

CONSOLIDATION OF BUSINESS CORPORATIONS ACT

S.N.W.T. 1996,c.19

In force April 1, 1998: SI-005-98

(Current to: February 1, 2015)

The following provisions have been deleted for the purposes of this consolidation:
s.300, Schedule (Consequential Amendments)

AS AMENDED BY NORTHWEST TERRITORIES STATUTES:

S.N.W.T. 1996,c.19,s.93.9,301(7),305(2) (as amended by S.N.W.T. 1999,c.5,Sch.A,s.1,2 and
S.N.W.T. 1999,c.9,Sch.D,s.1)

Note: Repeals in force May 7, 2001; see s.93.9,301(7),305(2).

S.N.W.T. 1998,c.5

S.N.W.T. 1998,c.24

S.N.W.T. 1999,c.5

In force March 31, 1999

AS AMENDED BY STATUTES ENACTED UNDER SECTION 76.05 OF NUNAVUT ACT:

S.N.W.T. 1998,c.34

In force April 1, 1999

S.N.W.T. 1998,c.35

In force April 1, 1999

S.N.W.T. 1999,c.9

In force April 1, 1999

AS AMENDED BY NUNAVUT STATUTES:

S.Nu. 2008,c.12,s.183

s.183 in force October 26, 2008: SI-008-2008

S.Nu. 2010,c.15,s.106

s.106 in force September 27, 2010: SI-002-2010

S.Nu. 2011,c.6,s.3

s.3 in force February 25, 2011

S.Nu. 2011,c.25,s.2

s.2 in force October 31, 2011

S.Nu. 2013,c.20,s.4

s.4 in force May 16, 2013

This consolidation is not an official statement of the law. It is an office consolidation prepared for convenience only. The authoritative text of statutes can be ascertained from the *Revised Statutes of the Northwest Territories, 1988* and the Annual Volumes of the Statutes of the Northwest Territories (for statutes passed before April 1, 1999) and the Statutes of Nunavut (for statutes passed on or after April 1, 1999).

A copy of a statute of Nunavut can be obtained from the Territorial Printer at the address below. The Annual Volumes of the Statutes of Nunavut and this consolidation are also available online at <http://www.justice.gov.nu.ca/english/legislation.html> but are not official statements of the law.

Any certified Bills not yet included in the Annual Volumes of the Statutes of Nunavut can be obtained through the Office of the Clerk of the Legislative Assembly.

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GLOSSARY OF TERMS USED IN CONSOLIDATIONS

Miscellaneous

- c. means "chapter".
- CIF means "comes into force".
- NIF means "not in force".
- s. means "section" or "sections", "subsection" or "subsections", "paragraph" or "paragraphs".
- Sch. means "schedule".
- SI-005-98 means the instrument registered as SI-005-98 in 1998. (*Note: This is a Northwest Territories statutory instrument if it is made before April 1, 1999, and a Nunavut statutory instrument if it is made on or after April 1, 1999 and before January 1, 2000.*)
- SI-012-2003 means the instrument registered as SI-012-2003 in 2003. (*Note: This is a Nunavut statutory instrument made on or after January 1, 2000.*)

Citation of Acts

- R.S.N.W.T. 1988,c.D-22 means Chapter D-22 of the *Revised Statutes of the Northwest Territories, 1988*.
- R.S.N.W.T. 1988,c.10(Supp.) means Chapter 10 of the Supplement to the *Revised Statutes of the Northwest Territories, 1988*. (*Note: The Supplement is in three volumes.*)
- S.N.W.T. 1996,c.26 means Chapter 26 of the 1996 Annual Volume of the Statutes of the Northwest Territories.
- S.Nu. 2002,c.14 means Chapter 14 of the 2002 Annual Volume of the Statutes of Nunavut.

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BUSINESS CORPORATIONS ACT

PART I

INTERPRETATION AND APPLICATION

Definitions

1. In this Act,

"affairs" means the relationships among a corporation, its affiliates and the shareholders, directors and officers of those bodies corporate but does not include the business carried on by those bodies corporate; (*affaires internes*)

"affiliate" means an affiliated body corporate within the meaning of subsection 2(1); (*groupe*)

"articles" means the original or restated articles of incorporation, articles of amendment, articles of amalgamation, articles of continuance, articles of reorganization, articles of arrangement, articles of dissolution and articles of revival and includes an amendment to any of them; (*statuts*)

"associate", when used to indicate a relationship with any person, means

- (a) a body corporate of which that person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or under any circumstances that have occurred and are continuing, or a currently exercisable option or right to purchase those shares or those convertible securities,
- (b) a partner of that person acting on behalf of the partnership of which they are partners,
- (c) a trust or estate in which that person has a substantial interest or in respect of which he or she serves as a trustee or in a similar capacity,
- (d) the spouse of the person, or
- (e) a relative of that person or of the individual referred to in paragraph (d), if that relative has the same residence as that person; (*liens*)

"auditor" includes a partnership of auditors; (*vérificateur*)

"beneficial interest" means an interest arising out of the beneficial ownership of securities; (*intérêt bénéficiaire*)

"beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary; (*propriété bénéficiaire*)

"body corporate" includes a company or other body corporate wherever or however incorporated; (*personne morale*)

"Canada corporation" means a body corporate incorporated by or under an Act of the Parliament of Canada; (*société de régime fédéral*)

"corporation" means a body corporate incorporated or continued under this Act and not discontinued under this Act; (*société par actions* or *société*)

"Court" means the Nunavut Court of Justice; (*tribunal*)

"Court of Appeal" means the Court of Appeal of Nunavut; (*Cour d'appel*)

"debt obligation" means

- (a) a bond, debenture, note or other evidence of indebtedness of a corporation, whether secured or unsecured, or
- (b) a guarantee given by a corporation; (*titre de créance*)

"director" means a person occupying the position of director by whatever name called and "directors" and "board of directors" includes a single director; (*administrateur*)

"distributing corporation" means a corporation that is a reporting issuer under Nunavut securities laws; (*société ayant fait appel au public*)

"extra-territorial corporation" means

- (a) a body corporate incorporated otherwise than by or under an Act of Nunavut, or
- (b) a limited liability company that is not a body corporate; (*société extraterritoriale*)

"incorporator" means a person who signs articles of incorporation; (*fondateur*)

"individual" means a natural person; (*particulier*)

"liability" includes a debt of a corporation arising under section 42, subsection 193(19) or paragraphs 243(3)(g), (h) or (i); (*passif*)

"Minister" means the Minister of Justice; (*ministre*)

"Nunavut securities laws" means Nunavut securities laws as defined in subsection 1(1) of the *Securities Act*; (*droit des valeurs mobilières du Nunavut*)

"ordinary resolution" means a resolution

- (a) passed by a majority of the votes cast by the shareholders who voted in respect of that resolution, or
- (b) signed by all the shareholders entitled to vote on that resolution;
(*résolution ordinaire*)

"person" includes an individual, partnership, association, body corporate, trustee, executor, administrator or legal representative; (*personne*)

"redeemable share" means a share issued by a corporation that the corporation

- (a) is required to purchase or redeem at a specified time or on the happening of a certain event,
- (b) is required by its articles to purchase or redeem on the demand of a shareholder, or
- (c) may purchase or redeem on demand of the corporation;
(*action rachetable*)

"registered form" means registered form as defined in the *Securities Transfer Act*; (*nominatif*)

"Registrar" means the Registrar of Corporations or a Deputy Registrar of Corporations appointed under section 266; (*registraire*)

"resident Canadian" means an individual who is

- (a) a Canadian citizen ordinarily resident in Canada,
- (b) a Canadian citizen not ordinarily resident in Canada who is a member of a prescribed class of persons, or
- (c) a permanent resident within the meaning of the *Immigration and Refugee Protection Act (Canada)*; (*résident canadien*)

"security" means a share of any class or series of shares or a debt obligation of a corporation and includes a certificate evidencing such a share or debt obligation;
(*valeur mobilière*)

"security interest" means an interest in or charge on property of a corporation to secure payment of a debt or performance of any other obligation of the corporation; (*sûreté*)

"send" includes deliver; (*envoyer*)

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

"special resolution" means a resolution passed by a majority of not less than 2/3 of the votes cast by the shareholders who voted in respect of that resolution or signed by all the shareholders entitled to vote on that resolution; (*résolution spéciale*)

"unanimous shareholder agreement" means

- (a) a written agreement to which all the shareholders of a corporation are or are deemed to be parties, whether or not any other person is also a party, or
- (b) a written declaration made by the beneficial owner of all the issued shares of a corporation,

that provides for any of the matters enumerated in subsection 148(1). (*convention unanime des actionnaires*)

S.Nu. 2008,c.12,s.183(2); S.Nu. 2010,c.15,s.106(2); S.Nu. 2011,c.6,s.3;
S.Nu. 2011,c.25,s.2; S.Nu. 2013,c.20,s.4(3).

Affiliated bodies corporate

2. (1) For the purposes of this Act,

- (a) one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and
- (b) if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.

Control

(2) For the purposes of this Act, a body corporate is controlled by a person or by two or more bodies corporate if

- (a) securities of the body corporate to which are attached more than 50% of the votes that may be cast to elect directors of the body corporate are held, other than by way of security only, by or for the benefit of that person or by or for the benefit of those bodies corporate; and
- (b) the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of the body corporate.

Holding body corporate

(3) For the purposes of this Act, a body corporate is the holding body corporate of another if that other body corporate is its subsidiary.

Subsidiary body corporate

(4) For the purposes of this Act, a body corporate is a subsidiary of another body corporate if

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

Deemed distribution to the public

- 3.** (1) For the purposes of this Act, securities of a corporation
- (a) issued on a conversion of other securities, or
 - (b) issued in exchange for other securities,
- are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

Distribution to the public

- (2) Subject to subsection (3), for the purposes of this Act, a security of a body corporate
- (a) is part of a distribution to the public where, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada; or
 - (b) is deemed to be part of a distribution to the public where the security has been issued and a filing referred to in paragraph (a) would be required if the security were being issued currently.

Exemption

- (3) On the application of a corporation, the Registrar may determine that a security of the corporation is not or was not part of a distribution to the public if the Registrar is satisfied that his or her determination would not prejudice any security holder of the corporation.

Execution in counterpart

- 4.** A document or writing required or permitted by this Act may be signed or executed in separate counterparts and the signing or execution of a counterpart shall have the same effect as the signing or execution of the original.

PART II

INCORPORATION

Incorporation

- 5.** One or more persons may incorporate a corporation by signing articles of incorporation and complying with section 7.

Articles of incorporation

- 6.** (1) Articles of incorporation shall be in the prescribed form and shall set out, in respect of the proposed corporation,
- (a) the name of the corporation;
 - (b) the place within Nunavut where the registered office is to be situated;

- (c) the classes and any maximum number of shares that the corporation is authorized to issue, and
 - (i) if there are two or more classes of shares, the special rights, privileges, restrictions and conditions attaching to each class of shares, and
 - (ii) if a class of shares may be issued in series, the authority given to the directors to fix the number of shares in, and to determine the designation of each series, and the rights, privileges, restrictions and conditions attaching to the shares of each series;
- (d) if the issue, transfer or ownership of the shares of the corporation is to be restricted, a statement to that effect and
 - (i) a statement of the nature of the restrictions, or
 - (ii) a statement that the nature of the restrictions appears in a unanimous shareholder agreement;
- (e) the number of directors or, subject to paragraph 108(a), the minimum and maximum number of directors of the corporation; and
- (f) any restrictions on the businesses that the corporation may carry on.

Additional provisions in articles

(2) The articles may set out any provision permitted by this Act or by law to be set out in the by-laws of the corporation.

Special majorities

(3) Subject to subsection (4), if the articles or a unanimous shareholder agreement require a greater number of votes of directors or shareholders than that required by the Act to effect any action, the provisions of the articles or of the unanimous shareholder agreement prevail.

Exception

(4) The articles may not require a greater number of votes of shareholders to remove a director than the number required by section 110. S.Nu. 2013,c.20,s.4(3).

Delivery of articles of incorporation

7. An incorporator shall send to the Registrar articles of incorporation and the documents required by subsection 12(4) and sections 19 and 107.

Certificate of incorporation

8. On receipt of the articles of incorporation, the documents required by section 7 and the prescribed fees, the Registrar shall issue a certificate of incorporation in accordance with section 268.

Effect of certificate

9. (1) A corporation comes into existence on the date shown in the certificate of incorporation.

Certificate is conclusive proof

(2) A certificate of incorporation is conclusive proof for the purposes of this Act and for all other purposes

- (a) that the provisions of this Act in respect of incorporation and all requirements precedent and incidental to incorporation have been complied with; and
- (b) that the corporation has been incorporated under this Act as of the date shown in the certificate of incorporation.

Corporate name

10. (1) The word "Limited", "Limitée", "Incorporated", "Incorporée", "Corporation" or "Société" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp." shall be the last word of the name of every corporation, but a corporation may use and may be legally designated by either the full or the corresponding abbreviated form.

Prohibition

(2) No person other than a body corporate shall carry on business within Nunavut under any name or title that contains the word "Limited", "Limitée", "Incorporated", "Incorporée", "Corporation" or "Société" or the abbreviation "Ltd.", "Ltée", "Inc." or "Corp.".

Offence

(3) A person carrying on business in contravention of subsection (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Alternate name

(4) A corporation may set out its name in its articles in an English form, a French form, an English form and a French form or in a combined English and French form, and the corporation may use and may be legally designated by any of those forms.

Languages other than English or French

(5) A corporation may, in accordance with the regulations, set out its name in the articles in a form that includes words in a language other than English or French.

Alternate name outside Canada

(6) A corporation may, outside Canada, use and be legally designated by a name in any language.

Publication of name

(7) A corporation shall set out its name in legible characters in or on all contracts, invoices, negotiable instruments and orders for goods or services, issued or made by or on behalf of the corporation.

Other name

(8) Subject to subsection (7) and subsection 12(1), and to section 48 of the *Partnership Act*, a corporation may carry on business under or identify itself by a name other than its corporate name if that other name does not contain, other than in a figurative or descriptive sense, either the word or expression "Limited", "Limitée", "Incorporated", "Incorporée", "Corporation", "Société" or the corresponding abbreviation. S.N.W.T. 1998,c.5,s.4(2),(3); S.Nu. 2013,c.20,s.4(3).

Assignment of name

11. (1) If requested to do so by the incorporators, by a corporation or by an extra-territorial corporation about to continue as a corporation pursuant to section 190, the Registrar shall assign to the corporation as its name a designated number determined by the Registrar together with such other words and abbreviations as the Registrar may require.

Reserving name

- (2) The Registrar may, on request, reserve for 90 days a name for
- (a) an intended corporation;
 - (b) a corporation about to change its name; or
 - (c) an extra-territorial corporation about to continue as a corporation pursuant to section 190.

Withdrawal of reservation

- (3) The Registrar may, at the request of the person who requested the reservation of a name,
- (a) assign that reserved name to another person; or
 - (b) withdraw the reservation of that name.

Prohibited names

- 12.** (1) Subject to the circumstances and conditions prescribed by the regulations, a corporation shall not be incorporated with, have, carry on business under or identify itself by a name
- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations;
 - (b) that is identical to
 - (i) the name of a body corporate incorporated or continued under the laws of Nunavut, whether in existence or not,
 - (ii) the name of an extra-territorial corporation registered in Nunavut,
 - (iii) the name of a Canada corporation, or

- (iv) a name reserved under section 11;
- (c) that is similar to
 - (i) the name of a body corporate incorporated or continued under the laws of Nunavut,
 - (ii) the name of an extra-territorial corporation registered in Nunavut,
 - (iii) the name of a Canada corporation, or
 - (iv) a name reserved under section 11,
 if the use of that name would be likely to confuse or mislead;
- (d) that is similar to
 - (i) the name of a business, association, partnership or firm, or
 - (ii) a trade-mark registered pursuant to the *Trade-marks Act* (Canada),
 if the use of that name would be likely to confuse or mislead; or
- (e) that does not meet the prescribed requirements.

Application of subsection (1)

(2) Subsection (1) applies to

- (a) a body corporate continued as a corporation under this Act;
- (b) an order for reorganization under section 194;
- (c) an arrangement under section 195; and
- (d) a revival under section 210 or 211.

Direction to change corporate name

(3) Where a corporation acquires a name as a result of a person undertaking to dissolve or to change its name and the undertaking is not carried out within the time specified, the Registrar may, by notice in writing, giving his or her reasons, direct the corporation to change its name in accordance with section 13.

Additional documents

(4) A corporation shall send to the Registrar the prescribed documents relating to its corporate name. S.N.W.T. 1998,c.5,s.4(4); S.Nu. 2013,c.20,s.4(3).

Direction to change corporate name

13. (1) Where, through inadvertence or otherwise, a corporation comes into existence with or acquires a name that contravenes section 10 or 12, the Registrar may, by notice in writing giving his or her reasons, direct the corporation to change its name to a name that the Registrar approves within 60 days after the date of the notice.

Initiation of direction

(2) The Registrar may give a notice under subsection (1) on his or her own initiative or at the request of a person aggrieved by the name that contravenes section 10 or 12, as the case may be.

Revoking name

(3) Where a corporation

- (a) is directed to change its name under subsection 12(3) or subsection (1) and does not do so, and
- (b) has not served the Registrar with a notice of an appeal of the direction within 60 days after the date of the notice of the Registrar under subsection (1),

the Registrar may change the name of the corporation to a name approved by the Registrar or assign a number designated in accordance with subsection 11(1), together with such other words and abbreviations as the Registrar may require.

Certificate of amendment

(4) When a corporation has had its name changed under subsection (3),

- (a) the Registrar shall issue a certificate of amendment showing the new name of the corporation and shall without delay give notice of the change of name in the *Nunavut Gazette*; and
- (b) the articles of the corporation are amended accordingly on the date shown in the certificate of amendment.
S.N.W.T. 1998,c.24,s.2(2); S.Nu. 2013,c.20,s.4(3).

Personal liability

14. (1) Subject to this section, a person who enters into or purports to enter into a written contract in the name of or on behalf of a corporation before it comes into existence is personally bound by the contract and is entitled to the benefits of the contract.

Pre-incorporation contracts

(2) Within a reasonable time after it comes into existence, a corporation may, by any action or conduct signifying its intention to be bound, adopt a written contract made in its name or on its behalf before the corporation came into existence, and on the adoption

- (a) the corporation is bound by the contract and is entitled to the benefits of the contract as if the corporation had been in existence at the date of the contract and had been a party to it; and
- (b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

Application to Court

(3) Subject to subsection (4), whether or not a written contract made before the coming into existence of a corporation is adopted by the corporation, a party to the contract may apply to the Court for an order

- (a) fixing obligations under the contract as joint or joint and several, or

- (b) apportioning liability between or among the corporation and a person who purported to act in the name of or on behalf of the corporation,

and on the application the Court may make any order it considers fit.

Exemption from personal liability

(4) If expressly so provided in the written contract, a person who purports to act in the name of or on behalf of the corporation before it comes into existence is not in any event bound by the contract or entitled to the benefits of the contract.

PART III

CAPACITY AND POWERS

Capacity of a corporation

15. (1) A corporation has the capacity and, subject to this Act and paragraph 23(q) of the *Nunavut Act* (Canada), the rights, powers and privileges of a natural person.

Extra-territorial capacity

(2) A corporation has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Nunavut to the extent that the laws of that jurisdiction permit. S.Nu. 2013,c.20,s.4(3).

Powers of a corporation

16. (1) It is not necessary for a by-law to be passed in order to confer any particular power on the corporation or its directors.

Restricted business or powers

- (2) A corporation shall not
- (a) carry on any business or exercise any power that it is restricted by its articles from carrying on or exercising; or
 - (b) exercise any of its powers in a manner contrary to its articles.

Limitation on powers

- (3) No corporation has the capacity nor the power under this Act
- (a) to carry on the business of insurance as an insurer;
 - (b) to carry on the business of a trust company; or
 - (c) to carry on the business usually or ordinarily carried on by a stock exchange or to provide, for the marketing of any shares or other securities, the facilities that are ordinarily and usually afforded by a stock exchange.

Rights preserved

(4) No act of a corporation, including any transfer of property to or by a corporation, is invalid by reason only that the act or transfer is contrary to its articles or this Act.

No constructive notice

17. No person is affected by or is deemed to have notice or knowledge of the contents of a document concerning a corporation by reason only that the document has been filed by the Registrar or is available for inspection at an office of the corporation.

Authority of directors, officers and agents

18. A corporation, a guarantor of an obligation of the corporation or a person claiming through the corporation may not assert against a person dealing with the corporation or dealing with any person who has acquired rights from the corporation

- (a) that the articles, by-laws or any unanimous shareholder agreement have not been complied with,
- (b) that the persons named in the most recent notice sent to the Registrar under section 107 or 114 are not the directors of the corporation,
- (c) that the address of the registered office in the most recent notice sent to the Registrar under section 19 is not the registered office of the corporation,
- (d) that the post office box designated as the address for service by mail in the most recent notice sent to the Registrar under section 19 is not the address for service by mail of the corporation,
- (e) that a person held out by the corporation as a director, an officer or an agent of the corporation has not been duly appointed or has no authority to exercise a power or perform a duty that the director, officer or agent might reasonably be expected to exercise or perform,
- (f) that a document issued by any director, officer or agent of the corporation with actual or usual authority to issue the document is not valid or not genuine, or
- (g) that financial assistance referred to in section 46 or a sale, lease or exchange of property referred to in section 192 was not authorized,

unless the person has or ought to have, by virtue of his or her position with or relationship to the corporation, knowledge to the contrary.

PART IV

REGISTERED OFFICE, RECORDS AND SEAL

Registered office

19. (1) A corporation shall at all times have a registered office at the place within Nunavut specified in its articles.

Notice of registered office

(2) A notice of

- (a) the address of the registered office,
- (b) a separate records office, if any, and
- (c) the post office box designated as the address for service by mail, if any,

shall be sent to the Registrar in the prescribed form together with the articles of incorporation and any articles that change the place of those offices or that change the post office box.

Change of address

(3) The directors of the corporation may

- (a) change the address of the registered office within the place specified in Nunavut;
- (b) designate, or revoke or change a designation of, a records office within Nunavut; or
- (c) designate, or revoke or change a designation of, a post office box within Nunavut as the address for service by mail of the corporation.

Post office box

(4) A post office box designated as the corporation's address for service by mail shall not be designated as the corporation's records office or registered office.

Notice of change

(5) A corporation shall send to the Registrar, within 15 days after any change under subsection (3), a notice of that change in the prescribed form, and the Registrar shall file it.

Access to registered office and records

(6) The corporation shall ensure that its registered office and its records office are

- (a) accessible to the public during normal business hours; and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (2) or (5).

Registered office is records office

(7) Unless the directors designate a separate records office, the registered office of a corporation is also its records office. S.Nu. 2013,c.20,s.4(3).

Where address not that of corporation

20. (1) Where the registered office of a corporation is situated at an address where the corporation does not carry on business, a person at the address may, if the person no longer desires to allow his or her address to be used as the address of the registered office of the corporation, send a notice to that effect to the Registrar and, on or before the day the notice is sent, send a copy of the notice to the corporation by registered mail.

Cessation of address as registered office

(2) On the expiry of 30 days after a notice referred to in subsection (1) is sent to the Registrar, the address of the person that sent the notice ceases to be the address of the registered office of the corporation referred to in the notice.

Corporation must file notice to amend

(3) A corporation that receives a notice under subsection (1) shall send a notice to the Registrar indicating a new address for the registered office of the corporation in sufficient time that the Registrar receives it before the address of the person that filed the notice ceases to be the address of the registered office of the corporation.

Corporate records

21. (1) A corporation shall prepare and maintain at its records office records containing

- (a) the articles and the by-laws, all amendments to the articles and by-laws, a copy of any unanimous shareholder agreement and any amendment to a unanimous shareholder agreement;
- (b) minutes of meetings and resolutions of shareholders;
- (c) copies of all notices required by sections 107 and 114;
- (d) a securities register that complies with section 50;
- (e) copies of the financial statements, reports and information referred to in subsection 157(1); and
- (f) a register of disclosures made pursuant to section 121.

Directors' records

(2) In addition to the records described in subsection (1), a corporation shall prepare and maintain adequate accounting records and records containing minutes of meetings and resolutions of the directors and any committee of the directors.

Central securities register

(3) Despite subsection (1), a central securities register of a distributing corporation may be maintained in Canada at an office of a corporation's agent referred to in subsection 50(2), and a branch securities register may be kept at any place in or out of Nunavut designated by the directors.

Record of agents and offices

(4) If a central securities register is maintained under subsection (3) at a place other than the records office, the corporation shall maintain at its records office a record containing the names and addresses of all agents and offices at which those registers are maintained and descriptions of all those registers.

Compliance

(5) A corporation that

- (a) complies with subsection 23(2), and
- (b) maintains in Canada a register or record referred to in subsection (4),

complies with paragraph (1)(d).

Records of continued corporations

(6) For the purposes of paragraph (1)(b) and subsection (2), where a body corporate is continued under this Act, "records" includes similar records required by law to be maintained by the body corporate before it was so continued.

Place where directors' records to be kept

(7) The records described in subsection (2) shall be kept at the records office of the corporation or at any other place the directors consider appropriate and shall at all reasonable times be open to examination by the directors.

Accounting records in Nunavut

(8) Where accounting records of a corporation are kept at a place outside Nunavut, such accounting records as are sufficient to enable the directors to ascertain the financial position of the corporation with reasonable accuracy on a quarterly basis shall be

- (a) kept at the records office or at any other place in Nunavut the directors consider appropriate; and
- (b) open to examination by the directors during normal business hours and at any other reasonable time.

Retention of records

(9) Subject to any other Act that provides for a longer retention period, a corporation shall retain the accounting records of the corporation for a period of six years after the end of the financial year to which the records relate.

Offence

(10) A corporation that fails to comply with this section without reasonable cause is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000. S.Nu. 2013,c.20,s.4(3).

Access to corporate records

22. (1) The directors and shareholders of a corporation and their agents and legal representatives may, without charge,

- (a) examine the records referred to in subsection 21(1) during normal business hours; and
- (b) subject to subsection (2), obtain a copy of those records.

Copies of corporate records

(2) A corporation may require a shareholder to pay a reasonable fee for a copy of the records referred to in paragraphs 21(1)(b), (d) and (f).

Examination of records

(3) Creditors of a corporation and their agents and legal representatives may, on payment of a reasonable fee,

- (a) examine the records referred to in paragraphs 21(1)(a), (c) and (d) during normal business hours; and
- (b) obtain a copy of those records.

Examination of records

(4) Any person may, on payment of a reasonable fee,

- (a) examine the records referred to in paragraph 21(1)(c) during normal business hours; and
- (b) obtain a copy of those records.

Shareholder lists

(5) Where a corporation is a distributing corporation, any person may, on payment of a reasonable fee and on sending to the corporation the statutory declaration referred to in subsection (6), require the corporation to furnish within 10 days after the receipt of the fee and the statutory declaration, a list made current to a date not more than 10 days before the date of receipt of the fee and the statutory declaration, setting out the names and addresses of the shareholders of the corporation and the number of shares owned by each shareholder, as shown on the records of the corporation.

Contents of statutory declaration

(6) The statutory declaration required under subsection (5) shall state

- (a) the name and address of the applicant;
- (b) the name and address for service of the body corporate if the applicant is a body corporate; and
- (c) that the list and any supplemental lists obtained pursuant to subsection (8) will only be used for the purposes set out in paragraphs (11)(a) to (c).

Corporate applicant

(7) Where the applicant is a body corporate, the statutory declaration shall be made by a director or officer of the body corporate.

Supplemental lists

(8) A person requiring a corporation to supply a list under subsection (5) may, on payment of a reasonable fee, require the corporation to furnish supplemental lists setting out any changes to the information provided in the list for each business day following the date the list is made current to, if the person states in the statutory declaration referred to in subsection (6) that he or she requires supplemental lists.

When supplemental lists to be furnished

- (9) The corporation shall furnish a supplemental list required under subsection (8)
- (a) on the date a list is furnished under subsection (5), if the information relates to changes that took place prior to that date; and
 - (b) on the business day following the day to which the supplemental list relates, if the information relates to changes that take place on or after the date a list is furnished under subsection (5).

Holders of options

(10) A person requiring a corporation to supply a list under subsection (5) or a supplemental list may also require the corporation to include in the list the name and address of any known holder of an option or right to acquire shares in the corporation.

Use of shareholder list

(11) Information contained in the records referred to in subsection 21(1) and a list of shareholders obtained under this section shall not be used by any person except in connection with

- (a) an effort to influence the voting of shareholders of the corporation;
- (b) an offer to acquire shares of the corporation; or
- (c) another matter relating to the affairs of the corporation.

Offence

(12) A person who contravenes this section without reasonable cause is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both. S.N.W.T. 1998,c.24,s.2(3).

Form of records

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

Duty of corporation

(2) If a person is entitled to examine any register or record that is maintained by a corporation in a form other than a written form and makes a request of the corporation to do so, the corporation shall

- (a) make available to that person within a reasonable time a reproduction of the text of the register or record in legible written form; or
- (b) provide facilities to enable that person to examine the text of the register or record in a legible written form otherwise than by providing a reproduction of that text, and shall allow that person to make copies of that register or record.

Precautions

(3) A corporation and its agents shall take reasonable precautions to

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

the registers and other records required by this Act to be prepared and maintained.

Offence

(4) A person who contravenes this section without reasonable cause is guilty of an offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or both.

Corporate seal

24. (1) A corporation may adopt a corporate seal.

Content of seal

(2) Where a corporation adopts a corporate seal, the seal must contain the name of the corporation.

Facsimile seal

(3) A corporation may adopt a facsimile of its corporate seal for use in any jurisdiction outside Nunavut if the use of a facsimile seal is permitted by the law of that jurisdiction.

