



PRACTICAL GUIDE
ON
Canadian Company Law

CONTAINING THE
DOMINION COMPANIES ACT AS AMENDED
IN 1918

TOGETHER WITH
INFORMATION RELATING TO THE INCORPORATION,
ORGANIZATION AND MANAGEMENT
OF COMPANIES AND FORMS AND BY-LAWS
FOR THE USE THEREOF

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FIRST EDITION, PRICE \$4.00

LAW BOOKS LIMITED
152-154 Bay Street
TORONTO
1919

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PREFACE.

Several times during the past three or four years the author has received suggestions from members of the legal profession, from bankers, business men and law book publishers, urging upon him the publication of a popular hand book on company law.

While this work may not contain all that is to be desired, still the author feels that when it is remembered that Mr. Palmer's work on company law is published in three large volumes, no apology should be required.

W. E. LEAR.



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PRACTICAL GUIDE
TO
CANADIAN COMPANY LAW
CHAPTER 1.

GENERAL PRINCIPLES OF COMPANY LAW

1. What is a Company?—A company is an association of a number of persons united in one body under a particular name and possessing, by law, the right to conduct some trade or business as a single individual.

Every company is a joint stock company, except private companies incorporated without joint stock or shares. *Hamilton v. Stewiacke Valley Ry. Co.*, (1897) 30 N.S.R. at p. 13.

2. Advantages of Incorporation.—There are three great advantages in having any business incorporated as a company with limited liability.

(1.) A larger number of persons may become financially interested in the business than could be possible by means of any kind of a partnership agreement.

(2.) Sufficient capital may be secured to make certain the success of the enterprise. If desired this capital may be secured largely from employees and other small investors.

(3.) The liability of the shareholders for payment of the debts of the company may be limited, thus differing very materially from an individual or partnership business. In case the company fails to turn out successful no shareholder need lose any more than the money he invested or agreed to invest in shares of the company.

3. Double Liability of Shareholders.—Under the Bank Act of Canada, the shareholders of any chartered bank in Canada are liable to pay double the amount of their subscriptions to the capital stock of the bank in case the bank goes into liquidation. This legislation applies only to banks. There is no such provision affecting the shareholders of any other company incorporated in Canada.

4. One Man Company.—Once a company is legally incorporated it must be treated like any other independent person with its rights and liabilities appropriate to itself. Even if four of the shareholders hold but one share each and the fifth holds twenty thousand shares, the Court cannot go behind the charter and inquire whether or no such a "one man" company is what the Legislature intended when passing the Companies Act. The motives of those who took part in the promotion of the company are absolutely irrelevant in discussing what the rights and liabilities of the company are. See *Saloman v. Saloman* [1895] A.C. 22; 60 L. J. Ch. 35; *Rielle v. Reid*, 26 A.R. 54.

5. Promoters—Corporators.—The promoters of a company are those persons who are active in setting on foot and organizing the commercial or business enterprise about to be undertaken by the company.

The corporators of a company are those who apply for and are granted a charter of incorporation. They may be the same persons as the promoters, but in the majority of cases they are not.

6. Subscribers—Shareholders.—A subscriber is one who has signed an agreement to take stock in the company, and a shareholder is a subscriber after his subscription to stock has been accepted by the company. In Canada there is no difference between a shareholder and a stockholder.

7. What is a Franchise?—The right which a company possess to do business is a franchise, therefore, there are thousands of different kinds of franchises.

8. What is a Syndicate?—A syndicate is an association of a number of persons, firms or companies joined together by an agreement for the purpose of promoting or carrying on some particular enterprise, or discharging some trust. Syndicate agreements should be carefully drawn, clearly setting out the rights and liabilities of the members.

9. What is a Trust?—A trust is an organization controlling several companies carrying on the same kind of business. The object of a trust is to prevent competition, control prices and lessen the cost of production.

10. Authority to Create Companies.—Companies may be formed under the authority of the Parliament of Canada, or under the authority of a Provincial Legislature, and are created by either Special Act, or by Letters Patent or Registration.

11. Incorporation by Special Act.—Companies desiring to conduct a bank, or operate a great public utility, are required to be incorporated by Special Act, as the powers they desire to obtain are so important that public interest must be safeguarded by debate in Parliament. Any other company may be incorporated by Special Act, but in dealing with such companies reference should be had to the particular Acts governing them.

Nearly all commercial companies are now incorporated by Letters Patent, or by Registration. These methods are more convenient as there is less delay in obtaining incorporation, and subsequent changes in their powers, capital stock, etc., are more easily made.

12. Name of Company.—Every company must have a corporate name by which it may sue and be sued, enter into

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contracts, make and receive grants and perform all legal acts. Its name is the "very being of its constitution, the knot of its combination."

In choosing a name for a proposed company make it short and expressive of the kind of business conducted, for instance, "LAW BOOKS, LIMITED," "Brighton Canning Company, Limited," "Toronto Hardware Company, Limited," or "Markham Telephone Company, Limited." Such names as these are an advertisement for the company, as every person who sees the name knows the nature of your business. But such names as "The John Smith Company Limited", mean nothing to the stranger. No one could tell by the name whether the company made mouse traps or conducted a brewery. If it is desirable to use a man's name in the name of the company then use it like these, "Bell Telephone Company", "Crocker Press Limited", or Maclean Publishing Company Limited". Names like "The Great National Wind Engine and Pump Manufacturing Corporation of Canada Limited", are a nuisance to the company, all its officers, clerks and servants, and every person who deals with it. Do not adopt a name that will require the full length of an envelope in addressing or which will take up a full line in writing a cheque. Names like "The Pink Tea Palm Garden Limited", is too suggestive that the moral tone is questionable; "Ye Old English Chop House Limited", sounds much better.

No alteration can be made in a corporate name by the company itself; if this is desired, application must be made to the authority from which its charter was issued. See sections 21 to 23 of Chapter 3 dealing with changing the name of a company.

The words "Royal" and "Imperial" cannot be used in the name of a Canadian company without the permission of the Home Office of the Imperial Government.

Under the Ontario Act the name of a company must not contain the words "Loan", "Mortgage", "Trust", "Investment", or "Guarantee."

In Ontario a going concern may be incorporated under its old name with merely the addition of the word "limited".

13. Duration of a Company.—There is no limit to the existence of an ordinary company incorporated under the Canadian Companies Act, and its existence begins on the day that the charter is issued to the company.

Under the Ontario Companies Act, a company operating a municipal or public utility may be limited to a term of years to be stated in the charter.

14. Head Office of Company.—Every company must have a Head Office, or Chief Agency where its principal books of accounts and its corporation records are to be kept, where legal process may be served and to which all communications and notices may be addressed. Companies incorporated under the Dominion Act are required by section 30 to have their Head Office in the city or town where its chief place of business in Canada is situated.

The several Provincial Acts require that the Head Office of the company shall be situated within the province granting its charter. Provision is made in all Acts for changing the Head Office of the company from one place to another, and the directors acting under a resolution of the shareholders to that effect can make the change. *Union Fire Ins. Co. v. O'Gara*. 4 O.R. 359.

15. Residence of a Company.—A company resides at the place where its head office is situate, and even though all of its members reside in foreign lands, the company is subject to the laws of the country or state which created it. A company may hold land in foreign countries, but it has no

legal existence in such countries, unless it is recognized by the proper authorities; then it holds its lands under certain qualifications, in subjection to the law of the state where the land lies, and not to the laws of the place where the company resides.

16. Legal Advice.—Company law in recent years has become one of the most bewildering mazes that a layman may travel. The pitfalls are numerous, particularly in the promotion of companies, the issue of prospectuses, the merger of one company with another, the registration of a company outside the Province, the issue of bonds and debentures, and the voluntary liquidation, so much so that the services of a solicitor are almost absolutely required.

The holding of organization meetings is best left to the solicitor engaged to procure the company's charter. It is in these early proceedings that mistakes are most easily made; later when shareholders are more numerous and other interests arise, correction of these mistakes is difficult or impracticable.

Solicitor's fees for incorporating a company vary greatly according to the work required and the amount of capital involved. The fees will range all the way from twenty-five dollars up to thousands of dollars where the enterprise is a large one. Any solicitor will give you an idea of what his charges will be. In choosing a solicitor, do not look for the cheapest, but find one who has had practical experience in such matters and pay him what his services are worth.

CHAPTER 2

INCORPORATION BY REGISTRATION

1. Requirements for Registration.—In Alberta, British Columbia, Newfoundland, North-West Territories, Nova Scotia, and Saskatchewan, companies are formed by Registration instead of by Letters Patent. No company consisting of more than ten shareholders in Newfoundland (twenty shareholders in the other Provinces) can carry on business within the scope of the Companies Act for the purpose of gain unless Registered, or unless operating under some other Act or Letters Patent. A copy of any of these Acts with the latest amendments may be obtained from the Government of the Province concerned by applying to

The Registrar of Joint Stock Companies,
House of Assembly,
Capital City and Province;

or in Newfoundland by addressing,

The Honourable,
The Colonial Secretary,
St. John's, Newfoundland;

or in the Yukon by addressing

The Commissioner of Joint Stock Companies,
Office of Territorial Secretary,
Dawson City, Yukon.

2. How to Obtain Registration of Company.—To form a company in Alberta, Newfoundland, North-West Territories, Nova Scotia or Saskatchewan, any three (in British Columbia any five) or more persons, of the full age of twenty-one years, may subscribe their names to the Memorandum of Association, and forward the same with the necessary affidavits, Government fee, etc., to the Registrar of Joint

Stock Companies, and thus become an incorporated company either with or without limited liability, according to the Articles of Association.

Three classes of companies may be Registered. 1. Where the personal liability of the members is unlimited; 2. Where the personal liability of the members is limited by guarantee; and 3. Where the personal liability of the members is limited to the amount unpaid on shares subscribed.

3. Unlimited Liability.—In companies where the personal liability of its members is not limited (general partnership) the Memorandum of Association must give:

1. The proposed name of the company,
2. The place where the head office of the company is to be located, and,
3. The object for which the company is to be formed.

The Memorandum of Association must be signed by each member in the presence of, and be attested by, at least one witness. When the Memorandum of Association is registered it binds the company and all its members, their heirs, executors and administrators, to observe all its conditions, as though it were an instrument under seal.

Any person would be very foolish to become a member in such a company, because while all its members may be honourable beyond doubt, still some person contracting with the company, or some employee of the company, may place the company in financial difficulties involving the ruination of its members.

4. Liability Limited by Guarantee.—Where the liability of members is to be limited to the amount they respectively undertake to contribute to the assets of the company in the event of it being wound-up, the Memorandum of Association must contain:

1. The name of the proposed company, with the addition of the words "Limited by Guarantee" as the last words of the name,
2. The place where the Head Office of the company is to be located.
3. The objects for which the company is to be formed, and,
4. A declaration that each member undertakes to contribute to the assets of the company a sum not exceeding an amount named in case the company is wound-up while he is a member, or within one year thereafter, in settlement of liabilities contracted before he ceased to be a member.

While membership in this kind of a company is preferable to membership in a company described in section 3, still it is not as satisfactory as membership in a company where the personal liability is limited to the amount unpaid on shares subscribed.

5. Liability Limited to Unpaid Shares.—Where the liability is to be limited to the amount paid on shares subscribed, the Memorandum of Association must contain :

1. The name of the proposed company, with the addition of the word "Limited" as the last word of the name,
2. The place where the Head Office of the Company is to be located,
3. The objects for which the company is to be formed,
4. The time for its continuance, if any time is to be limited,
5. A declaration that the liability of the members is to be limited, and,
6. The amount of capital authorized and its division into shares of fixed amounts.

No member can subscribe for less than one share.

Mining companies may have their liability limited to the amount paid on their shares, if such provision is made in their Memorandum of Association.

6. Articles of Association.—The memorandum of Association **may** in case of companies limited by **shares**, and **shall** in case of a company "limited by guarantee," or an unlimited company be accompanied by Articles of Association prescribing the regulations by which the company is to be conducted. The Articles of Association are to be printed and signed by each subscriber in the presence of, and attested by, at least one witness, and when registered bind the company, the members, their heirs, executors and administrators to the conditions therein contained.

It is generally required that the Articles of Association be written in separate paragraphs and numbered consecutively. In case of a company with the capital divided into shares it must state the amount of the capital authorized; and in case of a company whose capital is not divided into shares it must state the number of members with which the company proposes to be registered.

7. Personal Liability of Members.—If, after registration, the company carries on business when its membership is less than three (in British Columbia less than five) for six months every member who knows that fact becomes liable for all debts contracted during such period, as in case of a general partnership.

CHAPTER 3
DOMINION COMPANIES ACT

(Being Cap. 79 of R. S. C. 1906, as amended in 1918.)

1. Short Title.—This Act may be cited as the Companies Act.

PART I.
JOINT STOCK COMPANIES

2. Application of Part.—This Part applies to,—

- (a) all companies incorporated under it;
- (b) all companies incorporated under the Companies Act, chapter one hundred and nineteen of *The Revised Statutes of Canada*, or to which that Act applied before the fifteenth day of May, one thousand nine hundred and two, excepting loan companies. 2 E. VII., c. 15, s. 2.
- (c) all companies incorporated under *The Companies Act*, 1902. 7-8 Edw. VII, c. 16, s. 1.

By 7-8 Edw. VII., c. 16, s. 1, it is declared that Part I. of *The Companies Act*, applies and was intended to apply to all companies incorporated under *The Companies Act*, 1902:

3. Interpretation.—In this Part, and in all letters patent and supplementary letters patent issued under it, unless the context otherwise requires,—

- (a) 'the **company**' or 'a company' means any company to which this Part applies;
- (b) 'the **undertaking**' means the business of every kind which the company is authorized to carry on;
- (c) '**real estate**' or '**land**' includes messuages, lands, tenements, and hereditaments of any tenure, and all immoveable property of any kind;

- (d) **'shareholder'** means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder;
- (e) **'manager'** includes the cashier and his secretary.
- (f) **"court"** means in Ontario, the Supreme Court of Ontario; in Quebec, the Superior Court in and for that province; in Nova Scotia, New Brunswick, British Columbia and Prince Edward Island, the Supreme Court in and for each of those provinces, respectively; in Manitoba, the Court of King's Bench for Manitoba; in the provinces of Saskatchewan and Alberta, a superior court; and in the Yukon Territory, the Territorial Court.
- (g) **"judge"** means in the said respective provinces and Territory a judge of the said courts respectively. 2 E. VII., c. 15, ss. 3, 53 and 79.
- (h) **"debenture"** includes bonds and debenture stock. 7-8 Geo. V., c. 25, s. 2.

4. Preliminaries.—The provisions of this Part relating to matters preliminary to the issue of the letters patent or supplementary letters patent shall be deemed directory only, and no letters patent or supplementary letters patent issued under this Part shall be held void or voidable on account of any irregularity in respect of any matter preliminary to the issue of the letters patent or supplementary letters patent. 2 E. VII., c. 15, s. 4.

After a winding-up order has been issued, a shareholder cannot avoid his liability by setting up defects or irregularities in the organization of the company. Only upon direct proceedings at the instance of the Attorney-General can such grounds be taken. *Common v. McArthur* (1898) 29 S.C.R. 239.

Where an insolvent trader converts his business into a limited company, the Court is not entitled to enter into a

speculative analysis of the motives and the exorbitance of the price paid, to decide that it is not validly constituted on account of the non-fulfillment of conditions not found in the Companies Act. *Salomon v. Salomon & Co.* [1897] A.C. 22; 60 L. J. Ch. 35.

5. Formation of New Companies.—The Secretary of State of Canada may, by letters patent under his seal of office, grant a charter to any number of persons, not less than five, who apply therefor, constituting such persons, and others who have become subscribers to the memorandum of agreement hereinafter mentioned and who thereafter become shareholders in the company thereby created, a body incorporate and politic, for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, **except** the construction and working of railways or of telegraph or telephone lines, the business of insurance, the business of a trust company, the business of a loan company, and the business of banking and the issue of paper money: **Provided**, however, that nothing in this part of the Act shall be construed to prevent companies incorporated thereunder from exchanging reciprocal contracts of indemnity against loss by fire or otherwise, under the plan known as **inter-insurance.**"

2. No Power to Issue Paper Money or for Banking.—Nothing in this Part shall be construed to authorize any company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance. 2 E. VII., s. 15, ss. 5 and 24; 7-8 Geo. V., c. 25, s. 3.

The power hereby conferred on the Secretary of State is entirely discretionary. There is no absolute right to claim the grant of Letters Patent. Even though all the requirements of the Act have been complied with, the charter may be refused.

The Ontario Provincial Secretary refused incorporation to incorporate a company under the name of "Ontario Free Thought Printing and Publishing Company Limited". It was pointed out to the applicants that the expression "Free Thought" is one used technically to signify unbelief in christianity, which is part of the law of the land, and as the Legislature had not hitherto sanctioned the incorporation of any company or society, known to be in opposition to christianity, no such charter should be granted by Letters Patent.

All charters when granted are subject to revocation on sufficient grounds being shown, such as fraud, continued mismanagement, engaging in improper objects or works, and generally such conduct as may be deemed injurious to public interest.

In the case of *La Banque D' Hochelaga v. Murray*, C.R. 10 A.C. 134, the Privy Council ordered that the Letters Patent incorporating "The Pioneer Beet-root Sugar Company Limited", a company chartered by the Province of Quebec, should be entirely repealed, cancelled and annulled, on the ground that the names of several of the incorporators were fraudulently inserted in the petition for the Letters Patent.

The Ontario Government, by Order-in-Council, 15th February, 1904, revoked the charter of the "Bertie Pastime Club" on the ground that it had been sought for the purpose of operating what is known as a "pool room." And the same government, by Order-in-Council, 14th of July, 1904, revoked the charter of the "Toronto Junction Recreation Club" on the ground that it was carried on for other than lawful purposes.

6. Seal.—The Governor in Council may, from time to time, designate the seal of office to be used by the Secretary of State as the seal under which letters patent may be granted under this Act. 2 E. VII., c. 15, s. 5.

7. The applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth the following particulars:—

- (a) **The proposed corporate name** of the company, which shall not be that of any other known company, incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds objectionable;

See Chapter 1, section 12.

- (b) **The purposes** for which its incorporation is sought;
See Chapter 7.
- (c) The place within Canada which is to be its **chief place of business.**

See Chapter 1, section 14.

- (d) The proposed amount of its **capital stock.**

There is no limit as to capitalization of a company.

- (e) The number of **shares** and the amount of each share.

Shares may be of the par value of five dollars or any multiple of five dollars but not to exceed one hundred dollars. See section 51.

Shares may also be issued without any par value. See section 7B.

- (f) The names in full and the address and calling of each of the **applicants**, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors of the company;

Females may be applicants as well as males. An unmarried woman should describe herself as "Milliner" or "Cashier" where she has an occupation, but where she has no occupation she should be described as "Spinster." A married woman should be described as "Mary Doe," wife of "John Doe."

The word "Clerk" must not be used to describe the calling of the applicants, unless the applicant is a "Clerk in Holy Orders."

The Provisional Directors are the committee who manage the affairs of the company up to the time of the first general meeting of the shareholders, when a Board of Directors is elected. Directors must be shareholders, owning stock absolutely in their own right.

- (g) The **amount of stock taken** by each applicant, the amount, if any, paid in upon the stock of each applicant, and the manner in which the same has been paid, and is held for the company. 2 E. VII., c. 15, s. 6.

Above section not applicable to Corporations not for profit.

7A. Without Purpose of Gain.—When the application is for the creation of a corporation to carry on in more than one province of Canada, without pecuniary gain, objects of a national, patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional, or sporting character, or the like, the applicants for such letters patent, who must be of the full age of twenty-one years, shall file in the Department of the Secretary of State an application setting forth:—

- (a) The **proposed corporate name**, which shall not be that of any other known corporation, association or body incorporated or unincorporated, or any name liable to be confounded therewith, or otherwise, on public grounds, objectionable.
- (b) The **purposes** for which incorporation is sought;
- (c) The place within Canada where its **chief office** is to be situated;
- (d) The **names in full** and the address and calling of each of the applicants, with special mention of the names of not more than fifteen and not less than three of their number, who are to be the first or provisional directors or trustees of the corporation.
- (2) The application shall be accompanied by a **memorandum of agreement**, in duplicate, which shall set out the by-laws or regulations of the corporation and shall, more particularly, provide by-laws or regulations upon the following matters:—
- (a) **Conditions of membership**, including societies or companies becoming members of the corporation;

- (b) Mode of holding **meetings**, rights of voting and of making, repealing or amending by-laws or regulations;
 - (c) Appointment and removal of the **directors, trustees, committees or officers**, and their respective powers and remuneration.
 - (d) Provision for **audit of accounts** and appointment of auditors;
 - (e) Determination whether or **how members may withdraw** from the corporation;
 - (f) Provision for custody of **seal** and certifying of documents issued by the corporation.
- (3) Any of the **by-laws** or regulations the applicants desire may be embodied in the letters patent but in such case shall not be repealed or amended except by the issue of supplementary letters patent.
- (4) By-laws or regulations not embodied in the letters patent may be **repealed or amended**, but such variation or amendment shall not be in force or acted on until the approval of the Secretary of State of Canada has been obtained.
- (5) Any **existing corporation** created by or under any Act of the Parliament of Canada for any of the objects mentioned in subsection (1) of this section may apply under this section for the issue of letters patent creating it a corporation under those provisions of Part I of this Act which apply to corporations created under this section, and upon the issue of such letters patent the said provisions shall apply to the corporation created thereby.
- (6) 1. The following provisions of Part I of this Act **shall not** apply to corporations created under this section, namely sections 7, 7b, 8, 9, 26, 33, 38 to 43, both inclusive, 43a to 43d, both inclusive, 45 to 54, both inclusive, 54a to 54f, both inclusive, 55 to 68, both inclusive, 68a, 70 to 78, both inclusive,

80 to 84, both inclusive, 86 to 88, both inclusive, paragraphs (d) and (e) of section 89, section 90, 94a to 94c, both inclusive, 101 to 104, both inclusive, paragraphs (j) and (k) of subsection 2 of section 105, and sections 114, 115.

2. The other sections of Part I of this Act shall apply to corporations created under this section.

(7) In applying to corporations created under this section those sections of Part I of this Act which apply to such corporations:—

- (a) the word "**company**" shall be deemed to mean a corporation so created;
- (b) the word "**shareholder**" shall be deemed to mean a member of such a corporation;
- (c) a provision that the **votes of shareholders** representing a specified proportion in value of the stock of a company shall be requisite for any purpose shall be deemed to mean that the votes of a like proportion in number of the members of the corporation are requisite for that purpose." 7-8 Geo. V., c. 25, s. 4.

7B. Upon the formation or reorganization of any company the letters patent may provide for the issue of the shares of the capital stock of such company **without any nominal or par value**, except in the case of preferred stock having a preference as to principal; and,

- (a) If such **preferred stock** or any part thereof has a preference as to principal, the letters patent shall state the amount of such preferred stock having such preference, the particular character of such preference, and the amount of each share thereof, which shall be five dollars or some multiple of five dollars, but not more than one hundred dollars; and,
- (b) The letters patent shall set out the **amount of capital** with which the company will carry on business,

which amount shall not be less than the amount of preferred stock (if any) authorized to be issued with a preference to the principal, and in addition thereto a sum equivalent to five dollars or to some multiple of five dollars for every share authorized to be issued other than such preferred stock; but in no event shall the amount of such capital be less than five hundred dollars.

(2) Such statement in the letters patent shall be in lieu of any statements prescribed by this Act as to the amount or the maximum amount of the capital stock or the number of shares into which the same shall be divided, or the amount or the par value of such shares.

(3) Each share of the capital stock without nominal or par value shall be **equal to every other share** of the capital stock, subject to the preference given to the preferred shares, if any, authorized to be issued. Every certificate of shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the company is authorized to issue, and no such certificate shall express any nominal or par value of such shares. The certificates of preferred shares having a preference as to principal shall state briefly the amount which the holder of any of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the company in preference to the holders of other shares, and shall state briefly any other rights or preferences given to the holders of such shares.

(4) The **issue and allotment of shares** authorized by this section, other than shares of preferred stock having a preference as to principal, may be made for such consideration as may be prescribed in the letters patent, or as may be fixed

by the board of directors pursuant to authority conferred in the letters patent, or if the letters patent do not so provide, then by the consent of the holders of two-thirds of each class of shares then outstanding given at a meeting called for that purpose in such manner as is prescribed by the by-laws. Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of such shares shall not be liable to the company or its creditors in respect thereof.

(5) A company to which this section applies **shall not begin to carry on business** nor incur any debts until the amount of capital stated in the letters patent has been fully paid in money, or in property taken at its actual value. In case the amount of capital stated in the letters patent is increased as provided by this Act, such company shall not increase the amount of its indebtedness then existing until it has received in money or property the amount of such increase of its stated capital. Any of the directors of the company who assent to the creation of any debt in violation of this section shall be liable jointly and severally for such debt; but no action shall be brought against any such director unless within one year after the debt has been incurred the creditor has served upon the director written notice of intention to hold him personally liable for such debt.

"(6) A company to which this section applies shall not be subject to section 26 of this Act.

"(7) A company to which this section applies **shall not declare any dividend** which reduces the amount of its capital below the amount stated in the letters patent as the amount of capital with which the company will carry on business. In case any such dividend shall be declared, the directors in whose administration the same shall have been declared, except those who may have caused their dissent therefrom to be entered upon the minutes of such directors at the

time, or who were not present when such action was taken, shall be liable jointly and severally to such company and to the creditors thereof to the full amount of any loss sustained by such company or by its creditors respectively by reason of such dividend." 7-8 Geo. V., c. 25, s. 4.

Above section not applicable to Corporations not for profit.

8. Form of Application.—The application shall be in accordance with form A in the schedule to this Act and may ask to have embodied in the letters patent then applied for, any provision which could under this Part be contained in any by-law of the Company or of the directors approved by a vote of shareholders, which provision so embodied shall not, unless power is given therefor in the letters patent, be subject to repeal or alteration by any by-law. 2 E. VII., c. 15, s. 7.

Above section not applicable to Corporations not for profit.

9. Memorandum of Agreement.—The application shall be accompanied by a memorandum of agreement in duplicate under seal which shall be in accordance with form B in the schedule to this Act. 2 E. VII., c. 15, s. 7.

Above section not applicable to Corporations not for profit.

10. Before the letters patent are issued the applicants shall establish to the satisfaction of the Secretary of State the sufficiency of their application and memorandum of agreement and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known incorporated or unincorporated company or one likely to be confounded with any such name; and for that purpose the Secretary of State shall take any requisite evidence in writing by oath or affirmation or by solemn declaration and shall keep of record any such evidence so taken. 2 E. VII., c. 15, s. 7.

11. The letters patent shall recite such of the established averments in the application and memorandum of agreement

as to the Secretary of State seems expedient. 2 E. VII., c. 15, s. 8.

12. The Secretary of State may give to the company a **corporate name**, different from that proposed by the applicants if the proposed name is objectionable. 2 E. VII., c. 15, s. 9.

13. Notice of the granting of the letters patent shall be forthwith given by the Secretary of State of Canada by one insertion in the Canada Gazette, in the form C in the Schedule of this Act; and thereupon, from the date of the letters patent, the persons therein named, and such persons as have become subscribers to the memorandum of agreement or who thereafter become shareholders in the company, and their successors, shall be a body corporate and politic, by the name mentioned in the letters patent. 7-8 Geo. V., c. 25, s. 5.

This notice is published in the "Canada Gazette" without charge to the applicants.

14. As to existing companies. Any company heretofore incorporated for any purpose or object for which letters patent may be issued under this Part, whether under a special or a general Act, and now being a subsisting and valid corporation, may apply for letters patent to carry on its business under this Part, and the Secretary of State, with the approval of the Governor in Council, may direct the issue of letters patent incorporating the shareholders of the said company as a company under this Part.

