PART III

INCORPORATION, CONTINUANCE AND DISCONTINUANCE

Formalities of incorporation

22. On the application of one or more persons, a company may be incorporated by the Minister under this Part, issuing a certificate of incorporation.

Incorporation

Powers of a company on incorporation

23. (1) Unless the rights of a company or of its members, directors or trustees are restricted by its memorandum, articles or trust deed, as the case may be, a company has the capacity, rights, powers and privileges of a natural person.

Restrictions on powers

(2) Any restriction on the rights, powers or privileges of a company, whether or not it is contained in its memorandum, articles or trust deed, is ineffective against any person who is not a director, officer or trustee of the company and who has no knowledge of the restriction at the time the person acquires or disposes of any property to or by the company.

Directors, officers and trustees

(3) Where the rights, powers or privileges of a company are restricted as mentioned in subsection (2), a director, officer or trustee of the company who exercises any of those rights, powers or privileges on behalf of the company is liable to the persons affected by any resulting breach of duty for any loss they suffer as a result of the breach.

Name of company

24. (1) Except with the approval of the Minister, a company shall not be incorporated with a name that is the same as or too similar to the name of a company incorporated under this Act or a company to which the Companies Act applies.

Approval of Minister

(2) The Minister may approve a name that is not prohibited by subsection (1) if the company undertakes to change its name to a name specified by the Minister if a company incorporated under this Act or a company to which the Companies Act applies is subsequently incorporated with a name that is the same as or too similar to the approved name.

Change of name

(3) The Minister may direct a company to change its name if it was incorporated with a name that is prohibited by subsection (1) or was approved by the Minister under subsection (2), and the company shall change its name within thirty days after the direction is given.

Publication of change of name

(4) A change of name under subsection (3) takes effect from the date on which the Minister publishes notice of the change in the Gazette.

Articles of association

25. (1) The articles of association may be in such form as the incorporators adopt.

Mandatory provisions

(2) The articles shall

(a) state the name of the company;

(b) state the province in which the registered office of the company is to be situated;

(c) state the objects of the company;

(d) state that the liability of members is limited;

(e) state the number of shares that the company is authorized to issue and the par value of each share or that the shares are to be without par value;

(f) state any restrictions on the transfer of shares;

(g) state the number of directors or the minimum and maximum number of directors;

(h) state any restrictions on the business that the company may carry on or on the powers that it may exercise;

(i) state the number of directors required to constitute a quorum; and

(j) be signed by each incorporator.

Optional provisions

(3) The articles may contain any provision that is not contrary to law or to the memorandum.

Effect of articles

(4) The articles bind the company and its members to the same extent as if they were signed by the company and each member and contained covenants by the company and each member to observe all the provisions of the articles.

Memorandum

26. (1) The memorandum shall be in such form as the incorporators adopt.

Mandatory provisions

(2) The memorandum shall

(a) state the name of the company;

(b) state the province in which the registered office of the company is to be situated;

(c) state the objects of the company;

(d) state that the liability of members is limited;

(e) state the number of shares that the company is authorized to issue and the par value of each share or that the shares are to be without par value;

(f) state any restrictions on the transfer of shares;

(g) state the number of directors or the minimum and maximum number of directors;

(h) state any restrictions on the business that the company may carry on or on the powers that it may exercise;

(i) state the number of directors required to constitute a quorum; and

(j) be signed by each incorporator.

Optional provisions

(3) The memorandum may contain any provision that is not contrary to law or to the articles.

Effect of memorandum

(4) The memorandum binds the company and its members to the same extent as if they were signed by the company and each member and contained covenants by the company and each member to observe all the provisions of the memorandum.

Application for incorporation

27. (1) Every application for incorporation shall be signed by each incorporator and shall be sent to the Minister together with

(a) the articles of association;

(b) the memorandum;

(c) a statement of the address of the registered office of the company;

(d) a statement of the names and addresses of the first directors of the company;

(e) a statement of the names and addresses of the first officers of the company, if any;

(f) a statement of the names and addresses of the first trustees of the company, if any; and

(g) a statement of the amount of the stated capital of the company.

