BILL NO. 45

Government Bill

2nd Session, 60th General Assembly
Nova Scotia
56 Elizabeth II, 2007

An Act to Amend Chapter 81 of the Revised Statutes, 1989, the Companies Act

CHAPTER 34
ACTS OF 2007

AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 13, 2007

The Honourable Jamie Muir
Minister of Service Nova Scotia and Municipal Relations

Halifax, Nova Scotia
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An Act to Amend Chapter 81 of the Revised Statutes, 1989, the Companies Act

Be it enacted by the Governor and Assembly as follows:

1 (1) Subsection 2(1) of Chapter 81 of the Revised Statutes, 1989, the *Companies Act*, as amended by Chapter 15 of the Acts of 1990, is further amended by

(a) adding immediately after clause (aa) the following clause:

(ab) "body corporate" includes a company or other body corporate wherever or however incorporated;

(b) relettering clause (ba) as (bb) and adding immediately preceding clause (bb) the following clause:

(ba) "class", in relation to shares, means shares that are issued with preferred, deferred or other special rights or restrictions, whether in regard to dividends, voting, return of share capital or otherwise;

(c) striking out clause (c) and substituting the following clause:

(c) "company" means a company formed and registered or continued under this Act, or an existing company, that has not been discontinued under this Act;

(d) striking out clause (d) and substituting the following clause:

(d) "court" means the Supreme Court of Nova Scotia, or a judge thereof;

(e) adding "*Trust and***" immediately after "the" in the third line of clause (j);**

(f) adding immediately after clause (nb) the following clause:

(nc) "series", in relation to shares, means a division of a class of shares;

and

(g) adding immediately after clause (o) the following clause:

(oa) "trust company" means, and shall be deemed always to have meant, a company carrying on the business of a trust company as defined in the *Trust and Loan Companies Act*;

(2) Subsections 2(2) to (4) of Chapter 81, as enacted by Chapter 15 of the Acts of 1990, are amended by

(a) striking out "company" wherever it appears in those subsections and substituting in each case "body corporate**"; and**

(b) striking out "companies" wherever it appears in those subsections and substituting in each case "bodies corporate**".**

(3) Section 2 of Chapter 81, as amended by Chapter 15 of the Acts of 1990, is further amended by adding immediately after subsection (4) the following subsection:

(5) A body corporate is the holding body corporate of another body corporate if that other body corporate is a subsidiary of that body corporate.

2 Section 5 of Chapter 81, as amended by Chapter 5 of the Acts of 2002 and Chapter 3 of the Acts of 2004, is further amended by adding immediately after subsection (3) the following subsections:

(4) A continuance tax in the amount of one thousand dollars shall be paid to the Registrar for filing documents in support of a continuance if the continued company is an unlimited company, and that tax is in substitution for the continuance fee contained in the regulations.

(5) A conversion tax in the amount of one thousand dollars shall be paid to the Registrar for filing documents in support of an alteration of the memorandum if the effect of the alteration is to convert the company to an unlimited company.

3 Clause 10(a) of Chapter 81, as amended by Chapter 8 of the Acts of 1998, is further amended by

(a) striking out "Ltd" in the third line of subclause (i) and substituting "Ltd.**"; and**

(b) striking out subclauses (iv) to (vi) and substituting the following subclauses:

(iv) in the case of a company having par value shares, the amount of share capital of each class of such shares with which the company proposes to be registered and the division thereof into shares of a fixed amount,

(v) in the case of a company having shares without nominal or par value, the maximum number of shares of each class of such shares that the company is authorized to issue or, where there is no limit on the number of shares of any such class, a statement to that effect, and

(vi) in the case of a company having both par value shares and shares without nominal or par value, the particulars thereof in accordance with subclauses (iv) and (v);

4 Section 11 of Chapter 81, as amended by Chapter 8 of the Acts of 1998, is further amended by

(a) striking out "Ltd" in the third line of subclause (a)(i) and substituting "Ltd.**"; and**

(b) striking out subclause (b)(i) and substituting the following subclause:

(i) the memorandum must also state

(A) in the case of a company having par value shares, the amount of share capital of each class of such shares with which the company proposes to be registered and the division thereof into shares of a fixed amount,

(B) in the case of a company having shares without nominal or par value, the maximum number of shares of each class of such shares that the company is authorized to issue or, where there is no limit on the number of shares of any such class, a statement to that effect, and

(C) in the case of a company having both par value shares and shares without nominal or par value, the particulars thereof in accordance with paragraphs (A) and (B),

5 Chapter 81 is further amended by adding immediately after Section 12 the following Section:

12A Subject to Sections 10, 11 and 12, the memorandum may set out any provisions permitted by this Act or by law to be set out in the articles of the company.

6 Section 14 of Chapter 81 is amended by striking out "conditions" in the first line and substituting "provisions**".**

7 Clause 16(1)(b) of Chapter 81 is amended by striking out "without the consent of the Governor in Council, which contains the words "Royal" or "Imperial" or" in the first, second and third lines.