2. Effect of letters patent. Upon the issuing of such letters patent all the rights, property and obligations of the former company shall be and become transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company.

3. It shall not be necessary in any such letters patent to set out the **names of the shareholders**.

4. Effects of letters patent. After the issue of such letters patent the company shall be governed in all respects by the provisions of this Part, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the letters patent. 2 E. VII., c. 15, s. 11.

15. Scope of letters patent. If a subsisting company applies for the issue of letters patent under this Part, the Secretary of State may, by the letters patent, extend the powers of the company to such other objects for which letters patent may be issued under this Part as the applicant desires, and as the Secretary of State thinks fit to include in the letters patent. 2 E. VII., c. 15, s. 12.

16. First Directors. The Secretary of State may in any letters patent issued under this Part to any subsisting company name the first directors of the new company, and the letters patent may be issued to the new company by the name of the old company or by another name. 2 E. VII., c. 15, s. 12.

17. Re-incorporation. Any company incorporated under any general or special Act of any of the provinces of Canada, and any company duly incorporated under the laws of the United Kingdom or any foreign country for any of the purposes or objects for which letters patent may be issued under this Part, and being at the time of the application a subsisting and valid corporation, may apply for letters patent under this Part, and the Secretary of State, upon receiving satisfactory evidence that the Act of incorporation or charter of the company so applying is valid and subsisting and that no public or private interest will be prejudiced, may issue letters patent incorporating the shareholders of the company so applying as a company under this Part, limiting, if necessary, the powers of the said company to such purposes or objects as might have been granted had the shareholders

applied in the first instance to the Secretary of State for letters patent under this Part, and thereupon all the rights, property and obligations of the former company shall be and become transferred to the new company, and all proceedings may be continued or commenced by or against the new company that might have been continued or commenced by or against the old company.

2. It shall not be necessary in any such letters patent to set out the **names of the shareholders.**

3. **Effect of letters patent.** After the issue of such letters patent the company shall be governed in all respects by the provisions of this Part, except that the liability of the shareholders to creditors of the old company shall remain as at the time of the issue of the letters patent. 2 E. VII., c. 15, s. 13.

18. Re-incorporation. Every company desirous of obtaining letters patent under the last preceding section shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company, and shall also designate the place in Canada where its principal office will be situated and the name of the agent or manager in Canada authorized to represent the company and to accept process in all suits and proceedings against the company for any liabilities incurred by the company therein. 2 E. VII., c. 15, s. 13.

19. Return to Minister. Every such company to which letters patent have been granted, when so required, shall make a return to the Secretary of State of the names of its shareholders, the amount of its paid-up capital and the value of its real and personal estate held in Canada, and, in default of making the said return within three months, the letters patent may be cancelled. 2 E. VII., c. 15, s. 13.

20. Notice of the issue of such letters patent shall be published in the Canada Gazette. 2 E. VII., c. 15, s. 13.

21. Minister may change name. If it is made to appear to the satisfaction of the Secretary of State that the name of a company, given by original or supplementary letters patent issued under this Part, is the same as the name of an existing incorporated or unincorporated company, or so similar thereto as to be liable to be confounded therewith, the Secretary of State may direct the issue of supplementary letters patent, reciting the former letters and changing the name of the supplementary letters patent. 2 E. VII., c. 15, s. 14.

22. Company may change name. When a company is desirous of adopting another name the Secretary of State, upon being satisfied that the change desired is not for any improper purpose, may direct the issue of supplementary letters patent, reciting the former letters patent and changing the name of the company to some other name, which shall be set forth in the supplementary letters patent. 2 E. VII., c. 15, s. 15.

The application for Supplementary Letters Patent to change the corporate name of a company should consist of the following documents, viz.:

1. Petition of company for change of name.
2. Affidavit or declaration verifying facts set out therein.
3. Copy of resolution or by-law of company authorizing change of name and the application for same.
4. Certificate, affidavit or declaration verifying same.

23. No affect of rights or obligation. No alteration of name under the two sections last preceding shall affect the rights or obligations of the company; and all proceedings may be continued or commenced by or against the company under its new name that might have been continued or commenced by or against the company under its former name. 2 E. VII., c. 15, s. 16.

24. Fees. The Governor in Council may establish, alter and regulate the tariff of fees to be paid on application for any letters patent or supplementary letters patent under this Part, on filing any document, on any certificate issued under this Act, on making any return under this Act and on the making of any search of the files of the Department of the Secretary of State of Canada respecting a company. The amount of any fee may be varied according to the nature of the company, the amount of the capital stock, or other particulars, as the Governor in Council deems fit. 7-8 Geo. V., c. 25, s. 6.

2. Must be paid before letters issued. No steps shall be taken in the Department of the Secretary of State towards the issue of any letters patent or supplementary letters patent under this Part, until after all fees therefor are duly paid. 2 E. VII., c. 15, ss. 13 and 17.

P. C. 14.

AT THE GOVERNMENT HOUSE AT OTTAWA

Saturday, the 12th day of January, 1918.

PRESENT:

HIS EXCELLENCY THE ADMINISTRATOR IN COUNCIL

His Excellency the Administrator in Council is pleased to make and establish and doth hereby make and establish the following tariff of fees, under the provisions of Section 24 of The Companies Act as amended by Section 6 of The Companies Act Amendment Act, 1917.

LETTER PATENT AND SUPPLEMENTARY LETTERS PATENT

When the proposed capital of the company is \$50,000 or less	\$100 00
When the proposed capital is more than \$50,000 and not more than \$200,000	100 00
and \$1 for each \$1,000 or fractional part thereof in excess of \$50,000.	

When the proposed capital is more than \$200,000 and not more than \$500,000	250 00
and fifty cents for each \$1,000 or fractional part thereof in excess of \$200,000.	
When the proposed capital is more than \$500,000 . . .	400 00
and twenty cents for every additional \$1,000 or fractional part thereof.	
For Letters Patent to any company under Section 7A added to The Companies Act by Section 4 of The Companies Act Amendment Act, 1917 (other than a company incorporated for charitable purposes only)	100 00
For Letters Patent to any company incorporated for charitable purposes only (other than a war charity when there shall be no fee)	25 00
For Letters Patent to a company under Section 7B added to The Companies Act by Section 4 of The Companies Act Amendment Act, 1917, when no amount at which shares may be sold is set out in the Letters Patent, then the amount of each share shall be fixed at \$100 and the fee payable shall be according to the foregoing tariff upon the capital stock calculated on the total amount of such shares either at the price set forth in the Letters Patent or at the fixed sum of \$100 as the case may be.	
For Supplementary Letters Patent increasing the capital of a company the fee to be according to the foregoing tariff, but on the increase only, that is, the fee to be the same as for the incorporation of a company with capital equal to the increase.	
For Supplementary Letters Patent changing the name of a company	50 00
For Supplementary Letters Patent for other purposes	100 00

FOR FILING RETURNS

For filing returns under Section 106 of The Companies Act as amended by Section 13 of The Companies Act Amendment Act, 1917, the fee payable upon each return shall be as follows:

Co. L. 3.

When the capital stock of the company is \$200,000 or less	\$ 5 00
When the capital stock of the company is more than \$200,000 but not more than \$500,000	10 00
When the capital stock of the company is more than \$500,000, but not more than \$1,000,000	25 00
When the capital stock is more than \$1,000,000	25 00
and \$1 on each \$1,000,000 in excess of the first million, but not exceeding \$50 in all.	
For filing return from a company having shares without nominal or par value, the fee payable shall be calculated upon the capitalization of such company shown in such return.	
For filing return from a company incorporated for charitable purposes (other than a war charity when there shall be no fee)	1 00
For filing return from any company incorporated under Section 7A added to The Companies Act by Section 4 of The Companies Act Amendment Act, 1917 (other than a company incorporated for charitable purposes only)	2 00

CERTIFICATES OF REGISTRATION, ETC.

For each Certificate of Registration or Deposit of any prospectus, notice or agreement or other such document filed for that purpose under the provisions of The Companies Act or The Companies Act Amendment Act, 1917	1 50
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His Excellency is also pleased to Order that all former Orders in Council respecting the tariff of fees for the incorporation of companies and the tariff of fees established thereunder, shall be and the same are hereby cancelled.

RODOLPHE BOUDREAU,

Clerk of the Privy Council.

The Honourable

The Secretary of State.

[All fees must be paid in cash or by an accepted cheque made payable to the order of the Honourable the Secretary of State and should be transmitted to him by Registered Letter. —Ed.]

25. Forms prescribed. The Governor in Council may prescribe the forms of proceedings and registration in respect to letters patent and supplementary letters patent issued under this Part, and in respect of all other matters requisite for carrying out the objects of this Part. 2 E. VII., c. 15, s. 17.

See prescribed forms at end of Chapter 3.

26. Ten % of capital to be paid. The company shall not commence its operations or incur any liability before ten per centum of its authorized capital has been subscribed and paid for. 2 E. VII., c. 15, s. 18.

Above section not applicable to Corporations not for profit.

27. Forfeiture of Charter. In case of non-user by the company of its charter for three consecutive years or in case the company does not go into actual operation within three years after the charter is granted, such charter shall be and become forfeited. 2 E. VII., c. 15, s. 19.

Failure to comply with a charter provision that certain proportions of capital shall be subscribed and paid up within a limited period is ground for declaring a forfeiture of charter. *Dominion Salvage Co. v. Atty.-Gen'l.*, 21 S.C.R. 72.

28. All powers given to the company by letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Part. 2 E. VII., c. 15, s. 20.

29. As to real estate. The company may acquire, hold, mortgage, sell and convey any real estate requisite for the carrying on of the undertaking of the company.

2. **Loans.** The company shall in no case make any loan to any shareholder of the company.

3. **Property and power vested by incorporation.** The company shall forthwith upon incorporation under this Part, become and be vested with all property and rights, real and personal, theretofore held by it or for it under any trust created with a view to its incorporation, and with all the

BIBLIOTHÈQUE DE DROIT

powers, privileges and immunities, requisite or incidental to the carrying on of its undertaking, as if it was incorporated by a special Act of Parliament embodying the provisions of this Part and of the letters patent and supplementary letters patent issued to such company. 2 E. VII., c. 15, ss. 21 and 70.

30. Offices, agencies, domicile. The company shall, at all times, have an office in the city or town in which its chief place of business in Canada is situate, which shall be the legal domicile of the company in Canada; and the company may establish such other offices and agencies elsewhere as it deems expedient.

2. **Notice** of the situation of such principal office and of any change therein shall be published in the Canada Gazette. 2 E. VII., c. 15, s. 22.

31. Acts of Attorney Binding. Every deed which any person lawfully empowered in that behalf by the company as its attorney, signs on behalf of the company and seals with his seal, shall be binding on the company and shall have the same effect as if it was under the seal of the company. 2 E. VII., c. 15, s. 23.

32. Contracts of Agents.—Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company.

2. **When Seal Not Necessary.**—In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order.

3. **No Individual Liability.**—No person so acting as such agent, officer or servant of the company shall be thereby subjected individually to any liability whatever to any third person. 2 E. VII., c. 15, s. 24.

33. **'Limited' Required to be Used.**—The company shall keep its name, with the word limited after the name, painted or affixed, in letters easily legible, in a conspicuous position on the outside of every office or place in which the business of the company is carried on, and shall have its name, with the said word after it, engraved in legible character, on its seal, and shall have its name, with the said word after it in legible characters, mentioned in all notices, advertisements and other official publications of the company and in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices and receipts of the company. 2 E. VII., c. 15, s. 25.

Above section not applicable to Corporations not for profit.

See Sections 114 and 115 as to penalties for failure or neglect to use word "Limited".

34. **Obtaining Further Powers.**—The company may, from time to time, by a resolution passed by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent, extending the powers of the company to such further or other purposes or objects for which a company may be incorporated under this Part, or reducing, limiting, amending or varying such powers, or any provisions of the letters patent or supplementary letters patent issued to the company, as are defined in such resolution. 4-5 Geo. V., c. 23, s. 4.

35. **Application by Directors.**—The directors may, at any time within six months after the passing of any such resolu-

tion, make application to the Secretary of State, for the issue of such supplementary letters patent. 2 E. VII., c. 15, s. 27.

36. Evidence of Resolution.—Before such supplementary letters patent are issued, the applicants shall establish to the satisfaction of the Secretary of State the due passing of the resolution authorizing the application, and for that purpose the Secretary of State shall take any requisite evidence in writing, by oath or affirmation, or by statutory declaration under the Canada Evidence Act, and shall keep of record any such evidence so taken. 2 E. VII., c. 15, s. 28.

37. Supplementary Letters Patent Granted.—Upon the due passing of such resolution being so established, the Secretary of State may grant supplementary letters patent extending the powers of the company to all or any of the objects defined in the resolution; and **notice** thereof shall be forthwith given by the Secretary of State in the Canada Gazette, in the form D in the schedule to this Act.

2. **Effect of Letters.**—From the date of the supplementary letters patent, the undertaking of the company shall extend to and include the further or other purposes or objects set out in the supplementary letters patent as fully as if such further or other purposes or objects were mentioned in the original letters patent.

3. Repealed 7-8 Geo. V., c. 25, s. 16.

The application for supplementary letters patent extending the powers of a company should consist of the following documents, viz. :—

1. Petition by Directors for Supplementary Letters Patent. The petition should be signed by the Directors, or a majority of them, in person and in presence of a witness who should make the required statutory declaration of execution.
2. Affidavit or Declaration verifying Signatures of the Petitioners.

3. Affidavit or Declaration verifying truth of facts set out in Petition.
4. Verified copy of notice calling special or general meeting.
5. Copy of By-law or resolution passed by the shareholders.
6. Affidavit or declaration verifying same .

38. Liability of Shareholders.—The shareholders of the company shall not, as such, be responsible for any act, default or liability of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing relating to or connected with the company, beyond the amount unpaid on their respective shares in the capital stock thereof. 2 E. VII., c. 15, s. 30.

Above section not applicable to Corporations not for profit.

39. Liability of Shareholders.—Every shareholder, until the whole amount of his shares has been paid up, shall be individually liable to the creditors of the company to an amount equal to that not paid up thereon; but he shall not be liable to an **action therefor** by any creditor until an execution at the suit of such creditor against the company has been returned unsatisfied in whole or in part.

2. **Amount Recoverable.**—The amount due on such execution, not exceeding the amount unpaid on his shares, as aforesaid, shall be the amount recoverable, with costs, from such shareholder.

3. Any amount so recoverable, if paid by the shareholder, shall be considered as paid on his shares. 2 E. VII., c. 15, s. 31.

Above section not applicable to Corporations not for profit.

40. Set off Against Creditor's Action.—Any shareholder may plead by way of defence in whole or in part to any action by any creditor under the last preceding section any set-off which he can set up against the company, except a claim for unpaid dividends, or a salary or allowance as a president or a director of the company. 2 E. VII., c. 15, s. 31.

Above section not applicable to Corporations not for profit.

41. Trustees Not Personally Liable.—No person, holding stock in the company as an executor, administrator, tutor, curator, guardian or trustee of or for any person named in the books of the company as being so represented by him, shall be personally subject to liability as a shareholder: but **the estate** and funds in the hands of such person shall be liable in like manner, and to the same extent, as the testator or intestate would be if living, or the minor, ward or interdicted person, or the person interested in such trust fund would be, if competent to act and holding such stock in his own name.

2. No person holding such **stock as collateral security** shall be personally subject to such liability, but the person pledging such stock shall be considered for the purposes of such liability as holding the same and shall be liable as a shareholder accordingly. 2 E. VII., c. 15, s. 32.

Above section not applicable to Corporations not for profit.

The fact that shares are entered in the books of a company and in the transfer as held "in trust" is sufficient of itself to show that the title of the seller is not absolute, and to put the purchaser on inquiry as to the right to sell the shares. *Raphael v. McFarlane* (1890) 18 S.C.R. 183.

See Section 50 as to execution of trusts.

42. Trustees Represent Stock and Pledgeor.—Every such executor, administrator, curator, guardian or trustee shall represent the stock held by him, at all meetings of the company, and may vote as a shareholder; and every person who pledges his stock may represent the same at all such meetings and, notwithstanding such pledge, vote as a shareholder. 2 E. VII., c. 15, s. 33.

Above section not applicable to Corporations not for profit.

43. Prospectus.—In this Act, unless the context otherwise requires, the word "prospectus" shall have the meaning hereby assigned to it, that is to say: "Prospectus" means any prospectus, notice, circular advertisement, or other invita-

tion offering to the public for subscription or purchase any shares or debentures of a company. Imp. Act. 1908, s. 285; 7-8 Geo. V., c. 25, s. 7.

Above section not applicable to Corporations not for profit.

43A. Filing of Prospectus.—Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed for registration with the Secretary of State of Canada, on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The Secretary of State of Canada shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable on summary conviction to a fine not exceeding twenty dollars for every day from the date of the issue of the prospectus until a copy thereof is so filed. Imp. Act, 1908, s. 80; 7-8 Geo. V., c. 25, s. 7.

Above section not applicable to Corporations not for profit.

43B. Specific Requirements of Prospectus.—Every prospectus issued by or on behalf of a company, or on behalf of any person who is or has been engaged or interested in the formation of the company, must state,—

- (a) the contents of the letters patent and supplementary letters patent, with the names, descriptions, and addresses of the signatories to the petition for incorporation, and the number of shares subscribed for by them respectively; and the number of founders' or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and,
- (b) the number of shares, if any, fixed by the by-laws of the company as the qualification of a director, and any provision in the said by-laws as the remuneration of the directors; and,
- (c) the names, descriptions, and addresses of the directors or proposed directors; and,
- (d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscriptions on each previous allotment made within the two preceding years, and the amount actually allotted; and the amount, if any, paid on the shares so allotted; and,
- (e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and,
- (f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue

- offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors; and,
- (g) the amount (if any) paid or payable as purchase money in cash, shares or debentures, for any such property as aforesaid, specifying the amount (if any) payable for good will; and,
 - (h) the amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debenture of, the company, or the rate of any such commission: Provided that it shall not be necessary to state the commission payable to sub-underwriters; and,
 - (i) the amount or estimated amount of preliminary expenses; and,
 - (j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and,
 - (k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by

the company or to any contract entered into more than two years before the date of issue of the prospectus; and,

- (l) the names and addresses of the auditors (if any) of the company; and,
- (m) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm with a statement of all sums paid or agreed to be paid to him or the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and,
- (n) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where,—

- (a) the purchase money is not fully paid at the date of issue of the prospectus; or,
- (b) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or,
- (c) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirements of this section, or purporting to affect him with notice of any contract, document, or matter not specially referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the letters patent and supplementary letters patent, the signatories to the petition for incorporation, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that,—

- (a) as regards any matter not disclosed, he was not cognizant thereof; or,
- (b) the non-compliance arose from an honest mistake of fact on his part;

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of sub-section (1) of this section no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matter not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in

favor of other persons; but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the letters patent and supplementary letters patent and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company commenced business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section. Imp. Act. 1908, s. 81; 7-8 Geo. V., c. 25, s. 7.

Above section not applicable to Corporations not for profit.

43C. When no Prospectus is Issued.—A company which does not issue a prospectus on or with reference to its formation, shall not allot any of its shares or debentures unless before the first allotment of either shares or debentures there has been filed with the Secretary of State of Canada a statement in lieu of prospectus signed by every person who is named therein as a director or a proposed director of the company or by his agent authorized in writing, in the form and containing the particulars set out in Form F in the Schedule of this Act. Imp. Act, 1908, s. 82 (1).

(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the first day of January, 1918. Imp. Act, 1908, s. 82 (2).

(3) **"Private Company"**—For the purposes of this section the expression "private company" means a company which by its letters patent or supplementary letters patent,—

(a) restricts the right to transfer its shares; and,

- (b) limits the numbers of its members (exclusive of persons who are in the employment of the company and of persons who having been formerly in the employment of the company were, while in such employment and have continued after the termination of such employment to be members of the company) to fifty; and,
- (c) prohibits any invitation to the public to subscribe for any shares or debentures of the company. Imp. Act, 1908, s. 121 (1) and 3 & 4 Geo. V., c. 25.
- (4) A private company may, subject to anything contained in the letters patent and supplementary letters patent, by passing a resolution at a special general meeting of the company called for that purpose and by filing with the Secretary of State of Canada such a statement in lieu of prospectus as a company, if a public company, would have had to file before allotting any of its shares or debentures and by obtaining supplementary letters patent confirming the resolution, turn itself into a public company. Imp. Act, 1908, s. 121 (2).
- (5) Where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this section be treated as a single shareholder. Imp. Act, 1908, s. 121 (3); 7-8 Geo. V., c. 25, s. 7.

Above section not applicable to Corporations not for profit.

43D. Liability for Statements in Prospectus.—Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay

compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved,—

- (a) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and,
- (b) With respect to every untrue statement purporting to be a statement by, or contained in what purports to be a copy of or extract from a report or valuation of, an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and,
- (c) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document, unless it is proved,—
 - (i) that having consented to become a director of the company he withdrew his consent before the issue of

the prospectus and that it was issued without his authority or consent; or,

- (ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or,
- (iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Where a company existing on the first day of September, one thousand nine hundred and seventeen, has issued shares or debentures, and for the purpose of obtaining further capital by subscriptions for shares or debentures issues a prospectus, a director shall not be liable in respect of any statement therein, unless he has authorized the issue of the prospectus, or has adopted or ratified it.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been asserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who, by reason of his being a director or named as a director or as having agreed to become a

director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in the case of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section,—

The expression "**promoter**" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

The expression "**expert**" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him." Imp. Act, 1908, s. 84; 7-8 Geo. V., c. 25, s. 7.

Above section not applicable to Corporations not for profit.

44. Holding Stock of Other Companies.—The company shall not under any circumstances use any of its funds in the purchase of stock in any other corporation, unless nor until the directors have been expressly authorized by a by-law passed by them for the purpose and sanctioned by a vote of not less than two-thirds in value of the capital stock represented at a general meeting of the company duly called for considering the subject of the by-law: **Provided** that if the letters patent authorize such purchase it shall not be necessary to pass such by-law. 2 E. VII., c. 15, s. 35.

45. Capital Stock Personal Estate.—The stock of the company shall be personal estate, and shall be transferrable, in such manner and subject to all such conditions and restrictions as are prescribed by this Part or by the letters patent or by the by-laws of the company. 2 E. VII., c. 15, s. 36.

Above section not applicable to Corporations not for profit.

46. Allotment of Stock.—In so far as the stock of the company or any increased amount thereof is not allotted by the letters patent or the supplementary letters patent and when no other definite provision is made by such letters patent or supplementary letters patent such stock shall be allotted at such times and in such manner as the directors by by-law shall prescribe. 2 E. VII., c. 15, s. 37.

Above section not applicable to Corporations not for profit.

47. Preference Stock.—The directors of the company may make by-laws for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as is by such by-laws declared.

(2) **Provisions as to Control of Affairs.**—Such by-laws may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such other control over the affairs of the company as is considered expedient. 2 E. VII., c. 15, s. 38.

Above section not applicable to Corporations not for profit.

48. By-law to be Sanctioned.—No such by-law shall have any force or effect whatever until after it has been sanctioned by a vote of three-fourths of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or until the same shall be unanimously sanctioned in writing by the shareholders of the company. 2 E. VII., c. 15, s. 38.

Above section not applicable to Corporations not for profit.

49. Rights and Liabilities of Holders of Preference Stock.—Holders of shares of such preference stock shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities of shareholders within the meaning of this Part: Provided that in respect of dividends, and in any other respect declared

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by by-law as authorized by this Part, they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by such by-law. 2 E. VII., c. 15, s. 38.

Above section not applicable to Corporations not for profit.

50. Execution of Trusts.—The company shall not be bound to see the execution of any trust, whether express, implied, or constructive, in respect of any share.

2. Receipt of Shareholder as a Discharge.—The receipt of the shareholder in whose name the same stands in the books of the company shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share whether notice of such trust has been given to the company or not.

3. Application of Money.—The company shall not be bound to see to the application of the money paid upon such receipt. 2 E. VII., c. 15, s. 39.

Above section not applicable to Corporations not for profit.

51. By-law to Consolidate Shares.—The directors of the company may, at any time, whenever the par value of the existing shares of the company is less than one hundred dollars each, make a by-law consolidating them into shares of a larger par value; but no such consolidated share shall exceed the par value of one hundred dollars.

2. Purchase of Fractions of Shares by Company.—For the purpose of such consolidation, the company shall have the power to purchase fractions of shares, and shall be bound to sell any shares held from such purchases within two years after the purchase.

3. Sub-division of Shares.—The directors of the company may also, at any time, make a by-law subdividing the existing shares into shares of a smaller amount. 2 E. VII., c. 15, s. 40; 4 E. VII., c. 5, s. 2.

Above section not applicable to Corporations not for profit.

52. Increase of Capital.—The directors of the company may, at any time after ninety per centum of the capital stock of the company has been taken up and fifty per centum thereon paid in, make a by-law for increasing the capital stock of the company to any amount which they consider requisite for the due carrying out of the objects of the company.

2. **No by-law for increasing or reducing** the capital stock of the company, or for subdividing the shares, shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company at a special general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent. 2 E. VII., c. 15, ss. 41 and 43.

Above section not applicable to Corporations not for profit.

53. By-law to Allot Stock.—Such by-law shall declare the number of the shares of the new stock, and may prescribe the manner in which the same shall be allotted.

2. **Directors Allot Them.**—In default of the manner of the allotment of the shares of the new stock being prescribed by such by-law, the control of such allotment shall vest absolutely in the directors. 2 E. VII., c. 15, s. 41.

Above section not applicable to Corporations not for profit.

54. Reduction of Share Capital.—Subject to confirmation by supplementary letters patent, a company may by by-law reduce its share capital in any way, and in particular, without prejudice to the generality of the foregoing power, may:—

- (a) Extinguish or reduce the liability on any of its shares in respect of share capital not paid up; or,
- (b) Either with or without extinguishing or reducing share capital which is lost or unrepresented by liability on any of its shares, cancel any paid-up available assets; or,

(c) Either with or without extinguishing or reducing liability on any of its shares, pay off any paid-up share capital which is in excess of the wants of the company; and may reduce the amount of its share capital and of its shares accordingly.

(2) No by-law for reducing the capital stock of the company shall have any force or effect whatsoever, until it is approved by the votes of shareholders representing at least two-thirds in value of the subscribed stock of the company at a special general meeting of the company duly called for considering the same, and afterwards confirmed by supplementary letters patent. 2 E. VII., c. 15, ss. 41 and 43; 7-8 Geo. V., c. 25, s. 8

Above section not applicable to Corporations not for profit.

54A. Addition to Name of Company of "and Reduced."—

On and from the confirmation by a company of a by-law for reducing share capital, or where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, then on and from the presentation of the petition for supplementary letters patent confirming the reduction, the company shall add to its name, until such date as the Secretary of State of Canada may fix, the words "and reduced," as the last words in its name, and those words shall, until that date, be deemed to be part of the name of the company: Provided that, where the reduction does not involve either the diminution of any liability in respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, the Secretary of State of Canada may, if he thinks expedient, dispense altogether with the addition of the words "and reduced." 7-8 Geo. V., c. 25, s. 8.

Above section not applicable to Corporations not for profit.

54B. Objections by Creditors.—Where the proposed reduction of share capital involves either diminution of liability in

respect of unpaid share capital or the payment to any shareholder of any paid-up share capital, and in any other case if the Secretary of State of Canada so directs, every creditor of the company who at the date of the petition for supplementary letters patent to the Secretary of State of Canada is entitled to any debt or claim which, if that date were the commencement of the winding-up of the company, would be admissible in proof against the company, shall be entitled to object to the reduction.