Documents valid without seal

(4) A document executed on behalf of a corporation by a director, an officer or an agent of the corporation is not invalid merely because a corporate seal is not affixed to the document.

Share certificates

(5) Share certificates of a corporation may be issued under its corporate seal or a facsimile of that corporate seal.

Corporate seal not needed

(6) A document requiring authentication by a corporation may be signed by a director or the secretary or by another authorized officer of the corporation and need not be under a corporate seal. S.Nu. 2013,c.20,s.4(3).

PART V

CORPORATE FINANCE

Shares

25. (1) Shares of a corporation shall be in registered form and shall be without nominal or par value.

Transitional

(2) Where a body corporate is continued under this Act, a share with nominal or par value issued by the body corporate before it was so continued is, for the purpose of subsection (1), deemed to be a share without nominal or par value.

Rights attached to shares

(3) Where a corporation has only one class of shares, the rights of the holders of those shares are equal in all respects and include the right

- (a) to vote at any meeting of shareholders of the corporation;
- (b) to receive any dividend declared by the corporation; and
- (c) to receive the remaining property of the corporation on dissolution.

Rights to classes of shares

(4) The articles may provide for more than one class of shares and, where they so provide,

- (a) the rights, privileges, restrictions and conditions attaching to the shares of each class shall be set out in the articles; and
- (b) the rights set out in subsection (3) shall be attached to at least one class of shares but all of those rights are not required to be attached to one class.

Equality of rights within a class of shares

(5) Subject to section 29, where a corporation has more than one class of shares, the rights of the holders of the shares of any class are equal in all respects.

Constrained shares

26. (1) Subject to the regulations, the articles may constrain

- (a) the issue or transfer of shares of any class or series to persons who are not resident Canadians;
- (b) the issue or transfer of shares of any class or series to enable the corporation or any of its affiliates to qualify under any law of Canada, or any province or territory of Canada
 - (i) to obtain a licence to carry on any business,
 - (ii) to become a publisher of a Canadian newspaper or periodical, or
 - (iii) to acquire shares of a financial intermediary as defined in the regulations; or
- (c) the issue, transfer or ownership of shares of any class or series in order to assist the corporation or any of its affiliates or associates to qualify under any prescribed law of Canada, or any province or territory of Canada to receive licences, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control.

Limitation on power to constrain shares

(2) Paragraph (1)(c) does not permit a constraint on the issue, transfer or ownership of shares of any class or series of which any shares are outstanding unless,

- (a) in the case of a constraint with respect to a class, the shares of the class, or
- (b) in the case of a constraint with respect to a series, the shares of the series,

are already subject to a constraint permitted under that paragraph.

Regulations

(3) The Commissioner in Executive Council may, in relation to a corporation that constrains the issue or transfer of its shares, make regulations respecting

- (a) the disclosure required of the constraints in documents issued or published by the corporation;
- (b) the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation;
- (c) the limitations on voting rights of any shares held contrary to the articles of the corporation;
- (d) the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the right of the corporation and its directors, employees and agents to rely on such disclosure and the effects of such reliance;
- (e) the rights of any person owning shares of the corporation at the time of an amendment to its articles constraining share issues or transfers; and
- (f) the powers of the directors to require the sale of shares, or to sell on behalf of the owner of the shares, acquired contrary to constraints provided in the articles of the corporation.

Validity of acts

(4) An issue or a transfer of a share or an act of a corporation is valid despite any contravention of this section or the regulations. S.Nu. 2013,c.20,s.4(3).

"property" defined

27. (1) For the purposes of this section, "property" does not include a promissory note or a promise to pay.

Issue of shares

(2) Subject to section 30 and to the articles, the by-laws and any unanimous shareholder agreement, shares may be issued at such times and to such persons and for such consideration as the directors determine.

Shares non-assessable

(3) Shares issued by a corporation are non-assessable and the holders are not liable to the corporation or to its creditors in respect of those shares.

Consideration

(4) A share shall not be issued until the consideration for the share is fully paid in money or in property or past services that are not less in value than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

Consideration other than money

(5) In determining whether property or past services are the fair equivalent of a money consideration, the directors may take into account reasonable charges and expenses of organization and reorganization and payments for property and past services reasonably expected to benefit the corporation.

Changing number of shares

(6) A corporation may, by special resolution, change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series.

Application of section 178

(7) Section 178 applies, with any necessary modification, to a special resolution mentioned in subsection (6) as if the special resolution were a proposal to amend the articles.

Stated capital accounts

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

Entries in stated capital accounts

(2) A corporation shall add to the appropriate stated capital account the full amount of any consideration it receives for any shares it issues.

Exception for non-arm's length transactions

(3) Despite subsection (2), where a corporation issues shares

- (a) in exchange for
 - (i) property of a person who immediately before the exchange did not deal with the corporation at arm's length within the meaning of the *Income Tax Act* (Canada), or
 - (ii) shares of a body corporate that immediately before the exchange or that, because of the exchange, did not deal with the corporation at arm's length within the meaning of the *Income Tax Act* (Canada); or

(b) to shareholders of an amalgamating body corporate who receive the shares in addition to or instead of securities of the amalgamated body corporate pursuant to

- (i) an amalgamation agreement referred to in section 184 or 189, or,
- (ii) an arrangement referred to in paragraph 195(1)(b) or (c),

the corporation may add to the stated capital accounts maintained for the share or the classes or series issued the whole or any portion of the amount of the consideration it receives in exchange.

Other additions to stated capital

(4) Where a body corporate is continued under this Act, it may add to a stated capital account any consideration received by it for a share it has issued.

Retained earnings account

(5) Subject to subsection (6), a corporation may at any time add to a stated capital account any amount it credited to a retained earnings account or to another surplus account.

Constraint on addition to a stated capital account

(6) Where a corporation proposes to add any amount to a stated capital account it maintains in respect of a class or series of shares and

- (a) the amount to be added was not received by the corporation as consideration for the issue of shares, and
- (b) the corporation has issued any outstanding shares of more than one class or series,

the addition to the stated capital account must be approved by special resolution unless all the issued and outstanding shares are shares of not more than two classes of convertible shares referred to in subsection 41(5).

Transitional – share consideration

(7) Where a body corporate is continued under this Act, subsection (2) does not apply to the consideration received by it before it was so continued unless the share in respect of which the consideration is received is issued after the corporation is so continued.

Transitional – unpaid amounts

(8) Where a body corporate is continued under this Act, any amount unpaid in respect of a share issued by the body corporate before it was so continued and paid after it was so continued shall be added to the stated capital account maintained for the shares of that class or series.

Transitional – stated capital

(9) Where a body corporate is continued under this Act, the stated capital of each class and series of shares of the corporation immediately following its continuance is deemed to equal the paid up capital of each class and series of shares of the body corporate immediately prior to its continuance.

Restriction

(10) A corporation shall not reduce its stated capital or any stated capital account except in the manner provided in this Act.

Exception for an open-end mutual fund

(11) Subsections (1) to (10) and any other provisions of this Act relating to stated capital do not apply to an open-end mutual fund.

"open-end mutual fund" defined

(12) In subsection (11), "open-end mutual fund" means a corporation that makes a distribution to the public of its shares and that carries on only the business of investing the consideration it receives for the shares it issues, and all or substantially all of those shares are redeemable on the demand of a shareholder. S.Nu. 2013,c.20,s.4(3).

Shares in series

29. (1) The articles may authorize the issue of any class of shares in one or more series and may fix or authorize the directors to fix the number of shares in each series and may determine or authorize the directors to determine the designation, rights, privileges, restrictions and conditions attaching to the shares of each series, subject to the limitations set out in the articles.

Series participation

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

Restrictions on series

(3) No rights, privileges, restrictions or conditions attached to a series of shares authorized under this section shall confer on a series

- (a) greater voting rights than are attached to shares of any other series in the same class that are then outstanding; or
- (b) a priority in respect of dividends or return of capital over shares of any other series in the same class that are then outstanding.

Right to exchange or convert shares

(4) Subsection (3) does not apply to a right or privilege to exchange a share or shares for, or to convert a share or shares into, a share or shares of another class.

Amendment of articles

(5) Where the articles do not designate series of shares, the directors shall, before the issue of shares of a series authorized under this section, send to the Registrar articles of amendment in the prescribed form to designate a series of shares.

Certificate of amendment

(6) On receipt of articles of amendment designating a series of shares, the Registrar shall issue a certificate of amendment in accordance with section 268.

Effect of certificate

(7) The articles of the corporation are amended accordingly on the date shown in the certificate of amendment.

Pre-emptive right

30. (1) If the articles or a unanimous shareholder agreement so provide, no shares of a class shall be issued unless the shares have first been offered to the shareholders holding shares of that class, and those shareholders have a pre-emptive right to acquire the offered shares in proportion to their holdings of the shares of that class, at the same price and on the same terms as those shares are to be offered to others.

Exception

(2) Despite that the articles provide the pre-emptive right referred to in subsection (1), shareholders have no pre-emptive right in respect of shares to be issued

- (a) for a consideration other than money;
- (b) as a share dividend; or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the corporation.

S.Nu. 2013,c.20,s.4(3).

Options and rights

31. (1) A corporation may issue certificates, warrants or other evidences of conversion privileges, options or rights to acquire securities of the corporation, and shall set out their conditions

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

Transferrable rights

(2) Conversion privileges, options and rights to acquire securities of a corporation may be made transferable or non-transferable, and options and rights to acquire may be made separable or inseparable from any securities to which they are attached.

Reserved shares

(3) Where a corporation has granted privileges to convert any securities issued by the corporation into shares, or into shares of another class or series, or has issued or granted options or rights to acquire shares, the corporation shall reserve and continue to reserve sufficient authorized shares to meet the exercise of those conversion privileges, options and rights.

Prohibited share holdings

- 32.** (1) Subject to sections 33, 35, 37, 38 and 39, a corporation
- (a) shall not hold shares in itself or in its holding body corporate; and
 - (b) shall not permit any of its subsidiary bodies corporate to acquire shares of the corporation.

Subsidiary holding shares of a corporation

(2) A corporation shall cause a subsidiary body corporate of the corporation that holds shares of the corporation contrary to subsection (1) to sell or otherwise dispose of those shares within five years from the date

- (a) the body corporate became a subsidiary of the corporation; or
- (b) the corporation was continued under this Act.

Shares acquired before commencement of Act

(3) This section does not apply to shares acquired by a subsidiary body corporate before the commencement of this Act.

Holding shares as a legal representative

33. (1) A corporation may, in the capacity of a legal representative, hold shares in itself or in its holding body corporate unless it or the holding body corporate or a subsidiary of either of them has a beneficial interest in the shares.

Holding shares by way of security

(2) A corporation may hold shares in itself or in its holding body corporate by way of security for the purposes of a transaction entered into by it in the ordinary course of a business that includes the lending of money.

Voting shares

- 34.** A corporation holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the corporation
- (a) holds the shares in the capacity of a legal representative; and
 - (b) has complied with section 155.

Acquisition by corporation of its own shares

35. (1) Subject to subsection (2) and to its articles, a corporation may purchase or otherwise acquire shares issued by it.

Limitation

(2) Except as provided in subsections 37(1) and (2) and subsection 38(1), a corporation shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of its liabilities and stated capital of all classes.

Notice

36. (1) Subject to any unanimous shareholder agreement, a corporation that is not a distributing corporation shall, within 30 days after the purchase of any of its issued shares, notify its shareholders in accordance with section 256

- (a) of the number of shares it has purchased;
- (b) of the name of the shareholder from whom it has purchased the shares;
- (c) of the price paid for the shares;
- (d) if the consideration was other than cash, of the nature of the consideration given and the value attributed to it; and
- (e) of the balance, if any, remaining due to shareholders or to the shareholder from whom it purchased the shares.

Shareholder entitled to copy of agreement

(2) Subject to any unanimous shareholder agreement, a shareholder of a corporation other than a distributing corporation is entitled on request and without charge to a copy of the agreement between the corporation and any of its other shareholders under which the corporation has agreed to purchase, or has purchased, any of its own shares.

Alternative acquisition by corporation of its own shares

37. (1) A corporation may, subject to its articles, purchase or otherwise acquire shares issued by it to

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

Limitation

(2) A corporation shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or

- (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amounts required for payment on a redemption or in a liquidation of all shares the holders of which have the right to be paid prior to the holders of the shares to be purchased or acquired.

Share purchase to satisfy dissenter or to comply with Court order

- (3) A corporation may purchase or otherwise acquire shares issued by it
 - (a) to satisfy the claim of a shareholder who dissents under section 193; or
 - (b) to comply with an order under section 243.

Redemption of shares

38. (1) A corporation may, subject to its articles, purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price of those shares stated in the articles or calculated according to a formula stated in the articles.

Limitation

- (2) A corporation shall not make any payment to purchase or redeem under subsection (1) any redeemable shares issued by it if there are reasonable grounds for believing that
 - (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
 - (b) the realizable value of the corporation's assets would after the payment be less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or in a liquidation, rateably with or prior to the holders of the shares to be purchased or redeemed.

Donated shares

- 39.** (1) A corporation may accept from any shareholder a share of the corporation
 - (a) that is surrendered to the corporation as a gift; or
 - (b) that has been held in escrow pursuant to an escrow agreement required by the Superintendent of Securities appointed under section 13 of the *Securities Act* and that is surrendered pursuant to that agreement.

No extinguishment of liability

(2) The corporation may not extinguish or reduce a liability in respect of an amount unpaid on a share surrendered under paragraph (1)(a) except in accordance with section 40. S.Nu. 2008,c.12,s.183(3).

Other reduction of stated capital

40. (1) Subject to subsection (3), a corporation may by special resolution reduce its stated capital for any purpose including, without limiting the generality of the foregoing, the purpose of

- (a) extinguishing or reducing a liability in respect of an amount unpaid on any share;
- (b) distributing to the holders of the issued shares of any class or series of shares an amount not exceeding the stated capital of the class or series; and
- (c) declaring its stated capital to be reduced by an amount that is not represented by realizable assets.

Contents of special resolution

(2) A special resolution under this section shall specify the capital account or accounts from which the reduction of stated capital effected by the special resolution is to be deducted.

Limitation

(3) A corporation shall not reduce its stated capital for any purpose, other than the purpose mentioned in paragraph (1)(c), if there are reasonable grounds for believing that

- (a) the corporation is, or would after the reduction be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would, after the reduction, be less than the aggregate of its liabilities.

Recovery

(4) A creditor of a corporation is entitled to apply to the Court for an order compelling a shareholder or other recipient

- (a) to pay to the corporation an amount equal to any liability of the shareholder that was extinguished or reduced contrary to this section; or
- (b) to pay or deliver to the corporation any money or property that was paid or distributed to the shareholder or other recipient as a consequence of a reduction of capital made contrary to this section.

Limitation

(5) An action to enforce a liability imposed by this section may not be commenced more than two years after the date of the action complained of.

Remedy preserved

(6) This section does not affect any liability that arises under section 119. S.Nu. 2013,c.20,s.4(3).

Adjustment of stated capital account

41. (1) On a purchase, redemption or other acquisition by a corporation under section 35, 37, 38, 47 or 193 or paragraph 243(3)(g) of shares or fractions of shares issued by it, the corporation shall deduct from the stated capital account maintained for the class or series of shares of which the shares purchased, redeemed or otherwise acquired form a part, an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares or fractions of shares of that class or series purchased, redeemed or otherwise acquired, divided by the number of issued shares of that class or series immediately before the purchase, redemption or other acquisition.

Deduction of payment to shareholder

(2) A corporation shall deduct the amount of a payment made by the corporation to a shareholder under paragraph 243(3)(h) from the stated capital account maintained for the class or series of shares in respect of which the payment was made.

Adjustment in accordance with special resolution

(3) A corporation shall adjust its stated capital account or accounts in accordance with a special resolution referred to in subsection 40(2).

Adjustments on conversion of shares

(4) On a conversion of issued shares of a corporation into shares of another class or series or a change under section 176, 194 or 243, the corporation shall

- (a) deduct from the stated capital account maintained for the class or series of shares converted or changed an amount equal to the result obtained by multiplying the stated capital of the shares of that class or series by the number of shares of that class or series converted or changed, divided by the number of issued shares of that class or series immediately before the conversion or change; and
- (b) add the result obtained under paragraph (a) and any additional consideration pursuant to the conversion or change to the stated capital account maintained or to be maintained for the class or series of shares into which the shares have been converted or changed.

Stated capital of inter-convertible shares

(5) For the purposes of subsection (4) and subject to its articles, where a corporation issues two classes of shares and there is attached to each class a right to convert a share of the one class into a share of the other class and a share of one class is converted into a share of the other class, the amount of stated capital attributable to a share in either class is the aggregate of the stated capital of both classes divided by the number of issued shares of both classes immediately before the conversion.

Cancellation or restoration of shares

(6) Shares or fractions of shares of any class or series of shares issued by a corporation and purchased, redeemed or otherwise acquired by the corporation shall be cancelled or, if the articles limit the number of authorized shares, may be restored to the status of authorized but unissued shares of the class.

Exception

(7) For the purposes of this section, a corporation holding shares in itself as permitted by section 33 is deemed not to have purchased, redeemed or otherwise acquired those shares.

Conversion or change of shares

(8) Shares issued by a corporation and converted into shares of another class or series or changed under section 176, 194 or 243 into shares of another class or series shall become issued shares of the class or series of shares into which the shares have been converted or changed.

Effect of change of shares on number of unissued shares

(9) Where issued shares of a class or series have become, pursuant to subsection (8), issued shares of another class or series, the number of unissued shares of the first-mentioned class or series shall, unless the articles of amendment or reorganization otherwise provide, be increased by the number of shares that, pursuant to subsection (8), became shares of another class or series.

Repayment of debt obligations

42. (1) Debt obligations issued, pledged, hypothecated or deposited by a corporation are not redeemed by reason only that the indebtedness evidenced by the debt obligations or in respect of which the debt obligations are issued, pledged, hypothecated or deposited is repaid.

Acquisition and reissue of debt obligations

(2) Debt obligations issued by a corporation and purchased, redeemed or otherwise acquired by it may be cancelled or, subject to any applicable trust indenture or other agreement, may be reissued, pledged or hypothecated to secure any obligation of the corporation then existing or thereafter incurred, and any such acquisition and reissue, pledge or hypothecation is not a cancellation of the debt obligations.

Enforceability of contract against corporation

43. (1) A contract with a corporation providing for the purchase of shares of the corporation is specifically enforceable against the corporation except to the extent that the corporation cannot perform the contract without being in breach of section 35, 37 or 38.

Burden of proof

(2) In an action brought on a contract referred to in subsection (1), the corporation has the burden of proving that performance of the contract is prevented by section 35, 37 or 38.

Status of contracting party

(3) Until the corporation has fully performed a contract referred to in subsection (1), the other party to that contract retains the status of a claimant and is entitled to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class of shareholders whose rights were in priority to the rights given to the class of shares that he contracted to sell to the corporation, but in priority to the rights of the other shareholders.

Commission for sale of shares

44. The directors may authorize the corporation to pay a reasonable commission to any person in consideration of that person

- (a) purchasing or agreeing to purchase shares of the corporation from the corporation or from any other person; or
- (b) procuring or agreeing to procure purchasers for shares of the corporation.

Dividends

45. (1) A corporation shall not declare or pay a dividend if there are reasonable grounds for believing that

- (a) the corporation is, or would after the payment be, unable to pay its liabilities as they become due; or
- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities and stated capital of all classes.

Form of dividend

(2) A corporation may pay a dividend by issuing fully paid shares of the corporation and, subject to subsection (1), a corporation may pay a dividend in money or property.

Adjustment of stated capital account

(3) If shares of a corporation are issued in payment of a dividend, the declared amount of the dividend stated as an amount of money shall be added to the stated capital account maintained for the shares of the class or series issued in payment of the dividend.

Prohibited financial assistance by corporation

46. (1) Subject to subsection (2), a corporation or any corporation with which it is affiliated shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise

- (a) to a shareholder, director or officer of the corporation or of an affiliated corporation or to an associate of any such person for any purpose, or
- (b) to any person for the purpose of or in connection with a purchase of a share issued or to be issued by the corporation or affiliated corporation,

where there are reasonable grounds for believing that

- (c) the corporation is, or after giving the financial assistance would be, unable to pay its liabilities as they become due; or
- (d) the realizable value of the corporation's assets, excluding the amount of any financial assistance in the form of a loan and in the form of assets pledged or encumbered to secure a guarantee would, after giving the financial assistance, be less than the aggregate of the corporation's liabilities and stated capital of all classes.

Permitted loans and guarantees

(2) A corporation may give financial assistance by means of a loan, guarantee or otherwise

- (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the corporation;
- (b) to any person on account of expenditures incurred or to be incurred on behalf of the corporation;
- (c) to a holding body corporate if the corporation is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the corporation; and
- (e) to employees of the corporation or any of its affiliates
 - (i) to enable or assist them to purchase or erect living accommodation for their own occupation, or
 - (ii) in accordance with a plan for the purchase of shares of the corporation or any of its affiliates to be held by a trustee.

Enforceability

(3) A contract made by a corporation in contravention of this section may be enforced by the corporation or by a lender for value in good faith without notice of the contravention.

Information to be included in financial statement

(4) Unless disclosure is otherwise made by a corporation, a financial statement referred to in paragraph 157(1)(a) shall contain the following information with respect to each case in which financial assistance is given by the corporation by way of loan, guarantee or otherwise, to any of the persons referred to in paragraph (1)(a) or (b), if the financial assistance was given during the financial year or period to which the statement relates or remains outstanding at the end of that financial year or period:

- (a) the identity of the person to whom the financial assistance was given;
- (b) the nature of the financial assistance given;

- (c) the terms on which the financial assistance was given; and
- (d) the amount of the financial assistance initially given and the amount, if any, outstanding.

Wholly-owned subsidiary

(5) A corporation is a wholly-owned subsidiary of another body corporate for the purposes of paragraph (2)(c) if

- (a) all of the issued shares of the corporation are held by
 - (i) that other body corporate,
 - (ii) that other body corporate and one or more bodies corporate all of the issued shares of which are held by that other body corporate, or
 - (iii) two or more bodies corporate all of the issued shares of which are held by that other body corporate; or
- (b) it is a wholly-owned subsidiary of a body corporate that is a wholly-owned subsidiary of that other body corporate.

Shareholder immunity

47. (1) The shareholders of a corporation are not, as shareholders, liable for any liability, act or default of the corporation except under subsection 40(4), 119(6), 148(7) or 228(4).

Lien on shares

(2) The articles may provide that the corporation has a lien on a share registered in the name of a shareholder or his or her legal representative for a debt of that shareholder to the corporation, including an amount unpaid in respect of a share issued by a body corporate on the day it was continued under this Act.

Enforcement of lien

(3) A corporation may enforce a lien referred to in subsection (2) in accordance with its by-laws. S.Nu. 2010,c.15,s.106(3).

PART VI

SECURITY CERTIFICATES, REGISTERS AND TRANSFERS

Transfer of securities

48. Except as otherwise provided in this Act, the transfer or transmission of a security is governed by the *Securities Transfer Act*. S.Nu. 2010,c.15,s.106(4).

Security certificates

- 49.** (1) A security holder is entitled at his or her option to
- (a) a security certificate that complies with this Act; or
 - (b) a non-transferable written acknowledgment of his or her right to obtain a security certificate from a corporation in respect of the securities of that corporation held by him or her.

Fee for certificate

(2) A corporation may charge a fee in an amount not exceeding the maximum amount prescribed for a security certificate issued in respect of a transfer.

Joint holders

(3) A corporation is not required to issue more than one security certificate in respect of securities held jointly by several persons, and delivery of a certificate to one of several joint holders is sufficient delivery to all.

Signatures

(4) A security certificate shall be signed by at least one director or officer of the corporation or by or on behalf of a registrar, transfer agent or branch transfer agent of the corporation or by a trustee who certifies it in accordance with a trust indenture.

Mechanically reproduced signatures

(5) Any signatures required on a security certificate may be printed or otherwise mechanically reproduced on it.

Continuation of signature

(6) If a security certificate contains a printed or mechanically reproduced signature of a person, the corporation may issue the security certificate, despite that the person has ceased to be a director or an officer of the corporation, and the security certificate is as valid as if he or she were a director or an officer at the date of its issue.

Contents of share certificate

(7) The following shall be stated on the face of each share certificate issued by a corporation:

- (a) the name of the corporation;
- (b) the words "Incorporated under the *Business Corporations Act* of Nunavut";
- (c) the name of the person to whom it was issued;
- (d) the number and class of shares and the designation of any series that the certificate represents.

(8) Repealed, S.Nu. 2010,c.15,s.106(5).

Where no restriction

(9) A distributing corporation shall not have a restriction on the issue, transfer or ownership of its shares except by way of a constraint permitted under subsection 26(1).

Transitional

(10) Where a body corporate continued under this Act has outstanding security certificates and the words "private company" appear on the certificates, those words are deemed to be notice of a restriction, lien, agreement or endorsement for the purposes of subsection (8).

Notation of constraint

(11) Where the articles of a corporation constrain the issue, transfer or ownership of shares of any class or series as permitted under subsection 26(1), the corporation shall note the constraint or a reference to it in a conspicuous place on each share certificate evidencing a share subject to the constraint that is issued after the day on which the share became subject to the constraint.

Failure to note constraint

(12) The failure to note a constraint or a reference to it pursuant to subsection (11) does not invalidate any share certificate or render a constraint ineffective against an owner, a holder or a transferee of the share certificate.

Particulars of certificates

(13) A share certificate issued by a corporation that is authorized to issue shares of more than one class or series shall contain a legible statement indicating

- (a) the rights, privileges, restrictions and conditions attached to the shares of each class and series that exists when the share certificate is issued; or
- (b) that the class or series of shares that it represents has rights, privileges, restrictions or conditions attached to it and that the corporation will furnish to a shareholder, on demand and without charge, a full copy of the text of
 - (i) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as they have been fixed by the directors, and
 - (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

Duty

(14) Where a share certificate issued by a corporation contains the statement mentioned in paragraph (13)(b), the corporation shall furnish to a shareholder on demand and without charge a full copy of the text of

- (a) the rights, privileges, restrictions and conditions attached to each class authorized to be issued and to each series in so far as they have been fixed by the directors; and
- (b) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

Fractional share

(15) A corporation may issue a certificate for a fractional share or may issue in its place scrip certificates in a form that entitles the holder to receive a certificate for a full share by exchanging scrip certificates aggregating a full share.

Scrip certificates

(16) The directors may attach conditions to any scrip certificates issued by a corporation, including conditions that

- (a) the scrip certificates become void if they are not exchanged for a share certificate representing a full share before a specified date; and
- (b) any shares for which those scrip certificates are exchangeable may, despite any pre-emptive right, be issued by the corporation to any person and the proceeds of those shares may be distributed rateably to the holders of the scrip certificates.

Holder of fractional share

(17) A holder of a fractional share issued by a corporation is not entitled to exercise voting rights or to receive a dividend in respect of the fractional share, unless

- (a) the fractional share results from a consolidation of shares; or
- (b) the articles of the corporation otherwise provide.

Holder of scrip certificate

(18) A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend in respect of the scrip certificate. S.Nu. 2010,c.15,s.106(5); S.Nu. 2013,c.20,s.4(3).

Securities records

50. (1) A corporation shall maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series of securities

- (a) the names, alphabetically arranged, and the latest known address of each person who is or has been a security holder;
- (b) the number of securities held by each security holder; and
- (c) the date and particulars of the issue and transfer of each security.

Central and branch registers

(2) A corporation may appoint

- (a) an agent to maintain a central securities register; and
- (b) an agent to maintain a branch securities register.

Effect of registration

(3) Registration of the issue or transfer of a security in the central securities register or in a branch securities register is complete and valid registration for all purposes.

Branch register

(4) A branch securities register shall only contain particulars of securities issued or transferred at that branch.

Central register

(5) Particulars of each issue or transfer of a security registered in a branch securities register shall also be kept in the corresponding central securities register.

Destruction of certificates

(6) Neither a corporation, nor its agent nor a trustee defined in subsection 82(1) is required to produce

- (a) a cancelled security certificate in registered form, an instrument referred to in subsection 31(1) that is cancelled or a like cancelled instrument in registered form six years after the date of its cancellation;
- (b) a cancelled security certificate in bearer form or an instrument referred to in subsection 31(1) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation; or
- (c) an instrument referred to in subsection 31(1) or a like instrument, irrespective of its form, after the date of its expiry.

Dealings with registered holders

51. (1) A corporation or a trustee as defined in subsection 82(1) may, subject to sections 135, 136 and 139, treat the registered owner of a security as the person exclusively entitled to vote, to receive notices, to receive any interest, dividend or other payments in respect of the security, and otherwise to exercise all the rights and powers of an owner of the security.

Constructive registered holder

(2) Despite subsection (1), but subject to a unanimous shareholder agreement, a corporation whose articles restrict the right to transfer its securities shall, and any other corporation may, treat a person as a registered security holder entitled to exercise all the rights of the security holder he or she represents if that person furnishes evidence as described in subsection 87(3) of the *Securities Transfer Act* to the corporation that he or she is

- (a) the executor, administrator, heir or legal representative of the heirs of the estate of a deceased security holder;
- (b) a guardian, committee, trustee, curator or tutor representing a registered security holder who is an infant, an incompetent person or a missing person; or
- (c) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

Permissible registered holder

(3) If a person on whom the ownership of a security devolves by operation of law, other than a person described in subsection (2), furnishes proof of his or her authority to exercise rights or privileges in respect of a security of the corporation that is not registered in his or her name, the corporation shall treat that person as entitled to exercise those rights or privileges.