8 (1) Subsections 19(1) to (4) of Chapter 81 are repealed and the following subsections substituted:

(1) Subject to subsections (2) and (4), a company may, by resolution of its shareholders, add, change or remove any provision of its memorandum to

(a) in the case of a company limited by shares or by guarantee, where authorized by its articles,

(i) increase its share capital by the creation of new shares of such amount as it thinks expedient,

(ii) increase its share capital to authorize a new class of shares without nominal or par value, either stating the maximum number of shares of such class that the company is authorized to issue or, where there is no limit on the number of shares of such class, a statement to that effect,

(iii) change the maximum number of shares of a class of shares without nominal or par value, that the company is authorized to issue, which may include a change to or from an unlimited number of shares of that class,

(iv) consolidate and divide all or any of its share capital into shares of larger amounts than its existing shares,

(v) change the shares of any class, whether issued or unissued, into a different number of shares of the same class or into the same or different number of shares of another class,

(vi) convert all or any of its paid-up shares into stock and reconvert that stock into paid-up shares of any denomination or into shares without nominal or par value,

(vii) subdivide its shares, or any of them, into shares of smaller amounts than is fixed by the memorandum, so, however, that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share is the same as it was in the case of the share from which the reduced share is derived,

(viii) exchange shares of one denomination for another, including shares without nominal or par value,

(ix) cancel shares that at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled,

(x) convert any part of its issued or unissued share capital into preference shares redeemable or purchasable by the company,

(xi) except in the case of preferred shares, convert all or any of its previously authorized unissued or issued and fully paid-up shares with nominal or par value into the same number of shares without any nominal or par value and reduce, maintain or increase accordingly its liability on any of its shares so converted, but the power to reduce its liability on any of its shares so converted where it results in a reduction of paid-up capital may only be exercised in accordance with Section 57,

(xii) convert all or any of its previously authorized unissued or issued and fully paid-up shares without nominal or par value into the same or a different number of shares with nominal or par value and for such purpose the shares issued without nominal or par value and replaced by shares with a nominal or par value shall be considered as fully paid, but their aggregate par value shall not exceed the value of the net assets of the company as represented by the shares without par value issued before the conversion, or

(xiii) change the designation of all or any of its shares and add, change or remove any rights, privileges, restrictions or conditions including rights to accrued dividends, in respect of all or any of the shares, whether issued or unissued;

(b) add, change or remove any provision of the memorandum that limits the liability of the members, the effect of which is to convert a company limited by shares or by guarantee to an unlimited company;

(c) in the case of a company that was incorporated before the first day of September, 1982, and that has not previously altered its memorandum pursuant to this Act, to add, change or remove any provision to enable it to change to a company that has, pursuant to subsection (8) of Section 26, the capacity, rights, powers and privileges of a natural person;

(d) add, change or remove any provision in respect of the objects or powers of the company; and

(e) add, change or remove any other provision that is permitted by this Act or in law to be set out in the memorandum.

(2) Subject to subsections (3) and (4), the powers in subclauses (ii), (iii), (iv), (v), (vi), (vii), (viii), (x), (xi), (xii) and (xiii) of clause (a) of subsection (1) and clauses (c), (d) and (e) of subsection (1) must be exercised by special resolution.

(3) Subject to subsection (4), the power to add, change or remove any provision of the memorandum pursuant to

(a) clause (b) of subsection (1); or

(b) in the case of a company incorporated before the first day of September, 1982, and that has not altered its memorandum of association pursuant to clause (c) of subsection (1), clauses (c), (d) or (e) of subsection (1),

must be exercised with the approval of all members of the company, whether or not the shares held by them otherwise carry the right to vote, and a certificate of an officer of the company attesting to the approval of the alteration by members of the company in accordance with this subsection together with a copy of the memorandum as altered shall be delivered by the company to the Registrar, who shall register the same and certify the registration, and the certificate of the Registrar is conclusive evidence that all the requirements of this Act with respect to the alteration and its approval have been complied with, and the memorandum so altered is the memorandum of the company and before the issuance of the certificate in accordance with this subsection, the Registrar must be satisfied that all persons who will be members of the company at the time of or immediately after the alteration have consented to the alteration and, for such purpose, the Registrar may rely upon a certificate of an officer of the company attesting to the approval.

(4) In the case of a proposed change or removal of a provision in the memorandum that is stated to be unalterable without court order, the provision may not be changed or removed pursuant to subsections (1) and (2) until and to the extent that it is confirmed on petition to the court.

(4A) In the case of a proposed change or removal of a provision in the memorandum that is stated to be, or can reasonably be concluded to be, for the benefit of a person or class of persons including creditors or holders of debentures of the company, but not including members of the company generally in their capacity as members, hereinafter in this Section referred to as "Interested Persons", or each individually an "Interested Person", the provision may not be changed or removed pursuant to subsections (1) and (2) until and to the extent that it is confirmed on petition to the court or approved in writing by each interested person.

(2) Subsections 19(5) to (8) of Chapter 81 are repealed and the following subsections substituted:

(5) Before confirming the change or removal, the court must be satisfied that

(a) sufficient notice has been given to every Interested Person; and

(b) with respect to every Interested Person who, in the opinion of the court, is entitled to object, and who signifies the person's objection in the manner directed by the court, either the person's consent to the change or removal has been obtained or the person's debt or claim, if any, has been discharged or has been determined, or has been secured to the satisfaction of the court,

but the court may, in the case of any Interested Person or class of Interested Persons, for special reasons, dispense with the notice required by this Section.

(6) The court may make an order confirming the change or removal, either wholly or in part, and on such terms and conditions as the court thinks fit, and the court shall, in exercising its discretion under this subsection, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of Interested Persons, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the court for the purchase of interests of dissentient members, and may give such directions and make such orders as it thinks expedient for facilitating or carrying into effect any such arrangement, but no part of the capital of the company may be expended in any such purchase without complying with Section 51.

(7) A certified copy of the order confirming the alteration under subsection (6) or a certificate of the officer of the company attesting to the approval of the alteration by the members of the company in accordance with subsection (3), as the case may be, together with a printed, typewritten or otherwise mechanically reproduced copy of the memorandum as altered shall, within fifteen days from the date of the order or approval, be delivered by the company to the Registrar, and the Registrar shall register the same, and shall certify the registration under the Registrar's hand, and the certificate of the Registrar is conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation or approval thereof have been complied with, and thenceforth the memorandum so altered is the memorandum of the company.