(2) The Secretary of State of Canada shall settle a list of creditors so entitled to object, and for that purpose shall ascertain, as far as possible without requiring an application from any creditor, the names of those creditors and the nature and amount of their debts or claims, and may publish notices fixing a day or days within which creditors not entered on the list are to claim to be so entered or are to be excluded from the right of objecting to the reduction.

(3) Where a creditor entered on the list whose debt or claim is not discharged or determined does not consent to the reduction, the Secretary of State of Canada may, if he thinks fit, dispense with the consent of that creditor, on the company securing payment of his debt or claim by appropriating, as the Secretary of State of Canada may direct, the following amount, that is to say,—

- (i) If the company admits the full amount of his debt or claim, or, though not admitting it, is willing to provide for it, then the full amount of the debt or claim;
- (ii) If the company does not admit or is not willing to provide for the full amount of the debt or claim, or if the amount is contingent or not ascertained, then an amount fixed by the Secretary of State of Canada after the like inquiry and adjudication as if the company were being wound up. 7-8 Geo. V., c. 25, s. 8.

Above section not applicable to Corporations not for profit.

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54C. Order Confirming Reduction.—The Secretary of State of Canada, if satisfied, with respect to every creditor of the company who under this Act is entitled to object to the reduction, that either his consent to the reduction has been obtained or his debt or claim has been discharged or has determined, or has been secured, may issue supplementary letters patent confirming the reduction on such terms and conditions as he thinks fit. 7-8 Geo. V., c. 25, s. 8.

Above section not applicable to Corporations not for profit.

54D. Liability of Members in Respect of Reduced Shares.—A shareholder of the company, past or present, shall not be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount paid, or (as the case may be) the reduced amount, if any, which is to be deemed to have been paid, on the share and the amount of the share as fixed by the supplementary letters patent:

Provided that if any creditor, entitled in respect of any debt or claim to object to the reduction of share capital, is, by reason of his ignorance of the proceedings for reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and, after the reduction, the company is unable, within the meaning of the provisions of the Winding-up Act to pay the amount of his debt or claim, then,—

- (i) every person who was a shareholder of the company at the date of the supplementary letters patent shall be liable to contribute for the payment of that debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day before the date of the supplementary letters patent; and,

- (ii) if the company is wound up, the court, on the application of any such creditor and proof of his ignorance as aforesaid, may, if he thinks fit, settle accordingly a list of persons so liable to contribute, and make and enforce calls and orders on the contributories settled on the list as if they were ordinary contributories in a winding-up.

(2) Nothing in this section shall affect the rights of the contributories among themselves. 7-8 Geo. V., c. 25, s. 8.

Above section not applicable to Corporations not for profit.

54E. Penalty for Concealment of Name of Creditor.—Any director, manager, or officer of the company who wilfully conceals the name of any creditor entitled to object to the reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor, or aids or abets in or is privy to any such concealment or misrepresentation, is guilty of an indictable offence and liable to five years' imprisonment or to a penalty not exceeding one thousand dollars or to both such imprisonment and such penalty. 7-8 Geo. V., c. 25, s. 8.

Above section not applicable to Corporations not for profit.

54F. Publication of Reasons for Reduction.—In any case of reduction of share capital the Secretary of State of Canada may require the company to publish, as he directs, the reasons for reduction, or such other information in regard thereto as he may think expedient with a view to give proper information to the public, and, if he thinks fit, the causes which led to the reduction. 7-8 Geo. V., c. 25, s. 8.

Above section not applicable to Corporations not for profit.

55. Supplementary Letters to Confirm By-law.—At any time, not more than six months after the approval of a by-law for increasing or reducing the capital stock of the company, or for subdividing the shares, the directors may apply to the Secretary of State for the issue of supplementary letters patent to confirm the same. 2 E. VII., c. 15, s. 44.

Above section not applicable to Corporations not for profit.

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56. Evidence with Application.—The directors shall, with such application, produce a copy of such by-law, under the seal of the company, and signed by the president or vice-president and the secretary, and establish to the satisfaction of the Secretary of State, the due passage and approval of such by-law and the expediency and bona fide character of the increase or reduction of capital or subdivision of shares, as the case may be, thereby provided for.

(2) **How Taken.**—The Secretary of State shall, for that purpose, take any requisite evidence in writing, by oath or affirmation or by solemn declaration, and shall keep of record any such evidence so taken. 2 E. VII., c. 15, s. 44.

Above section not applicable to Corporations not for profit.

57. Granting of the Letters.—Upon the due passage and approval of such by-law being so established, the Secretary of State may grant such supplementary letters patent.

2. **Notice** of the granting of such letters patent shall be forthwith given by the Secretary of State in the Canada Gazette, in the Form E in the schedule to this Act.

3. **Effect of Letters.**—From the date of such supplementary letters patent, the capital stock of the company shall be and remain increased or reduced, or the shares subdivided, as the case may be, to the amount in the manner and subject to the conditions set forth by such by-law.

4. **New Stock Subject to Provisions of this Part.**—The whole of the stock, as so increased or reduced or with such subdivided shares shall become subject to the provisions of this Part, in like manner, as far as possible, as if every part thereof had been or formed part of the stock of the company originally subscribed 2 E. VII., c. 15, s. 45.

Above section not applicable to Corporations not for profit.

The application for supplementary letters patent to increase or decrease the capital stock or subdivide the shares of a company should consist of the following documents:—

1. Petition of Directors for Supplementary Letters Patent. The petition should be signed by the Directors, or a majority of them, in person and in presence of a witness, who should make the required declaration of execution.
2. Affidavit or declaration verifying truth of facts set out in petition.
3. Affidavit or declaration verifying signatures to petition.
4. Certified copy of By-law under seal of company.
5. Verified copy of notice calling special or general meeting.
6. Copy of proceedings at special or general meeting with respect to passage and sanction of By-laws.
7. Affidavit or declaration verifying truth of such minutes.

58. Calls Within First Year.—Not less than ten per centum upon the allotted shares of stock of the company shall, by means of one or more calls formally made, be called in and made payable within one year from the incorporation of the company.

2. **Calls for Residue.**—The residue shall be called in and made payable when and as the letters patent, or the provisions of this Part, or the by-laws of the company direct. 2 E. VII., c. 15, s. 46.

Above section not applicable to Corporations not for profit.

59. Call When Demand Made.—A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed. 2 E. VII., c. 15, s. 47.

Above section not applicable to Corporations not for profit.

60. Interest on Calls.—If a shareholder fails to pay any call due by him, on or before the day appointed for the payment thereof, he shall be liable to pay interest for the same, at the rate of six per centum per annum from the day appointed for

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payment to the time of actual payment thereof. 2 E. VII. c. 15, s. 47.

Above section not applicable to Corporations not for profit.

61. Payment in Advance on Shares.—The directors may, if they think fit, receive from any shareholder willing to advance the same, beyond the sums then actually called for, all or any part of the amounts remaining unpaid on the shares held by such shareholders.

2. Interest May be Allowed.—Upon the money, so paid in advance, or so much thereof, as, from time to time, exceeds the amount of the calls then made upon the shares in respect of which such advance is made, the company may pay interest at such rate not exceeding eight per centum per annum, as the shareholder who pays such sum in advance and the directors agree upon. 2 E. VII., c. 15, s. 48.

Above section not applicable to Corporations not for profit.

62. Forfeiture of Shares for Non-payment of Calls.—If after such demand or notice as is prescribed by the letters patent, or by resolution of the directors, or by the by-laws of the company, any call made upon any share is not paid within such time as by such letters patent or by resolution of the directors or by the by-laws is limited in that behalf, the directors, in their discretion, by vote to that effect duly recorded in their minutes, may summarily declare forfeited any shares whereon such call is not paid.

2. Revert to Company.—Such shares so declared forfeited shall thereupon become the property of the company, and may be disposed of as the company by the by-laws or otherwise prescribes.

3. Liability of Holders to Creditors.—Notwithstanding such forfeiture, the holder of such shares at the time of forfeiture shall continue liable to the creditors of the company at such time for the full amount unpaid on such shares at the

time of forfeiture, less any sums which are subsequently received by the company in respect thereof. 2 E. VII., c. 15, s. 49.

Above section not applicable to Corporations not for profit.

63. Enforcement of Calls by Action.—The directors may, if they see fit, instead of declaring forfeited any share or shares, enforce payment of all calls, and interest thereon, by action in any court of competent jurisdiction.

2. What Need be Alleged and Proved.—In such action it shall not be necessary to set forth the special matter, but it shall be sufficient to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount, in respect of one call or more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this Part. 2 E. VII., c. 15, s. 50.

Above section not applicable to Corporations not for profit.

64. Transfer Invalid Without Entry.—Except for the purpose of exhibiting the rights of parties to any transfer of shares towards each other and of rendering any transferee jointly and severally liable with the transferor to the company and its creditors, no transfer of shares unless made by sale under execution or under the decree, order or judgment of a court of competent jurisdiction, shall be valid for any purpose whatever until entry of such transfer is duly made in the register of transfers: Provided that as to the stock of any company listed and dealt with on any recognized stock exchange by means of scrip, commonly in use endorsed in blank and transferable by delivery, such endorsement and delivery shall, excepting for the purpose of voting at meetings of the company, constitute a valid transfer. 2 E. VII., c. 15, s. 51.

Above section not applicable to Corporations not for profit.

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65. Unpaid Shares.—No transfer of shares whereof the whole amount has not been paid in shall be made without the consent of the directors. 2 E. VII., c. 15, s. 52.

Above section not applicable to Corporations not for profit.

66. Calls Unpaid.—No shares shall be transferrable until all previous calls thereon are fully paid in. 2 E. VII., c. 15, s. 54.

Above section not applicable to Corporations not for profit.

67. Registration of Transfer.—The directors may decline to register any transfer of shares belonging to any shareholder who is indebted to the company. 2 E. VII., c. 15, s. 55.

Above section not applicable to Corporations not for profit.

68. Transfer by Personal Representative.—Any transfer of the shares or other interest of a deceased shareholder, made by his personal representative, shall, notwithstanding such personal representative is not himself a shareholder, be of the same validity as if he had been a shareholder at the time of his execution of the instrument of transfer. 2 E. VII., c. 15, s. 56.

Above section not applicable to Corporations not for profit.

68A. Issue and Effect of Share Warrants.—A company, if so authorized by its letters patent or supplementary letters patent and subject to the provisions thereof may, with respect to any fully paid-up shares, issue under its common seal a warrant stating that the bearer of the warrant is entitled to the share or shares therein specified, and may provide by coupons or otherwise, for the payment of the future dividends on the share or shares included in the warrant hereafter termed a share warrant.

2. Rights of Bearer.—A share warrant shall entitle the bearer thereof to the shares therein specified, and the shares may be transferred by delivery of the warrant.

3. Bearer to be Shareholder on Surrender of Warrant.—

The bearer of a share warrant shall, subject to the provisions and regulations respecting share warrants contained in the letters patent or supplementary letters patent, be entitled on surrendering it for cancellation, to have his name entered on the books of the company as the holder of the shares specified in such share warrant, and the company shall be responsible for any loss incurred by any person by reason of the company entering on the books of the company the name of the bearer of a share warrant in respect of the shares therein specified without the warrant being surrendered and cancelled.

4. Rights of Bearer Under Regulations.—The bearer of a share warrant may, if the provisions and regulations respecting share warrants so provide, be deemed to be a shareholder of the company either to the full extent or for any purposes defined by such regulations; except that he shall not be qualified in respect of the shares specified in the warrant for being a director of the company.

5. Entries on Issue of Share Warrants.—On the issue of a share warrant the company shall remove from its books the name of the shareholder then entered therein as holding such share or shares as if he had ceased to be a shareholder, and shall enter in such books the following particulars, namely:

- (i) the fact of the issue of the warrant;
- (ii) a statement of the shares included in the warrant, and
- (iii) the date of the issue of the warrant.

6. Surrender of Warrant.—Until the warrant is surrendered, the above particulars shall be deemed to be the particulars required by this Act to be entered in the books of the company in respect of such share or shares, and, on the surrender, the date of the surrender shall be entered as if it were the date at which a person ceased to be a shareholder.

7. **Warrant Holders Not Considered Where Vote of Definite Part of Stock Required.**—Unless the bearer of a share warrant is entitled to attend and vote at general meetings, the shares represented by such share warrant shall not be counted as part of the stock of the company for the purposes of a general meeting. 7-8 Geo. V., c. 23, s. 2.

Above section not applicable to Corporations not for profit.

69. **Borrowing Powers.**—If authorized by by-law, sanctioned by a vote of not less than two-thirds in value of the subscribed stock of the company represented at a general meeting duly called for considering the by-law, the directors may from time to time,—

- (a) **borrow money** upon the credit of the company;
- (b) **limit or increase** the amount to be borrowed;
- (c) **issue bonds, debentures**, debenture stock or other securities of the company, and pledge or sell the same for such sums and at such prices as may be deemed expedient;
- (d) **hypothecate, mortgage or pledge** the real or personal property of the company, or both, to secure any such bonds, debentures, debenture stock or other securities, and any money borrowed for the purposes of the company.

2. **Bills and Notes.**—Nothing in this section contained shall limit or restrict the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the company.

3. **Perpetual Debenture.**—A condition contained in any debentures or in any deed for securing any debentures, whether issued or executed before or after the passing of this Act shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the

expiration of a period, however long, any rule of equity to the contrary notwithstanding.

4. Power to Re-issue Redeemed Debentures in Certain Cases.—Where a company has redeemed any debentures previously issued, the company, unless the conditions of issue expressly otherwise provide, or unless the debentures have been redeemed in pursuance of any obligation on the company so to do (not being an obligation enforceable only by the person to whom the redeemed debentures were issued or his assigns), shall have power to keep the debentures alive for the purpose of re-issue, and where a company has purported to exercise such a power the company shall have power to re-issue the debentures either by re-issuing the same debentures or by issuing other debentures in their place, and upon such a re-issue the person entitled to the debentures shall have the same rights and priorities as if the debentures had not previously been issued;

- (a) **Transfer from Nominee of Company.**—Where with the object of keeping debentures alive for the purpose of re-issue they have, either before or after the passing of this Act, been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a re-issue for the purposes of this section;
- (b) **When Debentures Deposited Not Redeemed.**—Where a company has, either before or after the passing of this Act, deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited;
- (c) **the issue of a debenture** or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a

company, whether the re-issue or issue was made before or after the passing of this Act, shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued;

- (d) **Pending Proceedings Not Affected.**—Nothing in this section shall prejudice,—
- (i) the operation of any judgment or order of a court of competent jurisdiction pronounced or made not later than ninety days after the passing of this Act as between the parties to the proceedings in which the judgment was pronounced or the order made, and any appeal from any such judgment or order shall be decided as if this Act had not been passed; or
 - (ii) any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same. 4-5 Geo. V., c. 23, s. 3.

69A. Registration of Mortgages and Charges.—Every mortgage or charge created after the first day of January, nineteen hundred and eighteen, by a company, and being either,—

- (a) a mortgage or charge for the purpose of securing any issue of debentures; or,
- (b) a mortgage or charge on uncalled share capital of the company; or,
- (c) a floating charge on the undertaking or property of the company;

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless the prescribed particulars of the mortgage or charge, together with an original of the instrument (if any) by which the mortgage

or charge is created or evidenced, are delivered to or received by the Secretary of State of Canada, for registration in manner required by this Act, within thirty days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured; and when a mortgage or charge becomes void under this section the money secured thereby shall immediately become payable: Provided that,—

- (i) in the case of a mortgage or charge created out of Canada comprising solely property situate outside Canada, the delivery to and the receipt by the Secretary of State of Canada of a copy of the instrument by which the mortgage or charge is created or evidenced, verified in the prescribed manner, shall have the same effect for the purposes of this section as the delivery and receipt of the instrument itself, and thirty days after the date on which the instrument or copy could, in due course of post, and if despatched with due diligence, have been received in Canada, shall be substituted for thirty days after the date of the creation of the mortgage or charge, as the time within which the particulars and instrument or copy are to be delivered to the Secretary of State of Canada; and,
- (ii) where the mortgage or charge is created in Canada, but comprises property outside Canada, the instrument creating or purporting to create the mortgage or charge may be sent for registration notwithstanding that further proceedings may be necessary to make the mortgage or charge valid or effectual according to the law of the country in which the property is situate; and,
- (iii) the holding of debentures entitling the holder to a charge on land shall not be deemed to be an interest in land.

(2). The Secretary of State of Canada shall keep, with respect to each company, a register in the prescribed form of all mortgages and charges created by the company after the first day of January, nineteen hundred and eighteen, and requiring registration under this section, and shall, on payment of the prescribed fee, enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(3) Where a series of debentures containing, or giving by reference to any other instrument, any charge to the benefit of which the debenture holders of that series are entitled *pari passu*, is created by a company, it shall be sufficient if there are delivered to or received by the Secretary of State of Canada, within thirty days after the execution of the deed containing the charge, or, if there is no such deed, after the execution of any debentures of the series, the following particulars:—

- (a) the total amount secured by the whole series; and,
- (b) the dates of the resolutions authorizing the issue of the series and the date of the covering deed, if any, by which the security is created or defined; and,
- (c) a general description of the property charged; and,
- (d) the names of the trustees, if any, for the debenture holders;

together with the deed containing the charge, or if there is no such deed, one of the debentures of the series; and the Secretary of State of Canada, shall, on payment of the prescribed fee, enter those particulars in the register:

Provided that, where more than one issue is made of debentures in the series, there shall be sent to the Secretary of State of Canada for entry in the register particulars of

the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued.

(4). Where any commission, allowance, or discount has been paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any debentures of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any such debentures, the particulars required to be sent for registration under this section shall include particulars as to the amount or rate per cent of the commission, discount or allowance so paid or made, but an omission to do this shall not affect the validity of the debentures issued:

Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount.

(5). The Secretary of State of Canada shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured, and the certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with.

(6). The company shall cause a copy of every certificate of registration given under this section to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered:

Provided that nothing in this subsection shall be construed as requiring a company to cause a certificate of registration of any mortgage or charge so given to be endorsed on any debenture or certificate of debenture stock which has been issued by the company before the mortgage or charge was created.

(7) It shall be the duty of the company to send to the Secretary of State of Canada for registration the particulars of every mortgage or charge created by the company and of the issues of debentures of a series, requiring registration under this section, but registration of any such mortgage or charge may be effected on the application of any person interested therein.

Where the registration is effected on the application of some person other than the company, that person shall be entitled to recover from the company the amount of any fees properly paid by him to the Secretary of State of Canada on the registration.

(8). The register kept in pursuance of this section shall be open to inspection by any person on payment of the prescribed fee.

(9) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section to be kept at the registered office of the company:

Provided that, in the case of a series of uniform debentures a copy of one such debenture shall be sufficient. *Imp. Act, 1908, s. 93; 7-8 Geo. V., c. 25, s. 9.*

69B. Registration of Order Appointing Receiver.—If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall within fourteen days from the date of the order or of the appointment under the powers contained in the instrument give notice of the fact to the Secretary of State of Canada, and the Secretary of State of Canada, shall on payment of the prescribed fee, enter the fact in the register of mortgages and charges.

(2) If any person makes default in complying with the requirements of this section he shall be liable on summary

conviction to a fine not exceeding twenty dollars for every day during which the default continues. *Imp. Act, 1908, s. 94; 7-8 Geo. V., c. 25, s. 9.*

69C. Filing of Accounts of Receivers and Managers.—

Every receiver or manager of the property of a company who has been appointed under the powers contained in any instrument, and who has taken possession, shall, once in every half year while he remains in possession, and also on ceasing to act as receiver or manager, file with the Secretary of State of Canada an abstract in the prescribed form of his receipts and payments during the period to which the abstract relates, and shall also on ceasing to act as receiver or manager file with the Secretary of State of Canada notice to that effect, and the Secretary of State of Canada shall enter the notice in the register of mortgages and charges.

(2). Every receiver or manager who makes default in complying with the provisions of this section shall be liable on summary conviction to a fine not exceeding two hundred dollars. *Imp. Act, 1908, s. 95; 7-8 Geo. V., c. 25, s. 9.*

69D. Rectification of Register of Mortgages.—The court of the province in which the head office of the company is situated, on being satisfied that the omission to register a mortgage or charge within the time hereinbefore required, or that the omission or mis-statement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or any person interested, and on such terms and conditions as seem to the court just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or mis-statement be rectified. *Imp. Act, 1908, s. 96; 7-8 Geo. V., c. 25, s. 9.*

69E. Entry of Satisfaction.—The Secretary of State of Canada may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof. *Imp. Act, 1908, s. 97; 7-8 Geo. V., c. 25, s. 9.*

69F. Index to Register of Mortgages and Charges.—The Secretary of State of Canada shall keep a chronological index, in the prescribed form and with the prescribed particulars, of the mortgages or charges registered with him under this Act. *Imp. Act, 1908, s. 98; 7-8 Geo. V., c. 25, s. 9.*

69G. Penalties.—If any company makes default in sending to the Secretary of State of Canada for registration the particulars of any mortgage or charge created by the company, and of the issues of debentures of a series, requiring registration under the foregoing provisions of this Act, then, unless the registration has been effected on the application of some other person, the company, and every director, manager, secretary, or other person who is knowingly a party to the default, shall be guilty of an indictable offence and be liable to a fine not exceeding two hundred dollars for every day during which default continues.

(2) Subject as aforesaid, if any company makes default in complying with any of the requirements of this Act as to the registration with the Secretary of State of Canada of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company who knowingly and wilfully authorized or permitted the default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding five hundred dollars.

(3) If any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock requiring registration with the Secretary of State of Canada under the foregoing provisions of this Act without a copy of the certificate of registration being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding five hundred dollars. *Imp. Act, 1908, s. 99; 7-8 Geo. V., c. 25, s. 9.*

69H. Company's Register of Mortgages.—Every company shall keep a register of mortgages and enter therein all mortgages and charges specifically affecting property of the company, giving in each case a short description of the property mortgaged or charged, the amount of the mortgage or charge, and (except in the case of securities to bearer) the names of the mortgagees or persons entitled thereto.

(2) If any director, manager, or other officer of the company knowingly and wilfully authorizes or permits the omission of any entry required to be made in pursuance of this section, he shall be liable on summary conviction to a fine not exceeding two hundred dollars *Imp. Act, 1908, s. 100; 7-8 Geo. V., c. 25, s. 9.*

69I. Right to Inspect Mortgages, Charges and Company's Register.—The copies of instruments creating any mortgage or charge requiring registration under this Act with the Secretary of State of Canada, and the register of mortgages kept in pursuance of the last foregoing section, shall be open at all reasonable times to the inspection of any creditor or shareholder of the company without fee, and the register of mortgages shall also be open to the inspection of any other person on payment of such fee, not exceeding twenty-five cents for each inspection, as the company may prescribe.

2. If inspection of the said copies or register is refused, any officer of the company refusing inspection, and every

director and manager of the company authorizing or knowingly and wilfully permitting the refusal, shall be liable on summary conviction to a fine not exceeding twenty dollars, and a further fine not exceeding ten dollars for every day during which the refusal continues. *Imp. Act, 1908, s. 101; 7-8 Geo. V., c. 25, s. 9.*

69J. Right of Debenture Holders to Inspect the Register of Debenture Holders and to Have Copy of Trust Deed.—

Every register of holders of debentures of a company shall, except when closed in accordance with the by-laws of the company during such period or periods (not exceeding in the whole thirty days in any year) as may be specified in the said by-laws, be open to the inspection of the registered holder of any such debentures, and of any holder of shares in the company, but subject to such reasonable restrictions as the company may by by-law impose, so that at least two hours in each day are appointed for inspection, and every such holder may require a copy of the register or any part thereof on payment of ten cents for every hundred words required to be copied.

2. A copy of any trust deed for securing any issue of debentures shall be forwarded to every holder of any such debentures at his request, on payment in the case of a printed trust deed of the sum of twenty-five cents, or such less sum as may be prescribed by by-law of the company, or, where the trust deed has not been printed, on payment of ten cents for every hundred words required to be copied.

3. If inspection is refused, or a copy is refused or not forwarded, the company shall be liable on summary conviction to a fine not exceeding twenty dollars, and to a further fine not exceeding ten dollars for every day during which the refusal or neglect to forward a copy continues, and every director, manager, secretary, or other officer of the company

who knowingly authorizes or permits the refusal shall incur the like penalty. *Imp. Act*, 1908, s. 102; 7-8 Geo. V., c. 25, s. 9.

69K. Payments of Certain Debts Out of Assets Subject to Floating Charge in Priority to Claims under the Charge.—

Where, in the case of a company, either a receiver is appointed on behalf of the holders of any debentures of the company secured by a floating charge, or possession is taken by or on behalf of those debenture holders of any property comprised in or subject to the charge, then, if the company is not at the time in course of being wound up, the debts which in winding-up are under the provisions of the *Winding-up Act* relating to preferential payments to be paid in priority to all other debts, shall be paid forthwith out of any assets coming to the hands of the receiver or other person taking possession as aforesaid in priority to any claim for principal or interest in respect of the debentures.

2. The period of time mentioned in the said provisions of the *Winding-up Act* shall be reckoned from the date of the appointment of the receiver or of possession being taken as aforesaid, as the case may be.

3. Any payments made under this section shall be repaid as far as may be out of the assets of the company available for payment of general creditors. *Imp. Act*, 1908, s. 107; 7-8 Geo. V. c. 25, s. 9.

69L. Construction of Provisions as to Registration.—The provisions of this Act respecting the registration of mortgages, charges or other securities shall be in addition to and not in substitution for the provisions of any statute of any province of Canada or of any foreign country in respect thereto. 7-8 Geo. V. c. 25, s. 9.

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69M. Quebec Notarial Copies to be Deemed Originals.—

A duly certified copy of any deed, mortgage, hypothec or other authentic instrument executed in the province of Quebec and preserved in the records of a notary public of the province of Quebec, or in the office of a prothonotary of the Superior Court in any district of the said province, shall be deemed to be an original deed, mortgage or instrument for the purposes of this Act, and the term "mortgage" shall include "hypothec." 8-9 Geo. V., c. 14, s. 1.

The above sub-section 69M is deemed to have come into force on 20th September, 1917. 8-9 Geo. V., c. 14, s. 1.

70. No dividend shall be declared which will impair the capital of the company. 2 E. VII., c. 15, s. 58.

Above section not applicable to Corporations not for profit.

71. Debts Deducted from Dividends.—The directors may deduct from the dividends payable to any shareholder all such sums of money as are due from him to the company, on account of calls or otherwise. 2 E. VII., c. 15, s. 59.

Above section not applicable to Corporations not for profit.

72. Board of Directors.—The affairs of the company shall be managed by a board of not less than three directors. 8-9 Geo. V., c. 13, s. 2.

Above section not applicable to Corporations not for profit.

73. Provisional Directors.—The persons named as such, in the letters patent, shall be the directors of the company, until replaced by others duly appointed in their stead. 2 E. VII., c. 15, s. 61.

Above section not applicable to Corporations not for profit.

74. Failure to Elect Directors.—If, at any time, an election of directors is not made, or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any subsequent special general meeting of the company duly called for that

purpose; and the retiring directors shall continue in office until their successors are elected. 2 E. VII., c. 15, s. 62.

Above section not applicable to Corporations not for profit.

75. Qualifications of Directors.—No person shall be elected as a director or appointed as a director to fill any vacancy unless he is a shareholder, owning stock absolutely in his own right, and to the amount required by the by-laws of the company, and not in arrear in respect of any call thereon. 2 E. VII., c. 15, s. 63.

