and pay to the liquidator at the time and place specified any amount owing,

(ii) possessing property of the company, to deliver it to the liquidator at the time and place specified, and

(iii) having a claim against the company, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than two months after the first publication of the notice;

(c) subject to the appointment of a trustee pursuant to clause (c) of Section 167, take into custody and control the property of the company;

(d) open and maintain a trust account for the money of the company;

- (e) keep accounts of the money of the company received and paid out by the liquidator;
- (f) maintain separate lists of the shareholders, creditors and other persons having claims against the company;
- (g) if at any time the liquidator determines that the company is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions;
- (h) deliver to the Court and to the Superintendent, at least once in every twelve-month period after the liquidator's appointment or more often as the Court may require, financial statements of the company prepared in the manner described in subsection (3) of Section 139 or in such other manner as the liquidator may think proper or as the Court may require; and
- (i) after the final accounts are approved by the Court, distribute any remaining property of the company among the shareholders according to their respective rights. 1991, c. 7, s. 170.

Powers of liquidator and approval of final accounts

171 (1) A liquidator may

- (a) retain lawyers, accountants, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name and on behalf of the company;
- (c) carry on the business of the company as required for an orderly liquidation;
- (d) sell by public auction or private sale any property of the company;
- (e) do all acts and execute any documents in the name and on behalf of the company;
- (f) borrow money on the security of the property of the company;
- (g) settle or compromise any claims by or against the company; and
- (h) do all other things necessary for the liquidation of the company and distribution of its property.

(2) A liquidator is not liable if the liquidator relies in good faith

on

- (a) financial statements of the company presented to the liquidator by an officer of the company or in a written report of the auditor of the company to reflect fairly the financial condition of the company; or

(b) an opinion, a report or a statement of a lawyer, an accountant, appraiser or other professional advisor retained by the liquidator.

(3) A liquidator who has reason to believe that a person has in the person's possession or under the person's control, or has concealed, withheld or misappropriated any property of the company may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order and to be examined.

(4) If the examination referred to in subsection (3) discloses that a person has in the person's possession or under the person's control, or has concealed, withheld or misappropriated, property of the company, the Court may order that person to restore it or pay compensation to the liquidator.

(5) A liquidator shall pay the costs of liquidation out of the property of the company and shall pay or make adequate provision for all claims against the company.

(6) Within one year after the liquidator's appointment, and after paying or making adequate provision for all claims against the company, the liquidator shall apply to the Court for

(a) approval of the final accounts and for an order permitting the distribution in money or in kind of the remaining property of the company to its shareholders according to their respective rights; or

(b) an extension of time, setting out the reasons for the extension.

(7) If a liquidator fails to make the application required by subsection (6), a shareholder of the company may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(8) A liquidator shall give notice of the intention to make an application pursuant to subsection (6) to the Superintendent, each inspector appointed pursuant to Section 167, each shareholder and any person who provided a security or fidelity bond for the liquidation and shall publish the notice in the Royal Gazette and in a newspaper published or distributed in the place where the company has its registered office or as otherwise directed by the Court.

(9) If the Court approves the final accounts rendered by a liquidator, the Court shall make an order

(a) directing the company to apply to the Superintendent for letters patent dissolving the company;

(b) directing the custody or disposal of the documents and records of the company; and

(c) discharging the liquidator except in respect of the duty of a liquidator pursuant to subsection (10).

(10) The liquidator shall immediately send a certified copy of the order referred to in subsection (9) to the Superintendent. 1991, c. 7, s. 171.

Application for distribution in money

172 (1) If, in the course of liquidation of a company, the shareholders resolve or the liquidator proposes to

(a) exchange all or substantially all the property of the company for securities of another body corporate that are to be distributed to the shareholders; and

(b) distribute all or part of the property of the company to the shareholders in kind,

a shareholder may apply to the Court for an order requiring the distribution of the property of the company to be in money.

(2) On an application pursuant to subsection (1), the Court may order that

(a) all the property of the company be converted into and distributed in money; or

(b) the claims of any shareholder applying pursuant to this Section be satisfied by a distribution in money or such other manner as the Court may order.

(3) Where an order is made by the Court pursuant to clause (b) of subsection (2), the Court

(a) shall fix a fair value on the share of the property of the company ~~attributable~~ [attributable] to the shareholder;

(b) may, in its discretion, appoint one or more appraisers to assist the Court to fix a fair value in accordance with clause (a); and

(c) shall render a final order against the company in favour of the shareholder for the amount of the share of the property of the company attributable to the shareholder. 1991, c. 7, s. 172.

Letters patent to dissolve pursuant to order under s. 171(9)(a)

173 (1) On an application pursuant to an order made pursuant to clause (a) of subsection (9) of Section 171, the Minister may issue letters patent dissolving the company.

(2) A provincial company in respect of which letters patent are issued pursuant to subsection (1) ceases to exist on the date shown in the letters patent. 1991, c. 7, s. 173.

Production of documents and records of dissolved company

174 (1) A person who has been granted custody of the documents and records of a dissolved company remains liable to produce those documents and records for six years following the date of its dissolution or until the expiry of such other shorter period as may be ordered pursuant to subsection (9) of Section 171.

(2) A person who, without reasonable cause, violates subsection (1), commits an offence and is liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment of a term not exceeding six months or to both. 1991, c. 7, s. 174.

Legal proceeding after dissolution

175 (1) In this Section, “shareholder” includes the heirs and legal representatives of a shareholder.

(2) Notwithstanding the dissolution of a provincial company pursuant to this Act,

(a) a civil, criminal or ~~administrative~~ [administrative] action or proceeding commenced by or against the company before its dissolution may be continued as if the company had not been dissolved;

(b) a civil, criminal or administrative action or proceeding may be brought against the company within two years after its dissolution as if the company had not been dissolved; and

(c) any property distributed to shareholders that would otherwise have been available to satisfy any judgment or order if the company had not been dissolved remains available for that purpose.

(3) Service of a document on a company after its dissolution may be effected by serving the document on a person shown as a director in the last return filed with the Superintendent pursuant to Section 67 or, if no return has been filed, in the instrument of incorporation of the company.

(4) Notwithstanding the dissolution of a provincial company, a shareholder to whom any of its property has been distributed is liable to any person claiming pursuant to subsection (2) to the extent of the amount received by that shareholder on that distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the company.

(5) The Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to such conditions as the Court thinks fit and, if the plaintiff establishes the claim, the Court may refer the proceedings to a special referee who may

(a) add as a party to the proceedings each person who was a shareholder found by the plaintiff;

(b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and

(c) direct payment of the amounts so determined. 1991, c. 7, s. 175.

Creditor or shareholder who cannot be found

176 (1) Upon the dissolution of a company and subject to Section 177, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Minister of Finance in accordance with and subject to Section 162.

(2) A payment pursuant to subsection (1) shall be deemed to be in satisfaction of a debt or claim of such creditor or shareholder.

(3) If at any time a person establishes that the person is entitled to any money paid in accordance with subsection (1), the Minister of Finance shall pay an equivalent amount to that person out of the Consolidated Fund of the Province. 1991, c. 7, s. 176.

Property held in trust before dissolution

177 (1) Notwithstanding Sections 160 to 178, and if no trustee has been appointed pursuant to clause (c) of Section 167, all property that immediately before the dissolution of a provincial trust company was being held in trust by it other than deposits, shall be sent immediately by the persons who were its officers and directors before its dissolution or by the liquidators, if any, to a licensed trust company appointed as trustee by the Court for that purpose.

(2) Where property is not delivered as required pursuant to subsection (1), the trustee shall do such things as may be necessary to obtain the property.

(3) All property received by the trustee pursuant to subsections (1) and (2) shall be held in trust by the trustee for the beneficiaries of the trusts.

(4) Where a licensed trust company has not been appointed pursuant to clause (c) of Section 167, the officers or directors of the company or the liquidator, if any, shall apply to the Court for an order appointing a trustee for the purpose of subsection (1).

(5) Where a licensed trust company has not been appointed pursuant to clause (c) of Section 167 and where an application is not made pursuant to subsection (4) before the dissolution of a provincial trust company, the Superintendent shall make the application. 1991, c. 7, s. 177.

Property vests in the Crown

178 Subject to subsection (2) of Section 175 and Sections 176 and 177, any property of a provincial company that has not been disposed of at the date of its dissolution vests in Her Majesty in right of the Province. 1991, c. 7, s. 178.

Specific confidential information

179 A person who, in connection with a transaction in a security of a provincial company or any of its affiliates, makes use of any specific confidential information for the person's own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known, or in the exercise of reasonable diligence could have been known, to that person at the time of the transaction. 1991, c. 7, s. 179.

Designation of restricted party

180 For the purpose of Sections 179 to 191, the Superintendent may designate

(a) a person to be a restricted party of a provincial company if the Superintendent is of the opinion that

(i) the person is acting in concert with a restricted party of the company to participate in or enter into an investment or other transaction with the company that would be prohibited or restricted if entered into with the company by the restricted party, or

(ii) there exists between the person and the company such an interest or relationship as might reasonably be expected to affect the exercise of the best judgment of the company with respect to an investment or other transaction; or

(b) a shareholder of a provincial company or of an affiliate of a provincial company to be a restricted party of the company if the Superintendent is of the opinion that the shareholder is acting in concert with one or more other shareholders of the provincial company or of an affiliate to control, directly or indirectly, ten per cent or more of any class of shares of the company. 1991, c. 7, s. 180.

Restriction on investment

181 (1) Except as provided in Sections 179 to 191,

(a) no licensed provincial company or subsidiary of a licensed company shall, directly or indirectly, participate in, or enter into, any investment or other transaction with a restricted party of the company; and

(b) no restricted party of a licensed provincial company shall, directly or indirectly, participate in, or enter into, an investment or other transaction with the company or a subsidiary of the company.

(2) Except as provided in clause (a) of subsection (1) of Section 182, no licensed provincial company or subsidiary of a licensed provincial company shall wilfully invest by way of purchase of or loans on the security of real estate that at any time in the period of thirty-six months preceding the date of advance of any funds by the company or its subsidiary was owned by a director or the spouse or child of the director or any relative of the director or spouse if that relative has the same residence as the director.

(3) Sections 179 to 191 do not apply so as to prevent the payment of director's fees of the licensed provincial company or of a subsidiary of the licensed provincial company if the fees have been approved by the shareholders of the licensed provincial company. 1991, c. 7, s. 181.

Powers of licensed provincial company or subsidiary

182 (1) Subject to the prior approval of the board of directors of the licensed provincial company, a licensed provincial company or a subsidiary of a licensed provincial company may

(a) make a loan to a director, officer or employee of the company, the spouse or any child of a director or officer of the company or any relative of a director or officer of the company or of the spouse of a director or officer of the company on the security of the residence of the person to whom the loan is made if

(i) the loan qualifies as an investment pursuant to clause (a) of subsection(1) of Section 44,

(ii) the amount of the loan does not exceed one half of one per cent of the capital base of the company, and

(iii) in the case of a director who is not an employee or officer of the company or the spouse or child of the director, the terms of the loan are no more favourable than those offered by the company in the ordinary course of business;

(b) make a personal loan to an officer or employee of the company, the spouse or any child of an officer of the company or any relative of an officer of the company or of the spouse of an officer of the company if the loan qualifies as an investment pursuant to clause (b) of subsection (2) of Section 44;

(c) enter into written contracts with a restricted party for the provision of management services to or by the company or subsidiary if

(i) the consideration is at or exceeds competitive and fair rates where the services are provided by the company or the subsidiary and is otherwise reasonable for the services provided, and

(ii) the consideration does not exceed competitive and fair rates where the services are provided to the company

or the subsidiary and is otherwise not unreasonable for the services provided;

(d) enter into a written lease of real estate or personal property with a restricted party for the use of the company or the subsidiary in carrying out its business if

(i) the rent does not exceed fair rental value,

(ii) the term of the lease and all renewals does not exceed five years, and

(iii) the terms of the lease are otherwise competitive and not unreasonable;

(e) enter in written contracts with a restricted party for pension and benefit plans and other reasonable commitments incidental to the employment of officers and employees of the company or the subsidiary;

(f) enter into employment contracts with officers or future officers of the company or the subsidiary;

(g) enter into written contracts with a restricted party for the purchase of goods or services, other than management services, used or required by the company or the subsidiary in carrying on its business, if the price paid for such goods or services is competitive and at market value or fair rates, supported by appropriate documentation of such value or rates;

(h) enter into such investments or other transactions with a restricted party as may be prescribed by regulation.

(2) Notwithstanding clause (a) or (b) of subsection (1), a licensed provincial company may make a loan to an employee of the company who is not a director or officer of the company or to the employee's spouse or child without obtaining the approval of the board of directors if the amount of the loan does not exceed such amounts as may be prescribed by regulation and there is compliance with subclauses (i) and (ii) of clause (a) of subsection (1) or clause (b) of subsection (1), as the case may be.