(3) Section 19 of Chapter 81 is further amended by adding immediately after subsection (10) the following subsections:

(11) Where an alteration of a memorandum has been made under this Section, every copy of the memorandum issued after the date of the alteration must be in accordance with the alteration and, where a company fails to comply with this provision, it is liable to a penalty not exceeding five dollars for each copy in respect of which default is made, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty.

(12) Where shares of a class are issued in series, and any designation, rights, privileges, restrictions or conditions attaching to any series of such shares are set out in the memorandum, all provisions of this Section respecting the creation, amendment, exchange, cancellation or other change of shares of any class apply.

9 Chapter 81 is further amended by adding immediately after Section 19 the following Sections:

19A (1) Where the memorandum so provides, no shares of a class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at such price and on such terms as those shares are to be offered to others.

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

(a) for consideration other than money;

(b) as a share dividend; or

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

19B (1) Notwithstanding anything contained in this Act, preferred shares and debentures may be issued as convertible into shares of any class or classes as fully or partly paid up, or may, by special resolution, be made convertible into shares of any class or classes as fully or partly paid up.

(2) Where preferred shares or debentures to which subsection (1) applies are converted, it is not necessary to comply with Section 109.

19C Where a company having a share capital has

(a) consolidated and divided its share capital into shares of larger amount than its existing shares;

(b) converted any of its shares into stock;

(c) reconverted stock into shares; or

(d) cancelled shares that have not been taken or agreed to be taken by any person at the date of the passing of the resolution in that behalf and diminished the amount of its share capital by the amount of the shares so cancelled,

it shall give notice to the Registrar of the consolidation, division, conversion, reconversion or cancellation, specifying the shares consolidated, divided, converted or cancelled or of the stock reconverted.

19D Where a company has converted any of its shares into stock and given notice of the conversion to the Registrar, the register of members of the company shall show the amount of stock held by each member instead of the amount of shares and the particulars relating to shares required by this Act.

19E (1) Where a company that has authorized the issue of shares, whether its shares have or have not been converted into stock, has increased its share capital beyond the registered capital or the number of its authorized shares of any class, the company shall give to the Registrar, within fifteen days after the passing of the resolution authorizing the increase, notice of the increase of capital and the Registrar shall record the increase.

(2) Where a company not having authorized the issuance of shares has increased the number of its members beyond the registered number, the company shall give to the Registrar, within fifteen days after the increase was resolved on or took place, notice of the increase of members and the Registrar shall record the increase.

(3) Where a company fails to comply with this Section, it is liable to a penalty not exceeding twenty-five dollars for every day during which the default continues, and every director and manager of the company who knowingly and wilfully authorizes or permits the default is liable to the same penalty.

19F (1) Where any shares of a company are issued for the purpose of raising money to defray the expenses of the construction of any works or building or the provision of any plant that cannot be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up for the period and subject to the conditions and restrictions in this Section mentioned, and may charge the sum so paid by way of interest to capital as part of the cost of construction of the work or building, or the provision of plant, but

(a) no such payment shall be made unless it is authorized by the articles or by special resolution;

(b) the rate of interest must in no case exceed six per cent per annum;

(c) the payment of the interest must not operate as a reduction of the amount paid up on the shares in respect of which it is paid; and

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

(2) Where default is made in complying with clause (d) of subsection (1), the company and every officer of the company who is in default is liable to a penalty not exceeding one hundred dollars.

10 Subsections 20(3) and (4) of Chapter 81 are repealed and the following subsection substituted:

(3) In the case of an unlimited company, the articles must state

(a) in the case of a company having par value shares, the amount of share capital of each class of such shares with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(b) in the case of a company having shares without nominal or par value, the maximum number of shares of each class of such shares that the com-

pany is authorized to issue or, where there is no limit on the number of shares of any such class, a statement to that effect; and

(c) in the case of a company having both par value shares and shares without nominal or par value, the particulars thereof in accordance with clauses (a) and (b).

11 (1) Subsection 23(1) of Chapter 81 is amended by striking out "conditions" in the first line and substituting "provisions**".**

(2) Subsection 23(2) of Chapter 81 is amended by adding "and relating to the number of shares without nominal or par value**" immediately after "shares" in the fifth line.**

12 (1) Subsection 26(3) of Chapter 81 is amended by

(a) striking out "(j)" in the fourth line and substituting "(c)**"; and**

(b) striking out "(4)" in the fifth line and substituting "(2)**".**

(2) Subsection 26(7) of Chapter 81 is amended by

(a) striking out "(j)" in the fourth line and substituting "(c)**"; and**

(b) striking out "(4)" in the fifth line and substituting "(2)**".**

(3) Subsection 26(9) of Chapter 81 is amended by striking out "confirmed by the court upon petition" in the last two lines and substituting "filed with the Registrar**".**

(4) Subsection 26(10) of Chapter 81 is repealed.

(5) Subsection 26(17) of Chapter 81 is repealed and the following subsections substituted:

(17) In the case of a company with shares of a class or series, the company shall maintain or be deemed to maintain a capital account for each class or series and, except to the extend that this Act or other law permits the addition of a lesser amount, there shall be added or deemed to have been added to the capital account maintained or deemed to be maintained for each class or series, at the time of issuance of the shares, whether issued before or after the coming into force of this subsection,

(a) in the case of a class or series of shares without nominal or par value, the total amount of the consideration for the issue and allotment of the shares of that class or series; and

(b) in the case of a class or series of shares with a nominal or par value, except to the extent that the shares are not fully paid, the total par value of the shares of that class or series that have been issued.