Immunity of corporation

(4) A corporation is not required to inquire into the existence of, or see to the performance or observance of, any duty owed to a third person by a registered holder of any of its securities or by anyone whom it treats, as permitted or required by this section, as the owner or registered holder of the securities.

Infants

(5) If an infant exercises any rights of ownership in the securities of a corporation, no subsequent repudiation or avoidance is effective against the corporation.

Joint holders

(6) A corporation shall treat as owner of a security the survivors of persons to whom the security was issued as joint holders if

- (a) it receives proof satisfactory to it of the death of any joint holder of the security; and
- (b) the security provides that the persons to whom the security was issued are joint holders with right of survivorship.

Transmission of securities

(7) A person referred to in paragraph (2)(a) is entitled to become a registered holder or to designate a registered holder, if he or she deposits with the corporation or its transfer agent

- (a) the original grant of probate or of letters of administration, or a copy of the grant certified to be a true copy by
 - (i) the court that granted the probate or letters of administration,
 - (ii) a trust company incorporated under the laws of Canada, a province or the Yukon Territory, or
 - (iii) a lawyer or notary acting on behalf of the person referred to in paragraph (2)(a), or
- (b) in the case of transmission by notarial will in the Province of Quebec, a copy of the will authenticated pursuant to the laws of that province,

together with

- (c) an affidavit, statutory declaration or declaration of transmission made by a person referred to in paragraph (2)(a), stating the particulars of the transmission, and
- (d) the security certificate that was owned by the deceased holder
 - (i) in the case of a transfer to a person referred to in paragraph (2)(a), with or without the endorsement of that person, and
 - (ii) in the case of a transfer to any other person, endorsed in accordance with section 29 of the *Securities Transfer Act*, and accompanied by any assurance the corporation may require under section 87 of the *Securities Transfer Act*.

Excepted transmissions

(8) Despite subsection (7), if the laws of the jurisdiction governing the transmission of a security of a deceased holder do not require a grant of probate or of letters of administration in respect of the transmission, a legal representative of the deceased holder is entitled, subject to any applicable law relating to the collection of taxes, to become a registered holder or to designate a registered holder, if he or she deposits with the corporation or its transfer agent

- (a) the security certificate that was owned by the deceased holder; and
- (b) reasonable proof of the governing laws, of the deceased holder's interest in the security and of the right of the legal representative or the person he or she designates to become the registered holder.

Right of corporation

(9) Deposit of the documents required by subsection (7) or (8) empowers a corporation or its transfer agent to record in a securities register the transmission of a security from the deceased holder to a person referred to in paragraph (2)(a) or to any person that the person referred to in paragraph (2)(a) may designate and, thereafter, to treat the person who thus becomes a registered holder as the owner of the security. S.Nu. 2010,c.15,s.106(6); S.Nu. 2013,c.20,s.4(3).

Overissue

52. (1) When there has been an overissue within the meaning of the *Securities Transfer Act* and the corporation subsequently amends its articles or a trust indenture to which it is a party to increase its authorized securities to a number equal to or in excess of the number of securities previously authorized plus the amount of the securities overissued, the securities so overissued are deemed to be valid from the date of their issue.

Exception

(2) Subsection (1) does not apply if the issuer has purchased and delivered a security in accordance with subsection 67(2) or (3) of the *Securities Transfer Act*.

Non-application of provisions

(3) A purchase or payment in accordance with subsection 67(2) or (3) of the *Securities Transfer Act* is not a purchase or payment to which section 35, 37, 38 or 41 of this Act applies.

(4) **Repealed, S.Nu. 2010,c.15,s.106(7).** S.Nu. 2010,c.15,s.106(7).

53. Repealed, S.Nu. 2010,c.15,s.106(8).

54. Repealed, S.Nu. 2010,c.15,s.106(8).

55. Repealed, S.Nu. 2010,c.15,s.106(8).

56. Repealed, S.Nu. 2010,c.15,s.106(8).

57. Repealed, S.Nu. 2010,c.15,s.106(8).
58. Repealed, S.Nu. 2010,c.15,s.106(8).
59. Repealed, S.Nu. 2010,c.15,s.106(8).
60. Repealed, S.Nu. 2010,c.15,s.106(8).
61. Repealed, S.Nu. 2010,c.15,s.106(8).
62. Repealed, S.Nu. 2010,c.15,s.106(8).
63. Repealed, S.Nu. 2010,c.15,s.106(8).
64. Repealed, S.Nu. 2010,c.15,s.106(8).
65. Repealed, S.Nu. 2010,c.15,s.106(8).
66. Repealed, S.Nu. 2010,c.15,s.106(8).
67. Repealed, S.Nu. 2010,c.15,s.106(8).
68. Repealed, S.Nu. 2010,c.15,s.106(8).
69. Repealed, S.Nu. 2010,c.15,s.106(8).
70. Repealed, S.Nu. 2010,c.15,s.106(8).
71. Repealed, S.Nu. 2010,c.15,s.106(8).
72. Repealed, S.Nu. 2010,c.15,s.106(8).
73. Repealed, S.Nu. 2010,c.15,s.106(8).
74. Repealed, S.Nu. 2010,c.15,s.106(8).
75. Repealed, S.Nu. 2010,c.15,s.106(8).
76. Repealed, S.Nu. 2010,c.15,s.106(8).
77. Repealed, S.Nu. 2010,c.15,s.106(8).
78. Repealed, S.Nu. 2010,c.15,s.106(8).
79. Repealed, S.Nu. 2010,c.15,s.106(8).

80. Repealed, S.Nu. 2010,c.15,s.106(8).

81. Repealed, S.Nu. 2010,c.15,s.106(8).

PART VII

TRUST INDENTURES

Definitions

82. (1) In this Part,

"event of default" means an event specified in a trust indenture on the occurrence of which

- (a) a security interest constituted by the trust indenture becomes enforceable, or
- (b) the principal, interest and other money payable under the trust indenture become or may be declared to be payable before maturity,

but the event is not an event of default until all conditions prescribed by the trust indenture in connection with that event for the giving of notice, the lapse of time or other similar requirements have been satisfied; (*cas de défaut*)

"trustee" means

- (a) any person appointed as trustee under the terms of a trust indenture to which a corporation is a party, and
- (b) a successor trustee; (*fiduciaire*)

"trust indenture" means any deed, indenture or other instrument, and any supplement or amendment to such an instrument, made by a corporation after its incorporation or continuance under this Act, under which the corporation issues debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued under the instrument. (*acte de fiducie*)

Application

(2) This Part applies to a trust indenture only if the debt obligations issued or to be issued under the trust indenture are part of a distribution to the public.

Conflict of interest

83. (1) No person shall be appointed as trustee if there is a material conflict of interest between his or her role as trustee and his or her role in any other capacity.

Eliminating conflict of interest

(2) A trustee shall, within 90 days after he or she becomes aware that a material conflict of interest exists,

- (a) eliminate the conflict of interest; or
- (b) resign from office.

Validity

(3) A trust indenture, any debt obligations issued under it and a security interest effected by it are valid despite a material conflict of interest of the trustee.

Removal of trustee

(4) If a trustee contravenes subsection (1) or (2), any interested person may apply to the Court for an order that the trustee be replaced, and the Court may make an order on any terms the Court considers fit. S.Nu. 2013,c.20,s.4(3).

Qualification of trustee

84. A trustee, or at least one of the trustees if more than one is appointed, shall be a body corporate incorporated under the laws of Canada, a province or a territory and authorized to carry on the business of a trust company in Nunavut. S.Nu. 2013,c.20,s.4(3).

List of security holders

85. (1) A holder of debt obligations issued under a trust indenture may, on payment to the trustee of a reasonable fee, require the trustee to furnish within 15 days after delivering to the trustee the statutory declaration referred to in subsection (3), a list setting out

- (a) the names and addresses of the registered holders of the outstanding debt obligations,
- (b) the principal amount of outstanding debt obligations owned by each of those holders, and
- (c) the aggregate principal amount of debt obligations outstanding,

as shown on the records maintained by the trustee on the day that the statutory declaration is delivered to that trustee.

Duty of issuer

(2) On the demand of a trustee, the issuer of debt obligations shall furnish the trustee with the information required to enable the trustee to comply with subsection (1).

Contents of statutory declaration

(3) The statutory declaration required under subsection (1) shall state

- (a) the name and address of the person requiring the trustee to furnish the list and, if the person is a body corporate, the address for service of the body corporate; and
- (b) that the list will only be used for the purposes set out in paragraphs 5(a) to (c).

Corporate applicant

(4) Where the person requiring the trustee to furnish a list under subsection (1) is a body corporate, the statutory declaration required under that subsection shall be made by a director or officer of the body corporate.

Use of list

(5) A list obtained under this section shall not be used by any person except in connection with

- (a) an effort to influence the voting of the holders of debt obligations;
- (b) an offer to acquire debt obligations; or
- (c) another matter relating to the debt obligations or the affairs of the issuer or guarantor of the debt obligations.

Offence

(6) A person who contravenes subsection (5) without reasonable cause is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Evidence of compliance

86. (1) Before doing any act under paragraph (a), (b) or (c), an issuer or a guarantor of debt obligations issued or to be issued under a trust indenture shall furnish the trustee with evidence of compliance with the conditions in the trust indenture relating to

- (a) the issue, certification and delivery of debt obligations under the trust indenture;
- (b) the release or release and substitution of property subject to a security interest constituted by the trust indenture; or
- (c) the satisfaction and discharge of the trust indenture.

Duty of issuer or guarantor

(2) On the demand of a trustee, the issuer or guarantor of debt obligations issued or to be issued under a trust indenture shall furnish the trustee with evidence of compliance with the trust indenture by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

Contents of declaration

87. Evidence of compliance as required by section 86 shall consist of

- (a) a statutory declaration or certificate made by a director or an officer of the issuer or guarantor stating that the conditions referred to in that section have been complied with; and
- (b) where the trust indenture requires compliance with conditions that are subject to review
 - (i) by legal counsel, an opinion of legal counsel that those conditions have been complied with, and
 - (ii) by an auditor or accountant, an opinion of the auditor of the issuer or guarantor, or any other accountant the trustee may select, that those conditions have been complied with.

Further evidence of compliance

88. A person making a statutory declaration or certificate under paragraph 87(a) or giving an opinion under 87(b) shall include in the statutory declaration, certificate or opinion

- (a) a declaration that he or she has read and understands the conditions of the trust indenture described in section 86;
- (b) a description of the nature and scope of the examination or investigation on which he or she based the statutory declaration, certificate or opinion; and
- (c) a declaration that he or she has made any examination or investigation that he or she considers necessary to enable him or her to make the statements or give the opinions contained or expressed in the statutory declaration, certificate or opinion.

Trustee may require evidence of compliance

89. (1) On the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with evidence in any form the trustee may require as to compliance with any condition of the trust indenture relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

Certificate of compliance

(2) At least once in each 12 month period beginning on the date of the trust indenture and at any other time on the demand of a trustee, the issuer or guarantor of debt obligations issued under a trust indenture shall furnish the trustee with a certificate that the issuer or guarantor has complied with all requirements contained in the trust indenture that, if not complied with, would, with the giving of notice, lapse of time or otherwise, constitute an event of default, or, if there has been failure to so comply, giving particulars of the failure.

Notice of default

90. The trustee shall, within 30 days after the trustee becomes aware of its occurrence, give to the holders of debt obligations issued under a trust indenture notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee reasonably believes that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs the issuer or guarantor in writing.

Trustee's duty of care

91. A trustee in exercising the powers of trustee and discharging the duties of trustee shall

- (a) act honestly and in good faith with a view to the best interests of the holders of the debt obligations issued under the trust indenture; and
- (b) exercise the care, diligence and skill of a reasonably prudent trustee.

Trustee's reliance on statements

92. Despite section 91, a trustee is not liable if the trustee relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture. S.Nu. 2013,c.20,s.4(3).

No exculpation of trustee by agreement

93. No term of a trust indenture or of any agreement between a trustee and the holders of debt obligations issued under the trust indenture, or between the trustee and the issuer or guarantor, shall operate so as to relieve a trustee from the duties imposed on a trustee by section 91.

93.1. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.2. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.3. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.4. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.5. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.6. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.7. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.8. Repealed, S.N.W.T. 1996,c.19,s.93.9.

93.9. Repealed, S.N.W.T. 1996,c.19,s.93.9.

PART VIII

RECEIVERS AND RECEIVER-MANAGERS

Functions of receiver

94. A receiver of any property of a corporation may, subject to the rights of secured creditors, receive the income from the property, pay the liabilities connected with the property and realize the security interest of those on behalf of whom the receiver is appointed, but, except to the extent permitted by the Court, the receiver may not carry on the business of the corporation.

Functions of receiver-manager

95. A receiver of a corporation may, if the receiver is also appointed receiver-manager of the corporation, carry on any business of the corporation to protect the security interest of those on behalf of whom the receiver is appointed.

Directors' powers cease

96. If a receiver-manager is appointed by the Court or under an instrument, the powers of the directors of the corporation that the receiver-manager is authorized to exercise may not be exercised by the directors until the receiver-manager is discharged.

Duty to act

97. A receiver or receiver-manager appointed by the Court shall act in accordance with the directions of the Court.

Duty under instrument

98. A receiver or receiver-manager appointed under an instrument shall act in accordance with that instrument and any order of the Court made under section 100.

Duty of care

99. A receiver or receiver-manager of a corporation appointed under an instrument shall

- (a) act in good faith; and
- (b) deal with any property of the corporation in the possession or control of the receiver or receiver-manager in a commercially reasonable manner.

Powers of the Court

100. On an application by a receiver or receiver-manager, whether appointed by the Court or under an instrument or on an application by any interested person, the Court may make any order it considers fit including, without limiting the generality of the foregoing,

- (a) an order appointing, replacing or discharging a receiver or receiver-manager and approving the accounts of the receiver or receiver-manager;
- (b) an order determining the notice to be given to any person or dispensing with notice to any person;
- (c) an order fixing the remuneration of the receiver or receiver-manager;
- (d) an order
 - (i) requiring the receiver or receiver-manager, or a person by or on behalf of whom the receiver or receiver-manager is appointed, to make good any default in connection with the receiver's or receiver-manager's custody or management of the property and business of the corporation,
 - (ii) relieving any of those persons from any default on any terms the Court considers fit, or
 - (iii) confirming any act of the receiver or receiver-manager;
- (e) an order that the receiver or receiver-manager make available to the applicant any information from the accounts of the administration of the corporation that the Court specifies; and

- (f) an order giving directions on any matter relating to the duties of the receiver or receiver-manager.

Duties of receiver and receiver-manager

101. (1) A receiver or receiver-manager shall

- (a) immediately notify the Registrar when the receiver or receiver-manager is appointed or discharged;
- (b) take into custody and control the property of the corporation in accordance with the Court order or instrument under which the receiver or receiver-manager is appointed;
- (c) open and maintain in the name of the receiver or receiver-manager as receiver or receiver-manager of the corporation accounts at a bank, credit union or other institution licensed to accept deposits in Nunavut for the deposit of the money of the corporation coming under the control of the receiver or receiver-manager in that capacity;
- (d) keep detailed accounts, in accordance with generally accepted accounting practices, of all transactions carried out as receiver or receiver-manager;
- (e) keep accounts of the administration of the corporation that shall be available during normal business hours for inspection by the directors of the corporation;
- (f) prepare at least once in every six month period after the date of appointment financial statements of the receiver's or receiver-manager's administration as far as is practicable in the form required by section 157;
- (g) indicate on every business letter, invoice contract or similar document used or executed in connection with the receivership that the receiver or receiver-manager is acting as receiver or receiver-manager as the case may be; and
- (h) on completion of the duties of receiver or receiver-manager,
 - (i) render, in the form adopted for financial statements under paragraph (f), a final account of the administration of the corporation by the receiver or receiver-manager,
 - (ii) send a copy of the final report to the Registrar who shall file it, and
 - (iii) send a copy of the final report to each director of the corporation.

Inspection of records

(2) A director of the corporation may, by a demand in writing delivered to the receiver or receiver-manager, require the receiver or receiver-manager to make available for inspection the records referred to in paragraph (1)(d) during regular business hours at the place of business of the receiver or receiver-manager in Nunavut or to provide a copy of the financial statements referred to in paragraph (1)(f).

Inspection and provision of copies

(3) A Sheriff or a person with an interest in the collateral in the custody or control of the receiver or receiver-manager, or the authorized representative of the Sheriff or person, may, by a demand in writing delivered to the receiver or receiver-manager require the receiver or receiver-manager to provide a copy of the financial statements referred to in paragraph (1)(f) or the final account referred to in paragraph (1)(h).

Time for compliance

(4) The receiver or receiver-manager shall comply with a demand referred to in subsection (2) or (3) not later than 10 days after the day the demand is received.

Fee may be levied

(5) The receiver or receiver-manager may require the payment in advance of a fee in the amount prescribed for each demand by a person with an interest in the collateral in the custody or control of the receiver or receiver-manager. S.Nu. 2013,c.20,s.4(3).

PART IX

DIRECTORS AND OFFICERS

Directors to manage

102. (1) Subject to any unanimous shareholder agreement, the directors shall manage the business and affairs of a corporation.

Number of directors

(2) A corporation shall have one or more directors.

Directors of distributing corporation

(3) Despite subsection (2), a distributing corporation shall have at least three directors, at least two of whom are not officers or employees of the corporation or its affiliates.

Deemed directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the corporation shall be deemed to be a director for the purposes of this Act.

Exceptions

(5) Subsection (4) does not apply to,

- (a) an officer who manages the business of the corporation under the direction or control of a shareholder or other person;
- (b) a lawyer, accountant or other professional who participates in the management of the corporation solely for the purposes of providing professional services; or

- (c) a trustee in bankruptcy, receiver, receiver-manager or secured creditor who participates in the management of the corporation or exercises control over its property solely for the purposes of enforcement of a security agreement or administration of a bankrupt's estate, in the case of a trustee in bankruptcy.

Where directors' powers restricted

(6) Where the articles restrict in whole or in part the powers of the directors to manage the business and affairs of the corporation, the shareholders have all the rights, powers and duties of the directors to the extent the articles restrict the powers of the directors, and the directors are, to the extent of those restrictions, relieved of their duties and liabilities, including any liabilities under section 119. S.Nu. 2013,c.20,s.4(3).

By-laws

103. (1) Unless the articles, by-laws or a unanimous shareholder agreement otherwise provide, the directors may, by resolution, make, amend or repeal any by-laws that regulate the business or affairs of the corporation.

Shareholder approval

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

Effective date of by-law

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

Failure to confirm by-law

(4) If a by-law, an amendment or a repeal of a by-law is rejected by the shareholders or if the directors do not submit a by-law, an amendment or a repeal of a by-law to the shareholders as required by subsection (2), the by-law, amendment or repeal ceases to be effective and no subsequent resolution of the directors to make, amend or repeal a by-law having substantially the same purpose or effect is effective until it is confirmed or confirmed as amended by the shareholders.

Shareholder proposal

(5) A shareholder entitled to vote at an annual meeting of shareholders may, in accordance with section 138, make a proposal to make, amend or repeal a by-law.

General borrowing powers

104. (1) Unless otherwise provided in the articles or by-laws or in a unanimous shareholder agreement relating to a corporation, the directors may, without authorization of the shareholders,

- (a) borrow money on the credit of the corporation;
- (b) issue, reissue, sell or pledge debt obligations of the corporation;
- (c) subject to section 46, give a guarantee on behalf of the corporation to secure performance of an obligation of any person; and
- (d) mortgage, hypothecate, pledge or otherwise create a security interest in all or any property of the corporation, owned or subsequently acquired, to secure any obligation of the corporation.

Delegation of powers

(2) Despite subsection 116(2) and paragraph 122(a), unless otherwise provided in the articles or by-laws or in a unanimous shareholder agreement relating to a corporation, the directors may, by resolution, delegate the powers referred to in subsection (1) to a director, a committee of directors or an officer. S.N.W.T. 1998,c.24,s.2(4); S.Nu. 2013,c.20,s.4(3).

Organizational meeting

105. (1) After issue of the certificate of incorporation, a meeting of the directors shall be held at which the directors may

- (a) make by-laws;
- (b) adopt forms of security certificates and corporate records;
- (c) authorize the issue of securities;
- (d) appoint officers;
- (e) appoint an auditor to hold office until the first annual meeting of shareholders;
- (f) make banking arrangements; and
- (g) transact any other business.

Exception

(2) Subsection (1) does not apply to a body corporate to which a certificate of amalgamation has been issued under subsection 187(4).

Calling meeting

(3) An incorporator or a director may call the meeting of directors referred to in subsection (1) by giving not less than five days' notice of the meeting to each director, stating the time and the place of the meeting.

Qualifications of directors

106. (1) The following persons are disqualified from being a director of a corporation:

- (a) a person who is not an individual;
- (b) an individual less than 19 years of age;
- (c) an individual

- (i) in respect of whom a medical practitioner has filed a certificate of involuntary admission under the *Mental Health Act*,
- (ii) who is the subject of a trusteeship order under the *Guardianship and Trusteeship Act*,
- (iii) who has been found to be a person of unsound mind by a court elsewhere than in Nunavut;
- (d) an individual who has the status of bankrupt.

Further qualifications

(2) Unless the articles otherwise provide, a director of a corporation is not required to hold shares issued by the corporation.

When not a director

- (3) An individual who is elected or appointed a director is not a director unless
- (a) the individual was present at the meeting when he or she was elected or appointed and did not refuse to act as a director; or
 - (b) the individual was not present at the meeting when he or she was elected or appointed, but he or she
 - (i) consented to act as a director in writing before his or her election or appointment or within 10 days after the election or appointment, or
 - (ii) has acted as a director pursuant to the election or appointment.
- S.Nu. 2013,c.20,s.4(3).

Notice of directors

107. (1) At the time of sending articles of incorporation, the incorporators shall send to the Registrar a notice of directors in prescribed form and the Registrar shall file the notice.

Term of office

(2) Each director named in the notice referred to in subsection (1) holds office from the issue of the certificate of incorporation until the first meeting of shareholders.

Election of directors

(3) Subject to paragraph (8)(a) and section 108, shareholders of a corporation shall, by ordinary resolution at the first meeting of shareholders and at each succeeding annual meeting at which an election of directors is required, elect directors to hold office for a term expiring not later than the close of the next annual meeting of shareholders following the election.

Staggered terms

(4) It is not necessary that all directors elected at a meeting of shareholders hold office for the same term.

No stated terms

(5) A director not elected for an expressly stated term ceases to hold office at the close of the first annual meeting of shareholders following his or her election.

Incumbent directors

(6) Despite subsections (2), (3) and (5), if directors are not elected at a meeting of shareholders, the incumbent directors continue in office until their successors are elected.

Vacancy among candidates

(7) If a meeting of shareholders fails to elect the number or the minimum number of directors required by the articles by reason of the disqualification, incapacity or death of any candidate, the directors elected at that meeting may exercise all the powers of the directors if the number of directors so elected constitutes a quorum.

Appointment or election of directors where unanimous shareholder agreement exists

(8) The articles or a unanimous shareholder agreement may provide for the election or appointment of a director or directors

- (a) for terms expiring not later than the close of the third annual meeting of shareholders following the election; and
 - (b) by creditors or employees of the corporation or by a class or classes of the creditors or employees.
- S.Nu. 2013,c.20,s.4(3).

Cumulative voting

108. When the articles provide for cumulative voting,

- (a) the articles shall require a fixed number and not a minimum and maximum number of directors;
- (b) each shareholder entitled to vote at an election of directors has the right to cast a number of votes equal to the number of votes attached to the shares held by him or her multiplied by the number of directors to be elected, and he or she may cast all those votes in favour of one candidate or distribute them among the candidates in any manner;
- (c) a separate vote of shareholders shall be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting two or more candidates to be elected by a single resolution;
- (d) if a shareholder votes for more than one candidate without specifying the distribution of his or her votes among the candidates, he or she is deemed to have distributed the votes equally among the candidates for whom he or she voted;
- (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes shall be eliminated until the number of candidates remaining equals the number of positions to be filled;

- (f) each director ceases to hold office at the close of the first annual meeting of shareholders following his or her election;
- (g) a director may not be removed from office if the votes cast against his or her removal would be sufficient to elect him or her and those votes could be voted cumulatively at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected; and
- (h) the number of directors required by the articles may not be decreased if the votes cast against the motion to decrease would be sufficient to elect a director, and those votes could be voted cumulatively, at an election at which the same total number of votes were cast and the number of directors required by the articles were then being elected.

Ceasing to hold office

- 109.** (1) A director of a corporation ceases to hold office when the director
- (a) dies or resigns;
 - (b) is removed in accordance with section 110; or
 - (c) becomes disqualified under paragraph 106(1)(c) or (d).

Effective date of resignation

(2) A resignation of a director becomes effective at the time a written resignation is sent to the corporation, or at the time specified in the resignation, whichever is later.

Removal of directors

110. (1) Subject to paragraph 108(g) or to a unanimous shareholder agreement, the shareholders of a corporation may by ordinary resolution at a special meeting remove any director or directors from office.

Exception

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

Vacancy

(3) Subject to paragraphs 108(b) to (e), a vacancy created by the removal of a director may be filled at the meeting of the shareholders at which the director is removed or, if not so filled, may be filled under section 112.

Directors appointed under subsection 107(8)

(4) A director elected or appointed under subsection 107(8) may be removed only by those persons having the power to elect or appoint that director.

Attendance at meetings

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

Statement of director

(2) A director who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of shareholders called for the purpose of removing him or her from office, or
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed or elected to fill the office of director, whether because of his or her resignation or removal or because his or her term of office has expired or is about to expire,

is entitled to submit to the corporation a written statement giving the reasons for his or her resignation or the reasons why he or she opposes any proposed action or resolution.

Circulating statement

(3) A corporation shall send a copy of the statement referred to in subsection (2) without delay to every shareholder entitled to receive notice of any meeting referred to in subsection (1) unless the statement is included in or attached to a management proxy circular required by section 152.

Immunity

(4) No corporation or person acting on its behalf incurs any liability by reason only of circulating a director's statement in compliance with subsection (3).

Filling vacancies

112. (1) A quorum of directors may fill a vacancy among the directors, except a vacancy resulting from an increase in the number of directors required by the articles or from a failure to elect the number of directors required by the articles.

Calling meeting of shareholders

(2) If there is not a quorum of directors, or if there has been a failure to elect the number of directors required by the articles, the directors then in office shall without delay call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors then in office, the meeting may be called by any shareholder.

Class director

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

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

- (b) if there are no such remaining directors, any holder of shares of that class or series or any member of that other class of persons, as the case may be, may call a meeting of those shareholders or those persons for the purpose of filling the vacancy.

Shareholders filling vacancy

(4) The articles or a unanimous shareholder agreement may provide that a vacancy among the directors shall only be filled by

- (a) a vote of the shareholders;
- (b) a vote of the holders of any class or series of shares having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class or series; or
- (c) the vote of any class of persons having an exclusive right to elect one or more directors if the vacancy occurs among the directors elected by that class of persons.

Unexpired term

(5) A director appointed or elected to fill a vacancy holds office for the unexpired term of his or her predecessor.

Appointment of directors

(6) The directors may, if the articles of the corporation so provide, appoint one or more directors, who shall hold office for a term expiring not later than the close of the next annual meeting of shareholders, but the total number of directors so appointed may not exceed one-third of the number of directors elected at the previous annual meeting of shareholders.

Change in number of directors

113. (1) The shareholders of a corporation may amend the articles to increase or, subject to paragraph 108(h), to decrease the number of directors or the minimum or maximum number of directors, but no decrease shall shorten the term of an incumbent director.

Electing additional directors where articles amended

(2) Where the shareholders at a meeting adopt an amendment to the articles of a corporation to increase the number or minimum number of directors, the shareholders may, at the meeting at which they adopt the amendment, elect the number of directors authorized by the amendment, and for that purpose, despite subsections 181(1) and 268(3), on the issue of a certificate of amendment the articles are deemed to be amended as of the date the shareholders adopt the amendment to the articles.

S.Nu. 2013,c.20,s.4(3).

Notice of change of directors

114. (1) Within 15 days after a change is made among its directors or in the information contained in any previous notice filed under subsection 107(1) or under this section, a corporation shall send to the Registrar a notice in prescribed form setting out the change and the Registrar shall file the notice.

Application to Court

(2) Any interested person, or the Registrar, may apply to the Court for an order to require a corporation to comply with subsection (1), and the Court may so order and make any further order it considers fit.

Meetings of directors

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

Quorum

(2) Subject to the articles or by-laws, a majority of the number of directors appointed constitutes a quorum at any meeting of directors, and, despite any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

Notice of meeting

(3) A notice of a meeting of directors shall specify any matter referred to in subsection 116(2) that is to be dealt with at the meeting but, unless the by-laws otherwise provide, need not specify the purpose or the business to be transacted at the meeting.

Waiver of notice

(4) A director may in any manner waive a notice of a meeting of directors, and attendance of a director at a meeting of directors is a waiver of notice of the meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

Adjourned meeting

(5) Notice of an adjourned meeting of directors is not required to be given if the time and place of the adjourned meeting is announced at the original meeting.

One director meeting

(6) Where a corporation has only one director, that director may constitute a meeting.

Participation by telephone

(7) A director may participate in a meeting of directors or of a committee of directors by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other if

- (a) the by-laws so provide, or
- (b) subject to the by-laws, all the directors of the corporation consent,

and a director participating in a meeting by those means is deemed for the purposes of this Act to be present at that meeting. S.Nu. 2013,c.20,s.4(3).

Delegation to managing director or committee

116. (1) Directors of a corporation may appoint from their number a managing director or a committee of directors and delegate to the managing director or committee any of the powers of the directors.