(2) **Restrictions on Appointment or Advertisement of Director.**—A person named as a director or proposed director in any prospectus, or in any notice in lieu of prospectus issued by or on behalf of the company, shall not be capable of being appointed director of the company unless, at the time of the publication of the prospectus, he has by himself or by his agent authorized in writing,—

- (i) Signed and filed with the Secretary of State of Canada a consent in writing to act as such director; and,
- (ii) Either signed the petition for incorporation and memorandum of agreement and stock book for a number of shares not less than his qualification (if any) or signed and filed with the Secretary of State of Canada a contract in writing to take from the company and pay for his qualification shares (if any). 7-8 Geo. V., c. 25, s. 10.

Above section not applicable to Corporations not for profit.

76. Number of Directors.—The company may, by by-law increase or decrease to not less than three the number of its directors, or may change the company's **chief place of business** in Canada: Provided that no by-law for either of the said purposes shall be valid or acted upon unless it is approved by a vote of at least two-thirds in value of the stock

represented by the shareholders present at a special general meeting duly called for considering the by-law; nor until a copy of such by-law, certified under the seal of the company, has been deposited in the Department of the Secretary of State of Canada and published in the Canada Gazette. 8-9 Geo. V., c. 13, s. 3.

Above section not applicable to Corporations not for profit.

77. Election of Directors.—Directors of the company shall be elected by the shareholders, in general meeting of the company assembled at some place within Canada, at such times, in such manner and for such term, not exceeding two years, as the letters patent, or in default thereof, as the by-laws of the company prescribe. 2 E. VII., c. 15, s. 65.

Above section not applicable to Corporations not for profit.

78. Yearly Election.—In the absence of other provisions in that behalf, in the letters patent or by-laws of the company,—

- (a) the election of directors shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election;
- (b) every election of directors shall be by ballot;
- (c) **any vacancy** occurring in the board of directors may be filled, for the remainder of the term, by the directors from among the qualified shareholders of the company;
- (d) the directors shall, from time to time, elect from among themselves a president and, if they see fit, a vice-president of the company; and may also appoint all other officers thereof. 2 E. VII., c. 15, s. 66.

Above section not applicable to Corporations not for profit.

79. Director Indemnified in Suits Respecting Execution of His Office.—Every director of the company, and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the company, given at any

general meeting thereof, from time to time, and at all times, be indemnified and saved harmless out of the funds of the company, from and against all costs, charges and expenses whatsoever which such director sustains or incurs in or about any action, suit or proceeding which is brought, commenced or prosecuted against him, for or in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him, in or about the execution of the duties of his office; and also from and against all other costs, charges and expenses which he sustains or incurs, in or about or in relation to the affairs thereof, except such costs, charges or expenses as are occasioned by his own wilful neglect or default. 2 E. VII., c. 15, s. 67.

80. Powers of Directors.—The directors of the company may administer the affairs of the company in all things, and make or cause to be made for the company, any description of contract which the company may, by law, enter into; and may, from time to time, make by-laws not contrary to law, or to the letters patent of the company, or to this Part, as to the following matters:—

- (a) The regulating of the **allotment of stock**, the making of calls thereon; the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock;
- (b) The declaration of payment of **dividends**;
- (c) The amount of the stock **qualifications of the directors**, and their remuneration, if any;
- (d) The appointment, functions, duties and removal of all **agents, officers and servants** of the company, the security to be given by them to the company and their remuneration;

- (e) **Meetings.**—The time and place for the holding of the annual meetings of the company, the calling of meetings, regular and special, of the board of directors and of the company, the quorum, the requirements as to proxies, and the procedure in all things at such meetings;
- (f) **Penalties.**—The imposition and recovery of all penalties and forfeitures not otherwise provided for in this Part;
- (g) **Generally.**—The conduct, in all other particulars, of the affairs of the company not otherwise provided for in this Part. 2 E. VII., c. 15, s. 68.

Above section not applicable to Corporations not for profit.

81. Confirmation of By-laws.—The directors may, from time to time, repeal, amend or re-enact such by-laws, but every such by-law, excepting by-laws made respecting agents, officers and servants of the company, and every repeal, amendment or re-enactment thereof, unless in the meantime confirmed at a general meeting of the company, duly called for that purpose, shall only have force until the next annual meeting of the company, and in default of confirmation thereat, shall, at and from that time, cease to have force. 2 E. VII., c. 15, s. 68.

Above section not applicable to Corporations not for profit.

LIABILITY OF DIRECTORS AND OFFICERS

82. Dividend When Company is Insolvent.—If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or impairs the capital thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all debts thereafter contracted during their continuance in office, respectively: Provided that, if any director present when such dividend is declared does forthwith, or if any director

then absent does, within twenty-four hours after he becomes aware of such declaration and is able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or, if no newspaper is there published, in the newspaper published in the place nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability. 2 E. VII., c. 15, s. 69.

Above section not applicable to Corporations not for profit.

83. Transfer of Shares to Insolvent.—Whenever any transfer of shares not fully paid in has been made with the consent of the directors to a person who is not apparently of sufficient means to fully pay up such shares, the directors shall be jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, but for such transfer, would have been: Provided that if any director present when any such transfer is allowed does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such transfer and is able so to do, enter on the minute book of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest to such place, such director may thereby, and not otherwise, exonerate himself from such liability. 2 E. VII., c. 15, s. 52.

Above section not applicable to Corporations not for profit.

84. Loan by Company to Shareholders.—If any loan is made by the company to any shareholder in violation of the

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provisions of this Part, all directors and other officers of the company making the same, or in anywise assenting thereto, shall be jointly and severally liable for the amount of such loan, with interest to the company, and also to the creditors of the company for all debts of the company then existing, or contracted between the time of the making of such loan and that of the repayment thereof. 2 E. VII., c. 15, s. 70.

Above section not applicable to Corporations not for profit.

85. Liability of Directors for Wages.—The directors of the company shall be jointly and severally liable to the clerks, labourers, servants and apprentices thereof, for all debts not exceeding six months' wages due for service performed for the company whilst they are such directors respectively; but no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt becomes due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company in respect of such debt is returned unsatisfied in whole or in part.

2. The amount unsatisfied on such execution shall be the amount recoverable with costs from the directors. 2 E. VII., c. 15, s. 71.

86. Liability of Directors for Premature Commencement of Business.—Every director of any company who expressly or impliedly authorizes the commencement of operations by the company or the incurring of any liabilities by the company before ten per centum of its authorized capital has been subscribed and paid for, shall be jointly and severally liable with the company for the payment of any such liabilities so incurred. 2 Ed. VII., c. 15, s. 18.

Above section not applicable to Corporations not for profit.

87. Special Meeting.—Shareholders who hold one-fourth part in value of the subscribed stock of the company may at

any time by written requisition and notice call a special meeting of the company for the transaction of any business specified therein. 2 E. VII., c. 15, s. 72.

Above section not applicable to Corporations not for profit.

88. Provisions as to.—In the absence of other provisions in that behalf in the letters patent or by-laws of the company,—

- (a) **notice** of the time and place for holding a general meeting of the company shall be given at least fourteen days previously to the time in such notice specified for such meeting, in some newspaper published in the place where the head office or chief place of business of the company is situate, or if there is no such newspaper, then in the place nearest thereto in which a newspaper is published;
- (b) at all general meetings of the company, every shareholder shall be entitled to give **one vote for each share** then held by him; and such votes may be given in person or by proxy if such **proxy** is himself a shareholder: Provided that no shareholder shall be entitled either in person or by proxy, to vote at any meeting unless he has paid all the calls then payable upon all the shares held by him;
- (c) all questions proposed for the consideration of the shareholders at such meetings shall be determined by the **majority of votes**, and the chairman presiding at such meetings shall have the **casting vote** in case of an equality of votes 2 E. VII., c. 15, s. 73.

Above section not applicable to Corporations not for profit.

89. What Books Shall Contain.—The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded,—

- (a) a **copy of the letters patent** incorporating the company, and of any supplementary letters patent, and of the preliminary memorandum of agreement and of **all by-laws** of the company;
 - (b) the **names**, alphabetically arranged, of all persons who are or have been shareholders;
 - (c) the **address and calling** of every such person, while such shareholder, as far as can be ascertained;
 - (d) the **number of shares** of stock held by each shareholder;
- Above sub-section not applicable to Corporations not for profit.
- (e) the **amounts paid** in and remaining unpaid, respectively, on the stock of each shareholder; and,
- Above sub-section not applicable to Corporations not for profit.
- (f) the **names, addresses and calling** of all persons who are or have been **directors** of the company, with the several dates at which each became or ceased to be such director.
- 2 E. VII., c. 15, s. 74.

90. Register of Transfers.—A book called the register of transfers shall be provided, and in such book shall be entered the particulars of every transfer of shares in the capital of the company. 2 E. VII., c. 15, s. 74.

Above section not applicable to Corporations not for profit.

91. Inspection of Books.—Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the head office or chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder.

2. Every such shareholder, creditor or personal representative or judgment creditor may **make extracts** therefrom. 2 E. VII., c. 15, s. 75.

92. Investigation of Affairs of Company.—The Secretary of State of Canada may appoint one or more competent in-

spectors to investigate the affairs of any company and to report thereon in such manner as the Secretary of State of Canada may direct,—

- (i) In the case of any company having a share capital, on the application of shareholders holding such a proportion of the issued stock of the company as in the opinion of the Secretary of State of Canada warrants the application;
- (ii) In the case of a corporation not having a share capital, on the application of such number of the persons on the corporation's register of members as in the opinion of the Secretary of State of Canada warrants the application.

(2) The application shall be supported by such evidence as the Secretary of State of Canada may require for the purpose of showing that the applicants have good reason for and are not actuated by malicious motives in requiring, the investigation; and the Secretary of State of Canada may, before appointing an inspector, require the applicants to give security for payment of the costs of the inquiry.

(3) It shall be the duty of all officers and agents of the company to produce to the inspectors all books and documents in their custody or power.

(4) An inspector may examine on oath the officers and agents of the company in relation to its business, and may administer an oath accordingly.

(5) If any officer or agent refuses to produce any book or document which under this section it is his duty to produce, or to answer any question relating to the affairs of the company, he shall be liable on summary conviction to a fine not exceeding twenty dollars in respect of each offence.

(6) On the conclusion of the investigation the inspectors shall report their opinion to the Secretary of State of Canada,

and a copy of the report shall be forwarded by the Secretary of State of Canada to the company and a further copy shall, at the request of the applicants for the investigation, be delivered to them.

(7) The report shall be written or printed, as may be directed.

(8) All expenses of and incidental to the investigation shall be defrayed by the applicants, unless the Secretary of State of Canada directs the same to be paid by the company, which the Secretary of State of Canada is hereby authorized to do. *Imp. Act, 1908, s. 109. 7-8 Geo. V., c. 25, s. 11.*

93. Company May Appoint Inspectors.—A company may by resolution at any annual or special general meeting appoint inspectors to investigate its affairs.

(2) Inspectors so appointed shall have the same powers and duties as inspectors appointed by the Secretary of State of Canada, except that, instead of reporting to the Secretary of State of Canada, they shall report in such manner and to such persons as the company by resolution may direct.

(3) Officers and agents of the company shall incur the like penalties in case of refusal to produce any book or document required to be produced to inspectors so appointed, or to answer any question, as they would have incurred if the inspectors had been appointed by the Secretary of State of Canada. *Imp. Act, 1908, s. 110. 7-8 Geo. V., c. 25, s. 11.*

94. Report of Inspectors to be Evidence.—A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company whose affairs they have investigated, shall be admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matter contained in the report. *Imp. Act, 1908, s. 111. 7-8 Geo. V., c. 25, s. 11.*

94A. Appointment and Remuneration of Auditors.—Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2) If an appointment of auditors is not made at an annual general meeting, the Secretary of State of Canada may, on the application of any shareholder of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services

(3) A director or officer of the company shall not be capable of being appointed auditor of the company.

(4) A person, other than a retiring auditor, shall not be capable of being appointed auditor at an annual general meeting unless notice of an intention to nominate that person to the office of auditor has been given by a shareholder to the company not less than fourteen days before the annual general meeting; and the company shall send a copy of any such notice to the retiring auditor, and shall give notice thereof to the shareholders, either by advertisement or in any other mode provided by the by-laws of the company not less than seven days before the annual general meeting:

Provided that if, after notice of the intention to nominate an auditor has been so given, an annual general meeting is called for a date fourteen days or less after the notice has been given, the notice, though not given within the time required by this provision, shall be deemed to have been properly given for the purposes thereof, and the notice to be sent or given by the company may, instead of being sent or given within the time required by this provision, be sent or given at the same time as the notice of the annual general meeting: Provided, however, that a person other than a retiring auditor may be appointed auditor of the company at an annual general

meeting as hereinbefore provided, upon a resolution passed by the votes of shareholders present in person or by proxy and holding at least two-thirds of the subscribed stock represented at the meeting.

(5) The first auditors of the company may be appointed by the directors before the first annual general meeting, and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the company in general meeting, in which case the company at that meeting may appoint auditors.

(6) The directors may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

(7) The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors appointed before the first annual general meeting, or to fill any casual vacancy, may be fixed by the directors. *Imp. Act, 1908, s. 112. 7-8 Geo. V., c. 25, s. 11.*

Above section not applicable to Corporations not for profit.

94B. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors.

(2) The auditors shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office, and the report shall state,—

- (a) whether or not they have obtained all the information and explanations they have required; and,
- (b) whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true

and correct view of the state of the company's affairs according to the best of their information and the explanations given to them, and as shown by the books of the company.

(3) The balance sheet shall be signed on behalf of the board by two of the directors of the company, and the auditor's report shall be attached to the balance sheet, or there shall be inserted at the foot of the balance sheet a reference to the report, and the report shall be read before the company in general meeting, and shall be open to inspection by any shareholder.

(4) Thereafter any shareholder shall be entitled to be furnished with a copy of the balance sheet and auditors' report at a charge not exceeding ten cents for every hundred words.

(5) If any copy of a balance sheet which has not been signed as required by this section is issued, circulated or published, or if any copy of a balance sheet is issued, circulated, or published without either having a copy of the auditors' report attached thereto or containing such reference to that report as is required by this section, the company, and every director, manager, secretary, or other officer of the company who is knowingly a party to the default, shall on summary conviction, be liable to a fine not exceeding two hundred dollars. *Imp. Act*, 1908, s. 113; 7-8 Geo. V., c. 25, s. 11.

Above section not applicable to Corporations not for profit.

94C. Holders of preference shares and debentures of a company shall have the same right to receive and inspect the balance sheets of a company, and the reports of the auditors and other reports, as is possessed by the holders of ordinary shares in the company. 7-8 Geo. V., c. 25, s. 11.

Above section not applicable to Corporations not for profit.

95. Service of Process.—Any summons, notice, order or other process or document required to be served upon the

company, may be served by leaving the same at the office of the company in the city or town in which its chief place of business in Canada is situate, with any adult person in the employ of the company, or by serving the same on the president or secretary of the company, or by leaving the same at the domicile of either of them, with any adult person of his family or in his employ.

2. **Constructive Service.**—If the company has no known office or chief place of business, and has no known president or secretary, the court may order such publication as it deems requisite to be made in the premises; and such publication shall be deemed to be due service upon the company. 2 E. VII., c. 15, s. 80.

96. When Use of Seal Not Necessary.—Any summons, notice, order or proceeding requiring authentication by the company may be signed by any director, manager or other authorized officer of the company, and need not be under the seal of the company. 2 E. VII., c. 15, s. 81.

97. Service of Notices on Members.—Notices to be served by the company upon the shareholders may be served either personally or by sending them through the post, in registered letters, addressed to the shareholders at their places of abode as they appear on the books of the company. 2 E. VII., c. 15, s. 82.

98. Time from which Service Reckoned.—A notice or other document served by post by the company on a shareholder shall be deemed to be served at the time when the registered letter containing it would be delivered in the ordinary course of post. 2 E. VII., c. 15, s. 83.

99. Actions Between Company and Shareholders.—Any description of action may be prosecuted and maintained between the company and any shareholder thereof. 2 E. VII., c. 15, s. 85.

100. Setting Forth Incorporation in Legal Proceedings.—

In any action or other legal proceeding, it shall not be requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name as incorporated by virtue of letters patent, or of letters patent and supplementary letters patent, as the case may be, under this Part. 2 E. VII., c. 15, s. 86.

101. Procedure to Settle Ownership When Shares Are Transmitted Otherwise Than by Transfer.—

Whenever the interest in any shares of the capital stock of the company is transmitted by the death of any shareholder or otherwise, or whenever the ownership of any shares or the legal right of possession of the same changes by any lawful means, other than by transfer according to the provisions of this Part, and the directors of the company entertain reasonable doubts as to the legality of any claim to such shares, the company may make and file in the court in the province or territory in which the head office of the company is situated, a declaration and petition in writing, addressed to the justices of the court, setting forth the facts and the number of shares previously belonging to the person in whose name such shares stand in the books of the company, and praying for an **order or judgment** adjudicating and awarding the said shares to the person or persons legally entitled to the same. 2 E. VII., c. 15, s. 53.

Above section not applicable to Corporations not for profit.

102. Notice of the intention to present such petition shall be given to the person claiming such shares, or to the attorney of such person duly authorized for the purpose, who shall, upon the filing of such petition, establish his right to the shares referred to in such petition; and the time to plead and all other proceedings in such cases shall be the same as those

observed in analogous cases before such court. 2 E. VII., c. 15, s. 53.

Above section not applicable to Corporations not for profit.

103. The costs and expenses incurred by the company in procuring such order or judgment shall be paid to the company by the person or persons to whom such shares are declared lawfully to belong and such shares shall not be transferred in the books of the company until such costs and expenses are paid, but this provision shall in no way prejudice the right of the person adjudged to be the lawful owner of such shares to recourse according to the practice of the court for such costs and expenses against any person contesting his right to such shares. 2 E. VII., c. 15, s. 51.

Above section not applicable to Corporations not for profit.

104. Order to Guide Company.—The company shall be guided by the order or judgment of the court establishing the right to such shares.

2. Such order or judgment shall have the effect of a release from every other claim to the said shares or arising in respect thereof and shall fully indemnify and save harmless the said company from any such claim. 2 E. VII., c. 15, s. 53.

Above section not applicable to Corporations not for profit.

105. An annual meeting of the company shall be held at such time and place in each year as the special Act, letters patent, or by-laws of the company provide, and in default of such provisions in that behalf an annual meeting shall be held at the place named in the special Act or letters patent as the place of the head office of the company, on the fourth Wednesday in January in every year.

(2) At such meeting the directors shall lay before the company,—

(a) **a balance sheet** made up to a date not more than four months before such annual meeting: Provided however

that a company which carries on its undertaking out of Canada may, by resolution at a general meeting, extend this period to not more than six months;

(b) a general statement of income and expenditure for the financial period ending upon the date of such balance sheet;

(c) the report of the auditor or auditors;

(d) such further information respecting the company's financial position as the special Act, letters patent or by-laws of the company require.

(3) **Every balance sheet shall** be drawn up so as to distinguish severally at least the following classes or assets and liabilities, namely:—

(a) **cash;**

(b) **debts owing** to the company from its customers;

(c) **debts owing** to the company from its directors, officers and shareholders respectively;

(d) **stock in trade;**

(e) **expenditures** made on account of future business;

(f) **lands**, buildings, and plant;

(g) **goodwill**, franchises, patents and copyrights, trademarks, leases, contracts and licenses;

(h) **debts owing** by the company secured by mortgage or other lien upon the property of the company;

(i) **debts owing** by the company but not secured;

(j) **amount of common shares** subscribed for and allotted and the amount paid thereon, showing the amount thereof allotted for services rendered, for commissions or for assets acquired since the last annual meeting;

Above paragraph not applicable to Corporations not for profit.

(k) **amount of preferred shares** subscribed for and allotted and the amount paid thereon, showing the amount

thereof allotted for services rendered, for commissions or for assets acquired since the last annual meeting;

Above paragraph not applicable to Corporations not for profit.

(l) indirect and contingent liabilities. Ontario Companies Act, sec. 43.

(m) amount written off on account of depreciation of plant, machinery, good-will and similar items. New. 7-8 Geo. V., c. 25, s. 12.

106. Annual Returns.—Every company having a share capital shall, on or before the first day of June in every year, make a summary as of date the thirty-first day of March preceding, specifying the following particulars:—

- (a) The corporate name of the company;
- (b) The manner in which the company is incorporated, whether by special Act or by letters patent and the date thereof;
- (c) The place of the head office of the company, giving the street and number thereof when possible;
- (d) The date upon which the last annual meeting of shareholders of the company was held;
- (e) The amount of the share capital of the company, and the number of shares into which it is divided;
- (f) The number of shares taken from the commencement of the company up to the date of the return;
- (g) The amount called up on each share;
- (h) The total amount of calls received;
- (i) The total amount paid on shares otherwise than in cash, showing severally the amounts paid by services, commissions or assets acquired since the last annual return;
- (j) The total amount of calls unpaid;

- (k) The total amount of the sums (if any) paid by way of commission in respect of any shares, bonds or debentures, or allowed by way of discount in respect of any bonds or debentures;
- (l) The total number of shares forfeited, and the amount paid thereon at the time of forfeiture;
- (m) The total amount of shares issued as preference shares and the rate of dividend thereon, and whether cumulative;
- (n) The total amount paid on such shares;
- (o) The total amount of debentures, debenture stock or bonds authorized and the rate of interest thereon;
- (p) The total amount of debentures, debenture stock or bonds issued;
- (q) The total amount paid on debentures, debenture stock or bonds, showing severally the amounts of discount thereon and the amounts issued for services and assets acquired since the last annual return;
- (r) The total amount of share warrants issued;
- (s) The names and addresses of the persons who at the date of the return are the directors of the company, or occupy the position of directors, by whatever name called.

(2) **Summary to be Filed, Signed and Verified.**—The said summary must be completed and filed in duplicate in the Department of the Secretary of State of Canada on or before the first day of June aforesaid. Each of the said duplicates shall be signed by the president and the manager or, if these are the same person, by the president and by the secretary of the company, and shall be duly verified by their affidavits. There shall also be filed therewith an affidavit proving that the copies of the said summary are duplicates. New.

(3) **Penalty for Default.**—If a company makes default in complying with any requirement of this section it shall be

liable to a fine not exceeding twenty 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 shall be liable to the like penalty, and such fines may be recoverable on summary conviction. Ont. Co. Act., s. 134 in part, & Imp. Co. Act, s. 26 in part.

(4) **Endorsement of Summary.**—The Secretary of State of Canada, or an official of the Department of the Secretary of State of Canada designated for that purpose, shall endorse upon one duplicate of the above summary the date of the receipt thereof at the Department of the Secretary of State of Canada, and shall return the said duplicate summary to the company and the same shall be retained at the head office of the company available for perusal of for the purpose of making copies thereof or extracts therefrom by any shareholders or creditor of the company. New.

(5) **Proof of Endorsement.**—The duplicate of the said summary endorsed as aforesaid shall be prima facie evidence that the said summary was filed in the Department of the Secretary of State of Canada pursuant to the provisions of this section on any prosecution under sub-section (3) of this section, and the signature of an official of the Department of the Secretary of State of Canada to the endorsement of the said duplicate shall be deemed prima facie evidence that the said official has been designated to affix his signature thereto. New.

(6) **Proof of Failure to File Summary.**—A certificate under the hand and seal of office of the Secretary of State of Canada that the aforesaid summary in duplicate was not filed in the Department of the Secretary of State of Canada by a company pursuant to the provisions of this section shall be prima facie evidence on a prosecution under subsection (3) of this

section that such summary was not filed in the Department of the Secretary of State of Canada. New.

(7) **Companies Exempt.**—Companies organized after the thirty-first day of March in any year shall not be subject to the provisions of this section until the thirty-first day of March of the following year. New.

(8) **Failure to File Summary for 3 Years.**—The name of a company which, for three consecutive years, has omitted to file in the Department of the Secretary of State of Canada the said annual summary may be given in whole or in part to a new company unless the defaulting company, on notice by the Secretary of State of Canada by registered letter addressed to the company or its president as shown by its last return, proves to the satisfaction of the Secretary of State of Canada that it is still a subsisting company: Provided that if at the end of one month from the date of such notice the Secretary of State of Canada has not received from the company or its president response to such notice, the company may be deemed not to be a subsisting corporation, and no longer entitled to the sole use of its corporate name: Provided also that when no annual summary has been filed by a company for three years immediately following its incorporation its name may be given to another company without notice, and such company shall be deemed not to be subsisting. Ont. Co. Act, s. 38.

(9) **Application of Section.**—This section shall, mutatis mutandis, be applicable to corporations without share capital with respect to a summary setting out the particulars referred to in paragraphs (a), (b), (c), (d), (o), (p), and (q) of subsection (1) of this section and to directors, managers and other officers of such corporations. New. 7-8 Geo. V., c. 25, s. 13.

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107. Books to be Prima Facie Evidence.—All books required by this Part to be kept by the company shall in any action, suit or proceeding against the company or against any shareholder be prima facie evidence of all facts purporting to be thereby stated. 2 E. VII., c. 15, s. 78.

108. Service by Registering Letter.—Proof that any letter properly addressed and registered containing any notice or other document permitted by this Part to be served by post was properly addressed and registered and was put into the post office, and of the time when it was so put in, and of the time requisite for its delivery in the ordinary course of post, shall be sufficient evidence of the fact and time of service. 2 E. VII., c. 15, s. 83.

109. Evidence of By-laws.—A copy of any by-law of the company under its seal and purporting to be signed by any officer of the company shall be received as against any shareholder of the company as prima facie evidence of such by-law in all courts in Canada. 2 E. VII., c. 15, s. 84.

110. Proof of Incorporation.—In any action or other legal proceeding, the notice in the Canada Gazette of the issue of letters patent or supplementary letters patent under this Part shall be prima facie proof of all things therein contained, and on production of such letters patent or supplementary letters patent or of any exemplification or copy thereof, the fact of such notice and publication shall be presumed. 2 E. VII., c. 15, s. 86.

111. Proof of Matters in Letters Patent.—Except in any proceeding by scire facias or otherwise for the purpose of rescinding or annulling letters patent or supplementary letters patent issued under this Part, such letters patent or supplementary letters patent, or any exemplification or copy thereof, shall be conclusive proof of every matter and thing therein set forth. 2 E. VII., c. 15, s. 86.

112. Proof by Declaration or Affidavit.—Proof of any matter which is necessary to be made under this Part may be made by oath or affirmation, or by solemn declaration before any justice of the peace, or any commissioner for taking affidavits, to be used in any of the courts in any of the provinces of Canada, or any notary public, each of whom is hereby authorized and empowered to administer oaths and receive affidavits and declarations for that purpose. 2 E. VII., c. 15, s. 87.

OFFENCES AND PENALTIES

113. Penalties.—Every one who, being a director, manager or officer of a company, or acting on its behalf, commits any act contrary to the provisions of this Act, or fails or neglects to comply with any such provision, shall, if no penalty for such act, failure or neglect is expressly provided by this Act, be liable, on summary conviction, to a penalty of not more than one thousand dollars, or to imprisonment for not more than one year, or to both such penalty and imprisonment: Provided no proceeding shall be taken under this section without the consent in writing of the Secretary of State of Canada. 7-8 Geo. V., c. 25, s. 14.

114. Neglect to Use Name of Company and Word "Limited."—Every company which does not keep painted or affixed its name, with the word limited after it, in manner directed by this Part shall incur a penalty of twenty dollars for every day during which such name is not so kept painted or affixed, and every director and manager of the company, who knowingly and wilfully authorizes or permits such default, shall be liable to the like penalty. 2 E. VII., c. 15, s. 25.

Above section not applicable to Corporations not for profit.