(18) Notwithstanding subsection (17), a company may, in respect of the issuance of shares of a class or series without nominal or par value, add to the capital account maintained for shares of such class or series, the whole or any part of the amount of the consideration that it receives for such shares if the company issues shares

(a) in exchange for

(i) property of a person who immediately before the exchange did not deal with the company at arm's length within the meaning of that expression in the *Income Tax Act* (Canada), or

(ii) shares of or another interest in a body corporate that immediately before the exchange, or because of the exchange, did not deal with the company at arm's length within the meaning of that expression in the *Income Tax Act* (Canada); or

(b) pursuant to an agreement referred to in subsection (2) of Section 134 or an arrangement referred to in Sections 130 or 131 or to shareholders of an amalgamating company who receive the shares in addition to or instead of securities of the amalgamated company; or

(c) in any other case, where permitted by law, if the person, the company and all the holders of shares in the class or series of shares so issued consent to the amount so added.

(19) Subject to subsection (20), a company may, at any time, including upon continuance under this Act, add to a capital account of a class or series of shares any amount it credited to retained earnings, share premium, contributed surplus or other surplus account, but, in the event such class or series of shares has a nominal or par value, the amount so added cannot cause the total amount of the capital account for such class or series of shares to exceed the total par value of all issued and outstanding shares of that class or series.

(20) Where a company proposes to add, pursuant to subsection (19), any amount to a capital account it maintains in respect of a class or series of shares, if

(a) the amount to be added was not received by the company as consideration for the issue of shares of the class or series; and

(b) the company has issued any outstanding shares of more than one class or series,

the addition to the capital account of such class or series of shares must be approved by special resolution.

(21) Where a body corporate is continued under this Act, subsections (17) and (18) do not apply to the consideration received by it before it was so continued, except in so far as any share in respect of which the consideration is received is issued after the company is so continued.

(22) Where a body corporate is continued under this Act, any amount unpaid in respect of a share of a class or series of shares issued by it before it was continued and paid after it was continued shall be added to the capital account maintained for such class or series of shares, unless already included therein, but, where such share has a nominal or par value, the amount so added will be the lesser of the amount so paid and the difference between the nominal or par value of that share and the amounts previously paid in respect of that share that have been previously credited to such capital account on or before continuance.

(23) Where a body corporate is continued under this Act, the capital account of each class and series of shares of the company immediately following its continuance is deemed to have been credited with an amount equal to

(a) in the case of shares of a class or series without nominal or par value, the amount of the capital of the body corporate, whether referred to as stated capital, paid-up capital or otherwise, or such other amount as would be the nearest equivalent thereto in respect of such class or series of shares before its continuance under the laws by which it was then governed; and

(b) in the case of shares of a class or series with nominal or par value, the lesser of the amount of the capital of the body corporate, whether referred to as stated capital, paid-up capital or otherwise, or such other amount as would be the nearest equivalent thereto in respect of such class or series of shares prior to its continuance under the laws by which it was then governed, and the par value of the shares.

13 Subsection 27(1) of Chapter 81 is amended by adding ", but subject to subclause (xii) of clause (a) of subsection (1) of Section 19**" immediately after "company" in the second line.**

14 Section 34 of Chapter 81 is amended by striking out "certificate," in the first line and substituting "certificate, signed in accordance with the articles, whether or not**".**

15 (1) Subsections 43(1) to (3) of Chapter 81 are repealed and the following subsections substituted:

(1) The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company or such other location as is designated by the directors of the company.

(2) The register or information contained in the register must be available for inspection and copying by

(a) any member of the company, in the case of a company that is not a reporting issuer; and

(b) by any person, in the case of a reporting issuer,

at the registered office, physically or by means of a computer terminal or other electronic technology during business hours, subject to such reasonable restrictions as the company in general meeting may impose, so that no less than two hours in each day is allowed for inspection.

(3) The register or information contained in the register must be available for inspection by any member of a company without charge and by any person referred to in clause (b) of subsection (2) on payment of five dollars and thirty cents, or such lesser sum as the company may prescribe, for each inspection.

(3A) Any person entitled to inspect the register or information contained in the register may require a copy of the register, or any part thereof, on pay-

ment of one dollar, or such lesser sum as the company may prescribe, for every page or part thereof required to be copied.

(2) Subsection 43(5) of Chapter 81 is repealed and the following subsections substituted:

(5) A person who claims to be entitled to inspect or receive a copy of the register, and who is not permitted to inspect or be furnished with a copy of the register, or any part thereof, as set out in this Section, may apply in writing to the Registrar for an order under subsection (6).

(6) Where, on application of a person referred to in subsection (5), it appears to the Registrar that the company failed to allow the inspection or provide a copy of the register, or part thereof, to the applicant, the Registrar may order the company to provide, within fifteen days from the date of the order, an affidavit or sworn declaration of a director or officer of the company stating the reasons why the company believes the applicant should not be permitted to inspect the register or be provided with a copy of the register, or part thereof.

(7) Following receipt of the affidavit or sworn declaration referred to in subsection (6), the Registrar shall provide a copy of the affidavit or sworn declaration to the applicant and shall either

(a) order the company to permit the applicant to inspect the register or provide the applicant with a copy of the register, or part thereof, on such terms and conditions as may be ordered by the Registrar; or

(b) refuse the applicant's request to inspect the register or receive a copy of the register, or part thereof.

(8) Where the company fails to provide the affidavit or sworn declaration within the time required under subsection (6), the Registrar may make an order under subsection (7).

(9) An applicant or the company may, on written notice to the other party and the Registrar, apply to the court for a review of a decision of the Registrar under this Section, and the court may make such order as it considers just.

16 (1) Subsection 46(1) of Chapter 81 is amended by adding "or by the directors**" immediately after "articles" in the second line.**

(2) Subsection 46(5) of Chapter 81 is amended by

(a) striking out "its registered office" in the first and second line and substituting "the location of its principal register**"; and**

(b) striking out "its registered office" in the fourth line and substituting "that location**".**

(3) Subsection 46(7) of Chapter 81 is amended by striking out "registered office of the company" in the last line and substituting "location of the principal register**".**

(4) Section 46 of Chapter 81 is further amended by adding immediately after subsection (9) the following subsection:

(10) The provisions of Section 43 relating to the provision of access to the principal register of members apply *mutatis mutandis* to any branch register authorized by this Section.