(3) A licensed provincial company or a subsidiary of a licensed provincial company, without the approval of the board of directors, may enter into

(a) employment contracts with persons who are not directors or officers of the company or the subsidiary;

(b) transactions with a restricted party which involve nominal or immaterial expenditures by the company or the subsidiary;

(c) transactions with a restricted party for the sale of goods or the provision of services normally provided to the public by the company or the subsidiary in the ordinary course of business if the

prices and rates charged by the company or subsidiary are competitive and at fair rates;

(d) such investments or other transactions with a restricted party as may be prescribed by regulation. 1991, c. 7, s. 182.

Onus on restricted party and licensed provincial company

183 The onus is upon the restricted party and the licensed provincial company or its subsidiary to demonstrate

(a) for the purpose of subclause (iii) of clause (a) of subsection (1) of Section 182, that the terms of the loan are no more favourable than those offered by the company in the ordinary course of business;

(b) for the purpose of clause (c) of subsection (1) of Section 182, that it is reasonable that the services be obtained or supplied;

(c) for the purpose of subclause (i) of clause (c) of subsection (1) of Section 182, that the consideration is at or exceeds competitive and fair rates;

(d) for the purpose of subclause (ii) of clause (c) of subsection (1) of Section 182, that the consideration does not exceed competitive and fair rates;

(e) for the purpose of clause (d) of subsection (1) of Section 182, that the rent does not exceed fair rental value and the terms of the lease are otherwise competitive and not unreasonable;

(f) for the purpose of clause (g) of subsection (1) of Section 182, that the price paid is competitive and at market value or fair rates;

(g) for the purpose of clause (b) of subsection (3) of Section 182, that expenditures are nominal or immaterial; and

(h) for the purpose of clause (c) of subsection (3) of Section 182, that services are normally provided to the public in the ordinary course of business and that the prices and rates are competitive and at fair rates. 1991, c. 7, s. 183.

Company as fiduciary

184 (1) A licensed provincial trust company shall not participate in or enter into an investment or other transaction with its subsidiaries or restricted parties using funds held by the company as a fiduciary, other than deposits.

(2) Except as provided in this Section, a licensed provincial trust company shall not invest funds held by the company as a fiduciary in any class of securities of the company or its subsidiaries or restricted parties.

(3) A licensed provincial trust company may act as a fiduciary of one or more trusts or estates that own securities of the company or its subsidiaries or

restricted parties if the securities were acquired before the company assumed responsibility as a fiduciary.

(4) Nothing in this Section authorizes a licensed provincial trust company to perform any act as a fiduciary which is otherwise prohibited.

(5) Nothing in this Section prevents a licensed provincial trust company from

(a) fulfilling a specific direction or permission of a court or of an instrument creating a fiduciary duty that the company should or may purchase or sell securities of the company or its subsidiaries or restricted parties or participate in, or enter into, any investment or other transaction with its subsidiaries or restricted parties, but a general power to invest in the discretion of the fiduciary shall not be considered to be a specific direction or permission for the purpose of this clause;

(b) investing funds held by it as a fiduciary in the securities of its restricted parties if those securities are listed on a stock exchange prescribed by regulation;

(c) participating in or entering into an investment that a co-fiduciary or the co-fiduciaries of the company can direct to be made without the agreement of the company and that the co-fiduciary or co-fiduciaries have directed to be made. 1991, c. 7, s. 184.

Consent of Superintendent to transaction with restricted party

185 (1) Upon the application of a licensed provincial company, the Superintendent may, subject to such terms and conditions as the Superintendent may impose, consent to an investment or other transaction set out in Sections 179 to 191, with a restricted party, if, in the Superintendent's opinion, the investment or other transaction is necessary to the well-being of the company and is not prejudicial to the interests of its depositors or persons in respect of whom the company acts in a fiduciary capacity.

(2) Subsection (1) does not apply so as to permit the Superintendent to consent to an investment or other transaction that is prohibited by Section 184. 1991, c. 7, s. 185.

Disclosure

186 (1) A restricted party who is a party to an investment or other transaction with a licensed provincial company or a subsidiary of a licensed provincial company or to a proposed investment or other transaction with the company or the subsidiary for which the approval of the board of directors of the company is required, whether pursuant to this Act or otherwise, shall disclose in writing to the company the nature of the restricted party's interest in that investment or other transaction.

(2) A director or officer of a licensed provincial company, with respect to an investment or other transaction with the licensed provincial company or a subsidiary of the licensed provincial company or with respect to a proposed investment or other transaction with the company or the subsidiary, shall disclose the nature of the interest in that investment or other transaction if the director or officer

(a) is a director or an officer of a body corporate that is a party to an investment or other transaction of the licensed provincial company or the subsidiary or a proposed investment or other transaction of the company or subsidiary; or

(b) holds ten per cent or more of the shares of a body corporate referred to in clause (a).

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

(a) at the meeting at which a proposed investment or other transaction is first considered;

(b) if the director was not then interested in a proposed investment or other transaction, at the first meeting after becoming so interested;

(c) if the director becomes interested after a proposed investment or other transaction is entered into, at the first meeting after becoming so interested; or

(d) if a person who is interested in a proposed investment or other transaction later becomes a director, at the first meeting after becoming a director.

(4) The disclosure required by subsection (1) of (2) shall be made, in the case of a restricted party who is not a director,

(a) immediately after becoming aware that the proposed investment or other transaction is to be considered or has been considered at a meeting of directors;

(b) if the restricted party becomes interested after an investment or other transaction is entered into, immediately after becoming interested; or

(c) if a person who is interested in an investment or other transaction later becomes a restricted party, immediately after becoming a restricted party.

(5) A director required by subsection (1) or (2) to make a disclosure shall not take part in the discussion or vote on any resolution to approve an investment or transaction in relation to which disclosure is required pursuant to subsection (1) or (2) and the director shall not be present at any meeting of the board while it is dealing with the matter.

(6) A director referred to in subsection (5) shall not attempt in any way to influence the voting on any resolution to approve an investment or other transaction.

(7) For the purpose of this Section, a general notice to the directors by a director or officer, declaring that the director or officer is a director or officer of, or has an interest in, a person and is to be regarded as interested in an investment or other transaction made with that person, is a sufficient declaration of interest in relation to an investment or other transaction so entered into. 1991, c. 7, s. 186.

Failure to comply with Sections 179 to 191

187 Where a restricted party or a licensed provincial company or a subsidiary of a licensed provincial company fails to comply with Sections 179 to 191, and where an investment or other transaction which is prohibited by Sections 179 to 191 takes place, the company or the Superintendent may apply to the Court for an order setting aside the investment or other transaction and directing that the restricted party account to the company for any profit or gain realized, and upon such application the Court may so order or make such order as it thinks fit including compensation for loss or damage suffered by the company and punitive or exemplary damages from the restricted party. 1991, c. 7, s. 187.

Application to Court for payment

188 (1) Where an investment or other transaction that is prohibited pursuant to Sections 179 to 191 takes place, a licensed provincial company or the Superintendent may apply to the Court for an order that each person who participated in or facilitated that investment or other transaction made in violation of Sections 179 to 191 pay, on a joint and several basis,

- (a) damages;
- (b) the face value of the investment; or
- (c) the amount expended by the company in the transaction.

(2) Subsection (1) does not apply to a person who is not a director unless the person knew or ought reasonably to have known that the investment or other transaction was made in violation of Sections 179 to 191. 1991, c. 7, s. 188.

Duty of auditor to report breach

189 An auditor shall immediately report to the board of directors and the Superintendent any breach of a provision of Sections 179 to 191 of which the auditor is aware or is made aware pursuant to Section 90 and, if the board of directors does not act to rectify the breach within a reasonable period of time, the auditor shall immediately report the failure to rectify to the Superintendent. 1991, c. 7, s. 189.

Duty of professional adviser to report breach

190 (1) A person who provides professional advice and services for or on behalf of the licensed provincial company, other than an auditor pursuant to Section 189, who in providing the professional services becomes aware of a violation of any of the provisions of Sections 179 to 191 in the course of providing such advice and services shall immediately advise the board of directors and the auditor.

(2) No person referred to in subsection (1) shall advise or perform services for a company with respect to an investment or other transaction to which that person is a party or in which that person has a direct or indirect beneficial interest in the subject matter of the investment or transaction.

(3) Nothing in Sections 179 to 191 shall be construed to affect the privilege that exists in respect of a solicitor and client. 1991, c. 7, s. 190.

No liability

191 A person who in good faith makes a report pursuant to subsection (1) of Section 190 shall not be liable in any civil action arising from the making of the report. 1991, c. 7, s. 191.

Application to extra-provincial company

192 A licensed extra-provincial company is subject to the provisions of Sections 2 to 11 and Sections 192 to 276, except where those provisions are limited in application to a provincial company. 1991, c. 7, s. 192.

Licensing of extra-provincial company

193 (1) Unless it registers a business name in accordance with the *Partnerships and Business Names Registration Act* under which it will carry on business in the Province, no extra-provincial company shall be licensed in its own name pursuant to this Act except in accordance with subsection (1) of Section 20 and subsection (1) of Section 22 and those subsections apply *mutatis mutandis* to an extra-provincial company as if it were a provincial company.

(2) The Superintendent may exempt an extra-provincial company from the provisions of subsection (1) of Section 20.

(3) If, through inadvertence or otherwise, an extra-provincial company is licensed in violation of subsection (1), the Superintendent may, after giving the company an opportunity to be heard, require the company to register, in accordance with the *Partnerships and Business Names Registration Act*, a business name that the Superintendent approves within sixty days after the Superintendent so requires and the extra-provincial company shall comply with that requirement.

(4) An extra-provincial company that carries on business in the Province under a name in violation of this Section is guilty of an offence. 1991, c. 7, s. 193.

Agent of extra-provincial company

194 (1) An extra-provincial company shall, with its application for a first licence pursuant to this Act, file with the Superintendent the appointment of an agent and the power of attorney referred to in subsection (9) of Section 212.

(2) If an agent of a licensed extra-provincial company dies or resigns or his appointment is revoked, the company shall file immediately with the Superintendent the appointment of another agent and a new power of attorney referred to in subsection (9) of Section 212.

(3) An agent for a licensed extra-provincial company who intends to resign shall

(a) give not less than sixty days notice to the extra-provincial company at its registered office; and

(b) file immediately a copy of the notice with the Superintendent.

(4) An agent shall file immediately with the Superintendent a notice in the form prescribed by regulation of any change of the agent's address.

(5) The address of an agent shown in the agent's appointment or in a notice pursuant to subsection (4) shall be an office that is accessible to the public during usual business hours.

(6) Service of a process, notice or document in a civil, criminal or administrative action or proceeding shall be deemed to have been sufficiently made upon a licensed extra-provincial company if made upon the agent as shown in the most recent appointment of an agent filed with the Superintendent.

(7) A notice or document may be sent or served upon a licensed extra-provincial company by

(a) personally serving the agent as shown in the most recent appointment of an agent filed with the Superintendent;

(b) delivering the notice or document to the address, according to the Superintendent's records, of its agent; or

(c) sending the notice or document by registered mail to that address.

(8) A notice or document sent by registered mail to the agent's address shall be deemed to have been received or served at the time it would have been delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the agent did not receive the notice or document at that time or at all. 1991, c. 7, s. 194.

Opening branch by extra-provincial company

195 A licensed extra-provincial company shall not open a branch in the Province unless the company gives notice to the Superintendent of its intention to do so at least thirty days before it opens the branch. 1991, c. 7, s. 195.

Acceptance of deposits by extra-provincial company

196 A licensed extra-provincial company shall not receive or accept, in the Province, money as deposits within the meaning of the *Canada Deposit Insurance Corporation Act* unless it is a member institution within the meaning of that Act or the deposits are insured by some other public agency approved by the Superintendent. 1991, c. 7, s. 196.

Authority of extra-provincial company to act

197 (1) A licensed extra-provincial company shall not carry on business, conduct its affairs or exercise its powers in the Province to any greater extent than the company is authorized or permitted by its jurisdiction of incorporation to do in carrying on its business, conducting its affairs or exercising its powers in its jurisdiction of incorporation.

(2) Notwithstanding subsection (1), a licensed extra-provincial company shall not carry on business, conduct its affairs or exercise its powers in the Province to any greater extent than the company is authorized or permitted by its jurisdiction of incorporation to do in carrying on its business, conducting its affairs or exercising its powers in its jurisdiction of incorporation.

(3) Notwithstanding subsections (1) and (2), a licensed extra-provincial company shall not, with respect to its total assets, participate in or enter into any investment in the Province if the investment or the amount of the investment is prohibited or restricted, as the case may be, by regulation or by the company's licence issued pursuant to this Act.