Limits on authority

(2) Despite subsection (1), no managing director and no committee of directors has authority to

- (a) submit to the shareholders any question or matter requiring the approval of the shareholders;
 - (b) fill a vacancy among the directors or in the office of auditor or add additional directors under subsection 112(6);
 - (c) issue securities except in the manner and on the terms authorized by the directors;
 - (d) declare dividends;
 - (e) purchase, redeem or otherwise acquire shares issued by the corporation, except in the manner and on the terms authorized by the directors;
 - (f) pay a commission referred to in section 44;
 - (g) approve a management proxy circular referred to in Part XII;
 - (h) approve any financial statements referred to in section 157; or
 - (i) adopt, amend or repeal by-laws.
- S.Nu. 2013,c.20,s.4(3).

Validity of acts of directors and officers

117. An act of a director or officer is valid despite an irregularity in his or her election or appointment or a defect in his or her qualification. S.Nu. 2013,c.20,s.4(3).

Resolution in lieu of meeting

118. (1) Subject to the articles, the by-laws or a unanimous shareholder agreement, a resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of directors or committee of directors is as valid as if it had been passed at a meeting of directors or of a committee of directors.

Filing resolution

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the proceedings of the directors or of the committee of directors.

Liability of directors and others

119. (1) Directors of a corporation who vote for or consent to a resolution authorizing the issue of a share under section 27 for a consideration other than money are jointly and severally liable to the corporation to make good any amount by which the consideration

received is less than the fair equivalent of the money that the corporation would have received if the share had been issued for money on the date of the resolution.

Exception

(2) Subsection (1) does not apply if the shares, on allotment, are held in escrow pursuant to an escrow agreement required by the Superintendent of Securities appointed under section 13 of the *Securities Act* and are surrendered for cancellation pursuant to that agreement.

Additional directors' liabilities

(3) Directors of a corporation who vote for or consent to a resolution authorizing

- (a) a purchase, redemption or other acquisition of shares contrary to section 35, 37 or 38,
- (b) a commission contrary to section 44,
- (c) a payment of a dividend contrary to section 45,
- (d) financial assistance contrary to section 46,
- (e) a payment of an indemnity contrary to section 125, or
- (f) a payment to a shareholder contrary to section 193 or 243,

are jointly and severally liable to restore to the corporation any amounts so paid and the value of any property so distributed, and not otherwise recovered by the corporation.

Contribution

(4) A director who satisfies a judgment rendered under this section is entitled to contribution from the other directors who voted for or consented to the unlawful act on which the judgment was founded.

Application to Court

(5) Where money or property of a corporation is paid or distributed to a shareholder or other recipient contrary to section 35, 37, 38, 44, 45, 46, 125, 193 or 243, the corporation, any director or shareholder of the corporation, or any person who was a creditor of the corporation at the time of the payment or distribution, is entitled to apply to the Court for an order under subsection (6).

Order of Court

(6) On an application under subsection (5), the Court may, if it is satisfied that it is equitable to do so, do any or all of the following:

- (a) order a shareholder or other recipient to restore to the corporation any money or property paid or distributed to him or her contrary to section 35, 37, 38, 44, 45, 46, 125, 193 or 243;
- (b) order the corporation to return or issue shares to a person from whom the corporation has purchased, redeemed or otherwise acquired shares;
- (c) make any further order the Court considers fit.

No liability

(7) A director is not liable under subsection (1) if he or she proves that he or she did not know and could not reasonably have known that the share was issued for a consideration less than the fair equivalent of the money that the corporation would have received if the share had been issued for money.

Limitation

(8) An action to enforce a liability imposed by this section may not be commenced more than two years after the date of the resolution authorizing the action complained of. S.Nu. 2008,c.12,s.183(4); S.Nu. 2013,c.20,s.4(3).

Liability of directors for wages

120. (1) Directors of a corporation are jointly and severally liable to employees of the corporation for all debts not exceeding six months wages payable to each employee for services performed for the corporation while they are directors.

Exception

- (2) Subsection (1) does not render a director liable for debts
- (a) if he or she believes on reasonable grounds that the corporation can pay the debts as they become due; or
 - (b) if the debts are payable to employees for services performed while the property of the corporation is under the control of a receiver, receiver-manager or liquidator.

Conditions precedent to liability

- (3) A director is not liable under subsection (1) unless
- (a) the corporation has been sued for the debt within six months after it has become due and execution has been returned unsatisfied in whole or in part;
 - (b) the corporation has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within six months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution; or
 - (c) the corporation has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the debt has been proved within six months after the date of the assignment or receiving order.

Limitation

(4) No action may be brought against a director under this section more than two years after the day he or she ceased to be a director.

Amount due after execution

(5) Where execution referred to in paragraph (3)(a) has issued, the amount recoverable from a director is the amount remaining unsatisfied after execution.

Subrogation of director

(6) A director who pays a debt referred to in subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings is entitled to any preference that the employee would have been entitled to, and where a judgment has been obtained, the director is entitled to an assignment of the judgment.

Contribution

(7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

Disclosure by directors and officers in relation to contracts

121. (1) A director or officer of a corporation who

- (a) is a party to a material contract or proposed material contract with the corporation, or
- (b) is a director or an officer of or has a material interest in any person who is a party to a material contract or proposed material contract with the corporation,

shall disclose in writing to the corporation or request to have entered in the minutes of meetings of directors the nature and extent of his or her interest.

Disclosure at meeting

(2) Subject to subsection (3), the disclosure required by subsection (1) shall be made, in the case of a director,

- (a) at the meeting at which a proposed contract is first considered;
- (b) if the director was not interested in a proposed contract at the time of the meeting referred to in paragraph (a), at the first meeting after he or she becomes so interested;
- (c) if the director becomes interested after a contract is made, at the first meeting after he or she becomes so interested; or
- (d) if a person who is interested in a contract later becomes a director, at the first meeting after he or she becomes a director.

Disclosure where no meeting held

(3) Where a proposed contract is dealt with by a resolution under section 118 instead of at a meeting, the disclosure required by subsection (1) shall be made

- (a) without delay on receipt of the resolution; or
- (b) if the director was not interested in the proposed contract at the time of receipt of the resolution, at the first meeting after he or she becomes so interested.

Time of disclosure for officer

(4) The disclosure required by subsection (1) shall be made, in the case of an officer who is not a director,

- (a) without delay after he or she becomes aware that the contract or proposed contract is to be considered or has been considered at a meeting of directors;
- (b) if the officer becomes interested after a contract is made, without delay after he or she becomes so interested; or
- (c) if a person who is interested in a contract later becomes an officer, without delay after he or she becomes an officer.

Time of disclosure for director or officer

(5) If a material contract or proposed material contract is one that, in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, a director or officer shall disclose in writing to the corporation, or request to have entered in the minutes of meetings of directors, the nature and extent of his or her interest without delay after the director or officer becomes aware of the contract or proposed contract.

Voting

(6) A director referred to in subsection (1) shall not vote on any resolution to approve the contract unless the contract is

- (a) an arrangement by way of security for money lent to or obligations undertaken by him or her, or by a body corporate in which he or she has an interest, for the benefit of the corporation or an affiliate;
- (b) a contract relating primarily to his or her remuneration as a director, officer, employee or agent of the corporation or an affiliate;
- (c) a contract for indemnity or insurance under section 125; or
- (d) a contract with an affiliate.

Continuing disclosure

(7) For the purpose of this section, a general notice to the directors by a director or officer is a sufficient disclosure of interest in relation to any contract made between the corporation and a person in which the director has a material interest or of which he or she is a director or officer if

- (a) the notice declares he or she is a director or officer of or has a material interest in the person and is to be regarded as interested in any contract made or to be made by the corporation with that person, and states the nature and extent of his or her interest;
- (b) at the time disclosure would otherwise be required under subsection (2), (3), (4) or (5), as the case may be, the extent of his or her interest in that person is not greater than that stated in the notice; and

- (c) the notice is given within the 12 month period immediately preceding the time at which disclosure would otherwise be required under subsection (2), (3), (4) or (5), as the case may be.

Avoidance standards

(8) Where a material contract is made between a corporation and one or more of its directors or officers, or between a corporation and another person of which a director or officer of the corporation is a director or officer or in which he or she has a material interest,

- (a) the contract is neither void nor voidable by reason only of that relationship or by reason only that a director with an interest in the contract is present at or is counted to determine the presence of a quorum at a meeting of directors or committee of directors that authorized the contract, and
- (b) a director or officer or former director or officer of the corporation to whom a profit accrues as a result of the making of the contract is not liable to account to the corporation for that profit by reason only of holding office as a director or officer,

if the director or officer disclosed his or her interest in accordance with subsection (2), (3), (4), (5) or (7), as the case may be, and the contract was approved by the directors or the shareholders and it was reasonable and fair to the corporation at the time it was approved.

Application to Court

(9) Where a director or officer of a corporation fails to disclose his or her interest in a material contract in accordance with this section, the Court may, on the application of the corporation or a shareholder of the corporation, set aside the contract on any terms the Court considers fit.

Where unanimous shareholder agreement

(10) This section is subject to any unanimous shareholder agreement.

Officers

122. Subject to the articles, the by-laws or any unanimous shareholder agreement,

- (a) the directors may designate the offices of the corporation, appoint as officers individuals of full capacity, specify their duties and delegate to them powers to manage the business and affairs of the corporation, except powers to do anything referred to in subsection 116(2);
- (b) a director may be appointed to any office of the corporation; and
- (c) two or more offices of the corporation may be held by the same person.

S.N.W.T. 1998,c.24,s.2(4).

Duty of care of directors and officers

- 123.** (1) Every director and officer of a corporation shall, in exercising his or her powers and discharging his or her duties,
- (a) act honestly and in good faith with a view to the best interests of the corporation; and
 - (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

Duty to comply

(2) Every director and officer of a corporation shall comply with this Act, the regulations, articles, by-laws and any unanimous shareholder agreement.

No exculpation

(3) Subject to subsection 148(7), no provision in a contract, the articles, the by-laws or a resolution relieves a director or officer from the duty to act in accordance with this Act or the regulations or relieves him or her from liability for a breach of that duty.

Where directors may give special consideration

(4) In determining whether a particular transaction or course of action is in the best interests of the corporation, a director, if he or she is elected or appointed by the holders of a class or series of shares or by employees or creditors or a class of employees or creditors, may give special, but not exclusive, consideration to the interests of those who elected or appointed him or her.

Dissent by director

- 124.** (1) A director who is present at a meeting of directors or a committee of directors is deemed to have consented to any resolution passed or action taken at the meeting unless the director
- (a) requests that his or her abstention or dissent be, or his or her abstention or dissent is, entered in the minutes of the meeting;
 - (b) sends his or her written dissent to the secretary of the meeting before the meeting is adjourned;
 - (c) sends his or her dissent by registered mail or delivers it to the registered office of the corporation immediately after the meeting is adjourned; or
 - (d) otherwise proves that he or she did not consent to the resolution or action.

Loss of right to dissent

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

Reliance on statements

(3) A director is not liable under section 119 or 123 to the extent that his or her acts or omissions result from his or her reliance in good faith on

- (a) financial statements of the corporation represented to him or her by an officer of the corporation or in a written report of the auditor of the corporation to fairly reflect the financial condition of the corporation; or
- (b) an opinion or report of a lawyer, accountant, engineer, appraiser or other person whose profession lends credibility to a statement made by him or her.

Indemnification by corporation

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

- (a) he or she acted honestly and in good faith with a view to the best interests of the corporation; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, he or she had reasonable grounds for believing that his or her conduct was lawful.

Indemnification in directive actions

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

Indemnity as of right

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

- (a) was substantially successful on the merits in his or her defence of the action or proceeding;
- (b) fulfils the conditions set out in paragraphs (1)(a) and (b); and
- (c) is fairly and reasonably entitled to indemnity.

Directors' and officers' insurance

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

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

Application to Court

(5) A corporation or a person referred to in subsection (1) may apply to the Court for an order approving an indemnity under this section and the Court may so order and make any further order it considers fit.

Registrar may appear

(6) On an application under subsection (5), the Court may order notice to be given to the Registrar and any other interested person and the Registrar and that person are entitled to appear and be heard in person or by counsel. S.Nu. 2013,c.20,s.4(3).

Remuneration

126. (1) Subject to the articles, the by-laws or any unanimous shareholder agreement, the directors of a corporation may fix the remuneration of the directors, officers and employees of the corporation.

Disclosure

(2) Disclosure of the aggregate remuneration of directors, the aggregate remuneration of officers and the aggregate remuneration of employees shall be made as prescribed.

PART X

INSIDER TRADING

Definitions

127. (1) In this Part,

"business combination" means an acquisition of all or substantially all the property of one body corporate by another or an amalgamation of two or more bodies corporate;
(*regroupement d'entreprises*)

"corporation" does not include a distributing corporation; (*société*)

"insider" means, in respect of a corporation,

- (a) the corporation,
- (b) an affiliate of the corporation,
- (c) a director or an officer of the corporation,
- (d) a person who beneficially owns more than 10% of the shares of the corporation or who exercises control or direction over more than 10% of the votes attached to the shares of the corporation,
- (e) a person employed or retained by the corporation, and
- (f) a person who receives specific confidential information from a person described in this definition or in subsection (3) and who has knowledge that the person giving the information is a person described in this definition or in subsection (3); (*initié*)

"officer" means the chairperson, president, vice-president, secretary, treasurer, comptroller, general counsel, general manager, managing director or any other individual who performs functions for a corporation similar to those normally performed by an individual occupying any such office; (*dirigeant*)

"share" means a share carrying voting rights under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing, and includes

- (a) a security currently convertible into such a share, and
- (b) currently exercisable options and rights to acquire such a share or such a convertible security. (*action*)

Deemed insiders

(2) For the purposes of this Part,

- (a) a director or an officer of a body corporate that is an insider of a corporation is deemed to be an insider of the corporation;
- (b) a director or an officer of a body corporate that is a subsidiary is deemed to be an insider of its holding corporation;
- (c) a person is deemed to beneficially own shares that are beneficially owned by a body corporate controlled by the person directly or indirectly;

- (d) a body corporate is deemed to beneficially own shares that are beneficially owned by its affiliates; and
- (e) the acquisition or disposition by an insider of an option or right to acquire a share is deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

Deemed insiders

(3) For the purposes of this Part,

- (a) if a body corporate becomes an insider of a corporation or enters into a business combination with a corporation, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous six months or for any shorter period during which he or she was a director or officer of the body corporate; and
- (b) if a corporation becomes an insider of a body corporate or enters into a business combination with a body corporate, a director or officer of the body corporate is deemed to have been an insider of the corporation for the previous six months or for any shorter period during which he or she was a director or officer of the body corporate.

S.N.W.T. 1998,c.5,s.4(5); S.Nu. 2008,c.12,s.183(5).

Civil liability of insiders

128. (1) An insider who, in connection with a transaction in a security of the corporation or any of its affiliates, makes use of any specific confidential information for his or her own benefit or advantage that, if generally known, might reasonably be expected to affect materially the value of the security

- (a) is liable to compensate any person for any direct loss suffered by that person as a result of the transaction, unless the information was known or in the exercise of reasonable diligence should have been known to that person; and
- (b) is accountable to the corporation for any direct benefit or advantage received or receivable by the insider as a result of the transaction.

Limitation period

(2) An action to enforce a right created by this section may only be commenced within two years after discovery of the facts that gave rise to the cause of action.

S.N.W.T. 1998,c.5,s.4(6); S.Nu. 2008,c.12,s.183(5).

129. Repealed, S.Nu. 2008,c.12,s.183(5).

130. Repealed, S.Nu. 2008,c.12,s.183(5).

131. Repealed, S.Nu. 2008,c.12,s.183(5).

132. Repealed, S.Nu. 2008,c.12,s.183(5).

PART XI

SHAREHOLDERS

Place of shareholders' meetings

133. (1) Unless otherwise provided in the articles or a unanimous shareholder agreement, meetings of shareholders of a corporation shall be held at the place within Nunavut provided in the by-laws or, in the absence of such provision, at the place within Nunavut that the directors determine.

Meeting outside Nunavut

(2) Despite subsection (1), a meeting of shareholders of a corporation may be held outside Nunavut if all the shareholders entitled to vote at that meeting agree, and a shareholder who attends a meeting of shareholders held outside Nunavut is deemed to have so agreed except where he or she attends the meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully held.

Participation by telephone

(3) A shareholder or any other person entitled to attend a meeting of shareholders may participate in the meeting by means of telephone or other communication facilities that permit all persons participating in the meeting to hear each other if

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

and a person participating in such a meeting by those means is deemed for the purposes of this Act to be present at the meeting. S.Nu. 2013,c.20,s.4(3).

Calling meetings

134. (1) The directors of a corporation

- (a) shall call an annual meeting of shareholders to be held not later than 18 months after
 - (i) the date of its incorporation, or
 - (ii) the date of its certificate of amalgamation, in the case of an amalgamated corporation,and subsequently not later than 15 months after holding the last preceding annual meeting; and
- (b) may at any time call a special meeting of shareholders.

Application for extension of time

(2) Despite subsection (1), the corporation may apply to the Court for an order extending the time in which an annual meeting of the corporation shall be held.

S.Nu. 2013,c.20,s.4(3).

Notice to Registrar

(3) Notice of any application under subsection (2) by a distributing corporation shall be sent to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

Court may extend time

(4) Where, on an application under subsection (2), the Court is satisfied that it is in the best interests of the corporation, the Court may extend the time by which the annual meeting of the corporation shall be held in any manner and on any terms it considers fit.

Record dates

135. (1) For the purpose of determining shareholders

- (a) entitled to receive payment of a dividend,
- (b) entitled to participate in a liquidation distribution, or
- (c) for any other purpose other than the right to receive notice of or to vote at a meeting,

the directors may fix in advance a date as the record date for that determination of shareholders, but the record date shall not precede by more than 50 days the particular action to be taken.

Notice of a meeting

(2) For the purpose of determining shareholders entitled to receive notice of a meeting of shareholders, the directors may fix in advance a date as the record date for that determination of shareholders, but that record date shall not precede by more than 50 days or by less than 21 days the date on which the meeting is to be held.

No record date fixed

(3) Where no record date is fixed,

- (a) the record date for the determination of shareholders entitled to receive notice of a meeting of shareholders shall be
 - (i) at the close of business on the day immediately preceding the day on which the notice is given, or,
 - (ii) if no notice is given, the day on which the meeting is held;and
- (b) the record date for the determination of shareholders for any purpose other than to establish a shareholder's right to receive notice of a meeting or to vote shall be at the close of business on the day on which the directors pass the resolution relating to that purpose.

Where record date is fixed

(4) Where a record date is fixed, notice of the record date shall be given not less than seven days before the date so fixed

- (a) by advertisement in a newspaper published or distributed in the place where the corporation has its registered office and in each place in Canada where it has a transfer agent or where a transfer of its shares may be recorded, and
- (b) by written notice to each stock exchange in Canada on which the shares of the corporation are listed for trading,

unless notice of the record date is waived in writing by every holder of a share of the class or series affected whose name is set out in the securities register at the close of business on the day the directors fix the record date.

Notice of meeting, adjournment, business and notice of business

136. (1) Notice of the time and place of a meeting of shareholders shall be sent not less than 21 days and not more than 50 days before the meeting,

- (a) to each shareholder entitled to vote at the meeting;
- (b) to each director; and
- (c) to the auditor of the corporation.

Exception

(2) A notice of a meeting is not required to be sent to shareholders who were not registered on the records of the corporation or its transfer agent on the record date determined under subsection 135(2) or (3), but failure to receive a notice does not deprive a shareholder of the right to vote at the meeting.

Adjournment

(3) Where a meeting of shareholders is adjourned by one or more adjournments for an aggregate of less than 30 days, it is not necessary, unless the by-laws otherwise provide, to give notice of the adjourned meeting, other than by announcement at the time of an adjournment.

Notice of adjourned meeting

(4) Where a meeting of shareholders is adjourned by one or more adjournments for an aggregate of 30 days or more, notice of the adjourned meeting shall be given in the same manner as for an original meeting, but subsection 151(1) does not apply unless the meeting is adjourned by one or more adjournments for an aggregate of more than 90 days.

Business

(5) All business transacted at a special meeting of shareholders and all business transacted at an annual meeting of shareholders, except consideration of the financial statements and auditor's report, fixing the number of directors for the following year, election of directors and reappointment of the incumbent auditor, is deemed to be special business.

Notice of business

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

- (a) the nature of that business in sufficient detail to permit the shareholder to form a reasoned judgment in respect of that business; and
- (b) the text of any special resolution to be submitted to the meeting.

Amendments

(7) The text of a special resolution may be amended at a meeting of shareholders if the amendments correct manifest errors or are not material.

Waiver of notice

137. A shareholder and any other person entitled to attend a meeting of shareholders may in any manner waive notice of a meeting of shareholders, and attendance of the shareholder or other person at a meeting of shareholders is a waiver of notice of the meeting, except when he or she attends a meeting for the express purpose of objecting to the transaction of any business on the grounds that the meeting is not lawfully called.

"proposal" defined

138. (1) In this section, "proposal" means a notice of any matter that a shareholder proposes to raise at an annual meeting of shareholders.

Shareholder proposal

- (2) A shareholder entitled to vote at an annual meeting of shareholders may
- (a) submit a proposal to the corporation; and
 - (b) discuss at the meeting any matter in respect of which he or she would have been entitled to submit a proposal.

Information circular

(3) A corporation that solicits proxies shall set out the proposal in the management proxy circular required by section 152 or attach the proposal to it.

Supporting statement

(4) If so requested by the shareholder, the corporation shall include in the management proxy circular or attach to it a statement by the shareholder of not more than 200 words in support of the proposal, and the name and address of the shareholder.

Nominations for director

(5) A proposal may include nominations for the election of directors if the proposal is signed by one or more holders of shares representing in the aggregate not less than 5% of the shares or 5% of the shares of a class of shares of the corporation entitled to vote at the meeting to which the proposal is to be presented, but this subsection does not preclude nominations made at a meeting of shareholders.

Exemption

- (6) A corporation is not required to comply with subsections (3) and (4) if
- (a) the proposal is not submitted to the corporation at least 90 days before the anniversary date of the previous annual meeting of shareholders;
 - (b) it clearly appears that the proposal has been submitted by the shareholder primarily for the purpose of enforcing a personal claim or redressing a personal grievance against the corporation, its directors, officers or security holders or any of them, or primarily for the purpose of promoting general economic, political, racial, religious, social or similar causes;
 - (c) the corporation, at the shareholder's request, included a proposal in a management proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the request, and the shareholder failed to present the proposal, in person or by proxy, at the meeting;
 - (d) substantially the same proposal was submitted to shareholders in a management proxy circular or a dissident's proxy circular relating to a meeting of shareholders held within two years preceding the receipt of the shareholder's request and the proposal was defeated; or
 - (e) the rights being conferred by this section are being abused to secure publicity.

Immunity

(7) No corporation or person acting on its behalf incurs any liability by reason only of circulating a proposal or statement in compliance with this section.

Notice of referral

(8) If a corporation refuses to include a proposal in a management proxy circular, the corporation shall, within 10 days after receiving the proposal, notify the shareholder submitting the proposal of its intention to omit the proposal from the management proxy circular and send the shareholder a statement of the reasons for the refusal.

Shareholder application to Court

(9) On the application of a shareholder claiming to be aggrieved by a corporation's refusal under subsection (8), the Court may restrain the holding of the meeting to which the proposal is sought to be presented and make any further order it considers fit.

Corporation's application to Court

(10) The corporation or any person claiming to be aggrieved by a proposal may apply to the Court for an order permitting the corporation to omit the proposal from the management proxy circular, and the Court, if it is satisfied that subsection (6) applies, may make any order it considers fit.

Shareholder list

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

- (a) if a record date is fixed under subsection 135(2), not later than 10 days after that date; or
- (b) if no record date is fixed,
 - (i) at the close of business on the last business day preceding the day on which the notice is given, or
 - (ii) where no notice is given, on the day on which the meeting is held.

Effect of list

(2) A person named in the list prepared under subsection (1) is entitled to vote the shares shown opposite his or her name at the meeting to which the list relates.

Effect of list where shares transferred

(3) Where a person referred to in subsection (2) transfers the ownership of any of his or her shares after the date on which a list referred to in subsection (1) is prepared, the transferee of those shares is entitled to vote the shares at the meeting if the transferee

- (a) produces properly endorsed share certificates or otherwise establishes that he or she owns the shares; and
- (b) demands, not later than 10 days before the meeting or any shorter period before the meeting that the by-laws of the corporation may provide, that his or her name be included in the list before the meeting.

Examination of list

(4) A shareholder may examine the list of shareholders

- (a) during normal business hours at the records office of the corporation or at the place where its central securities register is maintained; and
- (b) at the meeting of shareholders for which the list was prepared.

Quorum

140. (1) Unless the by-laws otherwise provide, a quorum of shareholders is present at a meeting of shareholders, irrespective of the number of persons actually present at the meeting, if the holder or holders of a majority of the shares entitled to vote at the meeting are present in person or represented by proxy.

Opening quorum sufficient

(2) If a quorum is present at the opening of a meeting of shareholders, the shareholders present may, unless the by-laws otherwise provide, proceed with the business of the meeting, despite that a quorum is not present throughout the meeting.

Adjournment

(3) If a quorum is not present at the opening of a meeting of shareholders, the shareholders present may adjourn the meeting to a fixed time and place but may not transact any other business.

One shareholder meeting

(4) If a corporation has only one shareholder or only one holder of any class or series of shares, the shareholder present in person or by proxy constitutes a meeting. S.Nu. 2013,c.20,s.4(3).

Right to vote

141. (1) Unless the articles otherwise provide, each share of a corporation entitles the holder of the share to one vote at a meeting of shareholders.

Representative

(2) If a body corporate or association is a shareholder of a corporation, the corporation shall recognize any individual authorized by a resolution of the directors or governing body of the body corporate or association to represent it at meetings of shareholders of the corporation.

Powers of representative

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

Joint shareholders

(4) Unless the by-laws otherwise provide, if two or more persons hold shares jointly, one of those holders present at a meeting of shareholders may in the absence of the others vote the shares, but if two or more of those persons who are present, in person or by proxy, vote, they shall vote as one on the shares jointly held by them.

Voting

142. (1) Unless the by-laws otherwise provide, voting at a meeting of shareholders shall be by show of hands except when a ballot is demanded by a shareholder or proxyholder entitled to vote at the meeting.

Vote by ballot

(2) A shareholder or proxyholder may demand a ballot either before or on the declaration of the result of any vote by show of hands.

Resolution in lieu of meetings

143. (1) Except where a written statement is submitted by a director under subsection 111(2) or by an auditor under subsection 170(5),

- (a) a resolution in writing signed by all the shareholders entitled to vote on that resolution is as valid as if it had been passed at a meeting of the shareholders; and

- (b) a resolution in writing dealing with all matters required by this Act to be dealt with at a meeting of shareholders, and signed by all the shareholders entitled to vote at that meeting, satisfies all the requirements of this Act relating to meetings of shareholders.

Copies to be kept

(2) A copy of every resolution referred to in subsection (1) shall be kept with the minutes of the meetings of shareholders.

Meeting on requisition of shareholders

144. (1) The holders of not less than 5% of the issued shares of a corporation that carry the right to vote at a meeting sought to be held may requisition the directors to call a meeting of shareholders for the purposes stated in the requisition.

Form

(2) The requisition referred to in subsection (1), which may consist of several documents of like form each signed by one or more shareholders, shall state the business to be transacted at the meeting and shall be sent to each director and to the registered office of the corporation.

Directors calling meeting

(3) On receiving the requisition referred to in subsection (1), the directors shall call a meeting of shareholders to transact the business stated in the requisition unless

- (a) a record date has been fixed under subsection 135(2) and notice of the record date has been given under subsection 135(4);
- (b) the directors have called a meeting of shareholders and have given notice of the meeting under section 136; or
- (c) the business of the meeting as stated in the requisition includes matters described in paragraphs 138(6)(b) to (e).

Shareholder calling meeting

(4) If the directors do not within 21 days after receiving the requisition referred to in subsection (1) call a meeting, any shareholder who signed the requisition may call the meeting.

Procedure

(5) A meeting called under this section shall be called as nearly as possible in the manner in which meetings are to be called pursuant to the by-laws, this Part and Part XII.

Reimbursement

(6) Unless the shareholders otherwise resolve at a meeting called under subsection (4), the corporation shall reimburse the shareholders the expenses reasonably incurred by them in requisitioning, calling and holding the meeting.

Meeting called by Court

145. (1) If for any reason it is impracticable to call a meeting of shareholders of a corporation in the manner in which meetings of those shareholders may be called, or to conduct the meeting in the manner established by the by-laws and this Act, or if for any other reason the Court considers fit, the Court, on the application of a director, a shareholder entitled to vote at the meeting or the Registrar, may order a meeting to be called, held and conducted in the manner the Court directs.

Varying quorum

(2) Without restricting the generality of subsection (1), the Court may order that the quorum required by the by-laws or this Act be varied or dispensed with at a meeting called, held and conducted pursuant to this section.

Valid meeting

(3) A meeting called, held and conducted pursuant to this section is for all purposes a meeting of shareholders of the corporation duly called, held and conducted.

Court review of election

146. (1) A corporation or a shareholder or director may apply to the Court to determine any controversy with respect to an election or appointment of a director or auditor of the corporation.

Powers of Court

(2) On an application under this section, the Court may make any order it considers fit including, without limiting the generality of the foregoing

- (a) an order restraining a director or auditor whose election or appointment is challenged from acting pending determination of the dispute;
- (b) an order declaring the result of the disputed election or appointment;
- (c) an order requiring a new election or appointment, and including in the order directions for the management of the business and affairs of the corporation until a new election is held or appointment made; and
- (d) an order determining the voting rights of shareholders and of persons claiming to own shares.