17 (1) Subsection 49(1) of Chapter 81 is amended by adding "limited by shares**" immediately after "company" in the first line.**

(2) Subsection 49(2) of Chapter 81 is amended by striking out "memorandum" in the second line and substituting "statement**".**

18 Subsection 50(4) of Chapter 81, as amended by Chapter 15 of the Acts of 1990, is further amended by striking out "condition" in the first line and substituting "provision**".**

19 (1) Subsections 51(1) to (3) of Chapter 81 are repealed.

(2) Subsection 51(5) of Chapter 81 is amended by adding "limited by shares or by guarantee**" immediately after "company" in the second line.**

(3) Subsection 51(6) of Chapter 81 is amended by adding "limited by shares or by guarantee**" immediately after "company" in the first line.**

(4) Subsection 51(7) of Chapter 81 is amended by adding "limited by shares or by guarantee**" immediately after "company" in the second line.**

(5) Subsection 51(8) of Chapter 81 is amended by adding "limited by shares or by guarantee**" immediately after "company" in the first line.**

(6) Subsection 51(9) of Chapter 81 is amended by adding "limited by shares or by guarantee**" immediately after "company" in the second line.**

(7) Subsection 51(10) of Chapter 81 is amended by adding "limited by shares or by guarantee**" immediately after "company" in the first line.**

(8) Subsection 51(11) of Chapter 81, as enacted by Chapter 15 of the Acts of 1990, is amended by adding "pursuant to this Section**" immediately after "it" in the third line.**

(9) Subsection 51(12) of Chapter 81 is amended by

(a) adding ", in the case of a company limited by shares or by guarantee**" immediately after "and" the second time it appears in the third line; and**

(b) striking out ", and Sections 57 to 67 do not apply in respect thereof" in the fourth and fifth lines.

(10) Subsection 51(14) of Chapter 81, as amended by Chapter 15 of the Acts of 1990, is further amended by adding "limited by shares or by guarantee**" immediately after "company" in the second line.**

(11) Subsection 51(15) of Chapter 81 is amended by adding ", but subsection (13) applies**" immediately after "capital" in the fourth line.**

20 Sections 52 to 56 of Chapter 81 are repealed.

21 Sections 57 and 58 of Chapter 81 are repealed and the following Sections substituted:

57 (1) A company limited by shares or by guarantee may, where authorized pursuant to subsection (2), reduce its paid-up capital of any class or series of shares for any purpose including, without limiting the generality of the foregoing, the purpose of

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share;

(b) either with or without extinguishing or reducing liability on any of its shares, paying or distributing to the holder of an issued share of any class or series of shares an amount not exceeding the paid-up capital of the class or series; and

(c) declaring its paid-up capital to be reduced, without payment or distribution, by an amount that is not represented by realizable assets or by such other amount as the company may see fit.

(2) A company limited by shares or by guarantee may not reduce its paid-up capital of any class or series of shares unless authorized to do so

(a) by special resolution, unless there are reasonable grounds for believing that

(i) the company is, or would after the reduction be, unable to pay its liabilities as they become due, or

(ii) the realizable value of the company's assets would thereby be less than the aggregate of its liabilities; or

(b) by special resolution confirmed by court order,

and, in the case of a reduction of the paid-up capital of a class or series of shares with nominal or par value, such resolution shall, to the extent necessary, subject to confirmation by the court if required, alter the company's memorandum by reducing the amount of its share capital and shares accordingly.

(3) A creditor of a company limited by shares or by guarantee is entitled to apply to the court for an order compelling a shareholder or other recipient

(a) to pay to the company an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this Section; or

(b) to pay or deliver to the company any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this Section.

(4) An unlimited company may, where so authorized pursuant to subsection (5), reduce its paid-up capital of any class or series of shares for any purpose including, without limiting the generality of the foregoing, the purpose of

(a) extinguishing or reducing a liability in respect of an amount unpaid on any share;

(b) either with or without extinguishing or reducing liability on any of its shares, paying or distributing to the holder of an issued share of any class or series of shares an amount not exceeding the paid-up capital of the class or series; and

(c) declaring its paid-up capital to be reduced, without payment or distribution, by an amount that is not represented by realizable assets or by such other amount as the company may see fit.

(5) An unlimited company may not reduce its paid-up capital of any class or series of shares unless authorized to do so

(a) in the manner provided in its articles; or

(b) by special resolution,

and shall, in the case of a reduction of the paid-up capital of a class or series of shares with nominal or par value, alter its articles by reducing the amount of its share capital and of its shares accordingly.

(6) Where a company has issued more than one class or series of shares, a special resolution referred to in subsections (2) or (5), must specify the capital account or accounts from which the paid-up capital returned, cancelled or otherwise extinguished will be deducted.

(7) Where an unlimited company has issued more than one class or series of shares and a reduction of paid-up capital is authorized by a provision in its articles pursuant to clause (a) of subsection (5), the provision must include a means to ascertain from which capital account or accounts the paid-up capital returned, cancelled or otherwise extinguished will be deducted.

58 Where the shareholders of a company limited by shares or by guarantee have passed a special resolution pursuant to clause (b) of subsection (2) of Section 57 authorizing the reduction of paid-up capital, the company may apply by petition to the court for an order confirming the reduction and Sections 59 to 67 apply.

22 (1) Subsection 59(1) of Chapter 81 is amended by

(a) striking out "share" in the first line and substituting "the paid-up**";**

(b) striking out "share" in the third line; and

(c) striking out "share" in the fourth line.