115. "Limited" Not on Seal.—Every director, manager or officer of the company, and every person on its behalf, who uses or authorizes the use of any seal purporting to be a seal

of the company, whereon its name with the word limited after it, is not engraven in legible characters; or,—

- (a) issues, or authorizes the issue of **any notice**, advertisement or other official publication of such company; or,
- (b) signs or authorizes to be signed on behalf of such company, any **bill of exchange, promissory note**, endorsement, cheque, order for money or goods; or,
- (c) issues or authorizes to be issued any **bill of parcels**, invoice or receipt of the company;

wherein its name, with the said word after it, is not mentioned in legible characters, shall incur a **penalty of two hundred dollars**, and shall also be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company. 2 E. VII., c. 15, s. 25.

Above section not applicable to Corporations not for profit.

116. Neglect to Keep Books.—Every company who neglects to keep any book or books required by this Part to be kept by the company, shall be guilty of an offence and liable, on summary conviction before two justices of the peace, to a **penalty** not exceeding twenty dollars for each day that such neglect continues. 2 E. VII., c. 15, s. 77.

117. False Entries in and Refusing Inspection of Books.—Every director, officer or servant of the company, who knowingly makes or assists in making any untrue entry in any book required by this Part to be kept by the company, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit as required by this Part any entry made therein, or to allow the same, as required by this Part, to be inspected and extracts to be taken therefrom, is guilty of an indictable offence. 2 E. VII., c. 15, s. 76.

118. Repealed. 7-8 Geo. V., c. 25, s. 16.

119. Refusing to Produce Books and Answer Questions.—

Any officer or agent who on any examination by any inspector appointed by a judge or by the company under this Part, refuses to produce any book or document relating to the affairs of the company or to answer any question relating to the affairs of the company, shall incur a penalty not exceeding twenty dollars in respect of each offence. 2 E. VII., c. 15, s. 79.

PART II.

COMPANIES INCORPORATED BY SPECIAL ACTS

Interpretation

120. Definitions.—In this Part, and in any Act incorporating a company to which this Part applies and with which this Part is incorporated as hereinafter provided, and also in all Acts amending such Act, unless the context otherwise requires,—

- (a) **'Special Act'** means any Act incorporating a company to which this Part applies, and with which this Part is so incorporated, and includes all Acts amending such Act;
- (b) **'the company'** means the company incorporated under the Special Act;
- (c) **'the undertaking'** means the whole of the works and business of whatsoever kind, which the company is authorized to undertake and carry on;
- (d) **'real property'** or **'land'** includes messuages, lands, tenements and hereditaments of any tenure, and all immovable property of any kind;
- (e) **'shareholder'** means every subscriber to or holder of stock in the company, and includes the personal representatives of the shareholder. R.S., c. 118, s. 2.

Application of Part

121. Railways, Banks or Banking.—This Part shall not apply to companies for the construction or working of railways

or for the business of banking and the issue of paper money, or to any penny bank, or to any insurance company.

2. **Not to Companies Subject to Third Part.**—No portion of this Part which is inconsistent with Part III. of this Act, shall apply to any company subject to the provisions of Part III. of this Act, nor shall any portion of this Part which is declared by letters patent incorporating any company under the said Part III. not to apply to such company, apply thereto.

3. **Not to Issue Notes for Circulation.**—Nothing in this Part shall be deemed to authorize the company to issue any note payable to the bearer thereof or any promissory note intended to be circulated as money or as the note of a bank or to engage in the business of banking or insurance. R.S., c. 118, ss. 3 and 35; 62-63 V., c. 41, s. 2; 3 E. VII., c. 47, s. 36.

122. **Companies Subject to This Part.**—Except as aforesaid, this Part applies to every joint stock company incorporated subsequently to the twenty-second day of June, one thousand eight hundred and sixty-nine, by any Special Act of the Parliament of Canada for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends; and, so far as applicable to the undertaking and not expressly varied or excepted by the Special Act, this Part is incorporated with the Special Act and forms part thereof and shall be construed therewith as forming one Act: Provided that any of the provisions of this Part may be excepted from incorporation with the Special Act; and for that purpose, it shall be sufficient, to provide in the Special Act, that the sections or subsections of this Part which it is proposed so to except, referring to them by the numbers they bear, shall not be incorporated with the Special Act, and the Special Act shall be construed accordingly. R.S., c. 118, ss. 3 and 4.

GENERAL POWERS

123. Powers Constructively Conferred by Charter.—Every company incorporated under any Special Act shall be a body corporate under the name declared in the Special Act, and may acquire, hold, alienate and convey any real property necessary or requisite for the carrying on of the undertaking of such company, and shall be invested with all the powers, privileges and immunities necessary to carry into effect the intention and objects of this Part and of the Special Act, and which are incident to such corporation, or are expressed or included in the Interpretation Act. R.S., c. 118, s. 5.

(2) **Inter-insurance.**—The powers conferred by this section shall be held to include the power to exchange with any person or company reciprocal contracts of indemnity against loss by fire or otherwise under the plan known as 'inter-insurance.' 7-8 Geo. V., c. 25, s. 15.

124. Powers Subject to This Part, Unless Excepted.—All powers given by the Special Act to the company shall be exercised, subject to the provisions and restrictions contained in this Part, except such as are by the Special Act expressly excepted from incorporation therewith. R.S., c. 118, s. 6.

DIRECTORS—THEIR DUTIES AND POWERS

125. To Manage Company.—The affairs of the company shall be managed by a board of not more than nine and not less than three directors. R.S., c. 118, s. 7.

126. Provisional Directors.—The persons named as such, in the Special Act, shall be the first or provisional directors of the company, and shall remain in office until replaced by directors duly elected in their stead. R.S., c. 118, s. 8.

127. Qualification of Subsequent Directors.—No person shall be elected as a director unless he is a shareholder, own-

ing stock absolutely in his own right, and not in arrear in respect of any call thereon; and the majority of the directors of the company so chosen shall, at all times, be persons resident in Canada, and subjects of His Majesty, by birth or naturalization. R.S., c. 118, s. 9.

128. Election of Directors.—The directors of the company shall be elected by the shareholders, in general meeting of the company assembled, at such times, in such manner, and for such term, not exceeding two years, as the Special Act prescribes, and in default of the Special Act so prescribing, as the by-laws of the company prescribe. R.S., c. 118, §. 10.

129. General Provisions.—In the absence of other provisions in that behalf, in the Special Act, or the by-laws of the company,—

- (a) **the election of directors** shall take place yearly, and all the directors then in office shall retire, but, if otherwise qualified, they shall be eligible for re-election;
- (b) **election of directors** shall be by ballot;
- (c) **vacancies occurring** in the board of directors may be filled for the remainder of the term, by the directors from among the qualified shareholders of the company;
- (d) **President and Officers.**—The directors shall, from time to time, elect from among themselves a president of the company, and shall also appoint, and may remove at pleasure, all other officers thereof. R.S., c. 118, s. 11.

130. Failure to Elect Directors.—If at any time, an election of directors is not made or does not take effect at the proper time, the company shall not be held to be thereby dissolved; but such election may take place at any general meeting of the company, duly called for that purpose, and the retiring directors shall continue in office until their successors are elected. R.S., c. 118, s. 12.

131. Powers of Directors.—The directors of the company may, in all things, administer the affairs of the company, and may make or cause to be made for the company, any description of contract which the company may, by law, enter into. R.S., c. 118, s. 13.

BY-LAWS

132. Directors May Enact By-laws.—The directors may, from time to time, make by-laws not contrary to law or to the Special Act or to this Part, for,—

- (a) the regulating of the **allotment of stock**, the making of calls thereon, the payment thereof, the issue and registration of certificates of stock, the forfeiture of stock for non-payment, the disposal of forfeited stock and of the proceeds thereof, and the transfer of stock;
- (b) the declaration and payment of **dividends**;
- (c) the number of the **directors**, their term of service, the amount of their stock qualification and their remuneration, if any;
- (d) the appointment, functions, duties and removal of all agents, **officers and servants** of the company, the security to be given by them to the company and their remuneration;
- (e) the time and place for the holding of the **annual meeting** of the company, the calling of **meetings, regular and special**, of the board of directors and of the company, the quorum at **meetings of the directors** and of the company, the requirements as to proxies, and the procedure in all things at such meetings;
- (f) the imposition and recovery of all **penalties** and forfeitures admitting of regulation by by-law; and,
- (g) the conduct, in all other particulars, of the affairs of the company. R.S., c. 118, s. 13.

133. Changing By-laws.—The directors may, from time to time, repeal, amend or re-enact any such by-law: Provided that every such by-law, repeal, amendment or re-enactment unless in the meantime confirmed at a general meeting of the company duly called for that purpose shall only have force until the next annual meeting of the company and in default of **confirmation** thereat shall from the time of such default cease to have force or effect. R.S., c. 118, s. 13.

134. Preference Stock by By-law.—The directors of any company, other than a trust company, may also make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority as respects dividends, and in any other respect over ordinary stock, as in the by-law may be declared.

2. Holders May be Given Control of Certain Matters.—Such by-law may provide that the holders of shares of such preference stock shall have the right to select a certain proportion therein stated of the board of directors, or may give such holders such other control over the affairs of the company as is considered expedient. 62-63 V., c. 40, ss. 1 and 2.

135. Sanction by Shareholders Necessary.—No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a vote of the shareholders present in person or by proxy at a general meeting of the company duly called for considering the same and representing two-thirds of the stock of the company, or unanimously sanctioned in writing by the shareholders of the company: Provided, that if the by-law be sanctioned by not less than three-fourths in value of the shareholders of the company, the company may, through the Secretary of State, petition the Governor in Council for an order approving the said by-law, and the **Governor in Council may**, if he

sees fit, **approve** thereof, and from the date of such approval the by-law shall be valid and may be acted upon. 62-63 V., c. 40, s. 3.

136. Change of Head Office.—Except companies which, under their Act of incorporation or any amendment thereto have power to change their head office or chief place of business, the company may, from time to time, by by-law, change the locality of its head office or principal place of business in Canada to any other place in Canada. 63-64 V., c. 42, s. 1.

137. Sanction of By-law by Company Necessary.—No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a vote of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, and representing two-thirds of the stock of the company; or until it is unanimously sanctioned in writing by the shareholders of the company: Provided, that if the by-law is sanctioned in writing by not less than three-fourths in value of the shareholders of the company, the company may, through the Secretary of State, petition the Governor in Council for an order approving the said by-law, and the Governor in Council may, on compliance with such terms and conditions, if any, as he directs, approve thereof, and upon such approval the by-law shall be valid.

2. Publication in "Canada Gazette" and Newspaper Necessary.—No such by-law shall be acted upon until two months after a copy of the by-law has been published by the company, once in the "Canada Gazette" and once in a newspaper published in the city, town or village in or nearest to which the head office or principal place of business of the company is then already situate, and in which a newspaper is published. 63-64 V., c. 42, s. 1.

CAPITAL STOCK AND CALLS THEREON.

138. Stock to be Personal Estate.—The stock of the company shall be personal estate, and shall be transferable in such manner only, and subject to such conditions and restrictions as are prescribed by this Part, or by the Special Act or the by-laws of the company. R.S., c. 118, s. 15.

139. Allotment of Stock.—If the Special Act makes no other definite provision, the stock of the company shall be allotted at such times and in such manner as the directors, by by-law or otherwise, prescribe. R.S., c. 118, s. 16.

140. Calls on Stock.—The directors of the company may call in and demand from the shareholders thereof respectively, all sums of money by them subscribed at such times and places and in such payments or instalments as the Special Act or this Part requires or allows.

2. **Interest shall accrue** and fall due, at the rate of six per centum per annum, upon the amount of any unpaid call, from the day appointed for payment of such call. R.S., c. 118, s. 17.

141. Ten % to be Called in Each Year.—At least ten per centum upon the allotted stock of the company shall by means of one or more calls, be called in and made payable within one year from the incorporation of the company; and for every year thereafter, at least a further ten per centum thereof shall, in like manner, be made payable and called in, until the whole has been so called in. R.S., c. 118, s. 18.

142. Forfeiture of Shares for Default in Paying Calls.—If, after such demand or notice as by the Special Act or the by-laws of the company is prescribed, any call made upon any share or shares is not paid within such time as by such Special Act or by-laws is limited in that behalf, the directors, in their discretion, by resolution to that effect, reciting the facts and duly recorded in their minutes, may summarily declare forfeited any shares whereon such payment is not made.

2. Such shares shall thereupon become the property of the company, and may be disposed of as the directors by by-law or otherwise prescribe. R.S., c. 118, s. 20.

143. No share shall be transferable, until all previous calls thereon have been fully paid, or until it is declared forfeited for non-payment of a call or calls thereon. R.S., c. 118, s. 21.

BOOKS OF THE COMPANY.

144. Stock Book to be Kept Containing.—The company shall cause a book or books to be kept by the secretary, or by some other officer specially charged with that duty, wherein shall be kept recorded,—

- (a) **the names**, alphabetically arranged, of all persons who are or have been shareholders;
- (b) **the address and calling** of every such person, while such shareholder;
- (c) **the number of shares** of stock held by each shareholder;
- (d) **the amounts paid in**, and remaining unpaid, respectively, on the stock of each shareholder;
- (e) **all transfers of stock**, in their order as presented to the company for entry, with the date and other particulars of each transfer, and the date of the entry thereof; and,
- (f) **the names**, addresses and calling of all persons who are or have been **directors** of the company, with the several dates at which each became or ceased to be such director. R.S., c. 118, s. 23.

145. Powers of Directors as to Entries of Transfers.—The directors may allow or refuse to allow the entry in any such book, of any transfer of stock whereof the whole amount has not been paid. R.S., c. 118, s. 24.

146. Transfer Valid Only after Entry.—No transfer of stock, unless made by sale under execution or under the decree,

order or judgment of a court of competent jurisdiction, shall be valid for any purpose whatsoever until entry thereof has been duly made in such book or books, except for the purpose of exhibiting the rights of the parties thereto towards each other, and of rendering the transferee liable, in the meantime, jointly and severally with the transferrer, to the company and its creditors. R.S., c. 118, s. 25.

147. Stock Books to be Open for Inspection.—Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open for the inspection of shareholders and creditors of the company, and their personal representatives, at the head office or chief place of business of the company, and every shareholder, creditor or personal representative may make extracts therefrom. R.S., c. 118, s. 26.

OFFENCES AND PENALTIES

148. Entries Falsely Made or Neglected.—Every director, officer or servant of the company who knowingly makes or assists in making any untrue entry in any book required by this Part to be kept by such company, or who refuses or wilfully neglects to make any proper entry therein, or to exhibit the same, or to allow the same to be inspected and extracts to be taken therefrom, is guilty of an indictable offence, and liable to imprisonment for any term not exceeding two years. R.S., c. 118, s. 28.

149. Neglect to Permit Inspection of Books.—Every company which neglects to keep open for inspection as required by this Part any book or books required by this Part to be kept by such company shall forfeit its corporate rights. R.S., c. 118, s. 29.

150. Shareholders' Liability.—Every shareholder shall until the whole amount of his stock has been paid up be individually liable to the creditors of the company to an amount

equal to that not paid up thereon; but shall not be liable to an action therefor by any creditor until an execution against the company at the suit of such creditor has been returned unsatisfied in whole or in part.

2. Limit of Liability.—The amount due on such execution, not exceeding the amount unpaid by the shareholder on his stock, shall be the amount recoverable with costs from such shareholder. R.S., c. 118, s. 30.

151. Limitation of Liability of Shareholders.—The shareholders of the company shall not, as such, be held responsible for any act, default or liability whatsoever, of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever, relating to or connected with the company, beyond the amount of their respective shares in the capital stock thereof. R.S., c. 118, s. 31.

152. Trustees not Personally Liable. Estate Liable.—No person holding stock in the company as an executor, administrator, tutor, curator, guardian or trustee shall be personally subject to liability as a shareholder; but the estate and funds in the hands of such person shall be liable in like manner and to the same extent as the testator, or intestate if living, or the minor, ward or interdicted person or the person interested in such trust fund if competent to act and holding such stock in his own name, would be liable.

2. Pledgeor Only Liable.—No person holding stock in the company as collateral security shall be personally subject to liability as a shareholder; but the person pledging such stock shall be considered as holding the same and shall be liable as a shareholder accordingly. R.S., c. 118, s. 32.

MEETINGS AND VOTING

153. Arrears Prevent Voting.—No shareholder who is in arrear in respect of any call shall vote at any meeting of the company. R.S., c. 118, s. 22.

154. Notice of General Meetings.—In the absence of other provisions in that behalf in the Special Act or the by-laws of the company, notice of the time and place for holding general meetings of the company shall be given at least ten days previously thereto, in some newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto. R.S., c. 118, s. 11.

155. As Many Votes as Shares. Proxies.—In the absence of other provisions, in manner aforesaid, every shareholder shall be entitled to as many votes at all general meetings of the company as he owns shares in the company, and may vote by proxy. R.S., c. 118, s. 11.

156. Trustees and Pledgors May Vote as Shareholders.—Every executor, administrator, tutor, curator, guardian or trustee shall represent the stock in his possession in his fiduciary capacity at all meetings of the company, and may vote as a shareholder; and every person who pledges his stock may, notwithstanding such pledge, represent the said stock at all such meetings, and vote as a shareholder. R.S., c. 118, s. 33.

157. Special Meetings May be Called by Shareholders.—Shareholders who hold one-fourth part in value of the subscribed stock of the company may at any time by written requisition signed by them call a special general meeting of the company for the transaction of any business specified in such requisition, and in the notice made and given for the purpose of calling such meeting. R.S., c. 118, s. 34.

PREFERENCE STOCK

158. Holders and Shareholders.—Holders of shares of preference stock, under the provisions of this Part, shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities

of shareholders within the meaning of this Part: Provided that in respect of dividends and in any other respect declared by by-law creating and issuing any part of the capital stock of the company as **preference stock** under the provisions of this Part, they shall as against the ordinary shareholders be entitled to the preferences and rights given by by-law of the company in that behalf. 62-63 V., c. 40, s. 4.

159. Saving of Creditors' Rights.—No provision in this Part as to the creation of preference stock and no by-law authorizing the creation of such stock and nothing done under or in pursuance of any such provision or by-law, shall affect or impair the rights of creditors of any company. 62-63 V., c. 40, s. 5.

CONTRACTS

160. Contracts by Agents or Officers.—Every contract, agreement, engagement or bargain made, and every bill of exchange drawn, accepted or endorsed, and every promissory note and cheque made, drawn or endorsed on behalf of the company, by any agent, officer or servant of the company, in general accordance with his powers as such under the by-laws of the company, shall be binding upon the company.

2. Affixing Seal Unnecessary.—In no case shall it be necessary to have the seal of the company affixed to any such contract, agreement, engagement, bargain, bill of exchange, promissory note or cheque, or to prove that the same was made, drawn, accepted or endorsed, as the case may be, in pursuance of any by-law or special vote or order.

3. Agent or Officer Not Liable.—The person so acting as agent, officer, or servant of the company, shall not be thereby subjected individually to any liability whatsoever to any third person therefor. R.S., c. 118, s. 35.

TRUSTS

161. Execution of Trusts.—The company shall not be bound to see to the execution of any trust, whether express, implied or constructive, in respect of any share.

2. Receipt of Shareholders a Discharge.—The receipt of the shareholder in whose name any share stands in the books of the company, shall be a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of such trust has been given to the company.

3. Application of Money.—The company shall not be bound to see the application of the money paid upon such receipt. R.S., c. 118, s. 36.

LIABILITY OF DIRECTORS

162. Liability of Directors Declaring and Paying Dividend When Company is Insolvent.—If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or diminishes the capital stock thereof, they shall be jointly and severally liable, as well to the company as to the individual shareholders and creditors thereof, for all the debts of the company then existing, and for all thereafter contracted during their continuance in office respectively: Provided that if any director present when such dividend is declared does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such dividend being declared and is able so to do, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability. R.S., c. 118, s. 37.

163. Liability of Directors for Transfer of Shares to Insolvent.—Whenever entry is made in the company's books of any transfer of stock not fully paid up, to a person who is not apparently of sufficient means, the directors shall be jointly and severally liable to the creditors of the company, in the same manner and to the same extent as the transferring shareholder, except for such entry, would have been liable: Provided that if any director present when such entry is allowed does forthwith, or if any director, then absent, does, within twenty-four hours after he becomes aware of such entry, and is able so to do, enter on the minute book of the board of directors, his protest against such transfer, and within eight days thereafter publishes such protest in at least one newspaper published at the place in which the head office or chief place of business of the company is situated, or if there is no newspaper there published, then in the newspaper published nearest thereto, such director may thereby, and not otherwise, exonerate himself from such liability. R.S., c. 118, s. 24.

164. Liability in Case of Loans by Company to Shareholders.—If any loan is made by the company to any shareholder in violation of the provisions of this Part, all directors and other officers of the company who make the same or assent thereto shall be jointly and severally liable to the company for the amount of such loan, and also to third persons to the extent of such loan, with lawful interest, for all debts of the company contracted from the time of the making of such loan to that of the repayment thereof. R.S., c. 118, s. 38.

165. Contracts to Have Words Indicating a Limited Liability.—The directors of the company shall be jointly and severally liable upon every written contract or undertaking of the company, on the face whereof the word limited or the

words limited liability are not distinctly written or printed after the name of the company, where it first occurs in such contract or undertaking. R.S., c. 118, s. 39.

166. Liability of Directors for Wages Unpaid.—The directors of the company shall be jointly and severally liable to the labourers, servants and apprentices thereof, for all debts, not exceeding one year's wages, due for services performed for the company whilst they are such directors respectively: Provided that no director shall be liable to an action therefor, unless the company is sued therefor within one year after the debt became due, nor unless such director is sued therefor within one year from the time when he ceased to be such director, nor unless an execution against the company at the suit of such labourer, servant or apprentice is returned unsatisfied in whole or in part.

2. **The amount unsatisfied** on such execution shall be the amount recoverable with costs from the directors. R.S., c. 118, s. 40.

USE OF FUNDS

167. No Loan to Shareholders.—No company shall loan any of its funds to any shareholder. R.S., c. 118, s. 38.

168. Purchase of Stock in Other Companies.—No company shall use any of its funds in the purchase of stock in any other corporation unless in so far as such purchase is specially authorized by the Special Act and also by the Act creating such other corporation. R.S., c. 118, s. 41.

PROCEDURE

169. Enforcement of Payment of Calls.—The company may enforce payment of all calls and interest thereon, by action in any court of competent jurisdiction. R.S., c. 118, s. 19.

170. Form of Action.—In such action it shall not be necessary to set forth the special matter, but it shall be sufficient

to declare that the defendant is a holder of one share or more, stating the number of shares, and is indebted to the company in the sum of money to which the calls in arrears amount, in respect of one call or more, upon one share or more, stating the number of calls and the amount of each call, whereby an action has accrued to the company under this Part. R.S., c. 118, s. 19.

171. Service of Any Process or notice upon the company may be made by leaving a copy thereof at the head office or chief place of business of the company, with any adult person in charge thereof, or elsewhere with the president or secretary of the company.

2. **Constructive Service.**—If the company has no known office or chief place of business, and has no known president or secretary, the court may order such publication as it deems requisite to be made in the premises, for at least one month in at least one newspaper.

3. **Such publication** shall be deemed to be due service upon the company. R.S., c. 118, s. 42.

172. Actions Against Shareholders.—Any description of action may be prosecuted and maintained between the company and any shareholder thereof. R.S., c. 118, s. 43.

173. Winding-up Act to Apply.—The company shall be subject to the provisions of any general Act for the winding-up of joint stock companies. R.S., c. 118, s. 44.

EVIDENCE

174. Evidence of By-laws.—A copy of any by-law of the company, under its seal, and purporting to be signed by any officer of the company, shall be received as prima facie evidence of such by-law in all courts in Canada. R.S., c. 118, s. 14.

175. Books of Company Prima Facie Evidence.—All books required by this Part to be kept by the secretary or by any

other officer of the company charged with that duty shall, in any suit or proceeding against the company or against any shareholder, be prima facie evidence of all facts purporting to be therein stated. R.S., c. 118, s. 27.

176. Proof of Being a Shareholder.—In any action by any company to enforce payment of any call or interest thereon, a certificate under the seal of the company and purporting to be signed by any officer of the company to the effect that the defendant is a shareholder, that the call or calls have been made to enforce payment of which or of any interest thereon such action has been brought, and that so much is due by him and unpaid thereon, shall be received in all courts as prima facie evidence. R.S., c. 118, s. 19.

PART III

LOAN COMPANIES

INTERPRETATION

177. Definition.—In this Part, unless the context otherwise requires,—

- (a) **'company'** means a company incorporated under its provisions;
- (b) **'Minister'** means the Minister of Finance. 62-63 V., c. 41, s. 1.

REGULATIONS

178. The Governor in Council may, from time to time, make regulations with respect to the following matters, viz. :—

- (a) **Application for Charter.**—The notice to be given of applications under this Part, and the evidence and material to be produced or filed in support thereof;
- (b) **Forms of Notice.**—The form and manner of giving any other notice required by this Part or by regulations made under it;

- (c) **The forms of petitions**, certificates, letters patent and other instruments and documents relating to proceedings under this Part;
- (d) **Making Affidavits**.—The persons before whom any affidavit, affirmation, or declaration required by this Part, or by regulations made under it, may be taken or made;
- (e) **Officers**.—The departmental or other officers to be charged with the administration of this Part and their respective duties thereunder. 62-63 V., c. 41, s. 3.

APPLICATION FOR INCORPORATION

179. Application for Charter.—Any five or more persons of the full age of twenty-one years may apply to the Governor in Council for letters patent under the Great Seal incorporating them as a loan company under this Part. 62-63 V., c. 41, s. 4.

180. The application shall show,—

- (a) **the number of the proposed board of directors**, and the names of not less than three of the applicants, who are to be the provisional board;
- (b) **the proposed name** of the company;
- (c) the place where its **head office** is to be established;
- (d) the amount of the **proposed capital stock**, the number of shares and the amount of each share; and,
- (e) **such other information** as may be required by regulations made under this Part. 62-63 V., c. 41, s. 5.

181. Acquisition of Existing Company.—The application may pray for power to acquire the assets of any existing company, whether incorporated by or under the authority of the Parliament of Canada or otherwise, whose **main business** is lending money on the security of or purchasing or investing in,—

- (a) **mortgages or hypothecs** upon freehold or leasehold real estate or other immovables; and,
- (b) **the debentures, bonds, stocks, and other securities**, excepting bills of exchange and promissory notes, of any government or of any municipal corporation or school corporation or of any chartered bank or incorporated company if incorporated by Canada or any province of Canada or any former province now forming part of Canada.

2. Terms on Which Assets of Company May be Acquired.

—In such case the applicants shall declare the terms upon which such assets are to be acquired, and shall be required to show to the satisfaction of the Governor in Council that such existing company is in a solvent condition and has power to dispose of its assets in the manner proposed, and has agreed, in a manner binding upon it and subject to the granting of letters patent to the applicants, to such a disposal of them. 62-63 V., c. 41, s. 6; 63-64 V., c. 43, s. 1.

LETTERS PATENT

182. Conditions Upon Which Application May be Granted.

—Upon the terms of this Part and of any regulations made thereunder being complied with, the Governor in Council may grant such application and issue the letters patent, if he considers it consistent with the public interests so to do. 62-63 V., c. 41, s. 7.

183. Effect of Charter.—By virtue of letters patent so issued the persons therein mentioned and such others as may thereafter become shareholders shall become and be a body corporate, with the rights and **powers conferred** by law upon corporations, and with the rights and powers subject to the obligations and restrictions hereinafter declared. 62-63 V., c. 41, s. 12.