Pooling agreement

147. A written agreement between two or more shareholders may provide that in exercising voting rights the shares held by them shall be voted as provided in the agreement.

Unanimous shareholder agreement

- 148.** (1) A unanimous shareholder agreement may provide for
- (a) the regulation of the rights and liabilities of the shareholders, as shareholders, among themselves or between themselves and any other party to the agreement;
 - (b) the regulation of the election of directors;
 - (c) the management of the business and affairs of the corporation, including the restriction or abrogation, in whole or in part, of the powers of the directors; and
 - (d) any other matter that may be contained in a unanimous shareholder agreement pursuant to any other provision of this Act.

Deemed parties to agreement

- (2) If a unanimous shareholder agreement is in effect at the time a share is issued by a corporation to a person other than an existing shareholder,
- (a) that person is deemed to be a party to the agreement whether or not he or she had actual knowledge of it when the share certificate was issued;
 - (b) the issue of the share certificate does not operate to terminate the agreement; and
 - (c) if he or she is a *bona fide* purchaser without actual knowledge of the unanimous shareholder agreement, that person may rescind the contract under which the shares were acquired by giving a notice to that effect to the corporation within a reasonable time after the person receives actual knowledge of the unanimous shareholder agreement.

Deemed party to agreement

- (3) If a unanimous shareholder agreement is in effect when a person who is not a party to the agreement acquires a share of a corporation, other than under subsection (2),
- (a) the person who acquired the share is deemed to be a party to the agreement whether or not he or she had actual knowledge of it when he or she acquired the share; and
 - (b) neither the acquisition of the share nor the registration of that person as a shareholder operates to terminate the agreement.

Notice of objection to agreement

- (4) If
- (a) a person referred to in subsection (3) is a protected purchaser as defined in the *Securities Transfer Act* and did not have actual knowledge of the unanimous shareholder agreement, and
 - (b) his or her transferor's share certificate did not contain a reference to the unanimous shareholder agreement,
- that person may, within 30 days after he or she acquires actual knowledge of the existence of the agreement, send to the corporation a notice of objection to the agreement.

Remedies

- (5) If a person sends a notice of objection under subsection (4),
- (a) he or she is entitled to be paid by the corporation the fair value of the shares held by him or her, determined as of the close of business on the day on which he or she became a shareholder; and
 - (b) subsection 193(4) and subsections 193(6) to (20) apply, with such modifications as the circumstances require, as if the notice of objection under subsection (4) were a written objection sent to the corporation under subsection 193(5).

Right of transferee to recover loss

(6) A transferee who is entitled to be paid the fair value of his or her shares under subsection (5) also has the right to recover from the transferor by action the amount by which the value of the consideration paid for his or her shares exceeds the fair value of those shares.

Rights of shareholder

(7) A shareholder who is a party or is deemed to be a party to a unanimous shareholder agreement has all the rights, powers and duties and incurs all the liabilities of a director of the corporation to which the agreement relates to the extent that the agreement restricts the powers of the directors to manage the business and affairs of the corporation, and the directors are thereby relieved of their duties and liabilities, including any liabilities under section 120 to the same extent.

Unanimous consent to amend

(8) A unanimous shareholder agreement may not be amended without the written consent of all those who are shareholders at the effective date of the amendment.

Excluding application of this section

(9) A unanimous shareholder agreement may exclude the application to the agreement of all but not part of this section. S.Nu. 2010,c.15,s.106(9).

PART XII

PROXIES

Definitions

149. In this Part,

"form of proxy" means a written or printed form that, on completion and execution by or on behalf of a shareholder, becomes a proxy; (*formulaire de procuration*)

"proxy" means a completed and executed form of proxy by means of which a shareholder appoints a proxyholder to attend and act on his or her behalf at a meeting of shareholders; (*procuration*)

"registrant" means a person required to be registered to trade or deal in securities under the laws of any jurisdiction; (*courtier attitré*)

"solicit" or "solicitation" includes

- (a) a request for a proxy whether or not accompanied by or included in a form of proxy,
- (b) a request to execute or not to execute a form of proxy or to revoke a proxy,
- (c) the sending of a form of proxy or other communication to a shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
- (d) the sending of a form of proxy to a shareholder under section 151,

but does not include

- (e) the sending of a form of proxy in response to an unsolicited request made by or on behalf of a shareholder,
- (f) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
- (g) the sending by a registrant of the documents referred to in section 155, or
- (h) a solicitation by a person in respect of shares of which he or she is the beneficial owner; (*sollicitation*)

"solicitation by or on behalf of the management of a corporation" means a solicitation by any person pursuant to a resolution or the instructions of, or with the acquiescence of, the directors or a committee of the directors. (*sollicitation effectuée par la direction ou pour son compte*)

Appointing proxyholder

150. (1) A shareholder entitled to vote at a meeting of shareholders may by means of a proxy appoint a proxyholder and one or more alternate proxyholders, who are not required to be shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

Execution of proxy

(2) A proxy shall be executed by the shareholder or by his or her attorney authorized in writing.

Validity of proxy

(3) A proxy is valid only at the meeting in respect of which it is given or any adjournment of that meeting.

Revocation of proxy

(4) A shareholder may revoke a proxy

- (a) by depositing an instrument in writing executed by him or her or by his or her attorney authorized in writing

- (i) at the registered office of the corporation at any time up to and including the last business day preceding the day of the meeting, or an adjournment of that meeting, at which the proxy is to be used, or
 - (ii) with the chairperson of the meeting on the day of the meeting or an adjournment of the meeting; or
- (b) in any other manner permitted by law.

Deposit of proxies

(5) The directors may specify in a notice calling a meeting of shareholders a time not exceeding 48 hours, excluding Saturdays and holidays, preceding the meeting or an adjournment of the meeting before which time proxies to be used at the meeting must be deposited with the corporation or its agent.

Mandatory solicitation

151. (1) Subject to subsection (2), the management of a corporation shall, concurrently with giving notice of a meeting of shareholders, send a form of proxy containing the prescribed information to each shareholder who is entitled to receive notice of the meeting.

Exceptions

(2) The management of a corporation is not required to send a form of proxy under subsection (1)

- (a) if the corporation has fewer than 15 shareholders entitled to vote at a meeting of shareholders, two or more joint shareholders being counted as one shareholder; or
- (b) if all the shareholders entitled to vote at a meeting of shareholders have agreed in writing to waive the application of subsection (1).

Revocation of waiver

(3) A shareholder may revoke a waiver given under paragraph (2)(b) in respect of any meeting of shareholders by sending to the corporation a notice in writing to that effect not less than 40 days before the date of the meeting in respect of which the waiver was given.

Offence

(4) Where the management of a corporation fails to comply with subsection (1) without reasonable cause, the corporation is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Officers, etc., of corporation

(5) Where a corporation commits an offence under subsection (4), any director or officer of the corporation who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both, whether or not the corporation has been prosecuted or convicted in respect of the offence. S.N.W.T. 1998,c.5,s.4(7).

Soliciting proxies

- 152.** (1) A person shall not solicit proxies unless
- (a) in the case of solicitation by or on behalf of the management of a corporation, a management proxy circular containing the prescribed information, either as an appendix to or as a separate document accompanying the notice of the meeting, or
 - (b) in the case of any other solicitation, a dissident's proxy circular containing the prescribed information and stating the purposes of the solicitation,

is sent to the auditor of the corporation, to each shareholder whose proxy is solicited and, if paragraph (b) applies, to the corporation.

Exception

(2) Subsection (1) does not apply to a corporation that has 15 or fewer shareholders entitled to vote at meetings of shareholders.

Copy to Registrar

(3) A person required to send a management proxy circular or dissident's proxy circular shall send concurrently a copy of it to the Registrar together with a statement containing the prescribed information, the form of proxy, any other documents for use in connection with the meeting and, in the case of a management proxy circular, a copy of the notice of meeting.

Offence

(4) A person who fails to comply with subsection (1) or (3) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Officers, etc., of bodies corporate

(5) Where a body corporate commits an offence under subsection (4), any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both, whether or not the body corporate has been prosecuted or convicted in respect of the offence. S.N.W.T. 1998,c.5,s.4(8),(9).

Exemption re proxies

152.1. Sections 151 and 152 do not apply to a corporation that is subject to and complies with the requirements of Nunavut securities laws in respect of proxy solicitation and information circulars. S.Nu. 2008,c.12,s.183(6).

Exemption orders

153. On the application of an interested person, the Registrar may make an order on such terms as he or she considers fit exempting that person from the application of section 151 or subsection 152(1) and the order may have retrospective effect.

Rights and duties of proxyholder

154. (1) A person who solicits a proxy and is appointed as a proxyholder shall attend in person or cause an alternate proxyholder to attend the meeting in respect of which the proxy is given and comply with the directions of the shareholder who appointed him.

Right of a proxyholder

(2) A proxyholder or an alternate proxyholder has the same rights as the shareholder who appointed him or her to speak at a meeting of shareholders in respect of any matter, to vote by way of ballot at the meeting and, except where a proxyholder or an alternate proxyholder has conflicting instructions from more than one shareholder, to vote at such a meeting in respect of any matter by way of any show of hands.

Conduct of vote

(3) Despite subsections (1) and (2), if the chairperson of a meeting of shareholders declares to the meeting that, if a ballot is conducted, the total number of votes attached to shares represented at the meeting by proxy required to be voted against what to the knowledge of the chairperson will be the decision of the meeting in relation to any matter or group of matters is less than 5% of the votes attached to the shares entitled to vote and represented at the meeting on that ballot, then unless a shareholder or proxyholder demands a ballot,

- (a) the chairperson may conduct the vote in respect of that matter or group of matters by a show of hands; and
- (b) a proxyholder or alternate proxyholder may vote in respect of that matter or group of matters by a show of hands.

Offence

(4) A proxyholder or alternate proxyholder who without reasonable cause fails to comply with the directions of a shareholder under this section is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both. S.Nu. 2013,c.20,s.4(3).

Duties of registrant

155. (1) Shares of a corporation that are registered in the name of a registrant or his or her nominee and not beneficially owned by the registrant shall not be voted unless the registrant, forthwith after receipt of the notice of the meeting, financial statements, management proxy circular, dissident's proxy circular and any other documents, other

than the form of proxy sent to shareholders by or on behalf of any person for use in connection with the meeting, sends a copy of those documents to the beneficial owner and, except where the registrant has received written voting instructions from the beneficial owner, a written request for voting instructions.

Beneficial owner unknown

(2) A registrant shall not vote or appoint a proxyholder to vote shares registered in his or her name or in the name of his or her nominee that he or she does not beneficially own unless he or she receives voting instructions from the beneficial owner.

Copies

(3) A person by or on behalf of whom a solicitation is made shall, at the request of a registrant, forthwith furnish to the registrant at that person's expense the necessary number of copies of the documents referred to in subsection (1) other than copies of the document requesting voting instructions.

Instructions to registrant

(4) A registrant shall vote or appoint a proxyholder to vote any shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

Beneficial owner as proxyholder

(5) If requested by a beneficial owner, a registrant shall appoint the beneficial owner or a nominee of the beneficial owner as proxyholder.

Validity

(6) The failure of a registrant to comply with this section does not render void any meeting of shareholders or any action taken at a meeting of shareholders.

Limitation

(7) Nothing in this section gives a registrant the right to vote shares that he or she is otherwise prohibited from voting.

Offence

(8) A registrant who knowingly fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Officers, etc., of bodies corporate

(9) Where a body corporate commits an offence under subsection (8), any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both, whether or not the body corporate has been prosecuted or convicted in respect of the offence.

Court orders

156. If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement of a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it was made, an interested person or the Registrar may apply to the Court and the Court may make any order it considers fit including, without limiting the generality of the foregoing,

- (a) an order restraining the solicitation, the holding of the meeting or any person from implementing or acting on any resolution passed at the meeting to which the form of proxy, management proxy circular or dissident's proxy circular relates;
- (b) an order requiring correction of any form of proxy or proxy circular and a further solicitation; and
- (c) an order adjourning the meeting.

PART XIII

FINANCIAL DISCLOSURE

Exemption re annual financial statements

156.1. Sections 157, 161 and 162 do not apply to a corporation that is subject to and complies with the requirements of Nunavut securities laws in respect of the preparation, auditing, distribution and filing of financial statements. S.Nu. 2008,c.12,s.183(7).

Annual financial statements

157. (1) Subject to section 158, the directors of a corporation shall place before the shareholders at every annual meeting

- (a) the following financial statements:
 - (i) if the corporation has not completed a financial year and the meeting is held after the end of the first six month period of that financial year, a financial statement for the period that began on the date the corporation came into existence and ended on a date occurring not earlier than six months before the annual meeting;
 - (ii) if the corporation has completed only one financial year, a financial statement for that year;
 - (iii) if the corporation has completed two or more financial years, comparative financial statements for the last two completed financial years;
 - (iv) if the corporation has completed one or more financial years but the annual meeting is held after six months has expired in its current financial period, a financial statement for the period that
 - (A) began at the commencement of its current financial year, and

- (B) ended on a date that occurred not earlier than six months before the annual meeting, in addition to any financial statements required under subparagraph (ii) or (iii);
- (b) the report of the auditor, if any; and
- (c) any further information respecting the financial position of the corporation and the results of its operations required by the articles, the by-laws or any unanimous shareholder agreement.

Exception

(2) Despite subparagraph (1)(a)(iii), the financial statements for the earlier of the two financial years referred to in that subparagraph may be omitted if the reason for the omission is set out in the financial statements, or in a note to them, to be placed before the shareholders at the annual meeting. S.Nu. 2013,c.20,s.4(3).

Exemption

158. A distributing corporation may apply to the Registrar for an order authorizing the corporation to omit from its financial statements any item otherwise required or to dispense with the preparation of any financial statement, and the Registrar may, if he or she reasonably believes that the disclosure of the item or statement would be detrimental to the corporation, make the order on any reasonable conditions the Registrar considers fit.

Consolidated statements

159. (1) A corporation shall keep at its records office a copy of the financial statements of each of its subsidiary bodies corporate and of each body corporate the accounts of which are consolidated in the financial statements of the corporation.

Examination

- (2) Shareholders of a corporation and their agents and legal representatives may, on request and without charge,
- (a) examine the statements referred to in subsection (1) during normal business hours; and
 - (b) obtain a copy of those statements.

Barring examination

(3) A corporation may, within 15 days of a request to examine under subsection (2), apply to the Court for an order barring the right of any person to so examine and the Court may, if it is satisfied that the examination would be detrimental to the corporation or a subsidiary body corporate, bar that right and make any further order it considers fit.

Notice of application

(4) A corporation shall give notice of an application under subsection (3) to the person making a request under subsection (2), and that person may appear and be heard in person or by counsel.

Approval of financial statements

160. (1) The directors of a corporation shall approve the financial statements referred to in section 157 and the approval shall be evidenced by the signature of one or more directors.

Condition precedent

(2) A corporation shall not issue, publish or circulate copies of the financial statements referred to in section 157 unless the financial statements are

- (a) approved and signed in accordance with subsection (1); and
- (b) accompanied by the report of the auditor of the corporation, if any.

Copies to shareholders

161. (1) A corporation shall, not less than 21 days before each annual meeting of shareholders or before the signing of a resolution under paragraph 143(1)(b) in lieu of the annual meeting, send a copy of the documents referred to in section 157 to each shareholder, except to a shareholder who has informed the corporation in writing that he or she does not want a copy of those documents.

Offence

(2) A corporation that fails to comply with subsection (1) without reasonable cause is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Copies to Registrar

162. (1) A distributing corporation shall send a copy of the documents referred to in section 157 to the Registrar not less than 21 days before each annual meeting of shareholders or forthwith after the signing of a resolution under paragraph 143(1)(b) in lieu of the annual meeting, and in any event not later than 15 months after the last date when the last preceding annual meeting should have been held or a resolution in lieu of that meeting should have been signed.

Further disclosure

(2) If a distributing corporation

- (a) sends to its shareholders, or
- (b) is required to file with or send to a public authority or a stock exchange,

interim financial statements or related documents, the corporation shall forthwith send copies to the Registrar.

Subsidiary corporation exemption

(3) A subsidiary corporation is not required to comply with this section if

- (a) the financial statements of its holding corporation are in consolidated or combined form and include the accounts of the subsidiary; and

- (b) the consolidated or combined financial statements of the holding corporation are included in the documents sent to the Registrar by the holding corporation in compliance with this section.

Offence

(4) A corporation that fails to comply with this section is guilty of an offence and liable on summary conviction to a fine not exceeding \$15,000.

Qualification of the auditor

163. (1) Subject to subsection (5), a person is disqualified from being an auditor of a corporation if he or she is not independent of the corporation and its affiliates or the directors and officers of the corporation and its affiliates.

Independence

(2) For the purposes of this section,

- (a) independence is a question of fact; and
- (b) a person is deemed not to be independent if he or she or his or her business partner
 - (i) is a business partner, director, officer or employee of the corporation or any of its affiliates, or is a business partner of any director, officer or employee of the corporation or any of its affiliates,
 - (ii) beneficially owns or controls, directly or indirectly, an interest in the securities of the corporation or any of its affiliates, or
 - (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the corporation or any of its affiliates within two years before his or her proposed appointment as auditor of the corporation would take effect.

Duty to resign

(3) An auditor who becomes disqualified under this section shall, subject to subsection (5), resign forthwith after becoming aware of his or her disqualification.

Disqualification order

(4) An interested person may apply to the Court for an order declaring an auditor to be disqualified under this section and the office of auditor to be vacant.

Exemption order

(5) An interested person may apply to the Court for an order exempting an auditor from disqualification under this section and the Court may, if it is satisfied that an exemption would not unfairly prejudice the shareholders, make an exemption order on any terms it considers fit, which order may have retrospective effect.

S.Nu. 2008,c.12,s.183(8).

Auditor's appointment

164. (1) Subject to section 165, shareholders of a corporation shall, by ordinary resolution at each annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

Eligibility

(2) An auditor appointed under section 105 is eligible for appointment under subsection (1).

Incumbent auditor

(3) Despite subsection (1), if an auditor is not appointed at a meeting of shareholders, the incumbent auditor continues in office until a successor is appointed.

Remuneration

(4) The remuneration of an auditor may be fixed by ordinary resolution of the shareholders or, if not so fixed, may be fixed by the directors. S.Nu. 2013,c.20,s.4(3).

Dispensing with auditor

165. (1) The shareholders of a corporation other than a distributing corporation may resolve not to appoint an auditor.

Limitation

(2) A resolution under subsection (1) is valid only until the next annual meeting of shareholders.

Unanimous consent

(3) A resolution under subsection (1) is not valid unless it is consented to by all the shareholders, including shareholders not otherwise entitled to vote.

Auditor ceasing to hold office

166. (1) An auditor of a corporation ceases to hold office when the auditor dies or resigns or is removed pursuant to section 167.

Effective date

(2) A resignation of an auditor becomes effective at the time a written resignation is sent to the corporation or at the time specified in the resignation, whichever is later.

Removal of auditor

167. (1) The shareholders of a corporation may remove an auditor from office by ordinary resolution at a special meeting.

Vacancy

(2) A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 168.

Filling vacancy

168. (1) Subject to subsection (3), the directors shall forthwith fill a vacancy in the office of auditor.

Calling meeting

(2) If there is not a quorum of directors, the directors then in office shall, within 21 days after a vacancy in the office of auditor occurs, call a special meeting of shareholders to fill the vacancy and, if they fail to call a meeting or if there are no directors, the meeting may be called by any shareholder.

Shareholder filling vacancy

(3) The articles of a corporation may provide that a vacancy in the office of auditor shall only be filled by vote of the shareholders.

Unexpired term

(4) An auditor appointed to fill a vacancy holds office for the unexpired term of his or her predecessor.

Exception

(5) Subsections (1) and (2) do not apply if the shareholders have resolved under section 165 not to appoint an auditor.

Court-appointed auditor

169. (1) If a corporation does not have an auditor, the Court may, on the application of a shareholder or, if the corporation is a distributing corporation, on the application of the Registrar, appoint and fix the remuneration of an auditor who holds office until an auditor is appointed by the shareholders.

Exception

(2) Subsection (1) does not apply if the shareholders have resolved under section 165 not to appoint an auditor.

Right to attend meetings

170. (1) The auditor of a corporation is entitled to receive notice of every meeting of shareholders and, at the expense of the corporation, to attend and be heard at every meeting on matters relating to his or her duties as auditor.

Duty to attend

(2) The auditor or former auditor of a corporation shall attend a meeting of shareholders at the expense of the corporation and answer questions relating to his or her duties as auditor, where a director or shareholder of a corporation, including a shareholder who is not entitled to vote at the meeting, gives written notice to the auditor or the former auditor not less than 10 days before the meeting.

Notice to corporation

(3) A director or shareholder who sends a notice referred to in subsection (2) shall concurrently send a copy of the notice to the corporation.

Offence

(4) An auditor or former auditor of a corporation who fails to comply with subsection (2) without reasonable cause is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Statement of auditor

(5) An auditor who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of directors or shareholders called for the purpose of removing him or her from office,
- (c) receives a notice or otherwise learns of a meeting of directors or shareholders at which another person is to be appointed to fill the office of auditor, whether because of resignation or removal of the incumbent auditor or because his or her term of office has expired or is about to expire, or
- (d) receives a notice or otherwise learns of a meeting of shareholders at which a resolution referred to in section 165 is to be proposed,

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

Circulating statement

(6) The corporation shall forthwith

- (a) send to every shareholder entitled to receive notice of any meeting referred to in subsection (1), and
- (b) file with the Registrar, if the corporation is a distributing corporation,

a copy of the statement referred to in subsection (5), unless the statement is included in or attached to a management proxy circular required by section 152.

Replacing auditor

(7) Subject to subsection (8), no person shall accept an appointment or consent to be appointed as auditor of a corporation if he or she is replacing an auditor who has resigned or been removed or whose term of office has expired or is about to expire until he or she has requested and received from that auditor a written statement of the circumstances and the reasons why, in that auditor's opinion, he or she is to be replaced.

Exception

(8) A person who is otherwise qualified may accept appointment or consent to be appointed as auditor of a corporation if he or she does not receive a reply within 15 days after making the request referred to in subsection (7).

Effect of non-compliance

(9) Unless subsection (8) applies, an appointment of an auditor of a corporation of a person who has not complied with subsection (7) is void.

Exemption re change of auditor

(10) Subsections (5) to (7) do not apply to a corporation that is subject to and complies with the requirements of Nunavut securities laws in respect of a change of auditor. S.Nu. 2008,c.12,s.183(9).

Auditor's duty to examine

171. (1) An auditor of a corporation shall make the examination that is in his or her opinion necessary to enable him or her to report in the prescribed manner on the financial statements required by this Act to be placed before the shareholders, except those financial statements or parts of those statements that relate to the earlier of the two financial years referred to in subparagraph 157(1)(a)(iii).

Reliance on another auditor

(2) Despite section 172, an auditor of a corporation may reasonably rely on the report of an auditor of a body corporate or an unincorporated business the accounts of which are included in whole or in part in the financial statements of the corporation.

Reasonableness

(3) For the purpose of subsection (2), reasonableness is a question of fact.

Application

(4) Subsection (2) applies whether or not the financial statements of the holding corporation reported on by the auditor are in consolidated form. S.Nu. 2013,c.20,s.4(3).

Auditor's right to information

172. (1) On the demand of the auditor of a corporation, the present or former directors, officers, employees or agents of the corporation and the former auditors of the corporation shall furnish the

- (a) information and explanations, and
- (b) access to records, documents, books, accounts and vouchers of the corporation or any of its subsidiaries

that are, in the opinion of the auditor, necessary to enable him or her to make the examination and report required under section 171 and that the directors, officers, employees, agents or former auditors are reasonably able to furnish.

Duty of directors to obtain information

(2) On the demand of the auditor of a corporation, the directors of the corporation shall

- (a) to the extent they are reasonably able to do so, obtain from the present or former directors, officers, employees, agents or auditors of any subsidiary of the corporation the information and

- explanations that the present or former directors, officers, employees, agents or auditors are reasonably able to furnish and that are, in the opinion of the corporation's auditor, necessary to enable him or her to make the examination and report required under section 171; and
- (b) furnish the information and explanations so obtained to the corporation's auditor.

Immunity

(3) A person who in good faith makes an oral or written communication under subsection (1) or (2) does not incur any liability by reason of having made the communication.

Audit committee

173. (1) Subject to subsection (3), a distributing corporation shall, and any other corporation may, have an audit committee.

Composition of committee

(2) The audit committee of a distributing corporation shall be composed of not less than three directors of the corporation, a majority of whom are not officers or employees of the corporation or any of its affiliates.

Duty of committee

(3) An audit committee shall review the financial statements of the corporation before they are approved under section 160.

Auditor's attendance

(4) The auditor of a corporation is entitled to receive notice of every meeting of the audit committee and, at the expense of the corporation, to attend and be heard at the meeting, and, if so requested by a member of the audit committee, shall attend every meeting of the committee held during the term of office of the auditor.

Calling meeting

(5) The auditor of a corporation or a member of the audit committee may call a meeting of the committee.

Notice of errors

(6) A director or an officer of a corporation shall forthwith notify the audit committee and the auditor of any error or misstatement of which he or she becomes aware in a financial statement that the auditor or a former auditor has reported on.

Error in financial statements

(7) If the auditor or a former auditor of a corporation is notified or becomes aware of an error or misstatement in a financial statement on which the auditor has reported, and if in his or her opinion the error or misstatement is material, he or she shall inform each director accordingly.

Duty of directors

- (8) Where the auditor or a former auditor informs the directors of an error or misstatement in a financial statement pursuant to subsection (7), the directors shall
- (a) prepare and issue revised financial statements; or
 - (b) otherwise inform the shareholders and, if the corporation is a distributing corporation, the Registrar, of the error or misstatement.

Offence

(9) Every director or officer of a corporation who knowingly fails to comply with subsection (6) or (8) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Qualified privilege

174. Any oral or written statement or report made under this Act by the auditor or a former auditor of a corporation has qualified privilege.

Solicitor and client privilege

175. (1) Any privilege that exists in relation to any communication between a solicitor and client is not lost or waived because all or part of the communication is

- (a) furnished or disclosed to the client's auditor for the purpose of assisting the auditor in the performance of an audit; or
- (b) referred to in the client's financial statements and the notes with respect to those statements.

No waiver of privilege

(2) The fact that any communication between a solicitor and client is prepared or made with the intention that it will be furnished or disclosed to the client's auditor for the purpose of assisting the auditor in the performance of an audit does not prevent the creation of, or give rise to the waiver of, a privilege in relation to that communication.

PART XIV

FUNDAMENTAL CHANGES

Amendment of articles

176. (1) Subject to sections 178 and 179, the articles of a corporation may, by special resolution, be amended to

- (a) subject to section 12, change its name;
- (b) change the municipality or other place in which its registered office is situated;
- (c) add, change or remove any restriction on the business or businesses that the corporation may carry on;
- (d) change any maximum number of shares that the corporation is authorized to issue;

- (e) create new classes of shares;
- (f) add, change or remove, subject to the regulations, constraints on the issue, transfer or ownership of shares referred to in section 26;
- (g) reduce or increase its stated capital, if its stated capital is set out in the articles;
- (h) change the designation of all or any of its shares and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends in respect of all or any of its shares whether issued or unissued;
- (i) change the shares of any class or series, whether issued or unissued, into the same or a different number of shares of other classes or series;
- (j) divide a class of shares, whether issued or unissued, into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of each series;
- (k) authorize the directors to divide any class of unissued shares into series and fix the number of shares in each series and the rights, privileges, restrictions and conditions of each series;
- (l) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued shares of any series;
- (m) revoke, diminish or enlarge any authority conferred under paragraphs (j) and (k);
- (n) subject to sections 108 and 113, increase or decrease the number of directors or the minimum or maximum number of directors;
- (o) add, change or remove restrictions on the transfer of shares; or
- (p) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

Termination

(2) The directors of a corporation may, if authorized by the shareholders in the special resolution effecting an amendment under this section, revoke the resolution before it is acted on without further approval of the shareholders.

Amendment of number name

(3) Despite subsection (1), but subject to section 12, where a corporation has a designating number as a name or a name consisting of a designated number together with such other words and abbreviations as the Registrar requires under subsection 11(1), the directors may amend the corporation's articles to change that name.

S.Nu. 2010,c.15,s.106(10); S.Nu. 2013,c.20,s.4(3).

Proposal for amendment

177. (1) Subject to subsection (2), a director or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 138, make a proposal to amend the articles.

Notice of proposal

(2) Notice of a meeting of shareholders at which a proposal to amend the articles is to be considered shall set out the proposed amendment and, where applicable, shall state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 193, but failure to make that statement does not invalidate an amendment.

Class votes

178. (1) The holders of shares of a class or, subject to subsection (2), of a series are, unless the articles otherwise provide in the case of an amendment referred to in paragraphs (a), (b) and (e), entitled to vote separately as a class or series on a proposal to amend the articles to

- (a) increase or decrease the maximum number of authorized shares of that class or increase the maximum number of authorized shares of a class having rights or privileges equal or superior to the rights or privileges attached to the shares of that class;
- (b) effect an exchange, reclassification or cancellation of all or part of the shares of that class;
- (c) add, change or remove the rights, privileges, restrictions or conditions attached to the shares of that class and, without limiting the generality of the foregoing,
 - (i) remove or prejudicially change rights to accrued dividends or rights to cumulative dividends,
 - (ii) add, remove or prejudicially change redemption rights,
 - (iii) reduce or remove a dividend preference or a liquidation preference, or
 - (iv) add, remove or prejudicially change conversion privileges, options, voting, transfer or pre-emptive rights, rights to acquire securities of a corporation or sinking fund provisions;
- (d) increase the rights or privileges of any class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class;
- (e) create a new class of shares having rights or privileges equal or superior to the rights or privileges attached to the shares of that class;
- (f) make the rights or privileges of any class of shares having rights or privileges inferior to the rights or privileges of the shares of that class equal or superior to the rights or privileges of the shares of that class;
- (g) effect an exchange or create a right of exchange of all or part of the shares of another class into the shares of that class; or
- (h) constrain the issue, transfer or ownership of the shares of that class or extend or remove that constraint.