(2) Subsection 59(2) of Chapter 81 is amended by

(a) striking out "share" in the first line and substituting "the paid-up**"; and**

(b) striking out "share" in the third and in the fourth lines.

23 (1) Subsection 61(1) of Chapter 81 is amended by

(a) striking out "share" in the third line and substituting "the paid-up**"; and**

(b) adding ", in the case of a reduction of the paid-up capital of shares with a nominal or par value,**" immediately after "and" in the fourth line.**

(2) Subsection 61(2) of Chapter 81 is amended by striking out "share" in the second line and substituting "the paid-up**".**

(3) Subsection 61(4) of Chapter 81 is amended by

(a) striking out "share" in the fourth line and substituting "the paid-up**";** and

(b) adding ", in the case of a reduction of the paid-up capital of shares with a nominal or par value,**" immediately after "and" in the fifth line.**

24 Section 64 of Chapter 81 is repealed.

25 Subsection 80(5) of Chapter 81 is amended by striking out "Ltd" in the sixth line and substituting "Ltd.**".**

26 Section 81 of Chapter 81 is amended by striking out "contradiction" in the third line and substituting "contraction**".**

27 Section 86 of Chapter 81 is amended by striking out "corporation" wherever it appears in the Section and substituting in each case "body corporate**".**

28 (1) Subsections 87(1) and (2) of Chapter 81 are repealed and the following subsections substituted:

(1) Subject to subsection (2), a resolution is deemed to be special whenever it has been passed by

(a) in the case of a company incorporated before the coming into force of this subsection, a majority of not less than three fourths of the votes cast by the members of the company who voted in person or by proxy at any general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given; and

(b) in the case of a company incorporated on or after the coming into force of this subsection, by a majority of not less than two thirds of the votes cast by the members of the company who voted in person or by proxy at any general meeting of which notice specifying the intention to propose the resolution as a special resolution has been duly given.

(2) Notwithstanding clause (a) of subsection (1), a company incorporated before the coming into force of this subsection may adopt clause (b) of subsection (1) by special resolution in accordance with the requirements of clause (a) of subsection (1), and clause (b) of subsection (1) shall apply to all further special resolutions commencing on the date the special resolution approving the change is filed.

(2) Subsection 87(3) of Chapter 81 is amended by striking out "or confirmed" in the second line.

(3) Subsection 87(4) of Chapter 81 is amended by striking out "or confirmed" in the second line.

29 (1) Subsection 88(1) of Chapter 81 is amended by striking out "confirmation thereof or, where confirmation is not necessary, from the" in the second and third lines.

(2) Subsection 88(2) of Chapter 81 is amended by striking out "after the confirmation or, where confirmation is not necessary," in the fourth and fifth lines.

30 (1) Subsection 89(2) of Chapter 81 is amended by adding "or secretary**" immediately after "chairman" in the second and in the third lines.**

(2) Subsection 89(5) of Chapter 81 is repealed and the following subsection substituted:

(5) The company shall take adequate precautions for guarding against the risk of falsifying the information recorded in the books required by this Section.

31 (1) Subsection 90(1) of Chapter 81 is repealed and the following subsections substituted:

(1) The books containing the minutes of proceedings of any general meeting of a company shall be kept at the registered office of the company or such other location as is designated by the directors.

(1A) The minutes referred to in subsection (1) must be available for inspection by any member without charge at the registered office, physically or by means of a computer terminal or other electronic technology during business hours, subject to such reasonable restrictions as the company may by its articles or in general meeting impose, so that no less than two hours in each day be allowed for inspection.

(2) Subsection 90(2) of Chapter 81 is amended by striking out "ten cents for every hundred words" in the fourth and fifth lines and substituting "one dollar for every page or part of a page required to be copied"**.**

(3) Subsections 90(3) and (4) are repealed and the following subsections substituted:

(3) Any member who claims to be entitled to inspect or receive a copy of any minutes, and who is not permitted to inspect or be furnished with a copy of the minutes as set out in this Section, may apply, in writing, to the Registrar for an order under subsection (4).

(4) Where, on application of a member referred to in subsection (3), it appears to the Registrar that the company failed to allow the inspection or provide the minutes to the applicant, the Registrar may order the company to pro-

vide, within fifteen days from the date of the order, an affidavit or sworn declaration of a director or officer of the company stating the reasons why the company believes the applicant should not be permitted to inspect the minutes or be provided with a copy of the minutes.

(5) Following receipt of the affidavit or sworn declaration referred to in subsection (4), the Registrar shall provide a copy of the affidavit or sworn declaration to the applicant and shall either

(a) order the company to permit the applicant to inspect the minutes or provide the applicant with a copy of the minutes, on such terms and conditions as may be ordered by the Registrar; or

(b) refuse the applicant's request to inspect the minutes or receive a copy of the minutes.

(6) Where the company fails to provide the affidavit or sworn declaration within the time required under subsection (4), the Registrar may make an order under subsection (5).

(7) An applicant or the company may, on written notice to the other party and the Registrar, apply to the court for a review of a decision of the Registrar under this Section, and the court may make such order as it considers just.

32 Subsection 91(1) of Chapter 81 is amended by adding "of the directors or a committee of directors**" immediately after "meeting" in the third and in the fourth lines.**

33 Subsection 92(2) of Chapter 81 is amended by striking out "shareholders" in the third line and substituting "general meetings**".**

34 Subsections 110(5) and (6) of Chapter 81 are repealed.

35 Chapter 81 is further amended by adding immediately after Section 110 the following heading and Section:

FINANCIAL ASSISTANCE

110A (1) In this Section, "financial assistance" means financial assistance by means of a loan, guarantee, the provision of security or otherwise.