184. Provisions Which May be Embodied in Charter.—

Any provision which might be made by by-law of the company may be embodied in the letters patent, and a provision so embodied shall not be subject to alteration or repeal without the consent of the Governor in Council. 62-63 V., c. 41, s. 8.

NAME OF COMPANY

185. The name given to a company may differ in whole or in part from that asked for by the applicants. 62-63 V., c. 41, s. 9.

186. Name and Organization.—The name of the company, the place of its head office, the amount of its capital stock, the number of shares and amount of each share, the number of its directors, and its provisional board shall be declared in the letters patent, subject to such changes as may be lawfully made. 62-63 V., c. 41, s. 13.

187. The name so given shall not be that of any known company or partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to be calculated to deceive or cause confusion: Provided that a subsisting name may be given in whole or part with the consent of the company or person entitled thereto, and that the name of any existing company whose assets are to be acquired may be given to the applicants, if the Governor in Council is satisfied that such company has the best right to that name. 62-63 V., c. 41, s. 10; 63-64 V., c. 43, s. 1.

MATTERS DIRECTORY AND CONCLUSIVE

188. Provisions Relating to Preliminaries Directory Only.

—The provisions of this Part relating to matters preliminary to the issue of letters patent or of any certificate, order or other proceeding by or on behalf of the Governor in Council

or Treasury Board or of any minister or departmental or other officer under this Part, shall be deemed to be directory only; and such letters patent or other proceeding shall not be void or voidable on account of any omission or irregularity in respect of any matter preliminary thereto. 62-63 V., c. 41, s. 11.

189. Decision of Governor Final as to Name. Confirmation of Agreements.—As to questions arising under this Part, the decision of the Governor in Council shall be final in respect to,—

- (a) the name to be given a company;
- (b) the granting of applications for letters patent confirming agreements for amalgamation of companies and the issuing of such letters patent; and,
- (c) the confirmation by certificate of the Minister of by-laws for the conversion of partly paid-up shares of capital stock into fully paid-up shares. 62-63 V., c. 41, s. 11.

ORGANIZATION OF COMPANY

190. Subscription of Stock.—The provisional directors of a company incorporated under this Part may receive subscriptions for stock in the capital of the company, and as soon as a sum not less than one hundred thousand dollars of such capital stock has been subscribed and a sum not less than fifty thousand dollars has been paid thereon and deposited with the Minister, may **call a meeting of the subscribers** to said stock, to be held in the place of the company's head office, at which meeting the board of directors of the company shall be elected, who shall hold office until their successors are duly appointed; and upon the election of such board the functions of the provisional directors shall cease.

2. **Notice of Meeting.**—Two weeks' notice of said meeting shall be given by advertisement in a newspaper published in the place of the head office, and by circular to each subscriber

of stock posted by registered letter to his last known address: Provided that if all of the subscribers aforesaid are present in person or represented by proxy, the meeting may be held at any time and at any place without notice. 62-63 V., c. 41, s. 14.

191. Deposit May, in Certain Cases, be Dispensed With.—

Where the object of the company is wholly or in part to acquire the assets of an existing company, the consideration for such assets may consist wholly or in part of shares in the capital stock of the company for which incorporation is sought.

2. In such case, the Minister may dispense to such extent as he may think proper with the payment and deposit aforesaid. 62-63 V., c. 41, ss. 6 and 14; 63-64 V., c. 43, s. 1.

POWERS AND LIABILITIES OF COMPANY

192. Certificate Requisite for Doing Business.—A company incorporated under this Part shall not borrow or lend money or otherwise carry on business until it has obtained from the Minister a certificate permitting it to do so, and no application for such certificate shall be given, until the board of directors has been elected as required by this Part, nor until it has been shown to the satisfaction of the Minister that the provisions in that behalf of this Part have been complied with.

2. **Not After Two Years.—**No such certificate shall be given unless application therefor be duly made within two years after the issue of the letters patent, or within such extended period as the Governor in Council may, before the expiration of such two years, allow. 62-63 V., c. 41, s. 15.

193. Conditions of Issue of Certificate.—No such certificate shall be given to a company authorized to receive money on deposit unless nor until at least three hundred thousand dollars of its capital stock has been subscribed and at least

one hundred thousand dollars has been paid thereon and deposited with the Minister: Provided that in the case of a company authorized to acquire the assets of an existing company such payment and deposit may be wholly or in part dispensed with. 62-63 V., c. 41, s. 15; 63-64 V., c. 43, s. 1.

194. Effect of Failure to Obtain Certificate.—Should application for such certificate not be duly made within the time limited, or should such certificate be refused, the company's letters patent shall thereupon cease and become void, except for the purpose of winding up the affairs of the company and returning to the subscribers the amounts paid upon the subscribed stock or so much thereof as they may be entitled to. 62-63 V., c. 41, s. 16.

195. Return of Deposit.—Upon the issue of the certificate or upon refusal to issue it, the Minister shall pay over to the company, without interest, the amount deposited with him pursuant to the foregoing provisions of this Part. 62-63 V., c. 41, s. 17.

196. Power to Acquire Assets of Existing Company.—A company if so authorized may acquire all the assets, rights, credits, effects and property, real, personal and mixed, of whatever kind and wheresoever situated, belonging to the existing company or to which it is or may be or become entitled, and no company so authorized shall be vested with any of such assets, credits, effects or property, or exercise any of such rights, unless nor until the same have been actually so acquired. 62-63 V., c. 41, s. 19; 63-64 V., c. 43, s. 2.

197. Obligations of New Company.—A company duly authorized under this Part in that behalf, which has acquired the assets of an existing company, shall be and is hereby declared to be liable for and subject to, and shall pay, discharge, carry out and perform, all the debts, liabilities, obli-

gations, contracts and duties of the company whose assets have been so acquired. 62-63 V., c. 41, s. 18; 63-64 V., c. 43, s. 1.

198. May Loan Money.—A company shall, subject to the terms and exceptions contained in its letters patent, have the power of carrying on in Canada the business of lending money on the security of and of purchasing or investing in,—

- (a) **mortgages or hypothecs** upon freehold or leasehold real estate or other immovables; and,
- (b) **the debentures, bonds, stocks and other securities**, except bills of exchange and promissory notes, of any government, or of any municipal corporation or school corporation, or of any chartered bank or incorporated company, if incorporated by Canada or any province of Canada, or any former province now forming part of Canada. 62-63 V., c. 41, s. 20.

199. Personal Security.—Any company may take personal security as collateral for any advance made or to be made or for any debt due such company. 62-63 V., c. 41, s. 20.

LIABILITIES TO THE PUBLIC

200. Limitations of Liabilities to the Public.—The total amount of the company's liabilities to the public outstanding, from time to time, shall not exceed four times the amount paid up upon its capital stock: Provided that the amount of cash on hand or deposited in chartered banks and belonging to such company shall be deducted from such total liabilities for the purposes of this section. 62-63 V., c. 41, s. 21.

201. Debenture stock issued by a company shall be included in estimating such liabilities. 62-63 V., c. 41, s. 26.

202. Liability of Pre-existing Company Included.—The liabilities of a previously existing company which are assumed by a company shall form part of such total liabilities to the public of such company so assuming the same. 62-63 V., c. 41, s. 24.

LOANS AND DEPOSITS

203. No Loan on Stock of Another Company.—No company shall invest in or lend money upon the security of the stocks of any other loan company. 62-63 V., c. 41, s. 20.

204. Loans Upon Company's Own Stock.—The company may, subject to the provisions of any by-law of the company passed under this Part, lend upon its own paid-up permanent stock to an amount not exceeding in the aggregate of all such sums ten per centum of the company's paid-up permanent stock: Provided that no such loan shall exceed eighty per centum of the market price then actually offered for the stock.

2. No Loan or Advance Except as in This Section.—No company shall, except as in this section provided, make any loan or advance upon the security of any permanent share or shares or permanent stock of the company whether with or without collateral security. 62-63 V., c. 41, s. 20.

205. Effect on Borrowing Power.—All loans or advances by a company to its shareholders upon the security of their permanent stock shall be deducted from the amount of paid-up capital upon which the company is authorized to borrow. 62-63 V., c. 41, s. 22.

206. Borrowing Power and on What Securities.—Except as otherwise provided by its letters patent, and subject to the limitations hereinafter specified, a company which is subject to this Part may borrow money and receive money on deposit upon such terms as to interest, security and otherwise as may be agreed on, and may issue its bonds, debentures and other securities for moneys borrowed. 62-63 V., c. 41, s. 21.

207. Limitation of Amount to be Held on Deposit.—The amount held on deposit shall not at any time exceed the aggregate amount of the actually paid-up and unimpaired

capital of the company and of its cash actually on hand or deposited in any chartered bank or banks in Canada and belonging to the company. 62-63 V., c. 41, s. 21.

208. Assets Necessary.—So long as a company is indebted for money received upon deposit, its total assets over and above the value of its real estate and its mortgages or hypothecs upon freehold or leasehold estate or other immovables shall be equal to at least twenty per centum of its indebtedness in respect of such money. 62-6 V., c. 41, s. 25.

REAL ESTATE

209. Limitation of Time for Holding Real Estate.—No parcel of land, or interest therein at any time acquired by the company and not required for its actual use and occupation or held by way of security, shall be held by the company, or by any trustee on its behalf, for a longer period than seven years after the acquisition thereof, but shall be absolutely sold and disposed of, so that the company shall no longer retain any interest therein unless by way of security. 62-63 V., c. 41, s. 38.

210. Forfeiture.—Any such parcel of land, or any interest therein not required for the actual use and occupation of the company or held by way of security which has been held by the company for a longer period than seven years without being disposed of, shall be forfeited to His Majesty: Provided that the Governor in Council may extend the said period from time to time, not exceeding in the whole twelve years. 62-63 V., c. 41, s. 38.

211. Time for Enforcement of Forfeiture.—No such forfeiture shall take effect or be enforced until the expiration of at least six calendar months after notice in writing to the company of the intention of His Majesty to claim such forfeiture. 62-63 V., c. 41, s. 38.

DEBENTURES AND DEBENTURE STOCK

212. Issue of Debenture Stock.—The directors of a company may, with the consent of the shareholders, at a special general meeting duly called for the purpose, create and issue debenture stock in such amounts and manner, on such terms, and bearing such rate of interest, as the directors from time to time think proper.

2. **Status of Stock.**—Such debenture stock shall be treated and considered as part of the ordinary debenture debt of the company.

3. **Ranks with Debenture Debt.**—Such debenture stock shall rank equally with such ordinary debenture debt, and no greater rights or privileges shall be conferred upon holders or debenture stock in respect thereof than are held or enjoyed by holders of ordinary debentures of the company. 62-63 V., c. 41, s. 26.

213. Exchange of Debentures for Debenture Stock.—The holders of the ordinary debentures of the company may with the consent of the directors at any time exchange such debentures for debenture stock. 62-63 V., c. 41, s. 29.

214. Cancellation of Debenture Stock.—The company having issued debenture stock may, from time to time, as they think fit, in the interest of the company, but only with the consent of the holders thereof, buy up and cancel the said debenture stock or any portion thereof. 62-63 V., c. 41, s. 30.

REGISTRATION

215. Debentures Must be Entered in Special Register.—The debenture stock aforesaid shall be entered by the company in a register to be kept for that purpose in the head office of the company, wherein shall be set forth the names and addresses of those from time to time entitled thereto, with the respective amounts of the said stock to which they are respectively entitled.

2. **Inspection Without Fee.**—The register shall be accessible for inspection and perusal at all reasonable times to every debenture holder, mortgagee, bondholder, debenture stockholder and shareholder of the company without the payment of any fee or charge.

3. **Transfer.**—Such stock shall be transferable in such amounts and in such manner as the directors may determine. 62-63 V., c. 41, s. 27.

216. **Registry of Transfers.**—All transfers of debenture stock of the company shall be registered at the head office of the company, and not elsewhere. 62-63 V., c. 41, s. 28.

EXECUTION OF TRUSTS

217. **Not Liable for Execution of Trusts.**—The company shall not be bound to see to the execution of any trust, whether expressed, implied, or constructive, to which any share or shares of its stock or debenture stock, or to which any deposit or any other moneys payable by or in the hands of such company, may be subject.

2. **Receipt of Shareholder a Discharge.**—The receipt of the party or parties in whose name such share or shares, debenture stock or moneys stand in the books of the company shall, from time to time, be sufficient discharge to the company for any payment of any kind made in respect of such share or shares, stock or moneys, notwithstanding any trust to which the same may then be subject, and whether or not the company has had notice of such trust.

3. **Application of Money.**—The company shall not be bound to see to the application of the money paid upon such receipt. 62-63 V., c. 41, s. 32.

BY-LAWS BY COMPANY

218. **Loans to Shareholders.**—Any company may pass a by-law prohibiting absolutely the loaning to shareholders

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upon the security of their stock. 60-61 V., c. 31, s. 1; 62-63 V., c. 41, s. 20.

219. Limitation of Amount.—Subject to the limitations in this Part set forth, any company may pass a by-law limiting the aggregate amount which may be loaned on the stock of such company. 60-61 V., c. 31, s. 1; 62-63 V., c. 41, s. 20.

220. Repeal of By-law.—It shall not be lawful for any company to repeal either of the by-laws passed as aforesaid until the liabilities of the company are discharged. 60-61 V., c. 31, s. 1; 62-63 V., c. 41, s. 20.

221. Extension of Business Beyond Canada.—When the existence or operation of the company is not by the Act or instrument constituting it limited as to time or place, the company may, in general meeting of the members having due notice in that behalf, pass a by-law authorizing its directors to extend the business of the company beyond Canada, but in compliance with the law of foreign jurisdiction.

2. Liability of Directors.—The directors may give effect to such by-law without being liable or responsible as for any breach of trust in so doing. 62-63 V., c. 41, s. 23.

222. Building for Foreign Business.—When, under the provisions of this Part, any company carries on business beyond Canada the company may, in general meeting of the members having due notice in that behalf, pass a by-law authorizing the directors to invest the money of the company in the erection or purchase of buildings required for the occupation of the company in any place where the company is so carrying on business and within the limit, if any, authorized by the law of the foreign jurisdiction. 62-63 V., c. 41, s. 23.

223. Company Lending Money.—Any company whose main business is lending money on the security of or purchasing or investing in,—

- (a) **mortgages or hypothecs** upon freehold or leasehold, real estate or other immovables; and,
- (b) **the debentures, bonds, stocks, and other securities**, except bills of exchange and promissory notes, of any government, or of any municipal corporation or school corporation, or of any chartered bank or incorporated company if incorporated by Canada or any province of Canada or any former province now forming part of Canada;

may pass a by-law providing, upon such terms as may be thought best, for **the conversion into fully paid-up shares**, of shares in its capital stock which have been only partly paid-up. 62-63 V., c. 41, s. 40.

224. Sanction Necessary.—Such by-law shall not have any force or effect whatever unless nor until it has been sanctioned by a vote of shareholders present or represented by proxy at a general meeting of the company duly called for considering the by-law, and holding not less than two-thirds of the issued capital stock of the company represented at such meeting, and afterwards confirmed by a certificate of the Minister given under the authority of the Treasury Board. 62-63 V., c. 41, s. 40.

BY-LAWS BY DIRECTORS

225. Increase of Capital Stock.—The directors, at any time after ninety per centum of the capital stock of the company has been subscribed and ninety per centum thereof paid in, but not sooner, may by by-law provide for the increase of the capital stock of the company to any amount which they consider requisite. 62-63 V., c. 41, s. 33.

226. Decrease of Capital Stock.—The directors at any time may by by-law provide for the decrease of the capital stock of the company to any amount not less than one hundred thousand dollars, which they may consider sufficient.

2. **Declaration Necessary.**—The by-law shall declare the number of the shares of the stock decreased, and the allotment thereof or the rule or rules by which the same is to be made.

3. **Creditors Not Affected.**—The liability of the shareholders to persons who are, at the time the stock is decreased, creditors of the company, shall remain as though the stock had not been decreased. 62-63 V., c. 41, s. 34.

227. **Preference Stock.**—The directors of the company may make a by-law for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority, as respects dividends and in any other respect, over ordinary stock as may be declared by the by-law.

2. **Selection of Directors by Holders.**—The by-law may provide that the holders of shares of such preference stock shall have the right to select a certain stated proportion of the board of directors, or may give them such control over the affairs of the company as may be considered expedient.

3. **By-law to That Effect Must be Sanctioned.**—No such by-law shall have any force or effect whatever until after it has been unanimously sanctioned by a vote of the shareholders, present in person or by proxy at a general meeting of the company duly called for considering the same, or unanimously sanctioned in writing by the shareholders of the company: Provided that, if at such meeting the by-law is sanctioned by shareholders holding three fourths of the issued capital stock at such meeting, the company may petition the Minister for an order approving the said by-law, and the Minister may, with the approval of the Treasury Board, approve thereof, and, from the date of such approval, the by-law shall be valid and may be acted upon. 62-63 V., c. 41, s. 37.

CERTIFICATE OF CONFIRMATION

228. By-law for Increase or Decrease of Stock to be Voted by Shareholders and Confirmed by Minister.—No by-law for increasing or decreasing the capital stock of the company shall have any force or effect whatever unless nor until it has been sanctioned by a vote of shareholders present or represented by proxy at a general meeting of the company duly called for considering the by-law, and holding not less than two-thirds of the issued capital stock of the company represented at such meeting, and afterwards been confirmed by a certificate of the Minister given under the authority of the Treasury Board. 62-63 V., c. 41, s. 35.

229. Increase or Decrease Made if Bona Fide.—Upon an application to the Minister for a certificate confirming such by-law, the company shall satisfy him of the bona fide character of the increase or decrease of capital thereby provided for, and, unless it appears that the granting of such certificate would not be in the public interest, the Minister, with the approval of the Treasury Board, may grant the same.

2. The amount of such increase or decrease of capital may with the consent of the company be changed by said **certificate** and the increase or decrease made subject to such conditions as the Treasury Board may think proper. 62-63 V., c. 41, s. 36.

230. Conditions of Confirmation.—Upon an application to the Minister for a certificate confirming any by-law of the company for the conversion into fully paid-up shares of partly paid-up shares, unless it appears that the granting of such certificate would not be in the public interest, the Minister may, with the approval of the Treasury Board, grant the same, and upon the granting of such certificate, the said by-law shall come into force and take effect and may be acted on according to its terms. 62-63 V., c. 41, s. 41.

PREFERENCE STOCK

231. Rights and Liabilities of Holders.—Holders of shares of preference stock shall be shareholders within the meaning of this Part, and shall in all respects possess the rights and be subject to the liabilities of such shareholders: Provided that in respect of dividends and in any other respect they shall, as against the ordinary shareholders, be entitled to the preferences and rights given by by-law. 62-63 V., c. 41, s. 37.

AMALGAMATION AND PURCHASE

232. Amalgamation of Companies.—Any two or more companies which are subject to the provisions of this Part, or which are incorporated by or under the authority of an Act of the Parliament of Canada and whose main business is lending money on the security of or purchasing or investing in,—

- (a) **mortgages or hypothecs** upon freehold or leasehold, real estate or other immovables; and,
- (b) **the debentures, bonds, stocks, and other securities**, except bills of exchange and promissory notes, of any government, or of any municipal corporation or school corporation, or of any chartered bank or incorporated company if incorporated by Canada or any province of Canada or any former province now forming part of Canada;

may, in the manner herein provided, **amalgamate** the one with the other or others, and may enter into all agreements and do all acts necessary or convenient for the purposes of such amalgamation. 62-63 V., c. 41, s. 39.

233. Amalgamation to be by Purchase of Assets.—Any one or more of such companies may alone or together purchase the entire assets of any other or others of such companies which may sell said assets, and the companies may

enter into all agreements of purchase and sale and do all acts necessary or convenient for the purposes of such purchase and sale: Provided that specified assets may be excepted from such purchase and sale. 62-63 V., c. 41, s. 39.

234. Agreement to Set Out Terms and Working Company Details.—The agreement for amalgamation or purchase shall prescribe the terms and conditions of the amalgamation or purchase, and may provide for the mode of carrying the same into effect, the name of the amalgamated company, the amount of capital stock, the number of shares and amount of each share, the place of the head office, the number of the board of directors, the names of the first directors and their term of office, the manner of converting the capital stock of each company into that of the amalgamated company, and such other or additional details as may be necessary or convenient to perfect the new organization and the subsequent management and working thereof, but no share in the amalgamated company shall be terminating or liable to be withdrawn. 62-63 V., c. 41, s. 39.

235. Acceptance and Approval of Agreement by Each Company at Meetings.—The agreement shall be submitted to the shareholders of each of the said companies at a meeting thereof duly called and held separately for the purpose of taking the same into consideration, and, if at each such meeting the same is accepted and approved by resolution passed by shareholders present or represented by proxy and holding not less than two-thirds of all the shares of the issued capital stock of the company, the said agreement may be executed under the corporate seals of the companies, and an application may be made to the Governor in Council by the companies for letters patent confirming the same. 62-63 V., c. 41, s. 39.

236. Letters Patent Confirming Amalgamation.—Upon the terms of this Part, and of any regulations made here-

under, being complied with, and, unless it appears that the granting of such application would not be in the public interest, the Governor in Council may grant the same and issue letters patent under the Great Seal confirming said agreement and incorporating the amalgamated companies as a company under this Part. 62-63 V., c. 41, s. 39.

237. One Company After Date of Letters.—On, from and after the date of such letters patent or purchase the said companies shall be amalgamated and shall form one company by the name in said agreement provided, and upon the terms and conditions thereof. 62-63 V., c. 41, s. 39.

238. Letters Patent Confirming Amalgamation.—On, from and subject to the provisions of this Part in respect to actions or proceedings by or against any of the companies so amalgamated, the amalgamated company shall possess and be vested with all the powers, franchises, privileges, assets, rights, credits, effects and property, real, personal and mixed, of whatever kind and wheresoever situated, belonging to either of the said companies or to which either of the said companies may be or become entitled, not including the assets, if any, excepted under the agreement of purchase and sale, and shall be liable for and subject to, and shall pay, discharge, carry out and perform, all the debts, liabilities, obligations, contracts and duties of each of said companies. 62-63 V., c. 41, s. 39.

239. Powers of Amalgamated Company.—Subject to the terms and exceptions contained in the letters patent, confirming the agreement of purchase and sale and incorporating the amalgamated company, the provisions of this Part shall apply to the amalgamated company and to the business carried on by it, and, subject as aforesaid, the borrowing and lending powers of such company shall be governed by the provisions of this Part, and, subject as aforesaid, any provision in the

charter or Act of incorporation, or of any other Act, applicable to any of the amalgamated companies which is inconsistent with the provisions of this Part, shall cease to have effect. 62-63 V., c. 41, s. 39.

240. Assets of Amalgamated Company.—On, from and after the date of such letters patent, the assets purchased and sold shall, in accordance with and subject to the terms of said agreement and without any further conveyance, become vested in the company or companies purchasing.

2. Vesting Conveyances to be Executed.—The selling company shall, from time to time, subject to the terms of said agreement, execute such formal and separate conveyances, assignments and assurances, for registration purposes or otherwise, as may be reasonably required to confirm or evidence the vesting in the purchasing company or companies of the full title and ownership of the assets purchased and sold. 62-63 V., c. 41, s. 39.

TRANSFERS

241. Transmission of Shares Otherwise Than by Transfer.—If the interest of any person in any bond, debenture or obligation of the company which is not payable to bearer, or in the capital stock or debenture stock of the company is transmitted in consequence of the death, or bankruptcy, or insolvency of the holder thereof, or by lawful means other than a transfer upon the books of the company, the directors shall not be bound to allow any transfer pursuant to such transmission to be entered upon the books of the company, or to recognize such transmission in any manner, until a declaration in writing showing the nature of such transmission, and signed and executed by the person or persons claiming by virtue thereof, and also executed by the former shareholder, if living and has capacity to execute the same, has been filed with the manager or secretary of the company and approved by the directors. 62-63 V., c. 41, s. 42.

242. Credit Given to Declaration Before Certain Officers.—

If any such declaration, purporting to be signed and executed, also purports to be made or acknowledged in the presence of a notary public, or of a judge of the court of record, or of a mayor of any city, town or borough, or other place, or a British consul, or vice-consul or other accredited representative of the British Government in any foreign country, the directors may, in the absence of direct actual notice of a contrary claim, give full credit thereto.

2. **Entry of Transferee's Name.**—Unless the directors are not satisfied with the responsibility of the transferee, they shall allow the name of the party claiming by virtue of the transmission to be entered in the books of the company. 62-63 V., c. 41, s. 42.

243. Transmission by Will or Intestacy.—If the transmission takes place by virtue of any testamentary act or instrument, or in consequence of an intestacy, and if the probate of the will or letters patent of administration or document testamentary, or other judicial or official instrument under which the title, whether beneficial or as trustee, or the administration or control of the personal estate of the deceased is claimed to vest, purports to be granted by any court or authority in the Dominion of Canada, or in Great Britain or Ireland, or any other of His Majesty's dominions, or in any foreign country, the probate of the said will or the said letters of administration or the said document testamentary or the said other judicial or official instrument or an **authenticated copy** thereof or official extract therefrom, shall, together with the declaration referred to in the two last preceding sections be produced and deposited with the manager, secretary, treasurer, or other officer named by the directors for the purpose of receiving the same.

2. Such production and deposit shall be **sufficient justification and authority to the directors** for paying the amount

or value of any dividend, coupon, bond, debenture, or obligation or share, or transferring, or consenting to the transfer of any bond, debenture or obligation or share, in pursuance of, and in conformity to such probate, letters of administration or other such document aforesaid. 62-63 V., c. 41, s. 43.

AGENCIES

244. Deposit of Transfers.—Transfers of debenture stock may be left with such agent or agents in the United Kingdom of Great Britain and Ireland, or elsewhere, as the company appoints for that purpose, for transmission to the company's head office for registration. 62-63 V., c. 41, s. 28.

245. Agencies in United Kingdom.—The company may have agencies in any places in Great Britain or elsewhere for the transfer of debenture or other stock and for the transaction of any other business of the company. 62-63 V., c. 41, s. 31.

APPLICATION TO COURT

246. Procedure to Settle Ownership.—Whenever the directors entertain reasonable doubts as to the legality of any claim to or upon such share or shares, bonds, debentures, obligations, dividends, coupons or the proceeds thereof, it shall be lawful for the directors to file a petition stating such doubt, and praying for an order or judgment adjudicating and awarding the said shares, bonds, debentures, obligations, dividends, coupons, or proceeds to the party or parties legally entitled to the same.

2. Authority of Court.—Such court shall have authority to restrain any action or proceedings against the company, the directors or officers thereof, for the same subject-matter, pending the determination of the petition.

3. Order of Court Indemnifies.—The company and the directors and officers thereof shall be fully protected and

indemnified by obedience to such order or judgment against all actions, claims and demands in respect of the matters which have been in question in such petition, and the proceedings thereupon. 62-63 V., c. 41, s. 44.

247. Courts in Which Petition May be Filed.—Such petition shall, in the province of Ontario, be filed in the High Court of Justice; in the province of Quebec, in the Superior Court; in the province of Manitoba, in the Court of King's Bench; in the province of British Columbia, in the Supreme Court; in the province of Nova Scotia, in the Supreme Court; in the province of New Brunswick, in the Supreme Court; in the province of Prince Edward Island, in the Supreme Court; in the province of Saskatchewan or Alberta, in the Supreme Court of the Northwest Territories pending the abolition of that Court by the legislature of the province, and thereafter in such court in either of the said provinces as may in respect of that province be substituted by the legislature thereof for the Supreme Court of the Northwest Territories; in the Northwest Territories, in such court or with such magistrate or other judicial authority as is designated, from time to time, by proclamation of the Governor in Council, published in the Canada Gazette; and in the Yukon Territory, in the Territorial Court. 62-63 V., c. 41, s. 44.