Exception

(2) Subsection (1) does not apply with respect to a proposal to amend the articles to add a right or privilege for a holder to convert shares of a class or series into shares of another class or series that

- (a) is to be constrained by a restriction referred to in paragraph 26(1)(c); and
- (b) is otherwise equal to the class or series converted from.

Deemed status of new class of shares

(3) For the purposes of paragraph (1)(e), a new class of shares that is otherwise equal to an existing class of shares is deemed not to be equal or superior to that existing class of shares where the issue, transfer or ownership of such shares is to be constrained by a restriction referred to in paragraph 26(1)(c).

Limitation

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

Right to vote

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

Separate resolutions

(6) A proposed amendment to the articles referred to in subsection (1) is adopted when the holders of the shares of each class or series entitled to vote separately on the amendment as a class or series have approved the amendment by a special resolution.

Delivery of articles of amendment

179. (1) Subject to any revocation under subsection 176(2), after an amendment has been adopted under section 176 or 178, articles of amendment in prescribed form shall be sent to the Registrar.

Change of name

(2) If an amendment is to change the name of a corporation, the prescribed documents relating to corporate names shall, unless otherwise agreed by the Registrar, be sent to the Registrar.

Reduction of stated capital

(3) If an amendment effects or requires a reduction of stated capital, subsections 40(3) and (4) apply.

Certificate of amendment

180. On receipt of articles of amendment and the prescribed fees, the Registrar shall issue a certificate of amendment in accordance with section 268.

Effect of certificate

181. (1) An amendment becomes effective on the date shown in the certificate of amendment and the articles are amended accordingly.

Rights preserved

(2) No amendment to the articles affects an existing cause of action or claim or liability to prosecution in favour of or against the corporation or any of its directors or officers, or any civil, criminal or administrative action or proceeding to which a corporation or any of its directors or officers is a party.

Restated articles of incorporation

182. (1) A corporation may, at any time, and shall when reasonably so directed by the Registrar, restate the articles of incorporation as amended.

Delivery of articles

(2) Restated articles of incorporation in prescribed form shall be sent to the Registrar.

Restated certificate

(3) On receipt of restated articles of incorporation, the Registrar shall issue a restated certificate of incorporation in accordance with section 268.

Effect

(4) Restated articles of incorporation are effective on the date shown in the restated certificate of incorporation and supersede the original articles of incorporation and all amendments to them.

Amalgamation

183. Two or more corporations, including holding and subsidiary corporations, may amalgamate and continue as one corporation.

Amalgamation agreement

184. (1) Each corporation proposing to amalgamate shall enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be set out in articles of incorporation by section 6;
- (b) the name and address of each proposed director of the amalgamated corporation;
- (c) the manner in which the shares of each amalgamating corporation are to be converted into shares or other securities of the amalgamated corporation;

- (d) if any shares of an amalgamating corporation are not to be converted into securities of the amalgamated corporation, the amount of money or securities of any body corporate that the holders of those shares are to receive in addition to or instead of securities of the amalgamated corporation;
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated corporation or of any other body corporate the securities of which are to be received in the amalgamation;
- (f) whether the by-laws of the amalgamated corporation are to be those of one of the amalgamating corporations and, if not, a copy of the proposed by-laws; and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated corporation.

Cancellation

(2) If shares of one of the amalgamating corporations are held by or on behalf of another of the amalgamating corporations, the amalgamation agreement shall provide for the cancellation of those shares when the amalgamation becomes effective without any repayment of capital in respect of those shares, and no provision shall be made in the agreement for the conversion of those shares into shares of the amalgamated corporation.

Shareholder approval of amalgamation agreement

185. (1) The directors of each amalgamating corporation shall submit the amalgamation agreement for approval to a meeting of the holders of shares of the amalgamating corporation of which they are directors and, subject to subsection (4), to the holders of each class or series of those shares.

Notice of meeting

(2) A notice of a meeting of shareholders complying with section 136 shall be sent in accordance with that section to each shareholder of each amalgamating corporation and shall

- (a) include or be accompanied by a copy or summary of the amalgamation agreement; and
- (b) state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 193, but failure to make that statement does not invalidate an amalgamation.

Right to vote

(3) Each share of an amalgamating corporation carries the right to vote in respect of an amalgamation whether or not it otherwise carries the right to vote.

Class vote

(4) The holders of shares of a class or series of shares of an amalgamating corporation are entitled to vote separately as a class or series in respect of an amalgamation if the amalgamation agreement contains a provision that, if contained in a proposed amendment to the articles, would entitle those holders to vote as a class or series under section 178.

Shareholder approval

(5) Subject to subsection (4), an amalgamation agreement is adopted when the shareholders of each amalgamating corporation have approved of the amalgamation by special resolution.

Termination

(6) An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation the agreement may be terminated by the directors of an amalgamating corporation, despite approval of the agreement by the shareholders of all or any of the amalgamating corporations. S.Nu. 2013,c.20,s.4(3).

Vertical short form amalgamation

186. (1) A holding corporation and one or more of its subsidiary corporations may amalgamate and continue as one corporation without complying with sections 184 and 185 if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation;
- (b) all of the issued shares of each amalgamating subsidiary corporation are held by one or more of the other amalgamating corporations; and
- (c) the resolutions provide that
 - (i) the shares of each amalgamating subsidiary corporation shall be cancelled without any repayment of capital in respect of those shares,
 - (ii) except as may be prescribed, the articles of amalgamation shall be the same as the articles of incorporation of the amalgamating holding corporation,
 - (iii) no securities shall be issued by the amalgamated corporation in connection with the amalgamation, and
 - (iv) the stated capital of the amalgamated corporation shall be the same as the stated capital of the amalgamated holding corporation.

Horizontal short form amalgamation

(2) Two or more wholly-owned subsidiary corporations of the same holding body corporate may amalgamate and continue as one corporation without complying with sections 184 and 185 if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating corporation; and
- (b) the resolutions provide that
 - (i) the shares of all but one of the amalgamating subsidiary corporations shall be cancelled without any repayment of capital in respect of those shares,
 - (ii) except as may be prescribed, the articles of amalgamation will be the same as the articles of incorporation of the amalgamating subsidiary corporation whose shares are not cancelled, and
 - (iii) the stated capital of the amalgamating subsidiary corporations whose shares are cancelled shall be added to the stated capital of the amalgamating subsidiary corporation whose shares are not cancelled.

Sending of articles of amalgamation to Registrar

187. (1) Subject to subsection 185(6), after an amalgamation agreement has been adopted under section 185 or an amalgamation has been approved under section 186, articles of amalgamation in prescribed form and the prescribed fees shall be sent to the Registrar together with the documents required by sections 19 and 107 and, if the name of the amalgamated corporation is not the same as that of one of the amalgamating corporations, the prescribed documents relating to corporate names.

Attached declarations

(2) The articles of amalgamation shall have attached to them the amalgamation agreement, if any, and a statutory declaration of a director or officer of each amalgamating corporation that establishes to the satisfaction of the Registrar that

- (a) there are reasonable grounds for believing that
 - (i) each amalgamating corporation is and the amalgamated corporation will be able to pay its liabilities as they become due, and
 - (ii) the realizable value of the amalgamated corporation's assets will not be less than the aggregate of its liabilities and stated capital of all classes; and
- (b) there are reasonable grounds for believing that
 - (i) no creditor will be prejudiced by the amalgamation, or
 - (ii) adequate notice has been given to all known creditors of the amalgamating corporations and no creditor objects to the amalgamation otherwise than on grounds that are frivolous or vexatious.

Adequate notice

- (3) For the purposes of subsection (2), adequate notice is given if
- (a) a notice of the proposed amalgamation in writing is sent to each known creditor having a claim against the corporation that exceeds \$2,000;

- (b) a notice of the proposed amalgamation is published once in a newspaper published or distributed in the place where the corporation has its registered office and reasonable notice of the proposed amalgamation is given in each province and territory where the corporation carries on business; and
- (c) each notice states that the corporation intends to amalgamate with one or more specified corporations in accordance with this Act unless a creditor of the corporation objects to the amalgamation within 30 days from the date of the notice.

Certificate of amalgamation

(4) On receipt of articles of amalgamation and the other documents required by subsections (1) and (2) together with of the prescribed fees, the Registrar shall issue a certificate of amalgamation in accordance with section 268. S.Nu. 2013,c.20,s.4(3).

Effect of certificate of amalgamation

188. On the date shown in a certificate of amalgamation

- (a) the amalgamation of the amalgamating corporations and their continuance as one corporation become effective;
- (b) the property of each amalgamating corporation continues to be the property of the amalgamated corporation;
- (c) the amalgamated corporation continues to be liable for the obligations of each amalgamating corporation;
- (d) an existing cause of action, claim or liability to prosecution is unaffected;
- (e) a civil, criminal or administrative action or proceeding pending by or against an amalgamating corporation may be continued to be prosecuted by or against the amalgamated corporation;
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating corporation may be enforced by or against the amalgamated corporation; and
- (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated corporation and the certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated corporation.

Amalgamation of territorial corporation and extra-territorial corporation where one is wholly-owned subsidiary of the other

189. (1) A corporation may amalgamate with an extra-territorial corporation and continue as one corporation under this Act if

- (a) the extra-territorial corporation is authorized to amalgamate with the corporation by the laws of the jurisdiction in which the extra-territorial corporation is incorporated; and
- (b) one is the wholly-owned subsidiary of the other.

Amalgamation agreement

(2) Where a corporation and an extra-territorial corporation propose to amalgamate and one is the wholly-owned subsidiary of the other, the corporation and the extra-territorial corporation shall enter into an amalgamation agreement setting out the terms and means of effecting the amalgamation and, in particular,

- (a) providing for the matters enumerated in paragraphs 184(1)(a), (b) and (g);
- (b) providing that the shares of the wholly-owned subsidiary shall be cancelled without any repayment of capital in respect of those shares; and
- (c) providing that no securities shall be issued by the amalgamated corporation in connection with the amalgamation.

Approval of amalgamation agreement

(3) An amalgamation under this section is adopted when

- (a) the agreement is approved by the directors of the corporation;
- (b) the agreement is approved by the directors or comparable governing body of, or the members of, the extra-territorial corporation, whichever body is required under the laws of the jurisdiction of incorporation of the extra-territorial corporation to approve it; and
- (c) the extra-territorial corporation has otherwise complied with the law of the jurisdiction in which it is incorporated.

Termination

(4) An amalgamation agreement under this section may provide that at any time before the issue of a certificate of amalgamation, the agreement may be terminated by the directors of the corporation or the directors or comparable governing body of the extra-territorial corporation, despite any previous approval of the agreement.

Application of sections 187 and 188

(5) Sections 187 and 188 apply to an amalgamation under this section as if both of the amalgamating bodies corporate were corporations except that the notice referred to in paragraph 187(3)(b) shall also be published or distributed in each jurisdiction outside Canada where either body corporate carries on business. S.Nu. 2013,c.20,s.4(3).

Continuance of an extra-territorial corporation

190. (1) An extra-territorial corporation may, if so authorized by the laws of the jurisdiction where it is incorporated, apply to the Registrar for a certificate of continuance by sending the articles of continuance in the prescribed form together with the documents required by subsection 12(4) and sections 19 and 107.

Amendment in articles of continuance

(2) An extra-territorial corporation that applies for continuance under subsection (1) may, without so stating in its articles of continuance, effect by those articles any amendment of the extra-territorial corporation's act of incorporation, articles, letters patent or memorandum or articles of association that a corporation incorporated under this Act would be able to effect by way of amendment to its articles.

Certificate of continuance

(3) The Registrar shall issue a certificate of continuance in accordance with section 268 on receipt of articles of continuance, the documents required by subsection (1), the prescribed fees and, where the extra-territorial corporation is in default of filing any document or fulfilling any undertaking under this Act, the documents necessary to remedy the default or fulfil the undertaking.

Effect of certificate

- (4) On the date shown in the certificate of continuance
- (a) the extra-territorial corporation becomes a corporation to which this Act applies as if it had been incorporated under this Act; and
 - (b) the articles of continuance are deemed to be the articles of incorporation of the continued corporation.

Rights of dissatisfied shareholder

(5) Where articles of continuance effect a change or amendment of a kind mentioned in subsection 176(1), a shareholder who is dissatisfied with the change or amendment may, within two years from the day shown in the certificate of continuance, apply to the Court for an order under section 243 but is not entitled at any time to dissent under section 193 in respect of that change or amendment.

Copy of certificate

(6) The Registrar shall forthwith send a copy of the certificate of continuance to the appropriate official or public body in the jurisdiction in which continuance under this Act was authorized.

Rights preserved

- (7) When an extra-territorial corporation is continued as a corporation under this Act,
- (a) the property of the extra-territorial corporation continues to be the property of the corporation;
 - (b) the corporation continues to be liable for the obligations of the extra-territorial corporation;
 - (c) an existing cause of action, claim or liability to prosecution is unaffected;
 - (d) a civil, criminal or administrative action or proceeding pending by or against the extra-territorial corporation may be continued to be prosecuted by or against the corporation; and

- (e) a conviction against, or ruling, order or judgment in favour of or against, the extra-territorial corporation may be enforced by or against the corporation.

Issued shares

(8) A share of an extra-territorial corporation issued before the extra-territorial corporation was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and irrespective of any designation, rights, privileges, restrictions or conditions set out on or referred to in the certificate representing the share, and continuance under this section does not deprive a holder of any right or privilege that he or she claims under, or relieve him or her of any liability in respect of, an issued share.

Rights to bearer certificate

(9) Despite subsection 25(1), if a corporation continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to a share certificate in favour of bearer, the corporation may, if a holder of such a share certificate exercises the conversion privilege attached to it, issue a share certificate in favour of bearer for the same number of shares to the holder.

"share" defined

(10) For the purposes of subsections (8) and (9), "share" includes an instrument referred to in subsection 31(1), a share warrant or a like instrument.

Where continued reference to par value shares permissible

(11) Where the Registrar determines on the application of a corporation that it is not practicable to change a reference to the nominal or par value of shares of a class or series that it was authorized to issue before it was continued under this Act, the Registrar may, despite subsection 25(1), permit the corporation to continue to refer in its articles to those shares, whether issued or unissued, as shares having a nominal or par value.

Limitation

(12) A corporation shall set out in its articles the maximum number of shares of a class or series referred to in subsection (11) and may not amend its articles to increase that maximum number of shares or to change the nominal or par value of those shares. S.Nu. 2010,c.15,s.106(11); S.Nu. 2013,c.20,s.4(3).

Continuance of a territorial corporation into another jurisdiction

- 191.** (1) Subject to subsection (9), a corporation may,
- (a) if it is authorized by the shareholders in accordance with this section,
 - (b) if it establishes to the satisfaction of the Registrar that its proposed continuance in another jurisdiction will not adversely affect creditors or shareholders of the corporation, and
 - (c) if it appears to the Registrar that the corporation is not in default in filing any notice or return required to be filed under this Act,

apply to the appropriate official or public body of another jurisdiction requesting that the corporation be continued as if it had been incorporated under the laws of that other jurisdiction.

Notice of meeting

(2) A notice of a meeting of shareholders complying with section 136 shall be sent in accordance with that section to each shareholder and shall state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 193, but failure to make that statement does not invalidate a discontinuance under this Act.

Right to vote

(3) Each share of the corporation carries the right to vote in respect of a continuance whether or not it otherwise carries the right to vote.

Shareholder approval

(4) An application for continuance becomes authorized when the shareholders voting on it have approved of the continuance by a special resolution.

Termination

(5) The directors of a corporation may, if authorized by the shareholders at the time of approving an application for continuance under this section, abandon the application without further approval of the shareholders.

Discontinuance

(6) On receipt of notice satisfactory to the Registrar that the corporation has been continued under the laws of another jurisdiction, the Registrar shall file the notice and issue a certificate of discontinuance in accordance with section 268.

Notice deemed to be articles

(7) For the purposes of section 268, a notice referred to in subsection (6) is deemed to be articles that are in the prescribed form.

Act ceases to apply

(8) On the date shown in the certificate of discontinuance, this Act, other than Part XXI, ceases to apply to the corporation.

Prohibition

(9) A corporation shall not be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that

- (a) the property of the corporation continues to be the property of the body corporate;
- (b) the body corporate continues to be liable for the obligations of the corporation;
- (c) an existing cause of action, claim or liability to prosecution is unaffected;

- (d) a civil, criminal or administrative action or proceeding pending by or against the corporation may be continued to be prosecuted by or against the body corporate; and
- (e) a conviction against, or ruling, order or judgment in favour of or against the corporation may be enforced by or against the body corporate.

Extraordinary sale, lease or exchange

192. (1) A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in accordance with subsections (2) to (6).

Notice of meeting

(2) A notice of meeting of shareholders complying with section 136 shall be sent in accordance with that section to each shareholder and shall

- (a) include or be accompanied by a copy or summary of the agreement of sale, lease or exchange; and
- (b) state that a dissenting shareholder is entitled to be paid the fair value of his or her shares in accordance with section 193, but failure to make that statement does not invalidate a sale, lease or exchange referred to in subsection (1).

Shareholder approval

(3) At the meeting referred to in subsection (2), the shareholders may authorize the sale, lease or exchange and may fix or authorize the directors to fix any of its terms and conditions.

Right to vote

(4) Each share of the corporation carries the right to vote in respect of a sale, lease or exchange referred to in subsection (1) whether or not it otherwise carries the right to vote.

Class vote

(5) The holders of shares of a class or series of shares of the corporation are entitled to vote separately as a class or series in respect of a sale, lease or exchange referred to in subsection (1) only if that class or series is affected by the sale, lease or exchange in a manner different from the shares of another class or series.

Shareholder approval

(6) A sale, lease or exchange referred to in subsection (1) is adopted when the holders of each class or series entitled to vote on it have approved of the sale, lease or exchange by a special resolution.

Termination

(7) The directors of a corporation may, if authorized by the shareholders approving a proposed sale, lease or exchange, and subject to the rights of third parties, abandon the sale, lease or exchange without further approval of the shareholders.

Shareholder's right to dissent

193. (1) Subject to sections 194 and 243, a holder of shares of any class of a corporation may dissent if the corporation resolves to

- (a) amend its articles under section 176 to add, change or remove any provisions restricting or constraining the issue or transfer of shares of that class;
- (b) amend its articles under section 176 to add, change or remove any restrictions on the business or businesses that the corporation may carry on;
- (c) amalgamate with another corporation, otherwise than under section 186 or 189;
- (d) be continued under the laws of another jurisdiction under section 191; or
- (e) sell, lease or exchange all or substantially all its property under section 192.

Further right of dissent

(2) A holder of shares may dissent where the corporation resolves to amend the articles in a manner described in section 178 if

- (a) the holder holds shares of a class or series of shares entitled to vote under section 178 except where the proposal relates to an increase or decrease in the maximum number of shares of that class; or
- (b) in the case of a corporation where there is only one class of shares, the holder would have been entitled to vote under paragraph (a) if there had been more than one class of shares.

Payment for shares

(3) In addition to any other right he or she may have, but subject to subsection (20), a shareholder entitled to dissent under this section and who complies with this section is entitled to be paid by the corporation the fair value of the shares held by him or her in respect of which he or she dissents, determined as of the close of business on the last business day before the day on which the resolution from which he or she dissents was adopted.

No partial dissent

(4) A dissenting shareholder may only claim under this section with respect to all the shares of a class held by him or her or on behalf of any one beneficial owner and registered in the name of the dissenting shareholder.

Notice of objection

(5) A dissenting shareholder shall send to the corporation a written objection to a resolution referred to in subsection (1) or (2)

- (a) at or before any meeting of shareholders at which the resolution is to be voted on; or
- (b) if the corporation did not send notice to the shareholder of the purpose of the meeting or of his or her right to dissent, within a reasonable time after he or she learns that the resolution was adopted and of his or her right to dissent.

Application to the Court

(6) After the adoption of a resolution referred to in subsection (1) or (2), an application may be made to the Court

- (a) by the corporation, or
- (b) by a shareholder if he or she has sent an objection to the corporation under subsection (5),

to fix, in accordance with subsection (3), the fair value of the shares of a shareholder who dissents under this section.

Offer to pay for shares

(7) If an application is made under subsection (6), the corporation shall, unless the Court otherwise orders, send to each dissenting shareholder a written offer to pay him or her an amount considered by the directors to be the fair value of the shares.

Sending of offer

(8) Unless the Court otherwise orders, an offer referred to in subsection (7) shall be sent to each dissenting shareholder

- (a) at least 10 days before the date on which the application under subsection (6) is returnable, if the corporation is the applicant; or
- (b) within 10 days after the corporation is served with the application referred to in subsection (6), if a shareholder is the applicant.

Terms of offer

(9) Every offer made under subsection (7) shall

- (a) be made on the same terms to all dissenting shareholders of a class; and
- (b) contain or be accompanied by a statement showing how the fair value was determined.

Shareholder may accept offer

(10) A dissenting shareholder may make an agreement with the corporation for the purchase of his or her shares by the corporation, in the amount of the corporation's offer under subsection (7) or otherwise, at any time before the Court pronounces an order fixing the fair value of the shares.

No security for costs

(11) A dissenting shareholder

- (a) is not required to give security for costs in respect of an application under subsection (6); and
- (b) shall not be required to pay the costs of the application or appraisal unless the Court considers that special circumstances warrant such an order.

Directions

(12) The Court may give directions in connection with an application under subsection (6) for

- (a) joining as parties all dissenting shareholders whose shares have not been purchased by the corporation and for the representation of dissenting shareholders who, in the opinion of the Court, are in need of representation;
- (b) the trial of issues and interlocutory matters, including pleadings and examinations for discovery;
- (c) the payment to the shareholder of all or part of the sum offered by the corporation for the shares;
- (d) the deposit of the share certificates with the Court or with the corporation or its transfer agent;
- (e) the appointment and payment of independent appraisers, and the procedures to be followed by them;
- (f) the service of documents; and
- (g) the burden of proof on the parties.

Order of Court

(13) On an application under subsection (6), the Court shall make an order

- (a) fixing, in accordance with subsection (3), the fair value of the shares of all dissenting shareholders who are parties to the application;
- (b) giving judgment in that amount against the corporation and in favour of each of those dissenting shareholders; and
- (c) fixing the time within which the corporation must pay that amount to a shareholder.

Right to payment

(14) On

- (a) the coming into effect of the action approved by the resolution from which the shareholder dissents,
- (b) the making of an agreement under subsection (10) between the corporation and the dissenting shareholder as to the payment to be made by the corporation for his or her shares, whether by the acceptance of the corporation's offer under subsection (7) or otherwise, or
- (c) the making of an order under subsection (13),

whichever first occurs, the shareholder ceases to have any rights as a shareholder other than the right to be paid the fair value of his or her shares in the amount agreed to between the corporation and the shareholder or in the amount of the judgment, as the case may be.

Exception

(15) Paragraph (14)(a) does not apply to a shareholder referred to in paragraph (5)(b).

When proceedings under this section shall be discontinued

(16) Until one of the events mentioned in subsection (14) occurs,
(a) the shareholder may withdraw his or her dissent, or
(b) the corporation may rescind the resolution,
and in either event proceedings under this section shall be discontinued.

Interest

(17) The Court may in its discretion allow a reasonable rate of interest on the amount payable to each dissenting shareholder, from the date on which the shareholder ceases to have any rights as a shareholder by reason of subsection (14) until the date of payment.

Notice that subsection (20) applies

(18) If subsection (20) applies, the corporation shall, within 10 days after
(a) the making of an order under subsection (13), or
(b) the making of an agreement between the shareholder and the corporation as to the payment to be made for his or her shares,
notify each dissenting shareholder that it is unable lawfully to pay dissenting shareholders for their shares.

Effect where subsection (20) applies

(19) Despite the giving of a judgment in favour of a dissenting shareholder under paragraph (13)(b), the dissenting shareholder may, if subsection (20) applies, by written notice delivered to the corporation within 30 days after receiving the notice under subsection (18), withdraw his or her notice of objection, in which case the corporation is deemed to consent to the withdrawal and the shareholder is reinstated to his or her full rights as a shareholder, failing which he or she retains a status as a claimant against the corporation, to be paid as soon as the corporation is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors of the corporation but in priority to its shareholders.

Limitation

(20) A corporation shall not make a payment to a dissenting shareholder under this section if there are reasonable grounds for believing that
(a) the corporation is or would after the payment be unable to pay its liabilities as they become due, or

- (b) the realizable value of the corporation's assets would thereby be less than the aggregate of its liabilities.
S.Nu. 2013,c.20,s.4(3).

PART XV

CORPORATE REORGANIZATION AND ARRANGEMENTS

Articles of reorganization resulting from court order

- 194.** (1) In this section, "order for reorganization" means an order of the Court
- (a) made under section 243;
 - (b) approving a proposal under the *Bankruptcy and Insolvency Act* (Canada); or
 - (c) made under any other Act of Canada or Nunavut that affects the rights among the corporation, its shareholders and its creditors.

Powers of Court

(2) Where a corporation is subject to an order for reorganization, its articles may, subject to section 12, be amended by the order to effect any change that might lawfully be made by an amendment under section 176.

Further powers

- (3) On making an order for reorganization, the Court may also
- (a) authorize the issue of debt obligations of the corporation, whether or not convertible into shares of any class or having attached any rights or options to acquire shares of any class, and fix the terms of those debt obligations; and
 - (b) appoint directors in place of or in addition to all or any of the directors then in office.

Articles of reorganization

(4) Where the Court makes an order for reorganization that includes a direction that the articles of a corporation be amended, articles of reorganization in prescribed form shall be sent to the Registrar together with a certified copy of the order and the documents required by sections 19 and 114, if applicable.

Certificate of amendment

(5) On receipt of articles of reorganization, the Registrar shall issue a certificate of amendment in accordance with section 268.

Effect of certificate

(6) An order for reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

No dissent

(7) A shareholder is not entitled to dissent under section 193 if an amendment to the articles of incorporation is effected under this section or section 243.

S.N.W.T. 1998,c.5,s.4(10),(11); S.Nu. 2013,c.20,s.4(3).

Court-approved arrangements

195. (1) In this section, "arrangement" includes, but is not restricted to

- (a) an amendment to the articles of a corporation;
- (b) an amalgamation of two or more corporations;
- (c) an amalgamation of a body corporate with a corporation that results in an amalgamated corporation subject to this Act;
- (d) a division of the business carried on by a corporation;
- (e) a transfer of all or substantially all the property of a corporation to another body corporate in exchange for property, money or securities of the body corporate;
- (f) an exchange of securities of a corporation held by security holders for property, money or other securities of the corporation or property, money or securities of another body corporate that is not a take-over bid as defined in section 196;
- (g) a liquidation and dissolution of a corporation;
- (h) a compromise between a corporation and its creditors or any class of its creditors or between a corporation and the holders of its shares or debt obligations or any class of those holders; and
- (i) any combination of the foregoing.

Who may apply for order

(2) An application may be made to the Court by a corporation or a security holder or creditor of a corporation for an order approving an arrangement in respect of the corporation.

Restriction

(3) If an arrangement can be effected under any other provision of this Act, an application may not be made under this section unless it is impracticable to effect the arrangement under that other provision.

Powers of Court

(4) In connection with an application under this section, the Court, unless it dismisses the application,

- (a) shall order a meeting of shareholders or a class or classes of shareholders to vote on the proposed arrangement;
- (b) shall order a meeting of persons who are creditors or holders of debt obligations of the corporation or of options or rights to acquire securities of the corporation, or any class of those persons, if the Court considers that those persons or that class of persons are affected by the proposed arrangement;

- (c) may, with respect to any meeting referred to in paragraph (a) or (b), give any directions in the order respecting
 - (i) the calling of and the giving of notice of the meeting,
 - (ii) the conduct of the meeting,
 - (iii) subject to subsection (6), the number of votes required to pass a resolution at the meeting, and
 - (iv) any other matter it considers fit; and
- (d) may make an order appointing counsel to represent, at the expense of the corporation, the interests of the shareholders or any of them.

Notice of meeting

(5) The notice of a meeting referred to in paragraph (4)(a) or (b) shall contain or be accompanied by

- (a) a statement explaining the effect of the arrangement; and
- (b) if the application is made by the corporation, a statement of any material interests of the directors of the corporation, whether as directors, security holders or creditors, and the effect of the arrangement on those interests.

Votes required

(6) An order made under subparagraph (4)(c)(iii) in respect of any meeting may not provide for any number of votes that is less than the following:

- (a) in the case of a vote of the shareholders or a class of shareholders, at least two-thirds of the votes cast by the shareholders voting on the resolution;
- (b) in the case of a vote of creditors or a class of creditors, a majority in number of the creditors who must represent at least two-thirds of the amount of the claims of all the creditors;
- (c) in the case of a vote of the holders of debt obligations or a class of those holders, a majority in number of the holders who must represent at least two-thirds of the amount of the claims of those holders;
- (d) in the case of a vote of holders of options or rights to acquire securities, the majority that would be required under paragraph (a) or (c) if those holders had acquired ownership of the securities.

Resolution in writing

(7) Despite anything in subsections (4) to (6), if a resolution required to be voted on pursuant to the order under subsection (4) is in writing and signed by all the persons entitled to vote on the resolution,

- (a) the meeting required to be held by the order need not be held; and
- (b) the resolution is as valid as if it had been passed at a meeting.