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

36 Section 119B of Chapter 81, as enacted by Chapter 15 of the Acts of 1990, is amended by adding immediately after subsection (2) the following subsection:

(2A) Where a company has registered any of its securities under the United States Securities Act of 1933, the report of the auditor referred to in subsection (2) may be prepared in accordance with generally accepted auditing standards as established by the Public Company Accounting Oversight Board of the United States or its successor.

37 Section 122 of Chapter 81 is amended by adding immediately after subsection (1) the following subsection:

(1A) Where a company has registered any of its securities under the United States Securities Act of 1933, the financial statements referred to in subsection (1) may be prepared in accordance with generally accepted accounting practices as established by the Financial Accounting Standards Board of the United States or its successor.

38 (1) Subsection 133(1) of Chapter 81 is repealed and the following subsections substituted:

(1) Any body corporate, incorporated under the laws of any jurisdiction other than the Province for any of the purposes or objects for which a certificate of incorporation may be issued under this Act and being at the time of the application a subsisting and valid body corporate, may apply for a certificate of continuance under this Act as a company limited by shares or, where approved by all of the members of the body corporate, whether or not the shares held by them otherwise carry the right to vote, as an unlimited company, and the Registrar, upon receiving satisfactory evidence that the body corporate applying is a subsisting and valid body corporate and that no public interest in the Province will be prejudiced, may issue a certificate of continuance continuing the body corporate as a company limited by shares or an unlimited company under this Act and thereupon the body corporate is continued and is a body corporate and politic organized under the laws of the Province.

(1A) Before issuing a certificate of continuance in accordance with subsection (1) to a body corporate applying to be continued under this Act as an unlimited company, the Registrar must be satisfied that all persons who will be members of the company at the time of or immediately after continuance have consented to the continuance of the body corporate as an unlimited company and, for that purpose, the Registrar may rely on a certificate of an officer of the company attesting to the approval.

(2) Subsection 133(3) of Chapter 81 is amended by adding "and any provision of this Act that applies only to companies incorporated or registered after a certain date applies to the company as if the company had been incorporated or registered on the date of continuance**" immediately after "Act" in the fourth line.**

(3) Subsection 133(4) of Chapter 81 is amended by

(a) striking out "articles of continuance" in the second and third lines of clause (a) and substituting "constating documents**";**

(b) striking out "company" in the third line of clause (a) and substituting "body corporate**";**

(c) striking out clause (b) and substituting the following clause:

(b) without prejudice to the power of the company to vary or amend the same and subject to Section 26, the share capital of the company shall be the existing share capital and, unless the company is contin-

ued as an unlimited company, the liability of the shareholders continues to be limited;

(d) striking out "company" in the first line of clause (c) and substituting "body corporate**";**

(e) striking out "shareholders" in the first and second lines of clause (k) and substituting "members**";**

(f) adding "or members**" immediately after "shareholders" in the first line of clause (l); and**

(g) striking out "company" in the second and in the fifth lines of clause (m) and substituting in each case "body corporate**".**

(4) Subsection 133(5) of Chapter 81 is amended by

(a) striking out "of the shareholders" in the second line; and

(b) striking out "shareholders" in the fifth line and substituting "members**".**

39 (1) Subsection 134(3) of Chapter 81 is amended by

(a) striking out clauses (b) and (c) and substituting the following clause:

(b) the maximum number, if any limit is to be provided, of shares of each class without nominal or par value, and the amount of shares of each class of shares having a nominal or par value, that the amalgamated company is authorized to issue;

(b) striking out ", occupations and places of residence" in the first and second lines of clause (e) and substituting "and addresses**";**

(c) striking out "date when" in the first line of clause (f) and substituting "manner by which**"; and**

(d) striking out clauses (g) and (h) and substituting the following clauses:

(g) subject to subsections (23) and (24), the manner of converting shares of each class and series of shares of the amalgamating companies into shares of each class and series or into other securities of the amalgamated company and the manner of allocating the paid-up capital of each class or series of shares of each amalgamating company to the classes and series of shares of the amalgamated company;

(h) where any shares of the amalgamating companies will not be converted into securities of the amalgamated company and will not be cancelled, the amount of money or securities of another body corporate or other property that the holders of the shares are to receive in addition to or instead of securities of the amalgamating companies;

(i) such other details as may be desirable to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company including, if the amalgamating companies consider such necessary, a statement of the time or date on which the amalgamating companies desire the amalgamation to be effective.

(2) Subsection 134(4) of Chapter 81 is repealed and the following subsection substituted:

(4) Except in the case of amalgamations referred to in subsections (23) and (24), the amalgamation agreement shall be submitted to the shareholders of each of the amalgamating companies at general meetings called for the purpose of considering the agreement and, where approved by special resolution of each of the amalgamating companies, the amalgamation agreement is deemed to have been adopted by each of the amalgamating companies.

(3) Subsection 134(9) of Chapter 81 is amended by

(a) adding ", the special resolution or directors' resolution of each of the amalgamating companies approving the amalgamation agreement**" immediately after "agreement" in the first line; and**

(b) striking out "shall" in the second line and substituting "may**".**

(4) Subsection 134(10) of Chapter 81 is amended by adding ", the special resolutions or the directors' resolutions**" immediately after "order" in the second line.**

(5) Section 134 of Chapter 81 is further amended by adding immediately after subsection (10) the following subsections:

(10A)An amalgamation may be effected under this Section without court approval, in which case

(a) subsections (6), (7) and (8) do not apply; and

(b) subsections (9) and (10) apply, but in lieu of filing an approving order, the amalgamating companies shall each file with the Registrar a statutory declaration of a director or officer of that company that complies with subsection (10B) and, where the amalgamated company will be an unlimited company, a further statutory declaration of an officer or director of each of the amalgamating companies stating that all members of each of the amalgamating companies have approved the amalgamation agreement.