248. Costs.—If the court, magistrate or other judicial authority in or with which such petition is filed adjudges that such doubts were reasonable, the costs, charges and expenses of the company in and about such petition and proceedings shall form a lien upon such shares, bonds, debentures, obligations, dividends, coupons or proceeds and shall be paid to the company before the directors shall be obliged to transfer, or assent to the transfer of, or pay such shares, bonds, debentures, or obligations, dividends, coupons or proceeds to the party or parties found entitled thereto. 62-63 V., c. 41, s. 44.

RIGHTS OF CREDITORS

249. Preference Stock on Conversion of Shares Not to Affect Rights of Creditors.—No provision in this Part as to the creation of preference stock, and no by-law authorizing the creation of such stock, and nothing done under or in pursuance of any such provision or by-law, and no by-law of the company for the conversion into fully paid-up shares of partly paid-up shares, and no certificate confirming the same, and nothing done under or in pursuance of any such by-law or certificate, shall affect or impair the rights of creditors of the company. 62-63 V., c. 41, ss. 37 and 41.

250. Amalgamation Not to Affect Rights of Creditors.—Nothing in any agreement of amalgamation of companies under this Part, and nothing in this Part contained or done in pursuance thereof, shall take away or prejudice any claim, demand, right, security, cause of action or complaint which any person has against any of the companies so amalgamated, or their respective directors or shareholders, or shall relieve any such company, its directors and shareholders, from the payment or performance of any debt, liability, obligation, contract, or duty. 62-63 V., c. 41, s. 39.

251. Creditors Have Full Recourse Against the Amalgamated Company.—Any person having any claim, demand, right, cause of action or complaint, against any company so amalgamated with any other company or companies, and any person to whom any such company is under any liability, obligation, contract or duty, shall have the same rights and powers with respect thereto and to the collection, recovery and enforcement thereof from and against the amalgamated company as the person has against such company, or companies originally liable. 62-63 V., c. 41, s. 39.

252. Amalgamation Not to Abate Actions.—No action or proceeding by or against any of the said companies so amal-

gamated shall abate or be affected by such amalgamation, but for all the purposes of such action or proceeding such company may be deemed still to exist, or the amalgamated company may be substituted in such action or proceeding in the place thereof. 62-63 V., c. 41, s. 39.

253. Creditors Have Full Recourse Against Company Acquiring Assets of Another Company.—Every person having any claim, demand, right, cause of action or complaint against any company whose assets have been acquired under this Part, or to whom such company is under any liability, obligation, contract or duty, shall have the same rights and powers with respect thereto, and to the collection and enforcement thereof, from and against the new company, its directors and shareholders, as such person has against the company whose assets have been so acquired, its directors and shareholders. 62-63 V., c. 41, s. 18; 63-64 V., c. 433, s. 1.

254. Recourse of Creditors Against Company Whose Assets Have Been Acquired Saved.—Nothing in this Part contained or done in pursuance thereof, shall take away or prejudice any claim, demand, right, security, cause of action or complaint which any person has against any company whose assets have been so acquired, or its directors or shareholders, or shall relieve it, or its directors or shareholders, from the payment or performance of any debt, liability, obligation, contract or duty. 62-63 V., c. 41, s. 19.

STATEMENTS

255. Statement to Minister as to.—Every company shall transmit, on or before the first day of March in each year, to the Minister in such form and with such details as he from time to time requires and prescribes, a statement in duplicate, to the thirty-first day of December inclusive of the previous year, verified by the oath of the president or vice-president and the manager, setting out,—

- (a) **the capital stock** of the company and the proportion thereof paid up;
- (b) **the assets and liabilities** of the company;
- (c) **the amount and nature of the investments** made by the company, both on its own behalf and on behalf of others, and the average rate of interest derived therefrom, distinguishing the classes of securities;
- (d) the extent and value of the **lands held by it**; and,
- (e) **such other details** as to the nature and extent of the business of the company as the Minister requires. 62-63 V., c. 41, s. 45.

256. Statement of all Lands to be Furnished.—It shall be the duty of the company to give the Minister, when required, a full and correct statement of all lands at the date of such statement held by the company, or in trust for the company not required for its actual use and occupation or held by way of security. 62-63 V., c. 41, s. 38.

257. Private Affairs Not to be Disclosed.—The company shall not be bound to disclose in any statement transmitted by it to the Minister, the name or private affairs of any person who has dealings with the company. 62-63 V., c. 41, s. 45.

PART IV.

BRITISH LOAN COMPANIES

INTERPRETATION

258. Company.—In this Part, unless the context otherwise requires, 'company' means any institution or corporation duly incorporated under the laws of the Parliament of the United Kingdom for the purpose of lending money. R.S., c. 125, s. 1.

LICENSE

259. License May be Issued by Secretary of State.—The Secretary of State may, if he sees fit, issue a license under

this Part to any company that applies for such license and complies with the provisions of this Part in that behalf, authorizing it to carry on business in Canada. R.S., c. 125, s. 5.

260. Evidence of Incorporation and Authority.—Any company so applying, shall furnish the Secretary of State with a certified copy of the charter, Act of incorporation or articles of association of such company as evidence of the due incorporation of the company and with a power of attorney from such company to the person appointed as the principal agent or manager of such company within Canada, expressly authorizing such agent or manager to apply for such license.

2. **Verification of Authority.**—The power of attorney shall be under the seal of the company and shall be signed by the president or managing director and secretary thereof and verified by the oath of an attesting witness. R.S., c. 125, s. 5.

PRELIMINARIES

261. Formalities to be Observed by Company Before Commencing Business in Canada.—Every company which obtains such license shall, before commencing business, file in the office of the Provincial Secretary of each province in which such company proposes to do business, a certified copy of the charter, Act of incorporation or articles of association of such company, and also a power of attorney to the agent or manager of such company in each such province, signed by the president or managing director and secretary thereof, and verified as to its authenticity by the oath of the principal agent or manager of such company in Canada, or by the oath of some person cognizant of the facts necessary for its verification. R.S., c. 125, s. 2.

262. Contents of Power of Attorney Filed.—Such power of attorney shall expressly authorize such agent or manager,

so far as respects business done by him within the province for which he is agent or manager, to accept service of process in all suits and proceedings against such company in such province for any liabilities incurred by such company therein, and shall declare that service of process on such agent or manager for such liabilities shall be legal and binding on such company to all intents and purposes whatsoever, and shall waive all claims of error by reason of such service. R.S., c. 125, s. 2.

POWERS OF COMPANY

263. Company Licensed May Transact Loaning Business in Canada.—Any company which has received a license under this Part and has duly filed as aforesaid such certified copy of charter, Act of incorporation or articles of association and power of attorney may transact any loaning business, of any description whatsoever, within Canada, in its corporate name, **except the business** of banking, and may take and hold any mortgages of real estate, and any railway, municipal, or other bonds of any kind whatsoever, on the security of which it lends its money, at any rate of interest not exceeding the rate permissible on such **securities** by the Acts incorporating similiar companies in the several provinces of Canada, and whether the said bonds form a charge on real estate within Canada or not. R.S., c. 125, ss. 1 and 2.

264. Power as to Mortgage.—Such company may take and hold such mortgages in its corporate name, and may sell and transfer the same, and hold and convey the title to real estate acquired as mortgagees or chargees. Provided that such company shall sell or dispose of the real estate so acquired within five years from the time when the mortgage on such real estate becomes due and payable under the terms of the instrument creating such mortgage. R.S., c. 125, s. 1.

Co. L. 10.

PROCEDURE

265. Service of Process on Company.—After such certified copy of charter, Act of incorporation or articles of association, and such power of attorney are filed as aforesaid, any process in any suit, action or proceeding against such company, for any liability incurred in any province, may be served upon the manager or agent so authorized in the same manner as process is served upon the proper officer of any company incorporated in such province; and all proceedings may be had thereupon to **judgment and execution** in the same manner as in proceedings in any civil suit or action in such province. R.S., c. 125, s. 3.

NOTICES

266. Publication of Notice of License.—Every company which obtains such license as aforesaid shall forthwith give due notice thereof in the Canada Gazette, and in at least one newspaper in the county, city or place where the principal manager or agent of such company transacts the business thereof, and shall continue the publication thereof for the space of one calendar month.

2. **Notice of Discontinuance.**—Like notice shall be given when such company ceases to carry on business within the province, and like publication shall be had of notice that it ceases to so carry on business. R.S., c. 125, s. 4.

RETURNS

267. Must be Made to Minister of Finance.—Every company authorized under the provisions of this Part to lend and invest money in Canada, shall, by its agent or manager in Canada, make returns to the Minister of Finance of all the business done by it in Canada, at the same time and in the same manner as if such company had been incorporated under the provisions of the third Part of this Act. R.S., c. 125, s. 6.

LICENSE FEE

268. Amount.—The fee to be paid by a company, on the issuing of a license under this Part, shall be twenty dollars. R.S., c. 125, s. 5.

PART V.

BRITISH AND FOREIGN MINING COMPANIES

269. British and Foreign Mining Corporations May Obtain License to Mine.—Any joint stock company or incorporation duly incorporated under the laws of the Parliament of the United Kingdom, or under the laws of any foreign country for the purpose of carrying on mining operations may, on receiving a license from the Secretary of State of Canada, carry on mining operations in the provinces of Saskatchewan and Alberta, the Northwest Territories, and the Yukon Territory, and shall be entitled to the privileges of a free miner, subject to the laws and regulations governing and affecting free miners. 61 V., c. 49, s. 1.

COMPANIES

270. Copy of Charter to be Filed.—Every company desirous of obtaining such license as aforesaid shall first file in the office of the Secretary of State of Canada a certified copy of the charter or Act incorporating the company; and shall also designate the **agent or manager within the Yukon Territory** authorized to represent the company and to accept process in all suits and proceedings against the company for any liabilities incurred by the company therein. 61 V., c. 49, s. 2.

271. Notice of the issue of such license shall be published in the Canada Gazette. 61 V., c. 49, s. 4.

272. The fees payable for the license shall, from time to time be fixed by the Governor in Council. 61 V., c. 49, s. 5.

273. Returns, Penalty.—Every company to which such license has been granted, when so required, shall make a

return to the Secretary of State of all business done by it under such license, and in default of making the said return, the license may be cancelled. 61 V., c. 49, s. 3.

PART VI

SUPPLEMENT

274. How Debentures May be Made Payable.—Any loan company subject to the legislative authority of the Parliament of Canada may, if authorized to issue debentures, make its debentures payable to order or to bearer or to registered holder or otherwise as the company deems advisable. 59 V., c. 11, s. 1.

275. Loan Companies Incorporated under R.S.C. Cap. 119.—Loan companies formed or incorporated under the provisions of the Companies Act, The Revised Statutes of Canada, chapter one hundred and nineteen, before the eleventh day of August, one thousand eight hundred and ninety-nine, remain and continue subject to the said provisions of the said Companies Act as heretofore amended, and Part III. of this Act shall not, as to any such loan company, in any wise affect any of the said provisions. 62-63 V., c. 41, c. 46; 2 E. VII., c. 15, s. 90.

SCHEDULE

FORM A.

APPLICATION FOR INCORPORATION UNDER THE COMPANIES ACT.

See Chapter 4, Section 3, page 155.

FORM B.

MEMORANDUM OF AGREEMENT AND STOCK BOOK

See Chapter 4, Section 4, page 159.

FORM C.

Public notice is hereby given that under first Part of the Companies Act, letters patent have been issued under the seal of the Secretary of State, bearing date the
day of _____ incorporating (*here state names, address, and calling of each corporator named in the letters patent*) for the purpose of (*here state the undertaking of the company, as set forth in the letters patent*), by the name of (*here state the name of the company as in the letters patent*) with a total capital stock of _____ dollars divided into _____ shares of _____ dollars.

Dated at the office of the Secretary of State of Canada, this
day of _____ 19 .

A. B.,

FORM D.

Secretary.

Public notice is hereby given that under the first Part of the Companies Act, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the
day of _____, whereby the undertaking of the company has been extended to include (*here set out the other purposes or objects mentioned in the supplementary letters patent*).

Dated at the office of the Secretary of State of Canada, this
day of _____ 19 .

A. B.,

FORM E.

Secretary.

Public notice is hereby given that under the first Part of the Companies Act, supplementary letters patent have been issued under the seal of the Secretary of State, bearing date the
day of _____, whereby the total capital stock of (*here state the name of the company*) is increased (*or reduced, as the case may be*) from
dollars to _____ dollars.

Dated at the office of the Secretary of State of Canada, this
day of _____ 19 .

A. B.,

Secretary.

FORM F.

THE COMPANIES AMENDMENT ACT, 1917.

STATEMENT IN LIEU OF PROSPECTUS

Filed by

Limited.

Pursuant to section 43c of The Companies Amendment Act, 1917.

Presented for filing by

The nominal share capital of the company.	\$
Divided into.....	Shares of \$ Each
<i>(Here show the several classes of shares and the amount of each class.)</i>	" \$ "
	" \$ "
Names, description, and addresses of directors or proposed directors.	
Minimum subscription (if any) fixed by the letters patent, supplementary letters patent or by-laws on which the company may proceed to allotment.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid-up otherwise than in cash.	1. shares of \$ fully paid. 2. shares upon which \$ per share credited as paid.
The consideration for the intended issue of those shares and debentures.	3. debenture \$ 4. Consideration.
Names and addresses of (a) vendors of property purchased or acquired, or proposed to be (b) purchased or acquired by the company.	
Amount (in cash, shares and debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price \$ Cash \$ Shares \$ Debentures \$ Goodwill \$
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscription for any shares or debentures in the company, or Rate of the commission.	Amount paid. " payable. Rate per cent.

(a) For definition of vendor, see Section 43B, (2).

(b) See Section 43B. (3).

Estimated amount of preliminary expenses.	\$
Amount paid or intended to be paid to any promoter. Consideration for the payment.	Name of promoter. Amount \$ Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the fying of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.	
Whether the by-laws contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.	Nature of the provisions.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorized in writing.)

.....

7-8 Geo. V., c. 25, s. 18.

8-9 Geo. V., c. 13, s. 4.

CHAPTER 4.

HOW TO FORM A COMPANY WITH SHARE CAPITAL

1. Letters Patent incorporating companies are issued by the Secretary of State for Canada, under the Dominion Companies Act, and by the Provincial Secretaries of the Provinces of Manitoba, New Brunswick, Ontario, Prince Edward Island, and Quebec, under their respective Companies Acts. A copy of any of these Acts with the latest amendments may be obtained by applying to the Honourable Secretary concerned.

2. The First Step.—When you desire to incorporate a company by Letters Patent or by Registration, write,

The Honourable, or The Honourable,
The Secretary of State, The Provincial Secretary
Parliament Buildings, House of Assembly,
Ottawa, Canada, Capital City and Province,

requesting a set of blank forms for use in the incorporation of the proposed company. These forms are supplied free of charge. Alberta, North-West Territories, Quebec and Saskatchewan do not furnish Blank forms, but the forms supplied by the Dominion Government and the other Provincial Governments are nearly identical and will serve as precedents, especially those under the Dominion Act.

It must be remembered that the better the papers are prepared, the sooner the work is dispatched at the Department. Petitions and documents prepared upon paper of a size larger than foolscap will be returned, as they cannot be conveniently fyled in the Departmental fying cases.

While it would be arbitrary and inconvenient to refuse applications prepared on paper other than that supplied by the Government, applicants are requested to use the forms

supplied in preparing such applications. This is so because the regulations are liable to be changed by Order-in-Council, and it will save time and trouble to get the forms direct from the Government.

If the business of the proposed company is intended to be conducted in more than one Province then it will be advisable to apply to the Dominion Government for incorporation, but if the business is to be conducted in one Province only, then it would be as well to apply to the Provincial Government for incorporation.

Correspondence in Canada with the Secretary of State is carried free, but letters addressed to the Provincial Secretaries are generally sent to the Dead Letter Office when marked "O.H.M.S."

The forwarding of any paper to the Department should always be accompanied by a letter, confined to one subject only, the post office address and date should be given and the signature **distinctly** written.

It is particularly recommended that reference should be made to the law before writing to the Department on any subject. If this is done it will save unnecessary explanations and useless loss in time and labour.

3. Petitions for Letters Patent.—On receipt of the blank forms you will begin by filling in the Petition for Letters Patent, which, should in all essential features, conform to the following statutory form "A."

Application for Incorporation under the First Part of "The Companies Act" (Chapter 79 of the Revised Statutes of Canada, 1906)

To the Honourable the Secretary of State of Canada:

The application of *John Doe of the City of Toronto, in the County of York, Capitalist; Richard Roe, of the same place,*

Manufacturer; Henry Young, of the same place, Foreman; John Styles, of the same place, Broker; and Herman Smith, of the same place, Barrister-at-Law;
respectfully sheweth as follows:—

The undersigned applicants are desirous of obtaining letters patent under the provisions of the First Part of the Companies Act, (Chapter 79 of the Revised Statutes of Canada, 1906), constituting them and such others as may become shareholders in the Company thereby created a body corporate and politic under the name of "*Canada Salt Company Limited*", or such other name as shall appear to you to be proper in the premises.

The undersigned have satisfied themselves and are assured that the proposed corporate name of the Company under which corporation is sought is not the corporate name of any other known Company incorporated or unincorporated, or any name liable to be confounded therewith or otherwise on public grounds objectionable.

Add here, when proper, "except the name '.....' and the undersigned elsewhere show that they have received the necessary consent in writing to use the name applied for."

If any public or private interests are liable to be prejudicially affected by the incorporation of the company, then that fact should be briefly referred to here and set out at length in an affidavit.

Your applicants are of the full age of 21 years.

The purpose for which incorporation is sought by the applicants are (1) *to mine or otherwise produce, manufacture, make merchantable, sell and deal in salt;* (2) *to apply for, obtain, register, purchase or otherwise acquire, patents necessary for the better carrying on of the undertaking.*

The operations of the Company to be carried on throughout the Dominion of Canada and elsewhere.

The chief place of business of the proposed Company within Canada will be at the *City of Toronto* in the County of *York* in the Province of *Ontario*.

The amount of the capital stock of the Company is to be \$1,000,000.00.

The said capital stock is to be divided into *Ten Thousand* shares of \$100.00 each .

The following are the names in full and the address and calling of each of the applicants with the number of shares taken by each applicant respectively:—

APPLICANT	Number of Shares Subscribed
<i>John Doe, (Capitalist)..... 117 Yonge St., Toronto.</i>	25
<i>Richard Roe, (Manufacturer)..... 263 Bay St., Toronto.</i>	1
<i>Henry Young, (Foreman)..... 447 Danforth Ave., Toronto.</i>	1
<i>John Styles, (Broker.)..... 27 King St. E., Toronto.</i>	1
<i>Heman Smith, (Barrister.)..... 18 Toronto St., Toronto.</i>	1

If any payment in cash or otherwise, has actually been made by any petitioner on his stock, particulars thereof may be set out here.

Any special provisions which may be desired to be inserted in the Letters Patent should be set out here.

The said *John Doe, Richard Roe and John Styles*, will be the first or provisional directors of the Company.

The directors who must be at least three in number, must be petitioners and shareholders. *Each director must also hold stock absolutely in his own right.*

A stock book has been opened and a memorandum of agreement by the applicants under seal in accordance with the statute has been executed in duplicate—one of the duplicates being transmitted therewith.

The undersigned therefore request that a charter may be granted constituting them and such other persons as hereafter become shareholders in the Company, a body corporate and politic for the purposes above set forth.

SIGNATURES OF WITNESSES	SIGNATURES OF APPLICANTS
Mary E. Yates.....	John Doe.....
Mary E. Yates.....	Richard Roe.....
Mary E. Yates.....	Henry Young.....
Mary E. Yates.....	John Styles.....
Mary E. Yates.....	Heman Smith.....

Dated at *Toronto* this 4th day of *April*, 1919.

Signatures should be the ordinary business signatures of the applicants, and should be witnessed and proved by persons who are not petitioners, or directly interested in the formation of the company.

Signatures by Attorney must be made by a **specific**, not general power, duly executed, and the power of attorney must accompany the application.

Under the Dominion, New Brunswick, Ontario and Quebec Acts there must be at least five petitioners for the Letters Patent.

The formal petition may be lodged with the Department at any time **without Gazette Notice**, except in rare special cases where the Department directs that it be given. This is true when applying under the Dominion Act, or the Acts of the Provinces of Alberta, British Columbia, Manitoba, Nova Scotia, Ontario or Saskatchewan. The Quebec Act requires that one month's notice be given in the Official Gazette; New Brunswick requires two weeks' notice if the capital exceeds \$5,000; and Prince Edward Island requires notice in two issues of the Gazette.

BUREAU DE DROIT

In filling out the foregoing Petition the name, residence and occupation of each applicant must be set out **in full**, else it will be returned for completion. The word "clerk" must not be used except to describe a clerk in Holy Orders, the Department of Attorney-General having ruled that the word may be used for that purpose only.

At least two signatures must appear on the page containing the prayer. The signatures should be the ordinary business signatures of the applicants, and should be witnessed and proved by statutory declaration or affidavit by persons who are not petitioners, or directly interested in the formation of the company. If a signature is by Power of Attorney, the Power must be **specific**, both as to the purpose and as to the amount to be subscribed by the Attorney and must be filed with the Petition and is retained by the Department.

If the applicants desire the insertion in the Letters Patent of any special conditions regarding preference stock or otherwise, if any, intended to have a bearing upon the shares of the company, or the manner in which it, or any portion of it, shall or may be subscribed for, or any other special clauses, they must be inserted in the Petition and in the Memorandum of Agreement and Stock-Book as material parts thereof.

4. Memorandum of Agreement and Stock-Book.—The Petition for Letters Patent must be accompanied by a Memorandum of Agreement and Stock-Book, which must in all essential features, conform to the following statutory form "B."

(To be executed in duplicate; one duplicate to be transmitted with the application)

The "*Canada Salt Company Limited*".

MEMORANDUM OF AGREEMENT AND STOCK BOOK

We, the undersigned, do hereby severally covenant and agree each with the other to become incorporated as a company under

the provisions of the First Part of "The Companies Act," (Chapter 79 of the Revised Statutes of Canada, 1906), under the name of the "*Canada Salt Company Limited*," or such other name as the Secretary of State may give to the Company, with a capital of *one million* dollars, divided into *ten thousand* shares of *one hundred* dollars each.

And we do hereby severally, and not one for the other, subscribe for and agree to take the respective amounts of the capital stock of the said Company set opposite our respective names as hereunder and hereafter written, and to become shareholders in such company to the said amounts.

In witness whereof we have signed.

NAME OF SUBSCRIBER	Seal	Amount of Subscription	Date and Place of Subscription		Residence of Subscriber	NAME OF WITNESS
			Date 1919	Place		
<i>John Doe</i>	*	<i>\$2,500</i>	<i>Mar. 31st</i>	<i>Toronto</i>	<i>Toronto</i>	<i>Mary E. Yates</i>
<i>Richard Roe</i>	*	<i>100.</i>	<i>Mar. 31st</i>	<i>Toronto</i>	<i>Toronto</i>	<i>Mary E. Yates</i>
<i>Henry Young</i>	*	<i>100.</i>	<i>Mar. 31st</i>	<i>Toronto</i>	<i>Toronto</i>	<i>Mary E. Yates</i>
<i>John Styles</i>	*	<i>100.</i>	<i>Mar. 31st</i>	<i>Toronto</i>	<i>Toronto</i>	<i>Mary E. Yates</i>
<i>Heman Smith</i>	*	<i>100.</i>	<i>Apr. 4th</i>	<i>Toronto</i>	<i>Toronto</i>	<i>Mary E. Yates</i>

The Memorandum of Agreement and Stock Book must be executed in duplicate and under seal. Only one copy is sent to the Department of the Secretary of State at Ottawa, but under the Ontario practice both copies are sent to the Provincial Secretary and one copy is returned with the Letters Patent.

There must be at least two signatures on the page or sheet containing the undertaking. An Agreement made up

of two sheets of paper, the one setting forth the undertaking by itself, and the other carrying all the signatures by themselves, will not be accepted.

See Section 11 as to signatures by Attorney.

5. Verification of Execution.—An affidavit or Statutory Declaration in the form following verifying the signature to the Petition and Memorandum of Agreement and Stock Book must be filed with the Department.

CANADA
Province of *Ontario*,
County of *York*,
To WIT:

IN THE MATTER OF the application of *John Doe* and others for incorporation under the First Part of "The Companies Act" (Chapter 79 of the Revised Statutes of Canada, 1906) under the name of the "*Canada Salt Company, Limited*",

I, *Mary E. Yates*, of the City of *Toronto*, in the County of *York*, *Stenographer*, make oath and say that:—

1. I was personally present and did see the within Petition and Memorandum of agreement and Stock Book duly signed and executed by *John Doe, Richard Roe, Henry Young, John Styles and Heman Smith*, the parties thereto.

2. The said Petition and Memorandum of agreement and Stock Book were executed at the City of *Toronto* aforesaid.

3. I know the said parties.

4. I am a subscribing witness to the said Petition and Memorandum and agreement of Stock Book.

Sworn before me at the City of *Toronto*,
in the County of *York*, the 4th day of *Mary E. Yates*.
April, A.D. 1919.

W. E. Lear,
A Commissioner, etc.

6. Declaration Verifying Petition.—Besides the formal Petition for Letters Patent, the Memorandum of Agreement and Stock Book and the affidavit of execution of them, one of the petitioners must make a declaration in the form following:

CANADA
Province of *Ontario*,
County of *York*,
To WIT:

IN THE MATTER OF the application of *John Doe* and others for incorporation under the First Part of "The Companies Act" (Chapter 79 of the Revised Statutes of Canada, 1906) under the name of the "*Canada Salt Company, Limited*",

I, *John Doe*, of the City of *Toronto*, in the County of *York*, Province of *Ontario*, do solemnly declare:—

1. That I am one of the applicants herein.
2. That I have a knowledge of the matter, and that the allegations in the within petition contained are, to the best of my knowledge and belief, true in substance and fact.
3. That I am informed and believe that each petitioner signing the said petition is of the full age of twenty-one years, and that his name and description have been accurately set out in the preamble thereto.
4. That the proposed corporate name of the Company is not on any public ground objectionable and that it is not that of any known Company, incorporated or unincorporated, or of any partnership or individual, or any name under which any known business is being carried on, or so nearly resembling the same as to deceive.
5. That I have satisfied myself and am assured that no public or private interest will be prejudicially affected by the incorporation of the Company aforesaid.

AND I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the Canada Evidence Act.

Declared before me at the City of *Toronto*,
in the County of *York*, this *4th* day of *John Doe*.
April, A.D. 1919.

W. E. Lear,

A Commissioner, etc.

7. Consent to Use Name of Existing Company.—Where an existing company, partnership, or firm desires to grant its name to a new corporation, incorporated for the purpose of acquiring its business or promoting its objects, the following form is required to be filed with the Department:

IN THE MATTER OF THE APPLICATION of *Roger Seth Crocker* and others for incorporation under The *Ontario Companies Act* as the

“CROCKER PRESS, LIMITED”

UNDER the provisions of section 37 of the *Ontario Companies Act*, the *Crocker Printing Company, Limited*, hereby consents to the use by the applicants herein of the name of the “*Crocker Press, Limited*.”

DATED at *Toronto*, this *4th* day of *April*, A.D. 1919.

WITNESS: CROCKER PRINTING COMPANY, LIMITED

Arthur H. New.

Per *R. S. Crocker*,
President.

Corporate
Seal

W. H. Moore,
Secretary.

8. **Affidavit Verifying Consent.**—Above form of consent must be verified by the affidavit of the witness in the following form:

Co. L. 11.