Registrar may appear

(8) If the application is in respect of a distributing corporation, the applicant shall give the Registrar notice of the application and the Registrar is entitled to appear and be heard in person or by counsel.

Order of Court

(9) After the holding of the meetings required by an order under subsection (4) or the submission to it of written resolutions that comply with subsection (7), the Court shall hear the application and may, subject to section 12,

- (a) approve the arrangement as proposed by the applicant or as amended by the Court, or
 - (b) refuse to approve the arrangement,
- and make any other order it considers fit.

Articles of arrangement

(10) After an order referred to in paragraph (9)(a) is made, the corporation shall send to the Registrar

- (a) a copy of the order;
- (b) articles of arrangement in prescribed form; and
- (c) the documents required by sections 19 and 114, if applicable.

Certificate of arrangement

(11) On receipt of documents referred to in paragraphs (10)(b) and (c), the Registrar shall issue a certificate of arrangement in accordance with section 268.

Effective date

(12) An arrangement becomes effective on the date shown in the certificate issued pursuant to subsection (11).

Arrangement binding

(13) An arrangement as approved by the Court is binding on the corporation and all other persons. S.Nu. 2013,c.20,s.4(3).

PART XVI**TAKE-OVER BIDS – COMPULSORY PURCHASE****Definitions**

196. In this Part,

"dissenting offeree" means an offeree who does not accept a take-over bid and a person who acquires from an offeree a share for which a take-over bid is made; (*pollicité dissident*)

"offer" includes an invitation to make an offer; (*pollicitation*)

"offeree" means a person to whom a take-over bid is made; (*pollicité*)

"offeree corporation" means a corporation whose shares are the object of a take-over bid; (*société pollicitée*)

"offeror" means a person, other than an agent, who makes a take-over bid, and includes two or more persons who, directly or indirectly,

- (a) make take-over bids jointly or in concert, or
- (b) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made; (*pollicitant*)

"share" means a share with or without voting rights and includes

- (a) a security currently convertible into such a share, and
- (b) currently exercisable options and rights to acquire such a share or such a convertible security; (*action*)

"take-over bid" means an offer made by an offeror to shareholders to acquire all of the shares of any class of shares of an offeree corporation not already owned by the offeror, and includes every take-over bid by a corporation to repurchase all of the shares of any class of its shares. (*offre d'achat visant à la mainmise*)

Effective date of bid

197. (1) A take-over bid is deemed to be dated as of the day on which it is sent.

Compulsory acquisition of shares of dissenting offeree

(2) If within the time limited in a take-over bid for its acceptance or within 120 days after the date of a take-over bid, whichever period is the shorter, the bid is accepted by the holders of not less than 90% of the shares of any class of shares to which the take-over bid relates, other than shares of that class held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on the bid being so accepted and on complying with this Part, to acquire the shares of that class held by the dissenting offerees.

Limitation

(3) The rights of an offeror and offeree under this Part are subject to any unanimous shareholder agreement.

Offeror's notices

198. (1) Where the offerees holding more than 90% of the shares to which a take-over bid relates have accepted the take-over bid, an offeror may acquire shares held by a dissenting offeree by sending by registered mail within 60 days after the date of termination of the take-over bid and in any event within 180 days after the date of the take-over bid an offeror's notice to each dissenting offeree stating that

- (a) the offerees holding more than 90% of the shares to which the bid relates have accepted the take-over bid;

- (b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid;
- (c) a dissenting offeree is required to elect, within 20 days after the date of the sending of the offeror's notice,
 - (i) to transfer his or her shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or
 - (ii) to demand, by notifying the offeror, payment of the fair value of his or her shares as determined on an application to the Court under section 201;
- (d) a dissenting offeree who does not notify the offeror and apply to the Court in accordance with subparagraph (c)(ii) is deemed to have elected to transfer his or her shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid; and
- (e) a dissenting offeree shall send the share certificates of the class of shares to which the take-over bid relates to the offeree corporation within 20 days after he or she receives the offeror's notice.

Notice of adverse claim

(2) On sending the offeror's notice under subsection (1), the offeror shall concurrently send the offeree corporation a copy of the notice, constituting a demand under subsection 88(1) of the *Securities Transfer Act* that the offeree corporation did not register a transfer with respect to each share held by a dissenting offeree. S.Nu. 2010,c.15,s.106(12).

Surrender of share certificate and payment of money

199. (1) A dissenting offeree to whom an offeror's notice is sent under subsection 198(1) shall, within 20 days after he or she receives that notice, send his or her share certificates of the class of shares to which the take-over bid relates to the offeree corporation.

Transfer of money to pay for certificates

(2) Within 20 days after the offeror sends an offeror's notice under subsection 198(1), the offeror shall pay or transfer to the offeree corporation the amount of money or other consideration that the offeror would have had to pay or transfer to a dissenting offeree if the dissenting offeree had elected to accept the take-over bid under subparagraph 198(1)(c)(i).

Deposit of money by offeree corporation

200. (1) The offeree corporation is deemed to hold the money or other consideration it receives under subsection 199(2) in trust for the dissenting offerees, and the offeree corporation shall deposit the money in a separate account in a bank or other body corporate any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board, and shall place any other consideration in the custody of a bank or such other body corporate.

Obligations of offeree corporation

(2) Within 30 days after the offeror sends an offeror's notice under subsection 198(1), the offeree corporation shall, if the offeror has paid or transferred to the offeree corporation the money or other consideration referred to in subsection 199(2),

- (a) issue to the offeror a share certificate in respect of the shares that were held by dissenting offerees;
- (b) give to each dissenting offeree who elects to accept the take-over bid terms under subparagraph 198(1)(c)(i) and who sends his or her share certificates as required under subsection 199(1), the money or other consideration to which the dissenting offeree is entitled, disregarding fractional shares, which the offeror may pay for in money; and
- (c) send to each dissenting shareholder who has not sent his or her share certificates as required under subsection 199(1) a notice stating that
 - (i) the shares have been cancelled,
 - (ii) the offeree corporation or some designated person holds in trust the money or other consideration to which the shareholder is entitled as payment for or in exchange for his or her shares, and
 - (iii) the offeree corporation will, subject to sections 201 to 207, send that money or other consideration to the dissenting shareholder forthwith after receiving his or her shares.

Offeror's right to apply

201. (1) Where a dissenting offeree elects to demand payment of the fair value of his or her shares under subparagraph 198(1)(c)(ii), the offeror may, within 20 days after the offeror has paid the money or transferred the other consideration under subsection 199(2), apply to the Court to fix the fair value of the shares of that dissenting offeree.

Dissenting offeree's right to apply

(2) Where an offeror fails to apply to the Court under subsection (1), a dissenting offeree may apply to the Court for the same purpose within a further period of 20 days.

Deemed election to transfer shares

(3) Where no application is made to the Court under subsection (2) within the time provided for in that subsection, a dissenting offeree is deemed to have elected to transfer his shares to the offeror on the same terms that the offeror acquired the shares from the offerees who accepted the take-over bid.

No security for costs

202. A dissenting offeree is not required to give security for costs in an application made under this Part.

Procedure on application

203. Where more than one application is made under sections 198 and 201, the offeror or a dissenting offeree may apply to have the applications heard together.

Court to fix fair value

204. On an application under this Part, the Court shall fix a fair value for the shares of each dissenting offeree who is a party to the application.

Power of Court

205. The Court may appoint one or more appraisers to assist the Court to fix a fair value for the shares of a dissenting offeree.

Final order

206. The final order of the Court shall be made against the offeror in favour of each dissenting offeree who is a party to the application for the fair value of his or her shares as fixed by the Court.

Additional powers of Court

207. (1) In connection with proceedings under this Part, the Court may make any order it considers fit and, without limiting the generality of the foregoing, it may

- (a) fix the amount of money or other consideration that is required to be held in trust under subsection 200(1);
- (b) order that that money or other consideration be held in trust by a person other than the offeree corporation;
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date he or she sends his or her share certificates under subsection 199(1) until the date of payment; and
- (d) order that any money payable to a shareholder who cannot be found be paid to the Minister of Finance.

Money paid to Minister of Finance

(2) Subsections 229(3) to (5) apply in respect of money paid to the Minister of Finance in accordance with an order under paragraph (1)(d).

Corporation's offer to repurchase its own shares

208. (1) Where the take-over bid is an offer by a corporation to repurchase its own shares, subsection 198(2) does not apply, and subsection 199(2) does not apply, but the corporation shall comply with subsection 200(1) within 20 days after it sends an offeror's notice under subsection 198(1).

Reinstatement of dissenting offeree

(2) If the take-over bid is an offer by a corporation to repurchase its own shares and the corporation is prohibited by section 35

- (a) from depositing or placing the consideration for the shares in accordance with subsection 200(1), or

- (b) paying the amount for the shares fixed by the Court pursuant to section 204,

the corporation shall re-issue to the dissenting offeree the shares for which the corporation is not allowed to pay and the dissenting offeree is reinstated to his or her full rights as a shareholder.

Use of moneys held in trust

(3) Any money or consideration deposited or placed under subsection 200(1) in respect of shares that the corporation re-issues pursuant to subsection (2) may be used by the corporation for its own benefit.

PART XVII

LIQUIDATION AND DISSOLUTION

Staying proceedings

209. (1) Any proceedings taken under this Part to dissolve or to liquidate and dissolve a corporation shall be stayed if the corporation is at any time found to be insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada).

Application

(2) Subsection (1) applies only to a voluntary dissolution or liquidation and dissolution under this Part.

Companies Winding-Up Act

(3) The *Companies Winding-Up Act* does not apply to a corporation incorporated under this Act.

Revival by Registrar

210. (1) If a corporation is dissolved under this Part, any interested person may apply to the Registrar to have the corporation revived.

Articles of revival

(2) Articles of revival in prescribed form and prescribed documents relating to corporate names shall, unless otherwise agreed by the Registrar, be sent to the Registrar.

Certificate of revival

(3) On receipt of articles of revival and the documents referred to in subsection (2), the Registrar shall issue a certificate of revival in accordance with section 268.

Rights preserved

(4) A corporation is revived on the date shown in the certificate of revival and, subject to any reasonable terms that the Registrar may impose and to rights acquired by any person prior to the revival, the corporation is deemed to have continued in existence as if it had not been dissolved.

Application for revival by the Court

- 211.** (1) Any interested person may apply to the Court for an order reviving
- (a) a body corporate dissolved under section 276;
 - (b) a body corporate that was dissolved under the *Companies Act* or its predecessors before or after the coming into force of this Act; and
 - (c) a body corporate that was dissolved by reason of the operation of subsection (7).

Notice of application

(2) An applicant under subsection (1) shall give notice of the application to the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

Effect of court order

- (3) An order under subsection (1) may revive the body corporate
- (a) for the purpose of enabling it to apply for continuance, or
 - (b) for the purpose of carrying out particular acts specified in the order,

and the order shall state that the revival remains in effect for a specific time limited by the order.

Powers of Court

- (4) In an order under subsection (1), the Court may
- (a) give directions as to the holding of meetings of shareholders, the appointment of directors and meetings of directors;
 - (b) in the case of a body corporate revived for the purpose of enabling it to apply for continuance, give directions regarding any matter that the shareholders are required or authorized to provide for pursuant to section 276;
 - (c) specify any provisions of the *Companies Act* that are not to apply to the body corporate during the period of its revival or declare that any provisions of the *Companies Act* are to apply to the body corporate with the variations set out in the order;
 - (d) change the name of the body corporate to a name approved by the Registrar or a number designated by the Registrar together with such other words and abbreviations as the Registrar may require; and
 - (e) give any other directions the Court considers fit.

Documents for Registrar

(5) Where a person seeks the approval of the Registrar under paragraph (4)(d), he or she shall send to the Registrar the prescribed documents relating to corporate names.

Companies Act

(6) Despite section 301 but subject to paragraph (4)(c), the *Companies Act* applies to a body corporate revived under this section.

Term of order

(7) A body corporate revived by an order under this section is dissolved on the expiration of the time limited by the order unless it is sooner continued as a corporation under this Act.

Order to be sent to Registrar

(8) If an order is made under this section, the applicant shall forthwith send a certified copy of the order to the Registrar who shall file it and restore the body corporate to the register under the *Companies Act*.

Revival of body corporate

(9) A body corporate is revived on the making of an order under this section and, subject to the terms imposed by the order and to rights acquired by any person prior to the revival, the body corporate is deemed to have continued in existence as if it had not been dissolved. S.Nu. 2013,c.20,s.4(3).

Dissolution by directors

212. (1) A corporation that has not issued any shares and that has no property and no liabilities may be dissolved at any time by resolution of all the directors.

Dissolution by shareholders

(2) A corporation that has no property and no liabilities may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote.

Dissolution where property disposed of

(3) A corporation that has property or liabilities or both may be dissolved by special resolution of the shareholders or, if it has issued more than one class of shares, by special resolutions of the holders of each class whether or not they are otherwise entitled to vote, if

- (a) by the special resolution or resolutions the shareholders authorize the directors to cause the corporation to distribute all property and discharge all liabilities; and
- (b) the corporation has distributed all property and discharged all liabilities before it sends articles of dissolution to the Registrar pursuant to subsection (4).

Articles of dissolution

(4) Articles of dissolution in prescribed form shall be sent to the Registrar.

Certificate of dissolution

(5) On receipt of articles of dissolution, the Registrar shall issue a certificate of dissolution in accordance with section 268.

Effect of certificate

(6) The corporation ceases to exist on the date shown in the certificate of dissolution.

Voluntary liquidation and dissolution

213. (1) The directors may propose, or a shareholder who is entitled to vote at an annual meeting of shareholders may, in accordance with section 138, make a proposal for the voluntary liquidation and dissolution of a corporation.

Notice of meeting

(2) Notice of any meeting of shareholders at which voluntary liquidation and dissolution is to be proposed shall set out the terms of the liquidation and dissolution.

Shareholders resolution

(3) A corporation may liquidate and dissolve by special resolution of the shareholders or, if the corporation has issued more than one class of shares, by special resolution of the holders of each class whether or not they are otherwise entitled to vote.

Statement of intent to dissolve

(4) A statement of intent to dissolve in prescribed form shall be sent to the Registrar.

Certificate of intent to dissolve

(5) On receipt of a statement of intent to dissolve, the Registrar shall issue a certificate of intent to dissolve in accordance with section 268.

Effect of certificate

(6) On issue of a certificate of intent to dissolve, the corporation shall cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Registrar issues a certificate of dissolution.

Liquidation

- (7) After issue of a certificate of intent to dissolve, the corporation shall
- (a) forthwith cause notice of the issue of the certificate to be sent to each known creditor of the corporation;
 - (b) forthwith publish notice of the issue of the certificate once in a newspaper published or distributed in the place where the corporation has its registered office, and take reasonable steps to give notice of the issue of the certificate in every jurisdiction where the corporation was carrying on business at the time it sent the statement of intent to dissolve to the Registrar;
 - (c) collect its property, dispose of property that is not to be distributed in kind to its shareholders, discharge all its obligations and do all other acts required to liquidate its business; and

- (d) after giving the notice required under paragraphs (a) and (b) and discharging all its obligations, distribute its remaining property, either in money or in kind among its shareholders according to their respective rights.

Supervision by Court

(8) The Registrar or any interested person may, at any time during the liquidation of a corporation, apply to the Court for an order that the liquidation be continued under the supervision of the Court as provided in this Part, and on the application the Court may so order and make any further order it considers fit.

Notice to Director

(9) An applicant under this section shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

Revocation

(10) At any time after the issue of a certificate of intent to dissolve and before the issue of a certificate of dissolution, a certificate of intent to dissolve may be revoked by sending to the Registrar a statement of revocation of intent to dissolve in prescribed form and approved in the same manner as the resolution under subsection (3).

Certificate of revocation

(11) On receipt of a statement of revocation of intent to dissolve, the Registrar shall issue a certificate of revocation of intent to dissolve in accordance with section 268.

Effect of certificate

(12) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the corporation may continue to carry on business.

Articles of dissolution

(13) If a certificate of intent to dissolve has not been revoked and the corporation has complied with subsection (7), the corporation shall prepare articles of dissolution in the prescribed form and send them to the Registrar.

Certificate of dissolution

(14) On receipt of the articles of dissolution under subsection (13), the Registrar shall issue a certificate of dissolution in accordance with section 268.

Effect of certificate

(15) The corporation ceases to exist on the date shown in the certificate of dissolution.

Dissolution by Registrar

214. (1) The Registrar may dissolve a corporation under this section or apply to the Court for an order to dissolve a corporation where

- (a) the Registrar reasonably believes that the corporation has not carried on business for three years;
- (b) the corporation does not have a registered office address;
- (c) the Registrar does not receive a notice or document required by this Act to be sent to the Registrar within one year after the date on which the notice or document is required to be sent to the Registrar;
- (d) the corporation does not have any directors according to the most recent notice filed under section 114;
- (e) the corporation has failed to pay any fee required to be sent to the Registrar by or under this Act; or
- (f) the corporation does not carry out an undertaking given in accordance with the regulations.

Publication

(2) The Registrar shall not dissolve a corporation under this section for a reason set out in paragraph (1)(a), (c), (e) or (f) until he or she has

- (a) given 60 days notice of his or her intention to dissolve the corporation to the corporation by prepaid mail addressed to its registered office, or the post office box designated as its address for service by mail, as shown in the most recent notice filed under section 19 and to each director of the corporation named in the most recent notice sent to the Registrar under section 107 or 114; and
- (b) published notice of the intention to dissolve the corporation in the *Nunavut Gazette*.

Notice where no registered office

(3) The Registrar shall not dissolve a corporation under this section for a reason set out in paragraph (1)(b) until he or she has

- (a) given 60 days notice of his or her intention to dissolve the corporation to each director of the corporation named in the most recent notice sent to the Registrar under section 107 or 114; and
- (b) published notice of the intention to dissolve the corporation in the *Nunavut Gazette*.

Notice where no directors

(4) The Registrar shall not dissolve a corporation under this section for a reason set out in paragraph (1)(d), until the Registrar has

- (a) given 60 days notice of the intention to dissolve the corporation by sending prepaid mail addressed to the registered office of the corporation or to the post office box designated as its address for service by mail, as shown in the most recent notice filed under section 19; and
- (b) published notice of the intention to dissolve the corporation in the *Nunavut Gazette*.

Notice where no directors or registered office

(5) Where the corporation does not have a registered office address and does not have any directors according to the most recent notice filed under section 114, the Registrar may dissolve the corporation on the expiry of 60 days after he or she has published notice of the intention to dissolve the corporation in the *Nunavut Gazette*.

Certificate of dissolution

(6) Unless cause to the contrary has been shown or an order has been made by the Court under section 248, the Registrar may, after expiry of the period referred to in subsection (2), (3), (4) or (5), issue a certificate of dissolution in prescribed form and publish notice of the dissolution in the *Nunavut Gazette*.

Effect of certificate

(7) The corporation ceases to exist on the date shown in the certificate of dissolution. S.Nu. 2013,c.20,s.4(3).

Dissolution by court order

215. (1) The Registrar or any interested person may apply to the Court for an order to dissolve a corporation if the corporation has

- (a) failed for two or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings of shareholders;
- (b) contravened subsection 16(2) or (3) or section 22, 159 or 161;
- (c) operated in a capacity that, by operation of paragraph 23(q) of the *Nunavut Act* (Canada), is not permitted of a corporation incorporated under an Act of Nunavut; or
- (d) procured any certificate under this Act by misrepresentation.

Notice to Registrar

(2) An applicant under this section shall give the Registrar notice of the application, and the Registrar is entitled to appear and be heard in person or by counsel.

Dissolution order

(3) On an application under this section or section 214, the Court may order that the corporation be dissolved or that the corporation be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it considers fit.

Certificate

(4) On receipt of an order under this section, section 214 or section 216, the Registrar shall

- (a) if the order is to dissolve the corporation, issue a certificate of dissolution in prescribed form and publish notice of the dissolution in the *Nunavut Gazette*; or
- (b) if the order is to liquidate and dissolve the corporation under the supervision of the Court, issue a certificate of intent to dissolve in prescribed form and publish notice of the issuance of the certificate in the *Nunavut Gazette*.

Effect of certificate

(5) The corporation ceases to exist on the date shown in the certificate of dissolution. S.Nu. 2013,c.20,s.4(3).

Other grounds for liquidation and dissolution

216. (1) The Court may order the liquidation and dissolution of a corporation or any of its affiliated corporations on the application of a shareholder,

- (a) if the Court is satisfied that in respect of a corporation or any of its affiliates
 - (i) any act or omission of the corporation or any of its affiliates effects a result,
 - (ii) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
 - (iii) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer; or
- (b) if the Court is satisfied that
 - (i) a unanimous shareholder agreement entitles a complaining shareholder to demand dissolution of the corporation after the occurrence of a specified event and that event has occurred, or
 - (ii) it is just and equitable that the corporation should be liquidated and dissolved.

Alternative order

(2) On an application under this section, the Court may make any order under this section or section 243 it considers fit.

Application of section 244

(3) Section 244 applies to an application under this section.

Application for court supervision

217. (1) An application to the Court to supervise a voluntary liquidation and dissolution under subsection 213(8) shall state the reasons, verified by an affidavit of the applicant, why the Court should supervise the liquidation and dissolution.

Court supervision

(2) Where the Court makes an order under subsection 213(8), the liquidation and dissolution of the corporation shall continue under the supervision of the Court in accordance with this Act.

Application for show cause order

218. (1) An application to the Court under subsection 216(1) shall state the reasons, verified by an affidavit of the applicant, why the corporation should be liquidated and dissolved.

Show cause order

(2) On an application under subsection 216(1), the Court may make an order requiring the corporation and any person having an interest in the corporation or a claim against it to show cause, at a time and place specified in the order but not less than 30 days after the date of the order, why the corporation should not be liquidated and dissolved.

Powers of Court

(3) On an application under subsection 216(1), the Court may order the directors and officers of the corporation to furnish to the Court all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the corporation;
- (b) the name and address of each shareholder of the corporation; and
- (c) the name and address of each creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the corporation has a contract.

Publication

(4) A copy of an order made under subsection (2) shall be

- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a newspaper published or distributed in the place where the corporation has its registered office; and
- (b) served on the Registrar and each person named in the order.

Person responsible

(5) Publication and service of an order under this section shall be effected by the corporation or by any other person and in any manner the Court may order.

Powers of Court

219. In connection with the dissolution or the liquidation and dissolution of a corporation, the Court may make any order it considers fit including, without limiting the generality of the foregoing,

- (a) an order to liquidate;
- (b) an order appointing a liquidator, with or without security, fixing remuneration for a liquidator or replacing a liquidator;
- (c) an order appointing inspectors or referees, specifying their powers, fixing their remuneration or replacing inspectors or referees;
- (d) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (e) an order determining the validity of any claims made against the corporation;
- (f) an order at any stage of the proceedings, restraining the directors and officers from
 - (i) exercising any of their powers, or
 - (ii) collecting or receiving any debt or other property of the corporation, or from paying out or transferring any property of the corporation, except as permitted by the Court;
- (g) an order determining and enforcing the duty or liability of any present or former director, officer or shareholder
 - (i) to the corporation, or
 - (ii) for an obligation of the corporation;
- (h) an order approving the payment, satisfaction or compromise of claims against the corporation and the retention of assets for that purpose, and determining the adequacy of provisions for the payment or discharge of obligations of the corporation, whether liquidated, unliquidated, future or contingent;
- (i) an order disposing of or destroying the documents and records of the corporation;
- (j) on the application of a creditor, the inspectors or the liquidator, an order giving directions on any matter arising in the liquidation;
- (k) after notice has been given to all interested parties, an order relieving a liquidator from any omission or default on any terms the Court considers fit and confirming any act of the liquidator;
- (l) subject to section 225, an order approving any proposed interim or final distribution to shareholders in money or in property;
- (m) an order disposing of any property belonging to creditors or shareholders who cannot be found;
- (n) on the application of any director, officer, security holder, creditor or the liquidator,

- (i) an order staying the liquidation on any terms and conditions the Court considers fit,
 - (ii) an order continuing or discontinuing the liquidation proceedings, or
 - (iii) an order to the liquidator to restore to the corporation all its remaining property; and
- (o) after the liquidator has rendered his or her final account to the Court, an order to dissolve the corporation.

Effect of order for liquidation

220. If the Court makes an order for the liquidation of a corporation, the liquidation commences when the order is made.

Cessation of business and power

221. (1) If the Court makes an order for liquidation of a corporation,

- (a) the corporation continues in existence but shall cease to carry on business, except the business that is, in the opinion of the liquidator, required for an orderly liquidation; and
- (b) the powers of the directors and shareholders vest in the liquidator, except as specifically authorized by the Court.

Delegation by liquidation

(2) The liquidator may delegate any of the powers vested in him or her by paragraph (1)(b) to the directors or shareholders.

Appointment of liquidator

222. (1) When making an order for the liquidation of a corporation or at any later time, the Court may appoint any person, including a director, an officer or a shareholder of the corporation or any other body corporate, as liquidator of the corporation.

Vacancy

(2) Where an order for the liquidation of a corporation has been made and the office of liquidator is or becomes vacant, the property of the corporation is under the control of the Court until the office of liquidator is filled.

Duties of liquidator

223. A liquidator shall

- (a) forthwith after his or her appointment give notice of the appointment to the Registrar and to each claimant and creditor known to the liquidator;
- (b) forthwith publish notice in the *Nunavut Gazette* and once a week for two consecutive weeks in a newspaper published or distributed in the place where the corporation has its registered office, and take reasonable steps to give notice in each jurisdiction where the corporation carries on business, stating the fact of his or her appointment and requiring any person

- (i) indebted to the corporation, to render an account respecting the indebtedness and to pay to the liquidator at the time and place specified any amount owing,
 - (ii) possessing property of the corporation, to deliver it to the liquidator at the time and place specified, and
 - (iii) having a claim against the corporation, whether liquidated, unliquidated, future or contingent, to present particulars of the claim in writing to the liquidator not later than 60 days after the first publication of the notice;
- (c) take into his or her custody and control the property of the corporation;
 - (d) open and maintain a trust account for the money of the corporation;
 - (e) keep accounts of the money of the corporation received and paid out by him or her;
 - (f) maintain separate lists of the shareholders, creditors and other persons having claims against the corporation;
 - (g) apply to the Court for directions if he or she determines at any time that the corporation is unable to pay or adequately provide for the discharge of its obligations;
 - (h) deliver to the Court and to the Registrar, at least once in every twelve month period after his or her appointment or more often as the Court may require, financial statements of the corporation in the form required by section 157 or in any other form the liquidator considers proper or as the Court may require; and
 - (i) after his or her final accounts are approved by the Court, distribute any remaining property of the corporation among the shareholders according to their respective rights.
- S.Nu. 2013,c.20,s.4(3).

Powers of liquidator

224. (1) A liquidator may

- (a) retain lawyers, accountants, engineers, appraisers and other professional advisers;
- (b) bring, defend or take part in any civil, criminal or administrative action or proceeding in the name of and on behalf of the corporation;
- (c) carry on the business of the corporation as required for an orderly liquidation;
- (d) sell property of the corporation by public auction or private sale;
- (e) do all acts and execute any documents in the name of and on behalf of the corporation;
- (f) borrow money on the security of the property of the corporation;
- (g) settle or compromise any claims by or against the corporation; and
- (h) do all other things for the liquidation of the corporation and distribution of its property.

Reliance on statements

- (2) A liquidator is not liable if he or she relies in good faith on
- (a) financial statements of the corporation represented to him or her by an officer of the corporation or in a written report of the auditor of the corporation to reflect fairly the financial condition of the corporation; or
 - (b) an opinion, a report or a statement of a lawyer, accountant, engineer, appraiser or other professional adviser retained by the liquidator.

Application for examination

(3) If a liquidator has reason to believe that any person has in his or her possession or under his or her control, or has concealed, withheld or misappropriated any property of the corporation, the liquidator may apply to the Court for an order requiring that person to appear before the Court at the time and place designated in the order to be examined.

Power of Court

(4) If the examination referred to in subsection (3) discloses that a person has in his or her possession or under his or her control or has concealed, withheld or misappropriated property of the corporation, the Court may order that person to restore it or to pay compensation to the liquidator.

Costs of liquidation

225. (1) A liquidator shall pay the costs of liquidation out of the property of the corporation and shall pay or make adequate provision for all claims against the corporation.

Final accounts

(2) Within one year after his or her appointment, and after paying or making adequate provision for all claims against the corporation, the liquidator shall apply to the Court

- (a) for approval of his or her final accounts and for an order permitting him or her to distribute in money or in kind the remaining property of the corporation to its shareholders according to their respective rights; or
- (b) for an extension of time.

Application by shareholder

(3) If a liquidator fails to make the application required by subsection (2), a shareholder or creditor of the corporation may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

Notice of intention

(4) A liquidator shall give notice of his or her intention to make an application under subsection (2) to the Registrar, each inspector appointed under section 219, each shareholder, each creditor known to him or her and any person who provided a security or fidelity bond for the liquidation.

Final order

(5) If the Court approves the final accounts rendered by a liquidator, the Court shall make an order

- (a) directing the Registrar to issue a certificate of dissolution;
- (b) directing the custody or disposal of the documents and records of the corporation; and
- (c) subject to subsection (6), discharging the liquidator.

Delivery of order

(6) The liquidator shall forthwith send a certified copy of the order referred to in subsection (5) to the Registrar.

Certificate of dissolution

(7) On receipt of the order referred to in subsection (5), the Registrar shall issue a certificate of dissolution in prescribed form and publish notice of the issuance of the certificate in the *Nunavut Gazette*.

Effect of certificate

(8) The corporation ceases to exist on the date shown in the certificate of dissolution. S.Nu. 2013,c.20,s.4(3).