(4) A licensed extra-provincial company may, with respect to money received in the Province and held in trust by the company, other than deposits, invest that money in common trust funds in accordance with Section 55 and that Section applies *mutatis mutandis* to a licensed extra-provincial trust company as if it were a licensed provincial trust company.

(5) A licensed extra-provincial company or subsidiary of a licensed extra-provincial company shall not promote or operate a mutual fund in the Province, unless the company or subsidiary has received the approval of the Superintendent and complies with any terms or conditions imposed with respect to the approval by the Superintendent.

(6) A licensed extra-provincial company or subsidiary of a licensed extra-provincial company shall not be registered as a broker, salesman or sub agent pursuant to the *Securities Act* or the regulations pursuant to that Act, unless the company or subsidiary has received the approval of the Superintendent

and complies with any terms or conditions imposed with respect to the approval by the Superintendent. 1991, c. 7, s. 197.

Financial information to be provided by extra-provincial company

198 A licensed extra-provincial company at the times prescribed by regulation shall provide to the Superintendent such financial or other information as may be prescribed by regulation. 1991, c. 7, s. 198.

Filing by extra-provincial company

199 A licensed extra-provincial company shall file with the Superintendent

(a) copies of any change made in its instrument of incorporation, licence or registration pursuant to an enactment of the Parliament of Canada or of any province within seven days after the effective date of the change;

(b) copies of every return, report, statement or other information required to be filed in the company's jurisdiction of incorporation and the answer to every inquiry by or any other communication between it and the public official responsible for the administration of the company in its jurisdiction of incorporation, within seven days after filing, submission or receipt, as the case may be;

(c) the address of its principal office in the Province and its registered office and a notice of any change in either of those addresses within seven days after the effective date of the change;

(d) the names and addresses of the members of its board of directors, board of management or other governing body and a notice of any change in the membership within seven days after the effective date of the change; and

(e) such financial or other information as may be required by the Superintendent from time to time. 1991, c. 7, s. 199.

Filing of shareholder statement by extra-provincial company

200 A licensed extra-provincial company shall file with the Superintendent a copy of every statement of a financial nature furnished to its shareholders within seven days after the distribution of the statement to the shareholders. 1991, c. 7, s. 200.

Filing of annual return by extra-provincial company

201 A licensed extra-provincial company shall file with the Superintendent a copy of the annual return required to be filed in its jurisdiction of incorporation within seven days after filing it in the jurisdiction of incorporation together with a statement, on a form provided by the Superintendent, with respect to the information referred to in Section 202 with respect to that same period. 1991, c. 7, s. 201.

Required records of extra-provincial company

202 A licensed extra-provincial company shall maintain in Canada

(a) a record of all depositors in the Province, their names and addresses as far as are known and the sums deposited by the depositors; and

(b) where the company is a trust company, full and adequate records relating to the fiduciary activities of the company in the Province, the names and addresses as far as are known of all persons in the Province for whom the company acts in a fiduciary capacity and the sums received and held in trust by the company on their behalf. 1991, c. 7, s. 202.

Confidential information

203 The copy of any return, report, statement or other information or any other written document filed with the Superintendent pursuant to Sections 192 to 210 and which was, or is to be, filed as confidential with a public official of the Government of Canada or a province or agency shall be so marked and shall be deemed to contain information the confidentiality of which is protected by law and shall not be subject to disclosure pursuant to this or any other Act of the Legislature. 1991, c. 7, s. 203.

Duty to notify Minister respecting imposition of restriction

204 (1) Where any term, condition or restriction is imposed on the licence or registration of a licensed extra-provincial company in the company's jurisdiction of incorporation or its licence or registration is revoked, the company shall notify the Minister within twenty-four hours after receiving notice of it.

(2) Upon receipt of the notice referred to in subsection (1), the Minister may

(a) in accordance with Section 240

(i) impose a similar term, condition or restriction on the company's licence issued pursuant to this Act, or

(ii) revoke the company's licence issued pursuant to this Act; or

(b) take any other action in accordance with Sections 234 to 254 the Minister thinks fit. 1991, c. 7, s. 204.

Duty to notify Minister respecting compliance agreement

205 (1) A licensed extra-provincial company that enters into a voluntary compliance program or any other agreement similar to that referred to in Section 239 with the appropriate official of its jurisdiction of incorporation, shall notify the Minister within twenty-four hours after entering into that program or agreement.

(2) A licensed extra-provincial company referred to in subsection (1) shall, at the request of the Minister, enter into an agreement with the Minister which is supplementary to the voluntary compliance program or agreement entered

into in its jurisdiction of incorporation whereby the company is bound to carry on business, conduct its affairs and exercise its powers in the Province in accordance with the terms of the program or agreement entered into in its jurisdiction of incorporation. 1991, c. 7, s. 205.

Agreement where no conflict provisions

206 A licensed extra-provincial company of whose jurisdiction of incorporation the legislation, in the opinion of the Minister, does not contain conflict of interest provisions similar to those set out in Sections 179 to 191, shall, at the request of the Minister, enter into an agreement with the Minister whereby the company is bound to carry on business, conduct its affairs or ~~exeriese~~ [exercise] its powers in the Province in accordance with the provisions set out in Sections 179 to 191 as if it were a licensed provincial company or in accordance with such of those provisions or such other terms, conditions and restrictions as may be specified in the agreement. 1991, c. 7, s. 206.

Duty to notify Superintendent respecting deposits

207 A licensed extra-provincial company shall immediately notify the Superintendent of the name, address and telephone number of every deposit broker or agent or representative of the company or any other person who has the authority to receive or accept, in the Province and on behalf of the company, money as deposits within the meaning of the *Canada Deposit Insurance Corporation Act* or money intended to be deposits with the company. 1991, c. 7, s. 207.

Amalgamation of extra-provincial company

208 (1) Where a licensed extra-provincial company amalgamates with one or more other licensed extra-provincial companies, it shall file with the Superintendent a statement relating to the amalgamation in the form prescribed by regulation, the written consent to the amalgamation from the appropriate official of the company's jurisdiction of incorporation and such other documents or information as the Superintendent may require and the Superintendent shall immediately notify the Minister of the amalgamation.

(2) The Superintendent shall issue the appropriate licence for which the amalgamated extra-provincial company would qualify pursuant to subsection (1) of Section 213.

(3) An amalgamated provincial company referred to in subsection (2) may carry on business under the existing licence issued with respect to one of the amalgamating licensed companies, as directed by the Superintendent, until a licence has been issued to the amalgamated company by the Superintendent pursuant to subsection (2). 1991, c. 7, s. 208.

First licence of amalgamated extra-provincial company

209 (1) Where one or more licensed extra-provincial companies amalgamate with an extra-provincial company that is not licensed pursuant to this Act,

the amalgamated company shall apply immediately for a first licence in accordance with Sections 211 to 217.

(2) An amalgamated extra-provincial company required to apply for a licence pursuant to subsection (1) may continue to carry on business under the existing licence issued with respect to one of the amalgamating licensed companies, as directed by the Superintendent, until a first licence has been issued or refused to the amalgamated company by the Superintendent.

(3) Where the licence referred to in subsection (2) has been refused by the Superintendent, a licensed extra-provincial company may carry on business under its existing licence only in accordance with subsection (5) of Section 240. 1991, c. 7, s. 209.

Liquidator's duties respecting extra-provincial company

210 (1) If liquidation proceedings are commenced in respect of a licensed extra-provincial company, the company or, if a liquidator is appointed, the liquidator

(a) shall send to the Superintendent immediately after the commencement of those proceedings a notice showing that the proceedings have commenced and the address of the liquidator, if one is appointed; and

(b) shall send to the Superintendent immediately after the completion of those proceedings a return relating to the liquidation.

(2) The Superintendent shall upon receiving

(a) a notice pursuant to clause (a) of subsection (1), file it and publish a notice respecting the liquidation in the Royal Gazette; and

(b) a return pursuant to clause (b) of subsection (1), file the return and notify the Minister.

(3) The liquidator of a licensed extra-provincial company shall file with the Superintendent a notice of any change in the liquidator's address within one month after the effective date of the change. 1991, c. 7, s. 210.

Requirement to be licensed company

211 (1) No person other than a licensed loan company or licensed trust company shall conduct, undertake or transact the business of a loan company or trust company in the Province.

(2) No body corporate other than a licensed trust company shall offer its services to the public as or accept or execute the office of

(a) executor or administrator;

- (b) guardian of a minor's estate or a mentally incompetent person's estate in the Province; or
- (c) trustee.

(3) No person other than a licensed trust company shall hold itself out to the public in the Province as a licensed trust company by using in its name the words "Trust Corporation", "Corporation de fiducie", "Trust Corp.", "Trust Company", "Compagnie de fiducie", "Trust Co.", "Trustco", "Trustee Corporation", "Corporation fiduciaire", "Trustee Corp.", "Compagnie fiduciaire", "Trustee Company", or "Société fiduciaire" or any similar words in its name in conjunction with its business or undertakings, unless such name was lawfully in use before the day this Section comes into force.

(4) No company, other than a licensed company shall hold itself out to the public in the Province as a licensed company by conducting, undertaking or transacting any part or aspect of the business of a loan company or trust company.

(5) No person, other than a licensed loan company or licensed trust company and a person authorized by that company to act on its behalf, shall solicit the business of a loan company or trust company in the Province.

(6) No person shall undertake, transact or solicit in the Province any part or aspect of the business of a loan company or trust company that is not licensed pursuant to this Act. 1991, c. 7, s. 211.

Application for first licence

212 (1) A provincial company or an extra-provincial company licensed or registered in another jurisdiction may apply for a first licence pursuant to this Act as a loan company or trust company.

(2) A licensed loan company may apply to change its licence to that of a trust company and a licensed trust company may apply to change its licence to that of a loan company.

(3) A licensed company may apply to amend the terms, conditions and restrictions of its existing licence.

(4) Where an amendment to the instrument of incorporation of a licensed company effects a change in the name of the company under which it is licensed, the Superintendent shall, on payment of the fee prescribed by regulation, issue an amended licence reflecting the change.

(5) An application for a first licence shall be accompanied by evidence that from the date of its licence the company is or will be a member institution within the meaning of the *Canada Deposit Insurance Corporation Act* or that its deposits are or will be insured by some other public agency approved by the Superintendent, unless the licence to be issued will prohibit the company from receiving money as deposits within the Province.

(6) An application for a first licence by a provincial company incorporated pursuant to this Act shall contain a sworn or solemnly affirmed statement setting forth the several sums of money paid or to be paid by the company in connection with the incorporation and organization of the company.

(7) The particulars of all liabilities of a company referred to in subsection (6) shall be disclosed to the Superintendent at the time the application for a first licence is made.

(8) An application for a licence as a trust company shall set out the services in relation to which the company proposes to act in a fiduciary capacity.

(9) An application for a first licence by an extra-provincial company shall be accompanied by

(a) the appointment of an individual who is a resident of the Province as its agent within the Province and a power of attorney in a form satisfactory to the Superintendent from the company to the individual so appointed, which power of attorney shall be under seal of the company, if required in the jurisdiction of incorporation, and be signed by the president or managing director and secretary of the company and be verified by the oath or solemn affirmation of an attesting witness, and which shall expressly authorize the agent to accept process, notice or any document in any civil, criminal or administrative action or proceeding in the Province against the company and shall declare that service on the agent shall constitute sufficient service; and

(b) an undertaking to the Minister signed by the proper officers of the company that the company and its subsidiaries will provide such information as the Minister or Superintendent may request and will adhere to this Act and the regulations and to the terms, conditions and restrictions, if any, imposed on its licence pursuant to this Act.

(10) An undertaking referred to in clause (b) of subsection (9) shall be accompanied by a certified copy of the resolution of the directors authorizing the company's officers to apply for a licence pursuant to this Act and authorizing the execution of the undertaking.

(11) An application pursuant to this Section shall be filed with the Superintendent.

(12) Where the Superintendent receives an application pursuant to this Section, the Superintendent may require the applicant to provide such information, material and evidence as the Superintendent may consider necessary, in addition to the information, material and evidence required to be provided in or with the application together with such information, material and evidence as the form may specify. 1991, c. 7, s. 212.

Powers of Superintendent respecting licence

213 (1) On application by a company referred to in subsection (1) of Section 212, the Superintendent may, on payment of the fee prescribed by regulation for that kind of company and subject to subsection (2) but otherwise at the Superintendent's sole discretion,

- (a) issue a first licence to the company, as a loan company or trust company;
- (b) change the licence of the licensed company in accordance with subsection (2) of Section 212; or
- (c) amend the terms, conditions and restrictions of the existing licence of the licensed company in accordance with subsection (3) of Section 212.