I, *Arthur Hamilton New*, of the City of *Toronto*, in the County of *York*, *Broker*, make oath and say,

That I was personally present and did see *Roger Seth Crocker* and *William Hamilton Moore*, whom I personally know, sign the above consent at the said City of *Toronto*.

Sworn before me at *Toronto*,
in the County of *York*, this *Arthur H. New*.
4th day of *April*, 1919.

W. E. Lear,
A Commissioner, etc.

9. Consent to Use Firm Name.—This form is not required where all petitioners are members of the old firm and signify their consent in the Petition.

IN THE MATTER OF THE APPLICATION of *Roger Seth Crocker* and others for incorporation under The Ontario Companies Act as the

“CROCKER PRESS LIMITED”

I, *Roger Seth Crocker*, of the City of *Toronto*, in the County of *York*, *Printer*, sole proprietor of *The Crocker Printing Company*, a registered firm, carrying on business in the said City of *Toronto*, hereby consent that the name “CROCKER PRESS LIMITED” be granted to the company, incorporation of which is now being sought by the said *Roger Seth Crocker* and others under the provisions of The *Ontario Companies Act*.

WITNESS my hand at *Toronto*, this 4th day of *April*, 1919.

WITNESS:

Arthur H. New.

R. S. Crocker.

This consent must be verified by the affidavit of the witness in the form set out in Section 8 above.

10. Declaration of Proprietorship.—Where a firm is composed of a single person, then that person must make a declaration to that effect in the following form:

I, *Roger Seth Crocker*, of the *City of Toronto*, in the *County of York*, *Printer*, do solemnly declare that I am the sole proprietor of the *Crocker Printing Company*.

And I make this solemn declaration conscientiously believing the same to be true and knowing that it is of the same force and effect as if made under oath, by virtue of the Canada Evidence Act.

Declared before me at *Toronto*,
in the *County of York*, this
4th day of *April*, 1919.

R. S. Crocker.

W. E. Lear,
A Commissioner, etc.

11. Power of Attorney to Sign Petition.—The rule that the Petition for Letters Patent and the Memorandum of Agreement and Stock Book must be signed by each of the applicants in person is not enforced when it is impracticable, and in such case the applicant may sign by an Attorney. Signatures by Attorney cannot be made under a general power; they must be made under a *specific* power duly executed in the form following. It must state the amount of stock which is to be taken by the Attorney for his principal and the original Power of Attorney or a duly authenticated notarial copy thereof must accompany the application to the Department.

KNOW ALL MEN BY THESE PRESENTS, that I,

RICHARD TAYLOR BROWN, of the
City of Winnipeg, in the *Province of*
Manitoba, *Physician*,

Do Hereby Nominate and Appoint,

ERNEST OSCAR CHALMERS, of the
City of *Toronto*, in the Province of
Ontario, Barrister-at-Law,

My True and Lawful Attorney, for me and in my name and
stead to sign the Petition of *John Doe* and others now seek-
ing incorporation under the name of the "*CANADA SALT*
COMPANY, LIMITED," under the provisions of the *Canadian*
Companies Act, and also in my name and as my act and deed
to sign the Memorandum of Agreement and Stock Book of
the said company for *fifty* shares of the capital stock thereof
at *One Hundred* Dollars per share, and generally to do all
lawful acts requisite and necessary for effecting the premises,
hereby agreeing to ratify and confirm all that my said Attor-
ney shall do herein.

In Witness Whereof, I have hereunto set my hand and seal
at *Winnipeg* this *4th* day of *April*, A.D. 1919.

Signed and sealed

in the presence of
Nancy Taylor

R. T. Brown.

12. Verification of Power of Attorney.—The execution of
the above Power of Attorney must be verified by the affidavit
of the witness in the form following:

Province of *Manitoba*,
City of *Winnipeg*,

In the Matter of the Power of
Attorney given by *Richard Taylor*

To WIT: *Brown to Ernest Oscar Chalmers;*

I, *NANCY TAYLOR*, of the City of *Winnipeg*, in the Prov-
ince of *Manitoba*, *Stenographer*, make oath and say:—

1. That I was personally present and did see the Power of
Attorney, hereunto annexed, duly signed and sealed by
Richard Taylor Brown, one of the applicants for incorporation
as the "*Canada Salt Company, Limited*."

2. That I know the said *Richard Taylor Brown*.
3. That the signature "*R. T. Brown*" is of the proper handwriting of the said *Richard Taylor Brown*.
4. That the signature "*Nancy Taylor*," attesting the signature aforesaid, as the witness thereto, is the true signature of me, this deponent.

Sworn before me at the *City of*
Winnipeg this *4th* day of *April*, A.D.
 1919.

Nancy Taylor.

(SEAL) *A. B. Smith,*
 A Notary Public in and for the
 Province of *Manitoba*..

13. Verification of Execution by Attorney.—Where the Petition and Memorandum of Agreement and Stock Book are executed by an Attorney, then the affidavit of execution as set out in section 5 should include the names of only the applicants who signed personally, and a separate affidavit of execution by Attorney, in the form following, should be filed with the Department.

CANADA
 Province of *Ontario*,
 County of *York*,

To WIT:

IN THE MATTER OF the application of *John Doe* and others for incorporation under the First Part of "The Companies Act" (Chapter 79 of the Revised Statutes of Canada, 1906) under the name of the "*Canada Salt Company, Limited*"

I, *Mary E. Yates*, of the *City of Toronto*, in the *County of York*, *Stenographer*, make oath and say that:—

1. I was personally present and did see the within Petition and Memorandum of Agreement and Stock Book duly signed and executed by *Richard Taylor Brown*, by his attorney, *Ernest Oscar Chalmers*, duly authorized in that behalf *one of* the parties thereto.

2. The said Petition and Memorandum of Agreement and Stock Book were executed at the City of *Toronto* aforesaid.

3. I know the said *Ernest Oscar Chalmers* and the signature "*Richard Taylor Brown*" is of the proper handwriting of the said *Ernest Oscar Chalmers*.

4. I am a subscribing witness to the said Petition and Memorandum and Agreement of Stock Book.

Sworn before me at the City of
Toronto in the County of *York* the
4th day of *April*, A.D. 1919.

Mary E. Yates.

W. E. Lear,

A Commissioner, &c.

14. Commencing Business.—When your papers have been filled out and according to the instructions set out in Chapter 4, forward them to the Department together with the Government fee and if everything is in order, notice will be given by the Department in the official *Gazette* of the issue of Letters Patent or Certificate of Incorporation and then the parties therein named and their successors become a body corporate and politic by the name therein mentioned and the company is ready to begin business.

When the Letters Patent incorporating the company have passed into its custody they should be carefully preserved, but their loss or destruction will not dis-incorporate or invalidate the company. A certified copy can be obtained at any time from the Department that issued the original by paying a small fee. The official record can be inspected at any time by any person on payment of a fee.

CHAPTER 5

ORGANIZATION MEETINGS

1. Provisional Directors.—When the Letters Patent incorporating the company have been received by the Provisional Directors, they should call a general meeting of all the shareholders for the election of Directors and the proper organization of the company. Usually the first meeting of Provisional Directors is their last. At this meeting nothing more is done than decide that a shareholders' meeting be called at a date named. The following precedent setting out the minutes of the meeting of the Provisional Directors well explains what is required of them.

ONTARIO TEA COMPANY LIMITED

MINUTES OF MEETING OF PROVISIONAL DIRECTORS

The Provisional Directors of the Ontario Tea Company Limited met at 152 Bay Street, Toronto, on Friday, the nineteenth day of April, 1919.

Present: John A. Cole, George E. Young, and William T. Black.

Moved by Mr. Black, seconded by Mr. Young, that Mr. Cole be the chairman of this meeting. Carried. Mr. Cole took the chair.

Moved by Mr. Cole, seconded by Mr. Black, that Mr. Young be the Secretary of this meeting. Carried.

The Chairman, announced that all preliminary conditions and legal formalities had been complied with, and the Ontario Tea Company Limited was duly incorporated under the Ontario Companies Act with an authorized capital of Forty Thousand Dollars, divided into four hundred shares of One Hundred Dollars each.

The Chairman then read the Letters Patent incorporating the company. These were approved and adopted as the charter of the company.

The Chairman announced that he had caused a Code of By-laws to be prepared and had obtained a design of a Corporate Seal and blank Stock Certificates for submission to the shareholders for their approval.

The only remaining duty of the Provisional Directors being the calling of a general meeting of the shareholders it was moved by Mr. Young, seconded by Mr. Black, that a notice be sent to each shareholder by registered letter, calling a general meeting of the company for Friday, the twenty-sixth day of July, 1919, at the hour of one o'clock p.m., at the office of John A. Cole, 152 Bay Street, Toronto, for the purpose of organizing the company for commencement of business.

On motion of Mr. Young, seconded by Mr. Black, the meeting of the Provisional Directors then adjourned.

(Sgd.) *John A. Cole,*
Chairman.

(Sgd.) *George E. Young,*
Secretary.

(Sgd.) *William T. Black.*

The Solicitor employed to obtain the Letters Patent usually prepares these minutes in advance of the meeting. This reduces the functions of Provisional Directors to a mere formality, still this legal formality must be complied with.

2. First Shareholders' Meeting.—No shares of stock should be allotted to the public until after the first meeting of shareholders has been held, so that the only shareholders present at the meeting will be those named in the Letters Patent. The reason for this is obvious. The smaller the number of shareholders the more easily they can get together and the less likely they are to disagree.

The first as well as all other meetings of shareholders must be called in strict accordance with existing by-laws or general company law. The business usually done at this meeting

consists of the selection of a temporary chairman and secretary for the meeting; the approval and adoption of the Letters Patent incorporating the company as the charter of the company, the adoption of by-laws respecting the number of directors to be elected, their powers and duties, term of office, qualifications and disqualifications, the officers of the company, transfer of shares, form of stock certificates and proxies, the time, place and method of calling general meetings of the company, remuneration of directors and officers, accounting and auditing and all other important matters of internal regulation; the adoption of a corporate seal for the company (which must have the company's name on it in full with the word "Limited"), the passing of resolutions relating to the acquisition of property; and the election of directors. See Section 43 of the Ontario Companies Act.

The following precedent setting out the minutes of the first meeting of shareholders well explains what is usually done at this meeting.

BUILDERS SUPPLY COMPANY, LIMITED

*MINUTES OF THE FIRST GENERAL MEETING OF THE
SHAREHOLDERS*

The First General Meeting of the Shareholders of Builders Supply Company Limited was held at number 87 River Street, Toronto, on the 26th day of April, 1919.

PRESENT, all the shareholders, namely, George Thomas Black, William Hamilton Johnston, Claudius Young Leslie, Amos John Champion, and Harvey Oscar Price.

On motion of Mr. Leslie, seconded by Mr. Price, Mr. Black was appointed Chairman of the meeting.

On motion of Mr. Champion, seconded by Mr. Price, Mr. Johnston was appointed Secretary of the meeting.

The Secretary read the list of subscribers to the Capital Stock of the company, and as all were present, the Chairman

declared the meeting duly organized for the transaction of business.

The Secretary read the Letters Patent creating the company under the name of Builders Supply Company Limited, the wording on the Corporate Seal and the Stock Certificates, as secured by the Provisional Directors, and on motion of Mr. Price, seconded by Mr. Chapman, they were adopted as the Charter, Corporate Seal and Stock Certificate of the Company.

The Secretary read the code of By-laws, numbered 1 to 33 as approved by the Provisional Directors, and on motion of Mr. Champion, seconded by Mr. Price, they were adopted as By-laws of the Company.

The Secretary read an account of the Solicitor for incorporation expenses amounting to \$500, which covered Government fee of \$100, and disbursements for stock certificates \$25, Corporate Seal \$5, Rubber Stamps, Postage, etc., \$5 and his fee of \$365.

On motion of Mr. Black, seconded by Mr. Leslie, each of the shareholders paid into the company the amount of their subscribed stock and the same was handed over to the Solicitor in payment of his account.

On motion of Mr. Leslie, seconded by Mr. Champion, Mr. Price, Mr. Black, and Mr. Johnston were nominated as Directors of the Company, and as there were no other nominations, the chairman declared them duly elected to serve as Directors of the Company for the term of one year, and until their successors are duly elected.

On motion of Mr. Price, seconded by Mr. Black, the meeting adjourned for an hour to allow the Directors to meet and formally organize and elect officers.

After recess the meeting resumed and the Secretary reported that the Board of Directors had elected Mr. Price as

President, Mr. Black as Vice-President, and Mr. Johnston as Secretary-Treasurer of the Company for the ensuing year.

The chairman then announced that, any shareholder having any business concerning the object or purpose of the company could now present it.

The Secretary presented a Memorandum of Agreement of Sale by Harvey Oscar Price of his business and plant for the manufacture of bricks, etc., to the company, in consideration of the allotment to him of Two Hundred Full Paid Shares of the Capital Stock of the Company.

After the Memorandum of Agreement of Sale was read aloud and discussed it was decided that the purchase would be in the interest of the company, and on motion of Mr. Leslie, seconded by Mr. Champion, the Memorandum of Agreement was executed by Mr. Price and by all the shareholders of the company and the Corporate Seal attached thereto, and the Two Hundred shares were issued to Mr. Price.

The Secretary presented a by-law passed by the Directors, providing for the payment of the President, General Manager and Secretary-Treasurer, which was upon the motion of Mr. Champion, seconded by Mr. Leslie, unanimously approved.

The meeting then adjourned.



H. O. Price,
President.
W. H. Johnston,
Secy.-Treas.
G. T. Black,
Vice President.
C. Y. Leslie,
Shareholder.
A. J. Champion,
Shareholder.

3. First Directors' Meeting.—This meeting should take place during an intermission of the first meeting of shareholders. This meeting need last but a few minutes (where there is no dissension) as may be seen from the following precedent setting out the minutes of the meeting.

BUILDERS SUPPLY COMPANY, LIMITED

MINUTES OF THE FIRST MEETING OF DIRECTORS

The first meeting of Directors of Builders Supply Company, Limited, was held at 152 Bay Street, Toronto, on the 26th day of April, 1919.

Present, all the Directors.

The officers of the company for the ensuing year were elected as follows:

Harvey O. Price, President.

George T. Black, Vice-President.

William H. Johnston, Secretary-Treasurer.

By-law No. 34 fixing the salary of the President, General Manager and Secretary-Treasurer was unanimously adopted.

The meeting then adjourned.

H. O. Price,
President.

G. T. Black,
Vice-President.

W. H. Johnston,
Sec'y.-Treas.



CHAPTER 6

PRECEDENTS FOR BY-LAWS

Some otherwise intelligent business man may be tempted to change the names and dates in the following precedents and adopt them as the by-laws of an actual company. This kind of economy usually results in difficulties and often in litigation. The drafting of a set of by-laws requires much care and it will pay any company to employ a solicitor who has had practical experience in such matters.

BUILDERS SUPPLY COMPANY, LIMITED

WHEREAS Builders Supply Company, Limited, was incorporated under the Ontario Companies Act, by Letters Patent dated 19 January, 1919, and it is deemed expedient that certain By-laws for regulating the affairs of the Company should be enacted:

NOW THEREFORE the Directors hereby enact as follows:

1. Management.—The affairs of Builders Supply Company, Limited, shall be managed by a Board of three Directors, all of whom shall be required to form a quorum.

2. The President and Vice-President shall be chosen by the Directors from among themselves at the first Board meeting after the Annual Meeting of Shareholders.

3. The President shall, if present, preside at all meetings of the company. He shall call meetings of the Board of Directors and shareholders when necessary, and shall advise with and render such assistance to the Manager as may be in his power so to do.

4. The Vice-President shall, in the absence of the President, have and exercise all the power of the President.

5. Any Director may at any time summons a meeting of the Board of Directors.

6. The Board of Directors shall appoint a Secretary-Treasurer who shall keep a record of all the proceedings at all meetings of the Board and of the Shareholders of the Company and shall be the custodian of the Corporate Seal of the Company, and of all books, papers, records, etc., belonging to the Company, which he shall deliver, when authorized so to do by a resolution of the Board, to such person or persons as may be named in the resolution.

7. Qualification.—Any shareholder, not in arrears for payments for calls upon his stock, may be elected a Director.

8. Term of Office.—Directors shall hold office for one year, and until their successors shall be elected.

9. Vacancy.—In case of the death of a Director, or his being unable to act as such, or his ceasing to be a shareholder, the vacancy thereby created may be filled for the unexpired portion of the term by the Board of Directors from among the qualified shareholders of the Company.

10. Salary of Directors.—Directors, as such, shall not receive any stated salary for their services, but by resolution of the Board, they may be allowed Five dollars for attendance at each regular or special meeting of the Board.

11. Salary of Officers.—The Board shall from time to time fix the salary or wages to be paid officers of the company.

12. Vacancy.—The office of Director shall become vacated (a) by notice in writing to the Company that he resigns his office, (b) if he becomes of unsound mind, (c) if he be convicted of any Criminal Offence, (d) if he absents himself from the meetings of the Board during a period of three calendar months without special leave of absence from the Directors.

13. The Annual Meeting of the Shareholders shall be held at the Head Office of the Company in the City of Toronto, at one p.m. on the third Saturday in the month of January in

each year, to receive the report of the Directors for the past year, to elect Directors for the ensuing year, and for all other general purposes relating to the management of the Company's affairs.

14. A general meeting of the shareholders may be called at any time by the Directors whenever they deem the same necessary or advisable for any purpose, and it is incumbent on the President to call a special meeting of the shareholders whenever required so to do in writing by the holders of not less than one tenth of the subscribed Capital Stock of the Company, for the transaction of any business specified in such written requisition and notice calling the meeting.

15. Notice of the time and place of the holding of the Annual, Special, or other Meeting of the Shareholders of the Company shall be given by mailing a circular addressed to each shareholder of the Company at his last address as shown by the books of the Company, at least ten (10) days previous to the time appointed for holding such meeting.

Where the company has a large number of shareholders, the above by-law should provide for giving notice by publishing the same in some newspaper published at the place where the head office is located.

16. Quorum.—At Annual, General and Special Meetings of the Company, five shareholders shall constitute a quorum.

By-laws providing for a quorum more often lead to obstruction than good business. Always fix the number of shareholders required at some small number, so as to be sure of having a quorum. If shareholders, when notified, do not take sufficient interest to attend, they should not complain about what takes place at these meetings.

17. Shareholders Voting.—At Annual, General and Special Meetings of the Company, every shareholder shall be entitled to as many votes as he owns shares in the Company, and may vote by proxy duly appointed in writing.

Under the Ontario and Quebec Acts, any one may hold a proxy, but under the Dominion Act (sect. 88) only shareholders in their own right can hold a proxy, unless the by-laws of the company provide otherwise. See Sect. 20 (e).

18. Majority Vote.—Questions at meetings of the Company shall be decided by a majority in value of the shareholders present, either in person or by proxy, and in case the number of votes is equal, the President or Chairman shall have the deciding or casting vote.

19. Meetings of the Board of Directors shall be held as often as the business of the Company may require, and shall be called by the President.

20. Directors Voting.—Questions arising at any meeting of the Board of Directors shall be decided by a majority of votes. In case of an equality of votes the Chairman, in addition to his original vote, shall have a deciding or casting vote.

21. The Corporate Seal of the Company shall be of a design formed by two concentric circles, between which shall be the name of the Company in full, and in the centre shall be subscribed "Corporate Seal," and such seal, an impression of which appears on the margin hereof, is hereby adopted as the Corporate Seal of the Company.



22. Authentication.—Whenever this Seal is used it shall be authenticated by the signature of the Secretary-Treasurer, and President or Vice-President.

23. Books of Accounts.—The Board of Directors shall cause true accounts to be kept of the

- (a) Stock in trade of the Company,
- (b) Money received and expended by the Company and the matter in respect of which such receipt and expenditure takes place; and,
- (c) Credits and liabilities of the Company.

BIBLIOTHEQUE DE DROIT

24. Books Where Kept?—The books shall be kept at the Head Office of the Company, and shall be open to the inspection by shareholders during business hours.

Some companies have the power to restrict the time and manner of inspecting their books, but companies incorporated under the Dominion Act are bound by section 91 of that Act, and in such case it would be as well to omit this by-law. The public in general have no right to inspect any company's books.

25. Financial Statement.—At least once every year the Board of Directors shall lay before the Company in general meeting a statement of the income and expenditure for the past year. A balance sheet shall be made out in every year, or more often, if desirable, and laid before the Company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the Company arranged under appropriate headings.

26. The Bankers for the Company shall be the

27. All cheques, drafts or orders for the payment of money shall be signed by the Secretary-Treasurer, and countersigned by the President or Vice-President, or by any other person duly authorized so to do by the Board of Directors.

28. Dividends upon the Capital Stock of the Company, when earned, shall be paid semi-annually, on the first days of January and July in each year.

29. Reserve Fund.—The Directors may in any year before payment of any dividend set aside out of the net profits of the Company such sum or sums as the Board of Directors from time to time in their absolute discretion think proper as a Reserve Fund to meet any contingencies, or for equalizing dividends, or for replacing and maintaining any property of the Company, or for any other purpose as the Board of Directors shall think conducive to the interest of the Company.

30. Two or more Auditors shall be appointed annually by the Shareholders at the Annual Meeting, whose duty it

shall be to examine and audit all books, vouchers and accounts of the Company and all documents having reference to the business thereof. They shall be supplied with a list of all books kept by the Company and with a copy of the balance sheet and abstract of the affairs thereof and it shall be their duty to examine the statement and make a report thereon to the Board of Directors as soon after the close of the financial year as possible, together with such suggestions or recommendations as they may think fit.

31. Solicitor.—Walter E. Lear, Barrister-at-Law, of Toronto, shall be the Solicitor for the Company, but he may be removed at any time by a resolution of the Company, passed in general meeting.

32. Secrecy.—Every Director, Manager, Auditor, Trustee, Officer, Servant, Agent, Accountant, or other person employed in the business of the Company, shall, before entering upon his duties, sign a declaration pledging himself to observe strict secrecy respecting all transactions of the Company with the customers and the state of accounts with individuals, and in matters relating thereto, and shall by such declaration pledge himself not to reveal any of the matters which may come to his knowledge in the discharge of his duties, except where required so to do by the Board of Directors at any meeting, or by a Court of Law, or by the person to whom such matters relate, and, except so far as may be necessary, in order to comply with any of the provisions in these presents contained.

33. Amendment of By-laws.—The Board of Directors may from time to time repeal, amend and re-enact any of these By-laws, but such change, unless in the meantime confirmed at a general meeting of the Company duly called for that purpose, shall only have force until the next Annual Meeting

of the Company, and if not confirmed thereat, shall from that time only cease to have any force.

PASSED at the first Annual Meeting of the Shareholders of the Company this twenty-sixth day of April, A.D. 1919.



H. O. Price,

President.

W. H. Johnston,

Sec'y.-Treas.

G. T. Black,

Vice-President.

C. Y. Leslie,

Shareholder.

A. J. Champion,

Shareholder.

34. Salaries of Officers.—By-law fixing the salary of the Manager, Secretary-Treasurer, Auditors and other officers of the company.

BUILDERS' SUPPLY COMPANY LIMITED

BY-LAW No. 34.

THE DIRECTORS of Builders' Supply Company Limited hereby enact as follows:

1. That the salary of the Manager for the ensuing year shall be Two Thousand Four Hundred Dollars, payable in monthly instalments of Two Hundred Dollars each, at the end of each month's service.

2. That the salary of the Secretary-Treasurer for the ensuing year shall be Eighteen Hundred Dollars, payable in monthly instalments of One Hundred and Fifty Dollars each, at the end of each month's service.

3. That the salary of the Auditors for the ensuing year shall be Fifty Dollars each, payable in two instalments of Twenty-five Dollars at the end of each six months' service.

PASSED at the first Annual Meeting of the Shareholders of the Company this *twenty-sixth* day of *April*, A.D. 1919.



H. O. Price,

President.

W. H. Johnston,

Secy.-Treas.

G. T. Black,

Vice-President.

C. Y. Leslie,

Shareholder.

A. J. Champion,

Shareholder.

35. Borrowing Money.—By-law authorizing Directors to borrow money, issue debentures, etc.

BUILDERS' SUPPLY COMPANY LIMITED

BY-LAW No. 35.

WHEREAS Builders' Supply Company Limited is authorized to borrow money for the purposes of the company.

AND WHEREAS it is necessary and expedient to borrow money for the purposes of the company.

NOW THEREFORE the Directors hereby enact as follows :

1. That the directors of the company may borrow money upon the credit of the company, issue bonds, debentures or other securities of the company, charge, mortgage, hypothecate, or pledge all or any of the real or personal property, rights and powers of the company to secure any such bonds, debentures or other securities or any liability of the company.

2. That no sum in excess of Twenty Thousand Dollars shall be borrowed under this by-law.

PASSED, etc., as in By-law No. 34.

36. Executive Committee.—By-law authorizing the Directors to delegate their powers to an Executive Committee. See section 88 of the Ontario Companies Act.

BUILDERS' SUPPLY COMPANY LIMITED

By-Law No. 36.

WHEREAS the number of the Directors of Builders' Supply Company Limited is seven, and it is desirable to authorize said Directors to delegate their powers to an Executive Committee of three.

NOW THEREFORE the Directors hereby enact as follows:

1. That there shall be a committee of directors called the Executive Committee, consisting of the President, the Vice-President, and the Secretary-Treasurer, who shall be elected annually by the board.

2. That the President, or in his absence, the Vice-President, shall be the chairman of such Executive Committee.

3. That the Executive Committee shall, when the Board is not in session, supervise and control the operations, and superintend the business of the company generally.

4. That the Executive Committee shall meet on Friday in every week, if necessary, and at such other times as they may appoint, and also at the call of the President, or Vice-President.

5. That minutes of the proceedings of the Executive Committee shall be kept in a book provided for that purpose, which shall always be open for inspection of any Director.

6. That the board of Directors, may, if they see fit, fill any vacancy which may occur upon the Executive Committee for the unexpired remainder of the term by appointing thereto any qualified director.

7. That every member of the Executive Committee shall be paid for each attendance at the meetings of the committee such sum as shall be fixed from time to time by resolution of the board of Directors.

PASSED, etc., as in By-law No. 34.

37. Capital Stock.—By-law regulating calls, payment, transfer and forfeiture of shares.

BUILDERS' SUPPLY COMPANY LIMITED

BY-LAW No. 37.

THE DIRECTORS of Builders' Supply Company Limited hereby enact as follows:

1. That calls upon subscribed stock shall be made from time to time as the board may determine.

2. That no call shall exceed twenty-five per cent. of the subscribed stock, and there shall be an interval of at least thirty days between calls.

3. That it shall not be compulsory on the board to receive payment in full of any share or shares until the same shall have been called.

4. That the board shall have power to summarily forfeit shares and the money paid thereon, upon which any call shall have remained unpaid for six months after it shall be due and payable, and such forfeiture stock shall thereupon become the property of the company, and may be disposed of in such manner as the company in general meeting sees fit.

5. That receipts for payment of calls shall be issued from time to time as such payments are made, but stock certificates shall only be issued when shares are fully paid, and both receipt and certificate shall be authenticated by the signatures of the President, and Secretary, and sealed with the Company's seal.

6. That shareholders may, with the consent of the Board, but not otherwise, transfer their shares, and such transfers shall be recorded in a book provided for the purpose, and signed by the shareholder and his transferee and duly witnessed, but no person shall be allowed to hold or own stock in this company without the consent of the Board.

PASSED, etc., as in By-law No. 34.

Above section 6 may be desirable under certain circumstances, but as a general rule the owner of fully paid shares can transfer them at his pleasure. Only companies which have special provisions inserted in their Letters Patent can enforce such a by-law, but any company can prevent the transfer of shares not fully paid.

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