(10B)The statutory declaration referred to in subsection (10A) must establish to the satisfaction of the Registrar that

(a) there are reasonable grounds for believing that

(i) each amalgamating company is and the amalgamated company will be able to pay its liabilities as they become due, and

(ii) the realizable value of the amalgamated company's assets will not be less than the aggregate of its liabilities and paid-up capital of all classes; and

(b) there are reasonable grounds for believing that

(i) no creditor will be prejudiced by amalgamation, or

(ii) adequate notice has been given to all known creditors of the amalgamating companies and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

(6) Subsection 134(11) of Chapter 81 is amended by adding "and, if the amalgamation agreement specifies a time, the time so specified**" immediately after "amalgamation" in the second line.**

(7) Subsection 134(12) of Chapter 81 is amended by

(a) striking out "its registered office, capital" in the sixth line and substituting "the authorized capital, limitations on liability of its members**";**

(b) adding "and other provisions stated therein to become part of the memorandum**" immediately after "powers" in the seventh line; and**

(c) striking out "of association" in the eighth line.

(8) Subsection 134(13) of Chapter 81 is repealed and the following subsection substituted:

(13) A company amalgamated on a particular date is, for the purpose of applying the other provisions of this Act, deemed to be a company incorporated on that date.

(9) Subsection 134(14) of Chapter 81 is amended by striking out "at a general meeting thereof called for the purpose may, if approved by three fourths of the votes cast thereat" in the fifth, sixth and seventh lines and substituting "may, by resolution,**".**

(10) Subsection 134(15) of Chapter 81 is amended by striking out "each secretary" in the first line of clause (a) and "the secretary" in the first line of clause (b) and substituting in each case "an officer or director**".**

(11) Subsection 134(16) of Chapter 81 is amended by striking out "Where" in the first line and substituting "In the case of an amalgamated company limited by shares, where**".**

(12) Subsection 134(17) of Chapter 81 is amended by adding "to a company limited by shares**" immediately after "apply" in the sixth line.**

(13) Subsection 134(19) of Chapter 81 is repealed.

(14) Section 134 of Chapter 81 is further amended by adding immediately after subsection (22) the following subsections:

(23) A holding company and one or more of its subsidiary companies may amalgamate without complying with the requirements of this Section in respect of shareholder approval if

(a) the amalgamation agreement is approved by a resolution of the directors of each amalgamating company;

(b) all of the issued shares of each amalgamating subsidiary company are held by one or more of the other amalgamating companies;

(c) the amalgamation agreement provides that

(i) the shares of each amalgamating subsidiary company shall be cancelled without any repayment of capital,

(ii) the memorandum and articles of the amalgamated company shall be the same as the memorandum and articles of the amalgamating holding company, unless the agreement identifies the memorandum and articles of a particular amalgamating subsidiary company as the memorandum and articles of the amalgamated company, and

(iii) no securities shall be issued by the amalgamated company in connection with the amalgamation and the paid-up capital of the shares of each class and series of shares of the amalgamated company shall be the same as the paid-up capital of each class and series of shares of the amalgamating holding company; and

(d) the liability of the members of the amalgamated company is limited.

(24) Two or more wholly-owned subsidiary companies of the same holding company may amalgamate and continue as one company without complying with the requirements of this Section in respect of shareholder approval if

(a) the amalgamation agreement is approved by a resolution of the directors of each amalgamating company;

(b) the amalgamation agreement provides that

(i) the shares of all but one of the amalgamating subsidiary companies shall be cancelled without repayment of capital, and the amalgamating subsidiary company whose shares are not cancelled shall be identified in the agreement,

(ii) the memorandum and articles of the amalgamated company shall be the same as the memorandum and articles of the amalgamating subsidiary company whose shares are not cancelled, unless the agreement identifies the memorandum and articles of a particular amalgamating subsidiary company as the memorandum and articles of the amalgamated company, and

(iii) the capital of the amalgamating subsidiary companies whose shares are cancelled shall be added to the capital of the amalgamating subsidiary company whose shares are not cancelled; and

(c) the liability of the members of the amalgamated company is limited.

40 Section 135 of Chapter 81 is amended by adding immediately after clause (e) the following clause:

(ea) in the case of an unlimited company, no contribution exceeding the amount, if any, unpaid on the shares in respect of which the member is liable as a past member, shall be required from a past member who was not a member of the company at any time on or after the time the company became unlimited;

41 Subsections 136(4) and (4A) of Chapter 81 are repealed and the following subsections substituted:

(4) Any person aggrieved by the name of a company being struck off the register pursuant to this Section or dissolved pursuant to Section 137 may apply to the Registrar for restoration of the name of the company to the register, and the Registrar, where satisfied that the company was, at the time of the striking off, carrying on business or in operation, and that it is reasonable to do so, shall restore the name of the company on the register, and the company is deemed to have continued in existence as if the name of the company had never been struck off or dissolved.

(4A) Before submitting an application under subsection (4), the applicant shall provide notice of the application to the company and to the Attorney General.

(4B) Where a restoration is made under subsection (4), the restoration does not affect the title of a person who, before the restoration is made, acquires from Her Majesty in right of the Province property formerly of that company which vested in Her Majesty pursuant to the *Corporations Miscellaneous Provisions Act*.

(4C) Any person aggrieved by a decision of the Registrar pursuant to subsection (4) may apply to the court for a review of the Registrar's decision within thirty days of the date of the decision.

42 The Second Schedule to Chapter 81 is amended by striking out all references to the "occupation" of a subscriber and by making the changes in the Schedule necessary to effect this change.

43 The Third Schedule to Chapter 81 is amended by

(a) striking out "or a creditor of the company" in the third and fourth lines of Section 6; and

(b) adding immediately after subclause 7(5)(b)(ii) the following subclause:

(iia) a creditor of a company or any of its affiliates,

44 This Act comes into force on such day as the Governor in Council orders and declares by proclamation.