(2) The Superintendent shall not issue, change or amend a licence pursuant to subsection (1)

- (a) until the Superintendent has received,
 - (i) an application together with the fee prescribed by regulation,
 - (ii) such other information as the Superintendent may require including, without limiting the generality of the foregoing,
 - (A) information relating to the ownership of the shares of the company,
 - (B) the name of each director and officer of the company and that person's experience as it relates to financial institutions,
 - (C) copies of any financial statements or *pro forma* financial statements of the company,
 - (D) a detailed plan of the proposed operations of the first and any subsequent branch to be opened by the company, and
 - (E) in the case of an extra-provincial company, a copy of its instrument of incorporation and any amendments made to it;
- (b) unless the capital base of the company is at least
 - (i) three million dollars where the company is a loan company, or
 - (ii) five million dollars where the company is a trust company;

(c) unless the company has satisfied the Superintendent that it has the capacity and power to engage in the activities of a loan company or a trust company;

(d) if the applicant is not a company described in subsection (1) of Section 212;

(e) unless it is shown to the satisfaction of the Superintendent that

(i) there exists a public benefit and advantage for the licensing of a company or for an additional company of the kind for which the licence is sought,

(ii) the management is fit, both as to character and as to competence, to manage a company of the kind for which the licence is sought,

(iii) each person who will be a holder of ten per cent or more of any class of shares of the applicant immediately after the receipt of the licence can demonstrate the adequacy of that person's financial resources and is fit as to character to own ten per cent or more of that class of shares,

(iv) each director is fit, both as to character and as to competence, to be a director of the company of the kind for which the licence is being sought,

(v) the detailed plan of the proposed operations of the company is feasible, and

(vi) the applicant intends to offer to the public, initially or within a reasonable time after the receipt of its licence, the services set out in the application for a licence and the applicant has the capability to provide those services;

(f) in the case of a provincial company incorporated pursuant to this Act, unless Sections 33 and 34 have been complied with and the expenses of incorporation and organization to be borne by the company are reasonable;

(g) unless the Superintendent is satisfied as to the adequacy of any information received with or in support of the application for the licence; and

(h) unless all other requirements of this Act antecedent to the issuing of the licence have been complied with. 1991, c. 7, s. 213.

Additional powers of Superintendent

214 (1) Where the Superintendent is not satisfied as to all of the matters referred in clauses (a), (b), (c), (e), (f), (g) and (h) of subsection (2) of Section 213, the Superintendent may issue a licence to the applicant

(a) as a company of a kind other than that for which the application was made and subject to such terms, conditions and restrictions as the Superintendent may impose; or

(b) as a company of the kind for which the application was made but subject to such terms, conditions and restrictions as the Superintendent may impose.

(2) Before refusing to issue, change or amend a licence pursuant to subsection (1) of Section 213 or before issuing a licence subject to terms, conditions and restrictions, the Superintendent shall give the company an opportunity to be heard.

(3) With the consent of the licensed company, the Superintendent may impose terms, conditions and restrictions on the licence of a company or terms, conditions and restrictions in addition to those previously imposed on the licence of the company and subsection (2) does not apply with respect to the imposition of those terms, conditions and restrictions. 1991, c. 7, s. 214.

Form, content and notice of licence

215 (1) A licence shall be in such form as the Superintendent may from time to time determine and may contain such terms, conditions and restrictions relating to the powers and business of the company as the Superintendent may, consistent with the provisions of this Act, impose.

(2) Notice of the issue of a first licence to a company shall be published by the Superintendent in the Royal Gazette.

(3) A licensed company shall publish notice of the issue to it of a first licence once a week for four consecutive weeks in a newspaper published or distributed in the case of

(a) a provincial company, in the place where the company has its registered office; and

(b) an extra-provincial company, in the place where the company has its principal place of business in the Province. 1991, c. 7, s. 215.

Expiry, revocation or renewal of licence

216 (1) The licence of a company expires on the anniversary date of the incorporation of the company unless

(a) a date other than the anniversary date is specified in the licence, in which case it expires on that date;

(b) it has been revoked in accordance with this Act, in which case it expires on the date of the revocation; or

(c) the term of the licence has been reduced in accordance with this Act, in which case it expires at the end of the reduced term as specified in that licence.

(2) Subject to subsection (5) and subsection (1) of Section 240 and subsection (1) of Section 243, the Superintendent may, on or before the date the licence expires and upon payment of the fee prescribed by regulation, issue a second or subsequent licence, as the case may be, for a period ending on the anniversary date of the incorporation of the company in the following year, or where the term of the licence is to be reduced, for such shorter period as may be specified in the licence.

(3) Notwithstanding subsection (2), where a licence has expired because of inadvertence, the failure to pay the fee prescribed by regulation or any other reasons acceptable to the Superintendent, the Superintendent may, within six months after the licence has expired and if, in the opinion of the Superintendent, to do so would not be prejudicial to the public interest, issue a second or subsequent licence, as the case may be, and that licence shall be deemed to be effective from the date the expired licence expired.

(4) The Superintendent, on being ~~satisfied~~ [satisfied] that a licensed company is not carrying on any aspect of the business of a loan company or trust company may, subject to subsection (5), revoke the company's licence.

(5) Before refusing to issue a second or subsequent licence or issuing a second or subsequent licence with terms, conditions or restrictions different from those imposed on the previous licence, or before revoking a licence pursuant to subsection (4), the Superintendent shall give the company an opportunity to be heard.

(6) At the request of a licensed company, the Superintendent may revoke the company's licence subject to such terms, conditions and restrictions as the Superintendent may impose. 1991, c. 7, s. 216.

Superintendent to maintain register

217 The Superintendent shall maintain a register in which the Superintendent shall cause to be entered the name of every company to which a licence is issued pursuant to this Act and

(a) the nature of the licence and any terms, conditions and restrictions imposed on the licence;

(b) the fact that the licence of the company has been changed or amended in accordance with this Act and the nature of the change or amendment; and

(c) the fact that the licence of the company has been revoked or that a second or subsequent licence has not been issued. 1991, c. 7, s. 217.

Hearing of appeal by Minister

218 (1) When an appeal is provided for pursuant to this Act, the Minister shall hear the appeal or appoint one or more persons to act as an appeal board to do so.

(2) The Minister may, for the purpose of an appeal referred to in subsection (1), appoint a person to act as secretary to the Minister or an appeal board, as the case may be.

(3) The members of an appeal board shall be paid such remuneration and expenses as the Governor in Council determines.

(4) Section 249 applies to members of an appeal board. 1991, c. 7, s. 218.

Prohibition respecting civil servants

219 (1) An employee pursuant to the *Civil Service Act* performing duties or exercising powers pursuant to this Act shall not accept, directly or indirectly, any grant or gratuity from a licensed company or any affiliate of that company or from any director, officer, employee or agent of that company and no licensed company, director, officer, employee or agent of that company or any affiliate of that company shall make or give, directly or indirectly, any such grant or gratuity.

(2) An employee pursuant to the *Civil Service Act* performing duties or exercising powers pursuant to this Act shall not hold any shares of a licensed company. 1991, c. 7, s. 219.

Power of Minister and Superintendent to act outside the Province

220 The Minister and the Superintendent may, for the purpose of the administration and enforcement of this Act and the regulations, act outside the Province as if they were acting inside the Province. 1991, c. 7, s. 220.

Record keeping

221 (1) All documents filed with the Superintendent and records required by this Act to be prepared and maintained by the Superintendent may be in bound or loose-leaf form or in ~~photographic~~ [photographic] film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in intelligible written form within a reasonable time.

(2) Where documents filed with the Superintendent or records prepared and maintained by the Superintendent are maintained other than in written form

(a) the Superintendent shall furnish any copies required to be furnished in intelligible written form; and

(b) a report reproduced from such documents or records, if it is certified as correct by the Superintendent, is, without proof of the office or signature of the Superintendent, admissible in evidence to the same extent as the original written documents or records would have been.

(3) The Superintendent is not required to produce a document or record where a copy of the document is furnished in compliance with clause (a) of subsection (2).

(4) The Superintendent is not required to produce a document or record, other than an instrument of incorporation filed with the Superintendent, after six years after the date the Superintendent receives it. 1991, c. 7, s. 221.

Affidavits and examination of witnesses

222 (1) In carrying out the duties of the Minister or Superintendent pursuant to this Act, the Minister or Superintendent may require to be made or may take and receive affidavits, statutory declarations or depositions and may examine witnesses upon oath or solemn affirmation.

(2) The evidence and proceedings in any matter before the Minister or Superintendent or an appeal board may be reported by a stenographer sworn or solemnly affirmed before the Minister or Superintendent faithfully to report the evidence. 1991, c. 7, s. 222.

Condition of licence

223 (1) It is a condition of the licence of a licensed company that the company facilitate examinations, audits and inspections pursuant to this Act.

(2) For the purposes of an examination, audit or inspection pursuant to this Act, a licensed company and its subsidiaries shall prepare and submit to the person conducting the examination, audit or inspection such statements or returns with respect to its business, finances or other affairs, in addition to the statements or returns mentioned in this Act, as the Minister or Superintendent may require and the officers, agents and servants of the company and its subsidiaries shall cause their books to be open for inspection and shall otherwise facilitate that examination so far as it is in their power.

(3) In order to facilitate an examination, audit or inspection of the books and records of a licensed company, the company and its subsidiaries may be required by the Minister or the Superintendent to produce the books and records

(a) in the case of a provincial company, at its registered office; or

(b) in the case of an extra-provincial company, at its principal place of business in the Province,

or at such other convenient place as the Minister or Superintendent may direct.

(4) For the purpose of an examination, audit or inspection pursuant to this Act, the licensed company and its subsidiaries or the auditor shall make available to the person conducting the examination the working papers of the auditor used in preparing an audit or other report pursuant to this Act.

(5) On the direction of the Minister or Superintendent, where an examination, audit or inspection of a licensed company or a subsidiary of the company is made at an office situated outside the Province, the company shall pay such costs and expenses in connection with that examination, audit or inspection as directed. 1991, c. 7, s. 223.

Examination of condition and affairs of company

224 (1) Once each year or during such other period as the Superintendent considers appropriate for a particular company, the Superintendent may examine or cause a person acting under the Superintendent's direction to examine the statements of the condition and affairs of each licensed provincial company and the Superintendent or other person acting under the Superintendent's direction shall make such inquiries as are necessary to ascertain the company's condition and ability to meet its obligations as and when they become due, whether the company is following sound business and financial practices, the procedures and standards of its management and whether or not the company has complied with this Act and the regulations and any requirement, order, term, condition or restriction of a licence or inquiry made pursuant to this Act or the regulations.

(2) In conducting an examination pursuant to subsection (1), the Superintendent or other person acting under the Superintendent's direction may attend at the registered office of the company or its principal place of business in the Province and, if necessary, the Superintendent or other person acting under the Superintendent's direction may visit any branch of the company.

(3) The Superintendent may, in whole or in part, rely on an examination of a licensed extra-provincial company conducted by the Government of Canada or of the company's jurisdiction of incorporation or a recognized agency of that government, unless the Superintendent is made aware and believes the examination conducted in relation to that company is not satisfactory in any respect, in which case the Superintendent may examine or cause a person acting under the Superintendent's direction to examine the statements of the condition and affairs of the extra-provincial company as if it were a provincial company pursuant to subsection (1). 1991, c. 7, s. 224.

Examination by Superintendent of books and documents

225 The Superintendent or other person acting under the Superintendent's direction may, at any time during normal business hours, examine any books of or in the possession of a licensed company or any of its subsidiaries relating to its business, wherever situated, and vouchers, securities and documents of a licensed company. 1991, c. 7, s. 225.

Special examiner

226 (1) The Superintendent may, at any time on the Superintendent's own motion or upon an application by an interested party being made in writing, or shall, when so required by the Minister, appoint a person as a special examiner to make a special examination and audit of a licensed company's books, accounts and securities and to inquire generally into the conduct of the business and affairs of the company.

(2) The Superintendent may require an applicant pursuant to subsection (1) to give security for the payment of the costs of the inquiry to be given before appointing a person as a special examiner.

(3) A person appointed as a special examiner may summon witnesses and take evidence under oath or on solemn affirmation for the purposes of an examination, audit and inquiry and shall have all the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*.

(4) Upon the conclusion of the examination, audit and inquiry, the person appointed as a special examiner shall make a report in writing to the Superintendent who shall provide a copy of the report and the Superintendent's recommendations, if any, to the Minister.

(5) The Superintendent may, on the conclusion of an examination pursuant to this Section, order the licensed company or the party requesting the examination pursuant to subsection (1) to pay the costs and expenses of that examination or include the costs and expenses in those referred to in Section 233. 1991, c. 7, s. 226.