Statement of stated capital

(2) The statement of stated capital shall set out the consideration for which the shares are to be issued.

Statement of directors

(3) The statement of directors shall set out the consideration for which the directors are to be elected.

Statement of officers

(4) The statement of officers shall set out the consideration for which the officers are to be appointed.

Statement of trustees

(5) The statement of trustees shall set out the consideration for which the trustees are to be appointed.

Certificate of incorporation

28. (1) Where the Minister is satisfied that the requirements of this Act in respect of incorporation have been complied with, he shall issue a certificate of incorporation.

Effect of certificate

(2) A certificate of incorporation is conclusive proof that the company has been incorporated under this Act.

Commencement of corporate existence

(3) A company comes into existence on the date shown on its certificate of incorporation.

Continuance

29. (1) Subject to the approval of the Minister, a company incorporated under the laws of a province or territory of Canada or of a jurisdiction outside Canada may apply to the Minister for a certificate of continuance under this Act.

Application for continuance

(2) An application for a certificate of continuance shall be signed by each incorporator and shall be sent to the Minister together with

(a) the articles of association;

(b) the memorandum;

(c) a statement of the address of the registered office of the company;

(d) a statement of the names and addresses of the first directors of the company;

(e) a statement of the names and addresses of the first officers of the company, if any;

(f) a statement of the names and addresses of the first trustees of the company, if any; and

(g) a statement of the amount of the stated capital of the company.

Statement of stated capital

(3) The statement of stated capital shall set out the consideration for which the shares are to be issued.

Statement of directors

(4) The statement of directors shall set out the consideration for which the directors are to be elected.

Statement of officers

(5) The statement of officers shall set out the consideration for which the officers are to be appointed.

Statement of trustees

(6) The statement of trustees shall set out the consideration for which the trustees are to be appointed.

Certificate of continuance

30. (1) Where the Minister is satisfied that the requirements of this Act in respect of continuance have been complied with, he shall issue a certificate of continuance.

Effect of certificate

(2) A certificate of continuance is conclusive proof that the company has been continued under this Act.

Commencement of corporate existence

(3) A company comes into existence on the date shown on its certificate of continuance.

Effect of continuance

31. (1) Subject to subsection (2), a company that has been continued under this Act is not affected by the continuance in its rights or obligations or in the enforcement of its rights or obligations.

Idem

(2) Upon the continuance of a company under this Act, any provision in its articles or in any agreement that prohibits the company from changing its name or restricts the company in carrying on its business or in using its property in any specified manner ceases to apply to the company.

Application of Part

32. (1) For the purpose of this section, Part III shall be read as if it were in force on the day this subsection comes into force.

Idem

(2) Part III, except subsection 24(2), shall be read as if it were in force on the day this subsection comes into force, except that

(a) if Parliament does not sit on or before March 31 of the year following the year in which this subsection comes into force, Part III shall be read as if the year referred to in subsection 27(2) were the year following the year in which this subsection comes into force; and

(b) if Parliament does not sit on or before December 31 of the year following the year in which this subsection comes into force, Part III shall be read as if the year referred to in subsection 27(2) were the second year following the year in which this subsection comes into force.

Application of Part

(3) Part III, except subsection 24(2), applies to every company incorporated under this Act or to which the Companies Act applies.

Idem

(4) Part III, except subsection 24(2), applies to every company to which the Canada Corporations Act applies, except that

(a) Part III shall be read as if the reference to the Minister in subsection 24(3) were a reference to the Minister of Consumer and Corporate Affairs; and

(b) Part III shall be read as if the reference to the Minister in subsection 24(4) were a reference to the Minister of Consumer and Corporate Affairs.