Inquiries

227 (1) The Superintendent may, or shall when so ordered by the Minister, address any inquiries pursuant to this Act to a licensed company or to the president, secretary or any other officer of the company or to the agent of an extra-provincial company to ascertain the company's condition and ability to meet its obligations or as to the conduct of its business and affairs or as to complaints made by depositors, borrowers or by persons for whom the licensed company acts in a fiduciary capacity, and it is the duty of a licensed company or officer or agent so addressed to reply immediately in writing to that inquiry.

(2) The Superintendent may require a licensed company to forward a copy of any letter addressed to the company by the Superintendent and any answer to that letter to each director of the company and, upon that requirement being made, the secretary of the company shall include a copy of that letter and the answer to that letter in the minutes of the meeting of the directors next following the requirement being made by the Superintendent. 1991, c. 7, s. 227.

Extension of time

228 Where, by or pursuant to this Act, a licensed company is required to provide to or file with the Superintendent a return or document or other information,

the Superintendent, in the Superintendent's absolute discretion and upon payment by the company of the fee prescribed by regulation, may, before or after the last day for providing or filing the return or document or other information and except where otherwise provided, extend the time, for any period not exceeding sixty days, as the Superintendent considers appropriate. 1991, c. 7, s. 228.

Documents admissible in evidence

229 (1) A notice published in the Royal Gazette over the name of the Minister or Superintendent is admissible in evidence in any civil, criminal or administrative action or proceeding or for any other purpose and, when introduced as evidence, is proof, in the absence of evidence to the contrary, of the facts set forth in the notice without proof of the signature or official character of the person appearing to have signed the notice.

(2) A certificate of the Minister or Superintendent that on a stated day a body corporate mentioned in the certificate was or was not licensed or was licensed subject to terms, conditions or restrictions or that the licence of a company was revoked on a stated day is admissible in evidence in any civil, criminal or administrative action or proceeding or for any other purpose and when introduced as evidence is proof, in the absence of evidence of the contrary, of the facts stated in the certificate.

(3) Copies of, or extracts from, any book, record, instrument or document in the office of the Superintendent or of or from any instrument or document issued pursuant to this Act, if certified as correct by the Superintendent, are, without proof of the office or signature of the Superintendent, admissible in evidence to the same extent as the original would have been. 1991, c. 7, s. 229.

Agreements between Minister and other governments

230 The Minister may, with the approval of the Governor in Council, enter into agreements with the Government of Canada or a province or the appropriate official of that government, related to the administration and enforcement of this Act or of similar legislation of those jurisdictions and, without limiting the generality of the foregoing, those agreements may provide for the provision and exchange of confidential information, the confidentiality of which shall be protected by law and which shall not be subject to disclosure pursuant to this or any other Act of the Legislature. 1991, c. 7, s. 230.

Agreements, undertakings and indemnities

231 The Minister and the Superintendent may do all things necessary or incidental to the administration and ~~enforcement~~ [enforcement] of this Act and the regulations and, in particular, but without limiting the generality of the foregoing, the Superintendent may

- (a) in accordance with this Act, receive undertakings from and enter into agreements with companies; and

(b) enter into agreements with third parties related to the administration of this Act and the regulations and give indemnities to third parties related to such activities as are authorized pursuant to those agreements. 1991, c. 7, s. 231.

Disclosure of information

232 (1) Subject to this Section, where as a result of administering this Act, the Superintendent obtains information or documents regarding the business or affairs of a provincial company or persons dealing with a provincial company, the Superintendent shall not disclose that information or provide those documents or disclose any information contained in, or allow access to, those documents to any person other than the provincial company.

(2) The Superintendent may, in any manner, communicate or provide information and copies of documents referred to in subsection (1) whose disclosure the Superintendent considers to be required for

(a) the proper administration of this Act, to persons acting under the Superintendent's direction or authority in the administration of this Act;

(b) the purpose of enabling the auditor of a provincial company to fulfill the auditor's functions as such, to that auditor;

(c) regular law enforcement purposes, to a law enforcement authority.

(3) The Superintendent may, in any manner, communicate information and provide copies of documents referred to in subsection (1), or allow inspection of or access to any such documents,

(a) to the government of any other province or of Canada, or an agency of such a government;

(b) for the purpose of the administration or enforcement of

(i) the *Securities Act*, to the Registrar of Securities,

(ii) the *Insurance Act*, to the Superintendent of Insurance, or

(iii) the *Credit Union Act*, to the Registrar of Credit Unions; or

(c) for any prescribed purpose, to any other prescribed person.

(4) Subject to subsection (5), a person to whom information or a document is communicated or provided pursuant to subsection (2) or clause (b) or (c) of subsection (3) shall comply with subsection (1) in respect of the information or document.

(5) Subsection (4) does not apply to a disclosure made by the recipient referred to in that subsection

(a) for the relevant purpose referred to in clause (b) or (c) of subsection (2) or clause (b) or (c) of subsection (3); or

(b) to another person acting under the recipient's direction or authority or otherwise associated with the recipient in securing that purpose.

(6) Where, for the purpose of the administration of this Act, the Superintendent receives information communicated to the Superintendent by, or is allowed inspection of or access to any document provided by, the government of or a public body of Canada or any other province, the Superintendent shall not disclose the information or the contents of the document other than with the consent of that government or public body.

(7) Subject to subsections (4) and (5), duties pursuant to this Section apply, as well as to the person referred to in this Section, also to any other person acting under that person's direction or authority or to whose notice information or a document comes as a result of any relationship with that person. 1991, c. 7, s. 232.

Assessments

233 (1) The expenses and costs incurred by the Minister or Superintendent or any other persons acting pursuant to this Act in the carrying out of examinations and inspections pursuant to this Act shall be borne by and recovered from licensed companies by means of assessments.

(2) The Minister shall assess the amounts ascertained pursuant to subsection (1) against each licensed company in the manner and to the extent prescribed by regulation.

(3) An assessment made pursuant to this Act and the regulations constitutes a debt due by the company against which it is made to Her Majesty in right of the Province, is immediately payable and may be recovered as a debt in any court of competent jurisdiction. 1991, c. 7, s. 233.

Powers of Superintendent where non-compliance

234 (1) Where, in the opinion of the Superintendent, a licensed company or other person is committing an act or pursuing a course of conduct that

(a) does not comply with this Act or the regulations;

(b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;

(c) does not comply with a voluntary compliance program pursuant to Section 239, or in the case of a licensed extra-provincial company, does not comply with an order of the Minister or Superin-

tendent or any terms, conditions or restrictions imposed on its licence pursuant to subsection (5) of Section 239;

(d) does not comply with an undertaking given or agreement made with the Minister or Superintendent pursuant to this Act; or

(e) constitutes a practice that might prejudice or adversely affect the interests of depositors or of persons for whom the company acts in a fiduciary capacity,

the Superintendent may give notice to the licensed company or any other person of an intention to order the company or other person

(f) to cease doing any act or to cease pursuing any course of conduct identified by the Superintendent; or

(g) to perform such acts as, in the opinion of the Superintendent, are necessary to remedy the situation.

(2) The licensed company or other person may, by written notice served on the Superintendent within fifteen days after the service of the notice on the company or other person pursuant to subsection (1), request a hearing before the Superintendent.

(3) Where no hearing is requested within the time set out in subsection (2) or (4), or where a hearing is held and the Superintendent is of the opinion that an order described in clause (f) or (g) of subsection (1) should be made, the Superintendent may make an order under either or both of those clauses which shall take effect immediately on its making or at such later date as may be set out in the order.

(4) Notwithstanding subsection (2), where, in the opinion of the Superintendent, the interests of the depositors or persons for whom the company acts in a fiduciary capacity or the public may be prejudiced or adversely affected by any delay in the issuance of an order, the Superintendent may make an interim order as described in clause (f) or (g) of subsection (1) which shall become final on the fifteenth day after its making unless within that time a hearing before the Superintendent is requested.

(5) A request for a hearing pursuant to subsection (4) shall be in writing and served on the Superintendent.

(6) Where a hearing is requested pursuant to subsection (4), the Superintendent may extend the interim order until the hearing is concluded or any appeal from the hearing is concluded and the order is confirmed, varied or revoked.

(7) Where an order is made with respect to a licensed company pursuant to this Section, a copy of the order shall be sent to each director of the company.

(8) The Superintendent may, after giving the company or other person named in the order an opportunity to be heard, modify or revoke an order made pursuant to this Section. 1991, c. 7, s. 234.

Appeal to Minister

235 (1) A party to a hearing before the Superintendent may, within fifteen days after the receipt of the Superintendent's decision, appeal the decision to the Minister by serving a notice in writing of the appeal on the Superintendent who shall advise the Minister immediately of the appeal and the Minister may hear the appeal or appoint an appeal board to do so in accordance with subsection (1) of Section 218.

(2) An appeal shall be based on such evidence as may be presented to the Minister or the appeal board and the Minister or the appeal board upon hearing an appeal may confirm, vary or revoke the decision, order, approval or consent that is the subject of the appeal. 1991, c. 7, s. 235.

Decision, order, approval or consent of Minister

236 (1) Where this Act provides for a decision, order, approval or consent of the Minister, the decision, order, approval or consent shall be subject to such terms and conditions as the Minister may impose.

(2) A decision, order, approval or consent of the Minister pursuant to this Act shall be in writing and is not subject to appeal.

(3) Before rendering a decision, making an order, refusing an approval or consent or granting an approval or consent subject to terms and conditions, the Minister shall give the licensed company notice of the Minister's intention and the licensed company may require a hearing before the Minister.

(4) The Minister may at any time, having given the licensed company an opportunity to be heard, confirm, revoke or vary any decision, order, approval, consent or refusal. 1991, c. 7, s. 236.

Entitlement of Superintendent to appear

237 The Superintendent is entitled to appear and be heard in person or by counsel at a hearing before the Minister or an appeal board. 1991, c. 7, s. 237.

Private or public hearing

238 A hearing before the Superintendent or the Minister or an appeal board, at the discretion of the Superintendent or the Minister or the appeal board, as the case may be, may be heard in private or in public. 1991, c. 7, s. 238.

Program of voluntary compliance

239 (1) Where, in the opinion of the Superintendent, a licensed provincial company or other person is committing an act or pursuing a course of conduct that

- (a) does not comply with this Act or the regulations;
- (b) might reasonably be expected, if continued, to result in a state of affairs that would not be in compliance with this Act or the regulations;
- (c) does not comply with an undertaking given or an agreement made with the Minister or Superintendent pursuant to this Act; or
- (d) constitutes a practice that might prejudice or adversely affect the interests of depositors or persons for whom the company acts in a fiduciary capacity,

the licensed provincial company or other person may enter into a program of voluntary compliance related to any act or course of conduct described in clauses (a), (b), (c) or (d).

(2) A voluntary compliance program pursuant to this Section shall be in writing and shall bind the licensed provincial company or other person from the time it is approved by the Minister.

(3) Where a voluntary compliance program has been entered into, the Superintendent shall not be prevented from making orders against the licensed provincial company or other person

- (a) on matters not covered by the program;
- (b) where the program is not complied with, on matters covered in the voluntary compliance program;
- (c) if there has been a deterioration in the condition of the company; or
- (d) on matters covered in the program where all the facts related to the matter covered by the program were not known by the Minister at the time the program was entered into.

(4) The Minister may, on the request of a licensed provincial company or other person, approve the alteration of a voluntary compliance program entered into pursuant to this Section.

(5) Where a licensed extra-provincial company has entered into a voluntary compliance program or any other agreement ~~similar~~ [similar] to that program with the appropriate official of the company's jurisdiction of incorporation, the Minister may enter into an agreement with the company in accordance with subsection (2) of Section 205 or make any order or impose any terms, conditions or restrictions on the licence of that company the Minister thinks necessary to compel

any branch or operation of the company in the Province to comply with the program or the agreement, as the case may be. 1991, c. 7, s. 239.

Revocation or restriction of licence

240 (1) Where

(a) a licensed company or other person has not complied with an order of the Superintendent or of the Minister or an appeal board;

(b) a licensed company or other person has breached an order of the Court made pursuant to Section 251;

(c) grounds exist for the possession and control of the assets of a licensed company by the Minister; or

(d) the licence or registration of the company has been revoked or suspended, or terms, conditions or restrictions have been imposed on the licence or registration of the company by the Government of Canada or of any other province,

the Superintendent may, subject to subsections (2), (3) and (4), revoke the licence of the company, impose terms, conditions or restrictions on the licence of the company or refuse to grant a second or subsequent licence to the company.

(2) Where the Superintendent proposes to act pursuant to subsection (1), the Superintendent shall serve a notice of the intention to act on the company.

(3) The company may, by written notice served on the Superintendent within ten days after the service of the notice on the company pursuant to subsection (1), request a hearing before the Minister.

(4) Where no hearing is requested within the time set out in subsection (3) or where a hearing is held and the Minister is of the opinion that he should proceed pursuant to subsection (1), the Minister may do so immediately.

(5) After the revocation of a licence pursuant to this Section, the company shall, unless again licensed pursuant to this Act, cease to transact or undertake business in the Province, except so far as it is necessary for the liquidation of its business in the Province, but any liability incurred by it either before or after the revocation may be enforced against it as if the revocation had not taken place. 1991, c. 7, s. 240.

Notice of revocation or restriction of licence

241 (1) On the revocation of the licence of any company, or the modification of any of the terms, conditions or restrictions imposed on its licence, the Superintendent shall cause notice in writing of the revocation or modification to be sent to the company.

(2) Notice of the revocation of a licence issued pursuant to this Act shall be published by the Superintendent in the Royal Gazette. 1991, c. 7, s. 241.

Interpretation of Sections 243 to 253

242 In Sections 243 to 253,

(a) “licensed company” or “licensed extra-provincial company” includes an extra-provincial company that has, or had in the previous two years, a licence issued pursuant to this Act;

(b) “licensed company” or “licensed provincial company” includes a provincial company, whether or not it has or had a licensed issued pursuant to this Act. 1991, c. 7, s. 242.

Power of Governor in Council

243 (1) Notwithstanding any other provision of this Act, the Governor in Council may, without holding a hearing or issuing a notice, order

(a) that the licence of a licensed company shall be subject to such terms, conditions and restrictions as are set out in the order; or

(b) subject to subsection (6), that the Minister take possession and control of the assets of a licensed company,

where, in the opinion of the Governor in Council,

(c) there has been a transfer or issue of shares of a provincial company to which subsection (1) or (2) of Section 90 applies and the consent of the Superintendent has not been obtained pursuant to Section 90 or there has been such a transfer of the shares of a licensed extra-provincial company where a consent to that transfer is required in the company’s jurisdiction of incorporation and that consent was not obtained;

(d) the licensed company has defaulted on payment of any of its liabilities or will not be able to pay its liabilities as they become due and payable;

(e) the licensed company is not complying with this Act or the regulations or an undertaking given or agreement made with the Minister pursuant to this Act;

(f) the provincial company’s assets or investments are not satisfactorily accounted for;

(g) the provincial company’s assets are not sufficient, having regard to all the circumstances, to give adequate protection to the company’s depositors or those persons for whom the company acts in a fiduciary capacity;

(h) in the case of a licensed extra-provincial company, it has become or is about to become, subject to an order for possession and control of its assets in its jurisdiction of incorporation; or

(i) there exists any practice or state of affairs within the licensed company that is or may be prejudicial to the public interest or to the interests of the company's depositors or those persons for whom the company acts in a fiduciary capacity or creditors, and in the case of a licensed provincial company, to its shareholders.

(2) Where the Governor in Council makes an order pursuant to subsection (1), the Superintendent shall send a copy of the order to an officer of the licensed provincial company, or, in the case of an extra-provincial company, to its agent in accordance with subsection (7) of Section 194.

(3) An order of the Governor in Council pursuant to subsection (1) shall take effect immediately and is final and binding and that order or an order made pursuant to subsection (5) confirming or varying that order shall not be stayed, varied or set aside by any court.

(4) For the purpose of this Section, the Governor in Council may appoint such persons as the Governor in Council considers necessary to value and appraise the assets and liabilities of the licensed company and report upon its condition and its ability, or otherwise, to meet its liabilities.

(5) Upon the petition of any party or person interested, filed with the Clerk of the Executive Council within sixty days after the date of any order made pursuant to subsection (1), the Governor in Council may confirm, vary or rescind the whole or any part of such order and an order confirming or varying an order made pursuant to subsection (1) is final and binding.

(6) Where the Governor in Council makes an order pursuant to clause (b) of subsection (1) with respect to a licensed extra-provincial company, the order shall be limited to the possession and control of the assets of the company in the Province.

(7) Nothing in this Section affects the right of the Governor in Council to vary or rescind, at any time, an order made pursuant to subsection (1).
1991, c. 7, s. 243.

Possession and control of assets by Minister

244 (1) If so ordered by the Governor in Council pursuant to clause (b) of subsection (1) of Section 243, the Minister shall take possession and control of the assets of a licensed company and shall conduct its business and take such steps as, in the Minister's opinion, should be taken toward its rehabilitation and for such purposes the Minister has all the powers of the board of directors of the company and may, without limiting the generality of the foregoing,

(a) exclude the directors, officers, servants and agents of the licensed provincial company from the premises, property and business of the company, and in the case of an extra-provincial company, from the premises, property and business of the company situated in the Province;

(b) carry on, manage and conduct the operations of the licensed company and in the name of the company preserve, maintain, realize, dispose of and add to the property of the company, receive the incomes and revenues of the company and exercise all the powers of the company, and in the case of an extra-provincial company, to exercise those powers in the Province;

(c) in the case of an extra-provincial company, make any agreement with the appropriate official of the company's jurisdiction of incorporation to carry out the order of the Governor in Council.

(2) While the Minister has possession and control of the assets of a licensed company pursuant to this Section, the Minister may apply to the Court for an order for the liquidation of the licensed provincial company pursuant to subsection (1) of Section 166, as if it were an application for the supervision of a voluntary liquidation pursuant to that subsection, or in the case of a licensed extra-provincial company, for an order for the liquidation of the assets of the branch or branches of the company located in the Province.

(3) Where the Minister is in possession and control of the assets of a licensed company and is conducting its business, the Minister may appoint one or more persons to manage and operate the business of the company and

(a) each person so appointed is a representative of the Minister; and

(b) the remuneration of any such person, other than an employee pursuant to the *Civil Service Act*, shall be fixed by the Minister.

(4) Wherever the Governor in Council believes that a licensed company whose assets are in the possession and control of the Minister meets the requirements of this Act and the regulations and that it is otherwise proper for the company to resume possession and control of its assets and the conduct of its business, the Governor in Council may, in writing, direct the Minister to relinquish to the company the possession and control of its assets, and on and after the date specified in that direction, the powers of the Minister pursuant to this Section cease.

(5) If the Governor in Council considers that further efforts to rehabilitate a licensed company whose assets are in the possession and control of the Minister would be futile, the Governor in Council may, in writing, direct the Minister to relinquish to the company the possession and control of its assets, and on and after the date specified in that direction, the powers of the Minister pursuant to this Section cease.

(6) The costs and expenses of the Minister incurred in proceedings pursuant to Section 243 and this Section

(a) shall be paid by the licensed company; or

(b) where the company cannot pay the costs and expenses, the Minister may include the costs and expenses in those referred to in Section 233. 1991, c. 7, s. 244.

Application by Minister to Court

245 (1) Notwithstanding any other provision of this Act, where the Minister has taken possession and control of a licensed company pursuant to Section 243, the Minister may apply to the Court for an order

(a) authorizing some other person to conduct the business of the company on such terms and conditions as the Court thinks fit;

(b) authorizing and directing the sale of the assets of the licensed company, in whole or in part, notwithstanding any provision of the *Bulk Sales Act*;

(c) appointing interim or permanent substitute trustees in respect of all or any part of the fiduciary obligations and duties, other than those in respect of deposits of a licensed trust company;

(d) staying any civil proceedings against the licensed company while the Minister is in possession and control of the company.

(2) Where the Court has made an order pursuant to clause (c) of subsection (1), the ~~fiduciary~~ [fiduciary] obligation and duties vest in, bind and may be enforced against the substituted fiduciary as fully and effectually as if the substituted fiduciary was originally named as fiduciary. 1991, c. 7, s. 245.

Decision, order, approval or consent binding on successor or assignee

246 Where a decision, or an order, approval or consent is made or given pursuant to this Act or a term, condition or restriction is imposed on the licence of a licensed company, it is binding on every successor or assignee of the licensed company or other person to whom it is directed. 1991, c. 7, s. 246.

Appraisal of assets

247 (1) Subject to subsection (2), if, in the opinion of the Superintendent with respect to a licensed company or its subsidiaries, it appears that

(a) the value placed upon the real estate owned by the company or any of its subsidiaries or any parcel of real estate is too great;

(b) the amount secured by mortgage upon any parcel of real estate, together with interest due and accrued on the amount secured is greater than the lending value of the parcel, or that the parcel is not sufficient security for the loan and interest; or

(c) the market value of any other asset is less than the amount shown in the books of the company or any of its subsidiaries,

the Superintendent may require the company to secure the appraisal of those assets by one or more competent valutors or the Superintendent may procure the appraisal at the expense of the company.

(2) Subsection (1) applies in the case of a licensed extra-provincial company or its subsidiaries only to real estate or any other assets situated in the Province.

(3) If, following an appraisal pursuant to subsection (1), it appears to the Superintendent that a condition referred to in clauses (a), (b) or (c) of subsection (1) exists, the Superintendent may, in the case of a licensed provincial company, order that the appraised value be reflected in calculations made for the purpose of this Act and the regulations and, in the case of a licensed extra-provincial company, shall send immediately a copy of the appraisal to the appropriate official of the company's jurisdiction of incorporation.

(4) An order of the Superintendent pursuant to subsection (3) shall be noted in the annual financial statement of a licensed provincial company. 1991, c. 7, s. 247.

Investigation

248 (1) Where, upon a statement made under oath or by solemn affirmation, it appears probable to the Minister that a licensed company or other person has violated any of the provisions of this Act or the regulations or an undertaking given or agreement made with the Minister pursuant to this Act, the Minister may, by order, appoint a person to make such investigation as the Minister considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) For the purpose of any investigation ordered pursuant to this Section, the person appointed to make the investigation may, without limiting the generality of the foregoing, investigate, inquire into and examine

(a) the affairs of the person or company in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, or on behalf of or in relation to or connected with the company or other person and any property, assets or things owned, acquired or alienated, in whole or in any part, by the company or other person or by any person or body corporate acting on behalf of or as agent for the person or company; and

(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing in or in relation to or in connection with the company or other person and the relationship that may at any time exist or may have existed between the company or other person and any other person by reason of investments, purchases, commis-

sions promised, secured or paid, interests held or acquired, purchase or sale of stock or other property, the transfer, negotiation or holding of stock, interlocking directorates, common control, undue influence or control or any other relationship.

(3) The person making an investigation pursuant to this Section has the same power to summon and enforce the attendance of witnesses and to compel them to give evidence on oath or solemn affirmation or otherwise, and to produce documents, records and things, as is vested in the Court for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce such documents, records and things as are in the person's custody or possession makes the person liable for contempt by a judge of the Court as if in breach of an order or judgment of the Court and no provision of the *Evidence Act* exempts any bank or loan company or trust company or an officer or employees of a bank or loan company or trust company from the operation of this Section.

(4) A person giving evidence at an investigation pursuant to this Section may be represented by counsel.

(5) Where an investigation is ordered pursuant to this Section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the licensed company or other person whose affairs are being investigated.

(6) Where any documents, records, securities or other property are seized pursuant to subsection (5), the documents, records, securities or other property shall be made available for inspection and copying by the licensed company or other person from whom they were seized at a mutually convenient time and place if a request for an opportunity to inspect or copy is made by the person or company to the person appointed to make the investigation.

(7) Where an investigation is ordered pursuant to this Section, the Minister may appoint an accountant or other expert to examine documents, records, properties and matters of the person or licensed company whose affairs are being investigated.

(8) Every person appointed pursuant to subsection (1) or (7) shall provide the Minister with a full and complete report of the investigation including any transcript of evidence and material in the person's possession relating to the investigation.

(9) The costs and expenses incurred in an investigation ordered pursuant to this Section

(a) shall be paid by the licensed company or other person to which the investigation relates; or

(b) where the company or other person cannot pay the costs and expenses, the Minister may include the costs and expenses in those referred to in Section 233. 1991, c. 7, s. 248.

Restriction on action or proceeding against official

249 No action or other proceeding for damages shall be instituted against the Minister, Superintendent or anyone acting under the direction of the Minister or Superintendent or anyone appointed pursuant to subsection (1) or (7) of Section 248 for any act done in good faith in the execution or intended execution of the person's duty or for any alleged neglect or default in the execution in good faith of the person's duty. 1991, c. 7, s. 249.

Freezing of funds, securities or assets by Minister

250 (1) The Minister may,

(a) where the Minister is about to order an investigation in respect of a licensed company or other person pursuant to Section 248 or during or after an investigation in respect of a person or licensed company pursuant to that Section;

(b) where the Minister is about to make or has made a decision confirming the revocation of the licence of a licensed company; or

(c) where proceedings in respect of a violation of this Act or the regulations or of any other matters referred to in subsection (1) of Section 248 are about to be or have been instituted against any licensed company or other person that, in the opinion of the Minister, are connected with or arise out of any business and affairs conducted by the company or other person,

by any method that provides a written or printed copy, order any licensed company or other person having on deposit or under control or for safekeeping any funds, securities or assets of the company or other person referred to in clauses (a), (b) or (c) to hold those funds or securities or assets or direct the company or other person referred to in clauses (a), (b) or (c) to refrain from withdrawing or dealing with those funds, securities or assets from any other person having any of them on deposit, under control or for safekeeping or to hold all funds, securities or assets in their possession or control in trust for the Minister or until the Minister, in writing, revokes the order or consents to release any particular fund or property from the order.

(2) In the case of an extra-provincial company, subsection (1) applies only to funds, securities or assets in the Province.

(3) An order issued pursuant to subsection (1) does not apply to funds or securities in a stock exchange clearing house or to securities in process of transfer by a transfer agent unless the order expressly so states, and in the case of a bank or a loan company or trust company, the order applies only to the offices, branches or agencies of the bank or loan company or trust company named in the order.

(4) A person or licensed company named in an order issued pursuant to subsection (1), if in doubt as to the application of the direction to particular funds, securities or assets, may apply to the Minister for an order of clarification.

(5) On the application of a licensed company or other person directly affected by an order issued pursuant to subsection (1), the Minister may order, on such terms and conditions as the Minister may impose, the revocation of the previous order or may consent to the release of any fund or security.

(6) In any of the circumstances mentioned in clauses (a), (b) or (c) of subsection (1), the Minister may, by any method that provides a written or printed copy, notify the appropriate registrar of deeds that proceedings are being or are about to be taken that may affect land belonging to the company or other person referred to in the notice, which notice shall be registered or recorded against the lands or claims mentioned in the notice in the appropriate registry office or in accordance with the *Registry Act*, as the case may be, and has the same effect as the registration or recording of a certificate of pending litigation, and the Minister may, in writing, revoke or modify the notice. 1991, c. 7, s. 250.

Failure to comply

251 (1) Where it appears to the Minister that a licensed company or other person has failed to comply with or is not complying with

- (a) a decision or order made or an approval given pursuant to this Act or the regulations;
- (b) a voluntary compliance program entered into;
- (c) an undertaking given or an agreement made with the Minister or the Superintendent pursuant to this Act; or
- (d) a term, condition or restriction imposed on its licence issued pursuant to this Act,

the Minister may, in addition to any other rights pursuant to this Act, apply to the Court for an order directing

- (e) the person or company to comply with the decision, order, approval, program, undertaking or agreement or a term, condition or restriction imposed on its licence or restraining the person or company from violating that decision, order, approval, program, undertaking or agreement or a term, condition or restriction imposed on its licence; and
- (f) its directors and officers of the person or company to cause the person or company to comply with the decision, order, approval, program, undertaking or agreement or to cease violating that decision, order, approval, program, undertaking or agreement or a term, condition or restriction imposed on its licence,

and the Court may make any order it thinks fit.

(2) An appeal lies to the Appeal Division of the Supreme Court from an order made pursuant to subsection (1). 1991, c. 7, s. 251.

Application to Court for order

252 (1) A depositor, a person for whom the company acts in a fiduciary capacity, a shareholder or creditor of a licensed company, the Minister, the Superintendent or any other person who, in the discretion of the Court, is a proper person to make an application pursuant to this Section may apply to the Court for an order pursuant to this Section.

(2) Where, on an application pursuant to subsection (1), the Court is satisfied that in respect of a licensed company or any of its affiliates

(a) any act or omission of the company or any of its affiliates effects or threatens to effect a result;

(b) the business or affairs of the company or any of its affiliates are, have been or are threatened to be carried on or conducted in a manner; or

(c) the powers of the directors of the company or any of its affiliates are, have been or are threatened to be exercised in a manner,

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a shareholder, depositor, creditor or person for whom the company acts in a fiduciary capacity, the Court may make an order to rectify the matters complained of.

(3) A person referred to in subsection (1), other than the Minister or the Superintendent, who makes an application pursuant to subsection (1), shall give notice to the Minister and the Minister or the Superintendent may appear and be heard in person or by counsel.

(4) In connection with an application pursuant to this Section, the Court may make any interim or final order it thinks fit including, without limiting the generality of the foregoing, an order

(a) restraining the conduct complained of;

(b) to regulate a provincial company's affairs by amending the by-laws;

(c) appointing directors in place of or in addition to all or any of the directors of a provincial company then in office;

(d) varying or setting aside a transaction or contract to which a licensed company is party and compensating the licensed company or any other party to the transaction or contract;

(e) requiring a licensed company, within a time specified by the Court, to produce to the Court or an interested person financial statements or an accounting in such other form as the Court may determine;

- (f) compensating an aggrieved person;
- (g) directing rectification of the records of a company; or
- (h) requiring the trial of any issue. 1991, c. 7, s. 252.

Restrictions on stay or dismissal

253 (1) An application made or an action brought or intervened in pursuant to Section 252 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 company or its subsidiary has been or may be approved by the shareholders of such body corporate, but evidence of the approval by the shareholders may be taken into account by the Court in making an order pursuant to Section 252.

(2) An application made or an action brought or intervened in pursuant to Section 252 shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given upon such terms as the Court thinks fit and, if the Court determines that the interests of any person described in subsection (1) of Section 252 may be substantially affected by such stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the person.

(3) A person described in subsection (1) is not required to give security for costs in an application made or action brought or intervened in pursuant to Section 252.

(4) In an application made or an action brought or intervened in pursuant to Section 252, the Court may, at any time, order the licensed company or any of its affiliates to pay to the applicant interim costs, including reasonable legal fees and disbursements, for which interim costs the applicant may be held accountable to the company or its affiliate upon final disposition of the application or action. 1991, c. 7, s. 253.

Order for rectification of records

254 (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a company, the company, a shareholder of the company or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

(2) An applicant pursuant to this Section shall give the Minister notice of the application and the Minister or the Superintendent may appear and be heard in person or by counsel.

(3) In connection with an application pursuant to this Section, the Court may make any order it thinks fit including, without limiting the generality of the foregoing,

(a) an order requiring the registers or records of the company to be rectified;

(b) an order determining the right of a party to the proceedings to have the party's name entered or retained in, or deleted or omitted from, the registers or records of the company, whether the issue arises between two or more shareholders or alleged shareholders, or between the company and any shareholders or alleged shareholders; and

(c) an order compensating a party who has incurred a loss.
1991, c. 7, s. 254.

Offences and penalties

255 (1) A person who

(a) traffics in a shareholders list contrary to Section 98;

(b) violates any provision of Sections 179 to 191 or any provision of an agreement referred to in Section 206;

(c) violates any provision of Section 211;

(d) accepts or gives a grant or gratuity or holds shares contrary to Section 219;

(e) allows the person's name to be used on behalf of a person having a beneficial interest in a provincial company for the purpose of disguising that interest;

(f) wilfully fails to comply with an undertaking given pursuant to this Act;

(g) wilfully fails to comply with an order made pursuant to this Act;

(h) in the case of a licensed company, violates any term, condition or restriction imposed on its licence;

(i) wilfully breaches the terms of a voluntary compliance program or an agreement referred to in subsection (2) of Section 205;

(j) wilfully fails to report to the Minister or the Superintendent as required pursuant to this Act or the regulations; or

(k) wilfully makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Minister or Superintendent that

(i) contains an untrue statement of material fact, or

(ii) omits to state a material fact required in that report, return, notice or other document or necessary to make a statement contained in that report, return, notice or other document not misleading in light of the circumstances in which it was made,

is guilty of an offence.

(2) A person who commits an offence referred to in subsection (1) is liable on summary conviction

(a) for a first offence,

(i) in the case of an individual, to a fine of not less than one thousand dollars and not more than one hundred thousand dollars or to imprisonment for a term of not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than five thousand dollars and not more than one hundred thousand dollars;

(b) for each subsequent offence,

(i) in the case of an individual, to a fine of not less than two thousand dollars and not more than two hundred thousand dollars or to imprisonment for a term of not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than ten thousand dollars and not more than two hundred thousand dollars.

(3) A person who caused, authorized, permitted, acquiesced in or participated in an offence referred to in subsection (1) is guilty of an offence and is liable on summary conviction

(a) for a first offence,

(i) in the case of an individual, to a fine of not less than one thousand dollars and not more than one hundred thousand dollars or to imprisonment for a term or not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than five thousand dollars and not more than one hundred thousand dollars;

(b) for each subsequent offence,

(i) in the case of an individual, to a fine of not less than two thousand dollars and not more than two hundred thousand dollars or to ~~imprisonment~~ [imprisonment] for a term of not more than two years or to both, and

(ii) in the case of a body corporate, to a fine of not less than ten thousand dollars and not more than two hundred thousand dollars.

(4) Notwithstanding subsection (1), a person for whom a voluntary compliance program has been approved by the Minister who complies fully

with that program shall not be prosecuted for or convicted of an offence in respect of the breach of this Act that the program was intended to remedy.

(5) A person is not guilty of an offence pursuant to clause (b) of subsection (1) if the person was not a party to the offence and reported the failure to comply with Sections 179 to 191 as set out in Sections 189 or 190. 1991, c. 7, s. 255.

Order to comply

256 Where a person commits an offence pursuant to this Act or the regulations, any court in which proceedings in respect of the offence are taken may, in addition to any other punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the violation of which the person has been convicted. 1991, c. 7, s. 256.

Order to make compensation or restitution

257 Where a person is convicted of an offence pursuant to this Act or the regulations, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation to the offence. 1991, c. 7, s. 257.

Violation not otherwise stated to be offence

258 A person who violates a provision of this Act or the regulations that is not otherwise stated to be an offence is guilty of an offence pursuant to this Act or the regulations. 1991, c. 7, s. 258.

Penalty where not otherwise provided for

259 A person convicted of an offence pursuant to this Act or the regulations for which no punishment is provided elsewhere in this Act or the regulations is liable on summary conviction to a fine of not more than one thousand dollars. 1991, c. 7, s. 259.

Default

260 (1) An individual in default of payment of a fine imposed pursuant to this Act or the regulations is liable to imprisonment in accordance with the *Summary Proceedings Act*.

(2) A body corporate in default of payment of a fine imposed pursuant to this Act or the regulations is liable to levy by distress and sale in accordance with Section 13 of the *Summary Proceedings Act*. 1991, c. 7, s. 260.

Continuing offence

261 Where an offence pursuant to this Act or the regulations is committed on more than one day or is continued for more than one day, it shall be deemed to be a separate offence for each day on which the offence is committed or continued. 1991, c. 7, s. 261.

Time prosecution to be instituted

262 A prosecution for an offence pursuant to this Act or the regulations may be instituted at any time within three years after the time when the subject-matter of the complaint arose. 1991, c. 7, s. 262.

No civil remedy suspended or affected

263 No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence pursuant to this Act or the regulations. 1991, c. 7, s. 263.

Receipt and payment of money

264 A licensed company, without the authority, aid, assistance or intervention of any other person or official being required, may receive deposits from any person regardless of the person's age, status or condition in life, and whether the person is qualified by law to enter into ordinary contracts or not, and from time to time may pay any or all of the principal of those deposits and any or all of the interest of those deposits to or in order of the person, unless before payment, the money on deposit is claimed by some other person in a court proceeding to which the company is a party and in respect of which service of a notice of action or other process originating such proceeding has been made on the company, or in any other proceeding pursuant to which an injunction or order made by the court requiring the company not to make payment of that money or to make payment of that money to some person other than the depositor has been served on the company, and in the case of any such claim so made, the money so deposited may be paid to the depositor with the consent of the claimant or the claimant with the consent of the depositor. 1991, c. 7, s. 264.

Nomination to receive deposits

265 (1) A person who has deposits with a licensed company not exceeding five thousand dollars in the aggregate may, by a writing signed by the person and deposited with the company, nominate any person to receive the amount of those deposits at the person's death.

(2) Upon receiving a statutory declaration as to the death of a person who has made a nomination pursuant to subsection (1), the licensed company may substitute on its books the name of the nominee in place of the name of the person or may immediately pay to the nominee the amount due.

(3) Where a depositor as described in subsection (1) dies without making a nomination in accordance with that subsection, the deposit may, without letters probate or letters of administration being taken out, be paid or transferred to the person who appears to the company to be

(a) entitled under the will of that depositor or, in the case of intestacy, under the law relating to devolution of property to receive it; or

(b) equitably entitled to the deposit by reason of having incurred expense for the maintenance, medical attendance or burial of the depositor,

upon receipt by the licensed company of the statutory declaration of the person so claiming stating the time and place of the death of the depositor and the facts supporting the claim. 1991, c. 7, s. 265.

Payment to entitled person after depositor's death

266 Where a licensed company, after the death of a depositor, has paid or transferred a deposit to the person who at the time appeared to be entitled, the payment or transfer is valid with respect to any demand from any other person as the legatee, next of kin or the personal representative of the deceased against the licensed company, but the legatee, next of kin or personal representative is entitled to recover the amount of the deposit from the recipient or transferee. 1991, c. 7, s. 266.

Unclaimed deposit

267 (1) Within thirty days after a deposit made in the Province to a licensed provincial company becomes an unclaimed deposit, the company shall pay to the Minister of Finance the amount owing to the depositor.

(2) The Minister of Finance may pay an amount received pursuant to subsection (1) to a person claiming to be entitled to it upon being furnished with satisfactory proof of the person's entitlement.

(3) For the purposes of subsection (1), a deposit becomes an unclaimed deposit on the day ten years after the day on which the fixed term ended, in the case of a deposit for a fixed term, and, in any other case, on the day ten years after the day on which the last transaction took place on the depositor's account or a statement of account was last requested or acknowledged by the depositor, whichever is latest. 1991, c. 7, s. 267.

Powers of company to which business transferred

268 The transfer by a licensed provincial trust company to another licensed trust company of the business in relation to which the company acted as a fiduciary, other than deposits, does not operate further or otherwise as a discharge to any former or continuing trustee, including the provincial company, than an appointment of new trustees for that purpose contained in an instrument would have operated, and the company to which the business was transferred has the same powers, authority and discretion and may act in all respects as if the trust company had been originally appointed a trustee by the instrument, if any, creating the trust. 1991, c. 7, s. 268.

Manner of notification

269 (1) A notice or document required by this Act, the regulations, the instrument of incorporation or the by-laws to be sent to a shareholder or director of

a provincial company may be sent by prepaid mail addressed to, or may be delivered personally to

- (a) the shareholder at the latest address as shown in the records of the company or its transfer agent; or
- (b) the director at the latest address as shown in the records of the company or in the latest records of the Superintendent.

(2) A director named in a notice sent by a provincial company to the Superintendent and filed by the Superintendent shall be deemed for the purposes of the service of the notice or document referred to in subsection (1) to be a director of the company referred to in the notice.

(3) A notice or document sent in accordance with subsection (1) to a shareholder or director of a provincial company shall be deemed to have been received by the shareholder or director at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholders or director did not receive the notice or document at that time or at all.

(4) If a provincial company sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the company is not required to send any further notices or documents to the shareholder until the shareholder informs the company in writing of the shareholder's new address. 1991, c. 7, s. 269.

Service of notice or document

270 (1) A notice or document required to be sent to or served upon a company may be sent by registered mail to the registered office of the company and, if so sent, shall be deemed to have been received or served at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the company did not receive the notice or document at that time or at all.

(2) If there are reasonable grounds for believing that a company will not receive a notice or document, a notice or document required to be sent to or served upon a company may be sent by registered mail to or served upon any director of the company as shown in the last notice filed with the Superintendent and, if so sent, shall be deemed to have been received or served on the company at the time it would have been delivered in the ordinary course of mail to such director, unless there are reasonable grounds for believing that the director did not receive the notice or document at the time or at all.

(3) In the case of an extra-provincial company, a notice or document within the meaning of subsection (1) may be sent or served upon it in accordance with Section 194.

(4) Where a notice or document is required by this Act or the regulations to be sent, the notice may be waived or the time for the notice may be waived or abridged at any time, either before or after the event, with the consent in writing of the person entitled to the notice or document. 1991, c. 7, s. 270.

Certificate signed by Minister or Superintendent

271 (1) Where this Act requires or authorizes the Minister or Superintendent to issue a certificate or to certify any fact, the certificate shall be signed by the Minister or Superintendent, as the case may be.

(2) A certificate referred to in subsection (1) or a certified copy of such certificate is admissible in evidence and when introduced as evidence in any civil, criminal or administrative action or proceeding, or for any other purpose, is proof, in the absence of evidence to the contrary, of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate. 1991, c. 7, s. 271.

Photostatic or photographic copy and verification

272 (1) Where a notice or document is required to be sent or filed with the Superintendent pursuant to this Act, the Superintendent may accept a photostatic or photographic copy of the notice or document.

(2) The Superintendent may require that a document or a fact stated in a document required by this Act or the regulations to be sent to the Superintendent shall be verified in accordance with subsection (3).

(3) A document or fact required by this Act or by the Superintendent to be verified may be verified by affidavit made under oath or by statutory declaration pursuant to the *Evidence Act* before any commissioner for taking affidavits or a notary public or in any such other manner as may be prescribed or permitted by the *Evidence Act*. 1991, c. 7, s. 272.

Authorization to alter document

273 The Superintendent may alter a notice or document, other than an affidavit or statutory declaration, if so authorized by the person who sent the document or by the person's representative. 1991, c. 7, s. 273.

Certificate of company

274 (1) A certificate issued on behalf of a company stating any fact that is set out in the instrument of incorporation, the by-laws, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the company is a party may be signed by a director or an officer of the company.

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding

- (a) a certificate referred to in subsection (1);
- (b) a certified extract from any register of a company; or
- (c) a certified copy of the minutes or extracts from minutes of a meeting of shareholders, directors or a committee of directors of a company,

is proof, in the absence of evidence to the contrary, of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate. 1991, c. 7, s. 274.

Report of cash transactions

275 A provincial company shall report cash transactions over an amount prescribed by regulation to the Superintendent in the manner prescribed by regulation and shall keep such records of the transaction as are prescribed by regulation. 1991, c. 7, s. 275.

Regulations

276 The Governor in Council may make regulations

- (a) prescribing forms that are required to be prescribed pursuant to this Act and providing for their use;
- (b) respecting forms to be used pursuant to this Act;
- (c) requiring the payment of fees for letters patent, supplementary letters patent, letters patent of continuance, letters patent of amalgamation and licences and renewals issued pursuant to this Act and in respect of any function performed by the Minister or Superintendent pursuant to this Act or the regulations and prescribing the amounts of those fees;
- (d) requiring the payment of fees in respect of the filing, examination or copying of documents and prescribing the amounts of those fees;
- (e) respecting words, expressions or symbols that are prohibited in the name of a licensed provincial company and prescribing other conditions respecting the use of names by licensed provincial companies;
- (f) prescribing the method of calculating the capital base of a company including what may or may not be included in the calculation and the manner in which the value of anything included in the calculation shall be calculated or determined for that purpose;
- (g) prescribing the method of calculating the total assets of a company including the manner in which the value of any of those assets shall be calculated or determined for that purpose;
- (h) prescribing limits in dollar amounts or in a percentage of total assets of investments in any assets or any class of assets and, where a limit has been imposed by this Act with respect to any asset or class of assets, prescribing limits that are more restrictive than those set out in the Act;

- (i) respecting required leverage ratios and risk weighted average ratios, and the manner of calculating them, for the purpose of Section 39;
- (j) respecting the issue of subordinated notes;
- (k) prescribing the method of calculating liquidity of a provincial company, and the form and amount of liquidity to be maintained by a provincial company;
- (l) prohibiting securities for the purposes of clause (c) of subsection (1) of Section 44.
- (m) designating Acts for the purposes of clause (a) of subsection (2) of Section 44;
- (n) prescribing amounts that may be invested in personal loans pursuant to clause (b) of subsection (2) of Section 44;
- (o) prescribing amounts for the purpose of subclause (ii) of clause (d) of subsection (2) of Section 44;
- (p) prescribing investments that are prohibited for the purposes of subsection (1) of Section 48;
- (q) prescribing investments for the purpose of subsection (1) of Section 49;
- (r) prescribing the per cent of total assets for the purpose of subsection (1) of Section 49;
- (s) prescribing companies for the purpose of subsection (2) of Section 51;
- (t) prescribing terms and conditions for the establishment or acquisition of subsidiaries of a provincial company;
- (u) respecting common trust funds, including the establishment and operation of common trust funds and the investment of trust money in those funds;
- (v) requiring the disclosure of loans, mortgages and interest rates in lending transactions;
- (w) respecting the custody and safekeeping of securities, property or trust assets registered in the name of or held by a provincial company;
- (x) prescribing recognized stock exchanges for the purpose of this Act;
- (y) respecting the records, papers and documents to be retained by provincial companies and the length of time they shall be so retained;
- (z) prescribing financial or other information to be provided by provincial companies to the Superintendent and the time at which such information shall be provided;

- (aa) prescribing information to be publicly disclosed by a provincial company or to be placed before the annual meeting of a provincial company;
- (ab) prescribing the information that shall be maintained by licensed companies and the public file of each company;
- (ac) exempting persons holding such percentage, as may be set out in the regulations, of shares of a provincial company from the requirements of Section 90;
- (ad) exempting classes of shares of provincial companies from the requirements of Section 90;
- (ae) requiring the bonding and insurance coverage of and for directors, officers, agents and employees of a company and of property of the company or held by it;
- (af) respecting networking arrangements between licensed provincial companies and other persons providing products or services, prohibiting or restricting any such arrangements and governing the conduct of licensed provincial companies that have networking arrangements;
- (ag) prescribing information to be provided to security holders of a company and to persons on whose behalf a licensed company holds securities of a body corporate as fiduciary or agent;
- (ah) prohibiting the transfer or issue of voting shares of a provincial company;
- (ai) prescribing individuals disqualified from being a director of a provincial company for the purposes of clause (j) of subsection (1) of Section 100;
- (aj) prescribing individuals who are not eligible to be outside directors for the purposes of clause (d) of subsection (7) of Section 102;
- (ak) respecting the qualifications for appointment as an officer of a provincial company;
- (al) respecting reports of transactions required to be reviewed by the audit committee;
- (am) prescribing duties for audit and investment committees;
- (an) prescribing procedures to be established by a provincial company for the purposes of clause (d) of subsection (1) of Section 121;
- (ao) respecting the activities of a company in dealing with persons who act as agents for the licensed company and governing the relationships between the company and its agents and reporting of those agents;
- (ap) respecting the format and contents of financial statements, notices and other documents required pursuant to this Act;
- (aq) respecting reports by auditors;

(ar) prescribing classes of loans, investments or transactions for the purposes of Sections 179 to 191;

(as) permitting licensed provincial companies to make loans to employees as described in subsection (2) of Section 182 and prescribing the maximum amount of any such loan;

(at) respecting investments, and prohibiting or restricting as to amount, investments by licensed extra-provincial companies in the Province for the purposes of Section 197;

(au) prescribing financial or other information to be provided to the Superintendent and the time at which such information shall be provided for the purposes of Section 198;

(av) respecting the activities of deposit brokers and any other persons referred to in Section 207 and the relationship between the company, deposit brokers and any other persons referred to in Section 207 and their clients;

(aw) respecting hearings and appeals and the procedures for hearings and appeals;

(ax) respecting assessments with respect to licensed companies for recovering the costs and expenses referred to in subsection (1) of Section 233, including the amount of the assessment with respect to each company, the manner, time and frequency of assessments and payments and the use of different methods of assessment with respect to different companies;

(ay) prescribing procedures related to the payment of unclaimed deposits to the Minister of Finance pursuant to Section 267, requiring provincial companies to give notices to depositors in relation to the deposits and to keep such records of the deposits as are prescribed by regulations;

(az) prescribing rules with respect to exemptions permitted by this Act;

(ba) prohibiting or restricting the engaging by a licensed provincial company in tied selling practices;

(bb) setting out the circumstances in which investments of a subsidiary of a licensed provincial company are deemed to be investments of the company;

(bc) respecting the protection of customers and the public in their dealings with licensed provincial companies, including the making of representations by licensed provincial companies to them;

(bd) respecting the confidentiality of information possessed by licensed provincial companies or their subsidiaries or affiliates concerning their customers or clients, and prohibiting or restricting solicitations based on, or the giving of access to, any such information;

(be) requiring and respecting the provision of information to security holders of a licensed provincial company and to persons on whose

behalf a licensed provincial company holds securities of a body corporate as fiduciary or agent;

(bf) defining any word or expression used but not defined in this Act;

(bg) prescribing any matter required or authorized by this Act to be prescribed;

(bh) for any purpose necessary or advisable to carry out the intent and purpose of this Act. 1991, c. 7, s. 276.

Loan Companies Act repealed

277 Chapter 264 of the Revised Statutes, 1989, the *Loan Companies Act*, is repealed. 1991, c. 7, s. 277.

Trust Companies Act repealed

278 Chapter 478 of the Revised Statutes, 1989, the *Trust Companies Act*, is repealed. 1991, c. 7, s. 278.

Trust and Loan Corporations Act repealed

279 Chapter 315 of the Revised Statutes, 1967, the *Trust and Loan Corporations Act*, is repealed. 1991, c. 7, s. 279.

Loan Companies Inspection Act amended

280 *amendment*

Proclamation

281 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1991, c. 7, s. 281.

Proclaimed - December 18, 1991
In force - January 1, 1992