Right to distribution in money

226. (1) If in the course of liquidation of a corporation, the shareholders resolve or the liquidator proposes to

- (a) exchange all or substantially all the property of the corporation for securities of another body corporate that are to be distributed to the shareholders, or
- (b) distribute all or part of the property of the corporation to the shareholders in kind,

a shareholder may apply to the Court for an order requiring the distribution of the property of the corporation to be in money.

Powers of Court

(2) On an application under subsection (1), the Court may order that

- (a) all the property of the corporation be converted into and distributed in money; or
- (b) the applicant be paid the fair value of his or her shares, in which case the Court
 - (i) may determine whether any other shareholder is opposed to the proposal and if so, join that shareholder as a party,

- (ii) may appoint one or more appraisers to assist the Court to fix the fair value of the shares,
- (iii) shall fix the fair value of the shares of the applicant and the other shareholders joined as parties as of a date determined by the Court,
- (iv) shall give judgment in the amount of the fair value against the corporation and in favour of each of the shareholders who are parties to the application, and
- (v) shall fix the time within which the liquidator must pay that amount to a shareholder after delivery of his or her shares to the liquidator, if his or her share certificate has not been delivered to the Court or to the liquidator at the time the order is made.

Custody of records after dissolution

227. (1) A person who has been granted custody of the documents and records of a dissolved corporation remains liable to produce those documents and records for six years following the date of the corporation's dissolution or until the expiry of any shorter period that may be ordered under subsection 225(5).

Offence

(2) A person who contravenes subsection (1) without reasonable cause is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

"shareholder" defined

228. (1) In this section, "shareholder" includes the legal representative of a shareholder.

Continuation of actions after dissolution

- (2) Despite the dissolution of a body corporate under this Act,
- (a) a civil, criminal or administrative action or proceeding commenced by or against the body corporate before its dissolution may be continued as if the body corporate had not been dissolved;
 - (b) a civil, criminal or administrative action or proceeding may be brought against the body corporate within two years after its dissolution as if the body corporate had not been dissolved; and
 - (c) any property that would have been available to satisfy any judgment or order if the body corporate had not been dissolved remains available for that purpose.

Service

(3) Service of a document on a corporation after its dissolution may be effected by serving the document on a person shown in the last notice filed under section 107 or 114.

Reimbursement

(4) Despite the dissolution of a body corporate under this Act, a shareholder to whom any of its property has been distributed in the liquidation is liable to any person claiming under subsection (2) to the extent of the amount received by that shareholder on the distribution, and an action to enforce that liability may be brought within two years after the date of the dissolution of the body corporate.

Representative action

(5) The Court may order an action referred to in subsection (4) to be brought against the persons who were shareholders as a class, subject to any conditions the Court considers fit and, if the plaintiff establishes his or her claim, the Court may refer the proceedings to a referee or other officer of the Court.

Powers of referee

- (6) The referee or other officer of the Court may
- (a) add as a party to the proceedings each person who was a shareholder found by the plaintiff;
 - (b) determine, subject to subsection (4), the amount that each person who was a shareholder shall contribute towards satisfaction of the plaintiff's claim; and
 - (c) direct payment of the amounts so determined.
- S.Nu. 2013,c.20,s.4(3).

Unknown claimants

229. (1) On the dissolution of a body corporate under this Act, the portion of the property distributable to a creditor or shareholder who cannot be found shall be converted into money and paid to the Minister of Finance for deposit in the Consolidated Revenue Fund.

Constructive satisfaction

(2) A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor or shareholder.

Recovery

(3) If at any time a person establishes that he or she is entitled to any money paid to the Minister of Finance under this Act, the Minister of Finance shall pay an equivalent amount to him or her out of the Consolidated Revenue Fund.

No interest payable

(4) No interest is payable by the Government of Nunavut in respect of moneys deposited in the Consolidated Revenue Fund under subsection (1).

Limitation

(5) No claim may be made in respect of moneys deposited in the Consolidated Revenue Fund pursuant to subsection (1) more than 10 years after the day on which the moneys were deposited in the Fund. S.Nu. 2013,c.20,s.4(3).

Property not disposed of

230. (1) Subject to subsection 228(2) and section 229, property of a body corporate that has not been disposed of at the date of its dissolution under this Act vests in the Government of Nunavut.

Return of property on revival

(2) If a body corporate is revived as a corporation under section 210 or 211, any property, other than money that vested in the Government of Nunavut pursuant to subsection (1), that has not been disposed of shall be returned to the corporation and there shall be paid to the corporation out of the Consolidated Revenue Fund

- (a) an amount equal to any money received by the Government of Nunavut pursuant to subsection (1); and
- (b) if property other than money vested in the Government of Nunavut pursuant to subsection (1) and that property has been disposed of, an amount equal to the lesser of
 - (i) the value of that property at the date it vested in the Government of Nunavut, and
 - (ii) the amount realized by the Government of Nunavut from the disposition of that property.

Where title has not transferred

(3) Where property of a body corporate other than money vests in the Government of Nunavut pursuant to subsection (1), and one or more necessary steps to transfer title to that property have not been completed by the date on which it is to be returned to a corporation pursuant to subsection (2), the property shall be deemed to have not vested in the Government of Nunavut to the extent that these steps have not been completed.

Costs associated with vesting

(4) A corporation to which property is returned under subsection (2) shall pay all reasonable costs associated with the vesting of the property in the Government of Nunavut and with the return of the property to the corporation. S.Nu. 2013,c.20,s.4(3).

PART XVIII

INVESTIGATION

Definition

231. In this Part, "affiliated corporation" includes, with reference to a corporation, a body corporate, affiliated with that corporation that is incorporated or registered under the *Companies Act* or any of its predecessors.

Court order for investigation

232. (1) A security holder may apply to the Court, *ex parte* or on such notice as the Court may require, for an order directing an investigation to be made of the corporation and any of its affiliated corporations.

Grounds

(2) The Court may, on an application under subsection (1), order an investigation to be made of a corporation and any of its affiliated corporations where the Court considers that there are sufficient grounds to conduct such an investigation to determine whether

- (a) the business of the corporation or any of its affiliates is or has been carried on with intent to defraud any person;
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of a security holder;
- (c) the corporation or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose; or
- (d) persons concerned with the formation, business or affairs of the corporation or any of its affiliates have in that connection acted fraudulently or dishonestly.

No security for costs

(3) An applicant under this section or section 233 is not required to give security for costs.

Hearings *in camera*

(4) An application under this section or section 233 shall be heard *in camera* unless the Court otherwise orders.

Consent to publish proceedings needed

(5) No person may publish anything relating to proceedings under this section or section 233 except with the authorization of the Court or the written consent of the corporation being investigated.

Documents confidential

(6) Documents in the possession of the Court relating to an application under this section or section 233 are confidential unless the Court orders otherwise.

Exception for order

(7) Subsections (5) and (6) do not apply to an order of the Court under this section or section 233.

Powers of Court

233. (1) On an application under section 232 or on a subsequent application, the Court may make any order it considers fit including, without limiting the generality of the foregoing,

- (a) an order to investigate;
- (b) an order appointing an inspector, fixing the remuneration of an inspector or replacing an inspector;
- (c) an order determining the notice to be given to any interested person, or dispensing with notice to any person;
- (d) an order authorizing an inspector to enter any premises in which the Court is satisfied there might be relevant information, and to examine any thing and make copies of any document or record found on the premises;
- (e) an order requiring any person to produce documents or records to the inspector;
- (f) an order authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and prescribing rules for the conduct of the hearing;
- (g) an order requiring any person to attend a hearing conducted by an inspector and to give evidence on oath;
- (h) an order giving directions to an inspector or any interested person on any matter arising in the investigation;
- (i) an order requiring an inspector to make an interim or final report to the Court;
- (j) an order determining whether a report of an inspector should be published and, if so, designating the persons to whom all or part of the report should be sent;
- (k) an order requiring an inspector to discontinue an investigation; and
- (l) an order requiring any person other than the corporation to pay all or part of the costs of the investigation.

Copy of report

(2) Unless the Court otherwise orders, an inspector shall send a copy of his or her report to the corporation and to the Registrar.

Costs

(3) Unless the Court orders otherwise, the corporation shall pay the costs of the investigation.

Directions

(4) An interested person may apply to the Court for directions on any matter arising in the investigation.

Powers of inspector

234. (1) An inspector under this Part has the powers set out in the order of appointment.

Exchange of information

(2) In addition to the powers set out in the order appointing him or her, an inspector appointed to investigate a corporation may furnish to, or exchange information and otherwise cooperate with, any public official in Canada or elsewhere who is authorized to exercise investigatory powers and who is investigating, in respect of the corporation, any allegation of improper conduct that is the same as or similar to the conduct described in subsection 232(2).

Court order

(3) An inspector shall, on request, produce to an interested person a copy of any order made under section 232 or subsection 233(1).

Hearings *in camera*

235. (1) An interested person may apply to the Court for

- (a) an order that a hearing conducted by an inspector under this Part be heard *in camera*; or
- (b) directions respecting any matter arising in the investigation.

Right to counsel

(2) A person whose conduct is being investigated or who is being examined at a hearing conducted by an inspector under this Part has a right to be represented by counsel.

Compelling evidence

236. A person shall not be excused from attending and giving evidence and producing books, papers, documents or records to an inspector under this Part by reason only that the evidence so required tends to criminate the person or subject him or her to any proceeding or penalty, but no such evidence so required shall be used or is receivable against the person in any proceedings thereafter instituted against the person under any Act of Nunavut. S.Nu. 2013,c.20,s.4(3).

Absolute privilege

237. Any oral or written statement or report made by an inspector or any other person in an investigation under this Part has absolute privilege.

Solicitor-client privilege

238. Nothing in this Part affects the privilege that exists in respect of a solicitor and his or her client.

Inspector's report as evidence

239. A copy of the report of an inspector under section 233, that purports to be certified as a true copy by the inspector, is admissible as evidence of the facts stated in it without proof of the inspector's appointment or of his or her signature. S.Nu. 2013,c.20,s.4(2).

PART XIX

REMEDIES, OFFENCES AND PENALTIES

Definitions

240. In this Part,

"action" means an action under this Act or any other law; (*action*)

"complainant" means

- (a) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
- (b) a director or an officer or a former director or officer of a corporation or of any of its affiliates, or
- (c) any other person who, in the discretion of the Court, is a proper person to make an application under this Part. (*plaignant*)

Commencing derivative action

241. (1) Subject to subsection (2), a complainant may apply to the Court for leave to

- (a) bring an action in the name and on behalf of a corporation or any of its subsidiaries; or
- (b) intervene in an action to which a corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the corporation or subsidiary.

Granting of leave

(2) No leave may be granted under subsection (1) unless the Court is satisfied that

- (a) the complainant has given reasonable notice to the directors of the corporation or its subsidiary of his or her intention to apply to the Court under subsection (1) if the directors of the corporation or its subsidiary do not bring, diligently prosecute, defend or discontinue the action;
- (b) the complainant is acting in good faith; and
- (c) it appears to be in the interests of the corporation or its subsidiary that the action be brought, prosecuted, defended or discontinued.

Powers of Court

242. In connection with an action brought or intervened in under section 241 or paragraph 243(3)(q), the Court may at any time make any order it considers fit including, without limiting the generality of the foregoing,

- (a) an order authorizing the complainant or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;

- (c) an order directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the corporation or its subsidiary instead of to the corporation or its subsidiary; and
- (d) an order requiring the corporation or its subsidiary to pay reasonable legal fees incurred by the complainant in connection with the action.

Application for relief from oppression

243. (1) A complainant may apply to the Court for an order under this section.

Grounds

(2) If, on an application under subsection (1), the Court is satisfied that in respect of a corporation or any of its affiliates

- (a) any act or omission of the corporation or any of its affiliates effects a result,
- (b) the business or affairs of the corporation or any of its affiliates are or have been carried on or conducted in a manner, or
- (c) the powers of the directors of the corporation or any of its affiliates are or have been exercised in a manner

that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer, the Court may make an order to rectify the matters complained of.

Powers of Court

(3) In connection with an application under this section, the Court may make any interim or final order it considers fit including, without limiting the generality of the foregoing,

- (a) an order restraining the conduct complained of;
- (b) an order appointing a receiver or receiver-manager;
- (c) an order to regulate a corporation's affairs by amending the articles or by-laws or creating or amending a unanimous shareholder agreement;
- (d) an order declaring that any amendment made to the articles or by-laws pursuant to paragraph (c) operates despite any unanimous shareholder agreement made before or after the date of the order, until the Court orders otherwise;
- (e) an order directing an issue or exchange of securities;
- (f) an order appointing directors in place of or in addition to all or any of the directors then in office;
- (g) an order directing a corporation or any other person to purchase securities of a security holder;
- (h) an order directing a corporation or any other person to pay to a security holder any part of the money paid by the security holder for securities;

- (i) an order directing a corporation to pay a dividend to its shareholders or a class of its shareholders;
- (j) an order varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (k) an order requiring a corporation, within a time specified by the Court, to produce to the Court or to an interested person
 - (i) financial statements in the form required by section 157, or
 - (ii) an accounting in any other form the Court may determine;
- (l) an order compensating an aggrieved person;
- (m) an order directing rectification of the registers or other records of a corporation under section 245;
- (n) an order for the liquidation and dissolution of the corporation;
- (o) an order directing the making of an investigation under Part XVIII;
- (p) an order requiring the trial of any issue; and
- (q) an order granting leave to the applicant to
 - (i) bring an action in the name and on behalf of the corporation or any of its subsidiaries, or
 - (ii) intervene in an action to which the corporation or any of its subsidiaries is a party, for the purpose of prosecuting, defending or discontinuing an action on behalf of the corporation or any of its subsidiaries.

Limitation

(4) This section does not confer on the Court power to revoke a certificate of amalgamation.

Duty of directors

(5) If an order made under this section directs an amendment of the articles or by-laws of a corporation, no other amendment to the articles or by-laws shall be made without the consent of the Court, until the Court orders otherwise.

Articles of reorganization

(6) If an order made under this section directs an amendment of the articles of a corporation, the directors shall comply with the requirements of subsection 194(4).

Limitation

(7) A corporation shall not make a payment to a shareholder under paragraph (3)(g), (h) or (i) if there are reasonable grounds for believing that after the payment

- (a) the corporation would be unable to pay its liabilities as they became due; or
- (b) the realizable value of the corporation's assets would be less than the aggregate of its liabilities.

(8) Repealed, S.N.W.T. 1998,c.5,s.4(13).

Alternative order

(9) An applicant under this section may, in the alternative, apply under section 216 for an order for the liquidation and dissolution of the corporation. S.N.W.T. 1998,c.5,s.4(12),(13); S.Nu. 2013,c.20,s.4(3).

Evidence of shareholder approval not decisive

244. (1) An application made or an action brought or intervened in under this Part shall not be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the corporation or its subsidiary has been or may be approved by the shareholders of the corporation or the subsidiary, but evidence of approval by the shareholders may be taken into account by the Court in making an order under section 216, 242 or 243.

Court approval to discontinue

(2) An application made or an action brought or intervened in under this Part shall not be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court given on any terms the Court considers fit and, if the Court determines that the interests of any complainant may be substantially affected by the stay, discontinuance, settlement or dismissal, the Court may order any party to the application or action to give notice to the complainant.

No security for costs

(3) A complainant is not required to give security for costs in any application made or action brought or intervened in under this Part.

Interim costs

(4) In an application made or an action brought or intervened in under this Part, the Court may at any time order the corporation or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements.

Final accounting for interim costs

(5) The complainant may, on final disposition of the application or action, be held accountable for interim costs paid pursuant to an order under subsection (4).

Court order to rectify records

245. (1) If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a corporation, the corporation, a security holder of the corporation or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

Notice to Registrar

(2) If the corporation is a distributing corporation, an applicant under this section shall file notice of the application with the Registrar and the Registrar is entitled to appear and be heard in person or by counsel.

Powers of Court

(3) In connection with an application under this section, the Court may make any order it considers fit including, without limiting the generality of the foregoing,

- (a) an order requiring the registers or other records of the corporation to be rectified;
- (b) an order restraining the corporation from calling or holding a meeting of shareholders or paying a dividend before such rectification;
- (c) an order determining the right of a party to the proceedings to have his or her name entered or retained in, or deleted or omitted from, the registers or records of the corporation, whether the issue arises between two or more security holders or alleged security holders, or between the corporation and any security holders or alleged security holders; and
- (d) an order compensating a party who has incurred a loss.

Court order for directions

246. The Registrar may apply to the Court for directions in respect of any matter concerning his or her duties under this Act, and on the application the Court may give any directions and make any further order it considers fit.

Refusal by Registrar to file

247. (1) If the Registrar refuses to file any articles or other document required by this Act to be filed by him or her before the articles or other document become effective, the Registrar shall, within 20 days after he or she receives the articles or other document or within 20 days after he or she receives any approval that may be required under any other Act, whichever is the later, give written notice of his or her refusal to the person who sent the articles or document, giving reasons for the refusal.

Deemed refusal

(2) If the Registrar does not file or give written notice of his or her refusal to file any articles or document within the time limited in subsection (1), the Registrar is deemed for the purposes of section 248 to have refused to file the articles or document.

Appeal from decision of Registrar

248. A person who feels aggrieved by a decision of the Registrar

- (a) to refuse to file in the form submitted any articles or other document required by this Act to be filed by the Registrar,
- (b) to give, change or revoke a name or to refuse to reserve, accept, change or revoke a name under this Act,
- (c) to refuse to grant an exemption under subsection 3(3) or section 153 or to make an order under section 158,
- (d) to refuse under subsection 190(11) to permit a continued reference to shares having a nominal or par value,
- (e) to refuse to issue a certificate of discontinuance under section 191,

- (f) to revive, revive on terms imposed by the Registrar or refuse to revive a corporation under section 210,
- (g) to dissolve a corporation under section 214, or
- (h) to cancel the registration of an extra-territorial corporation under section 294,

may apply to the Court for an order requiring the Registrar to change the decision, and on the application the Court may so order and make any further order it considers fit.

Compliance or restraining order

249. If a corporation or any shareholder, director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of a corporation does not comply with this Act, the regulations, the articles or by-laws or a unanimous shareholder agreement, a complainant or a creditor of the corporation may, in addition to any other right he or she has, apply to the Court for an order directing that person to comply with, or restraining that person from acting in breach of, any provision thereof, and on the application the Court may so order and make any further order it considers fit.

Summary application to Court

250. When this Act states that a person may apply to the Court, the application may be made in a summary manner in accordance with the Rules of the Court by originating notice or otherwise as the Rules provide, and subject to any order respecting notice to interested parties or any other order the Court considers fit.

251. Repealed, S.N.W.T. 1998,c.34,Sch.C,s.2.

Offences relating to documents

252. (1) A person who makes or assists in making a report, return, notice or other document required by this Act or the regulations to be sent to the Registrar or any other person that

- (a) contains an untrue statement of a material fact, or
- (b) omits to state a material fact that is required in it or is necessary to make a statement contained in it not misleading in the light of the circumstances in which it is made,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding six months or to both.

Directors and officers of bodies corporate

(2) Where a body corporate commits an offence under subsection (1), any director or officer of the body corporate who knowingly authorized, permitted or acquiesced in the commission of the offence is a party to and guilty of the offence and is liable on summary conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding six months or to both, whether or not the body corporate has been prosecuted or convicted.

Immunity

(3) No person is guilty of an offence under subsection (1) or (2) if the untrue statement or omission was unknown to him or her and in the exercise of reasonable diligence could not have been known to him or her.

General offence

253. Every person who, without reasonable cause, contravenes a provision of this Act or the regulations for which no penalty is provided is guilty of an offence and liable on summary conviction to,

- (a) in the case of a body corporate, a fine not exceeding \$10,000; and
- (b) in the case of an individual, a fine not exceeding \$5,000 or to imprisonment for a term not exceeding six months or to both.

Order to comply

254. (1) Where a person is found guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order that person to comply with the provisions of this Act or the regulations for the contravention of which he or she has been found guilty.

Limitation period

(2) A prosecution for an offence under this Act may be instituted at any time within, but not later than, two years from the time when the subject-matter of the complaint arose.

Civil remedy not affected

(3) No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

Security for costs

255. Where, in any action or other legal proceeding in which the plaintiff is a body corporate, it appears to the court on the application of a defendant that the body corporate will be unable to pay the costs of a successful defendant, the court may order the body corporate to furnish security for costs on any terms it considers fit.

PART XX

GENERAL

Sending of notices and documents to shareholders and directors

256. (1) A notice or document required by this Act, the regulations, the articles or the by-laws to be sent to a shareholder or director of a corporation may be sent by prepaid mail addressed to, or may be delivered personally to,

- (a) the shareholder at his or her latest address as shown in the records of the corporation or its transfer agent; and
- (b) the director at his or her latest address as shown in the records of the corporation or in the last notice filed under section 107 or 114.

Effect of notice

(2) A director named in a notice sent by a corporation to the Registrar under section 107 or 114 and filed by the Registrar is presumed to be a director of the corporation referred to in the notice.

Deemed receipt

(3) A notice or document sent in accordance with subsection (1) to a shareholder or director of a corporation is deemed to be received by the shareholder or director at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the shareholder or director did not receive the notice or document at that time or at all.

Undelivered notices

(4) If a corporation sends a notice or document to a shareholder in accordance with subsection (1) and the notice or document is returned on three consecutive occasions because the shareholder cannot be found, the corporation is not required to send any further notices or documents to the shareholder until the shareholder informs the corporation in writing of his or her new address.

Notice to and service on a corporation

257. (1) Subject to section 20 and subsection 214(2), a notice or document required or permitted to be sent to or served on a corporation may be

- (a) delivered to its registered office, or
- (b) sent by registered mail to
 - (i) its registered office, or
 - (ii) the post office box designated as its address for service by mail,

as shown in the last notice filed under section 19.

Deemed receipt

(2) A notice or document sent by registered mail to the corporation in accordance with paragraph (1)(b) is deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the corporation did not receive the notice or document at that time or at all.

Deemed receipt

258. A notice or document may be sent or served on the Registrar by leaving it at the office of the Registrar or by mailing it by registered mail addressed to the Registrar at an office of the Registrar, and if sent by registered mail, the notice or document is deemed to be received or served at the time it would have been delivered in the ordinary course of mail unless there are reasonable grounds for believing that the Registrar did not receive the notice or document at that time or at all.

Waiver of notice

259. If a notice or document is required by this Act or the regulations to be sent, the sending of the notice or document may be waived or the time for the notice or document may be waived or abridged at any time with the consent in writing of the person entitled to receive it.

Certificate of Registrar as evidence

260. (1) When this Act requires or authorizes the Registrar to issue a certificate or to certify any fact, the certificate shall be signed by the Registrar or by an individual authorized by the Registrar.

Signature

(2) A signature required on a certificate issued by the Registrar under this Act may be printed or otherwise mechanically reproduced on the certificate, or may be in accordance with the regulations made under paragraph 267(d).

Evidence

(3) Except in an application brought by the Registrar under section 215 to dissolve a corporation, a certificate referred to in subsection (1) or a certified copy of it, when introduced as evidence in any civil, criminal or administrative action or proceeding, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Certificate of corporation

261. (1) A certificate issued on behalf of a corporation stating any fact that is set out in the articles, the by-laws, a unanimous shareholder agreement, the minutes of the meetings of the directors, a committee of directors or the shareholders, or in a trust indenture or other contract to which the corporation is a party, may be signed by a director, an officer or a transfer agent of the corporation.

Proof

(2) When introduced as evidence in any civil, criminal or administrative action or proceeding,

- (a) a fact stated in a certificate referred to in subsection (1),
- (b) a certified extract from a securities register of a corporation, or
- (c) a certified copy of minutes or an extract from minutes of a meeting of shareholders, directors or a committee of directors of a corporation,

is, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate.

Security certificate

(3) An entry in a securities register of a corporation, or a security certificate issued by a corporation, is, in the absence of evidence to the contrary, proof that the person in whose name the security is registered is owner of the securities described in the register or in the certificate.

Copies

262. (1) Where a notice or document is required under this Act to be filed with or sent to the Registrar, the Registrar may accept a photocopied or photographic copy of the notice or document.

Additional copies to Registrar

(2) A corporation shall provide to the Registrar on request an additional copy in legible written form of any document previously sent to the Registrar pursuant to this Act or to a regulation under this Act.

Electronic filing

263. (1) Notices and documents that are sent to or issued by the Registrar pursuant to this Act may, in the prescribed circumstances, be sent or issued in electronic or other form in any manner specified by the Registrar.

Time of receipt

(2) For the purposes of this Act, any notice or document that is sent or issued in accordance with subsection (1) is deemed to have been received at the time and date provided by the regulations.

Exemption

264. In the prescribed circumstances, the Registrar may, by order made subject to any conditions that the Registrar considers appropriate, exempt from the application of any provision of this Act requiring notices or documents to be sent to the Registrar, such notices or documents or classes of notices or documents containing information similar to that contained in notices or documents required to be made public pursuant to any other law of Canada, a province or a territory as may be specified in the order.
S.Nu. 2013,c.20,s.4(3).

Proof required by Registrar

265. The Registrar may require that a document or a fact stated in a document required by this Act or the regulations to be sent to him or her shall be verified under oath or by statutory declaration.

Appointment of Registrar

266. (1) The Minister may appoint a Registrar of Corporations and one or more Deputy Registrars of Corporations to carry out the duties and exercise the powers of the Registrar under this Act.

Seal

(2) The Minister may prescribe a seal for use by the Registrar in the performance of his or her duties.

Regulations

267. The Commissioner in Executive Council may make regulations

- (a) prescribing any matter required or authorized by this Act to be prescribed;
- (b) requiring the payment of a fee in respect of the filing, examination or copying of any document, or in respect of any action that the Registrar is required or authorized to take under this Act, and prescribing the amount of the fee, or a manner of calculating the amount of fees and the manner of payment of a fee;
- (c) prescribing the content and form of notices and documents required to be sent to or issued by the Registrar;
- (d) respecting the sending or issuance of notices and documents in electronic or other form, including
 - (i) the notices and documents that may be sent or issued in electronic or other form,
 - (ii) the persons or classes of persons by who may send the notices and documents,
 - (iii) the application of a signature to the notices and documents in electronic or other form by a person referred to in subparagraph (ii), or their execution, adoption or authorization in a manner that, pursuant to the regulations, is to have the same effect for the purposes of this Act as the signature of that person, and
 - (iv) the time and date when they are deemed to be received;
- (e) prescribing rules with respect to exemptions permitted by this Act;
- (f) declaring that, for the purposes of paragraph 157(1)(a), the standards, as they exist from time to time, of any accounting body named in the regulations shall be in force in Nunavut, in whole or in part or with any revisions, variations or modifications that are specified by the regulations;
- (g) respecting names of corporations and extra-territorial corporations;
- (h) prohibiting the use of any names or any words or expressions in a name;
- (i) prescribing requirements for the purposes of paragraphs 12(1)(e) and 283(1)(d);
- (j) defining any word or expression used in subsections 12(1) and 283(1);
- (k) respecting the circumstances and conditions under which a name may be used under subsections 12(1) and 283(1);
- (l) prescribing the documents referred to in sections 210 and 282, subsections 12(4), 179(2), 187(1), 211(5) and 290(1) and paragraph 289(1)(b);

- (m) prescribing the punctuation marks and other marks that may form part of a name;
- (n) respecting
 - (i) the form in which and the period of time for which records referred to in subsection 274(1) are to be kept, and
 - (ii) the disposal of records referred to in subsection 274(1); and
- (o) prescribing the maximum fee that may be charged under subsection 49(2).
S.N.W.T. 1998,c.5,s.4(14); S.Nu. 2013,c.20,s.4(3).

"statement" defined

268. (1) In this section, "statement" means a statement of intent to dissolve, a statement of revocation of intent to dissolve referred to in section 213, and a statement by an extra-territorial corporation under section 282.

Filing of articles and statements

(2) Where this Act requires that articles of a corporation or a statement relating to a corporation or an extra-territorial corporation be sent to the Registrar

- (a) the articles or the statement shall be signed by a director or an officer of the corporation or, in the case of articles of incorporation, by an incorporator; and
- (b) on receiving the articles or statement in the prescribed form, any other required documents and the prescribed fees, the Registrar shall
 - (i) record the date of the filing,
 - (ii) issue the appropriate certificate,
 - (iii) file the certificate and the articles or statement, or a copy, image or photographic, electronic or other reproduction of the certificate and of the articles or statement,
 - (iv) send the certificate and the articles or statement, or a copy, image or photographic, electronic or other reproduction of the certificate and of the articles or statement, to the corporation or its representative, and
 - (v) publish a notice of the issuance of the certificate in the *Nunavut Gazette*.

Date of certificate

(3) A certificate issued by the Registrar may be dated as of the day he or she receives the articles, statement or Court order pursuant to which the certificate is issued or as of any later day specified by the Court or the person who signed the articles or statement.

Date of certificate of discontinuance

(4) Despite subsection (3), a certificate of discontinuance may be dated as of the day on which the corporation amalgamates pursuant to another Act or is continued under the laws of another jurisdiction. S.Nu. 2013,c.20,s.4(3).

Registrar may refuse certain documents

269. (1) The Registrar may refuse to receive, file or register a document submitted to him or her where the Registrar is of the opinion that the document

- (a) contains material that is contrary to law;
- (b) by reason of any omission or error in description, has not been duly completed;
- (c) does not comply with the requirements of this Act;
- (d) contains any error, alteration or erasure;
- (e) is not sufficiently legible;
- (f) is not sufficiently permanent for the Registrar's records; or
- (g) is not accompanied by the prescribed fee.

Documents may be resubmitted

(2) The Registrar may request that a document refused under subsection (1) be amended or completed and resubmitted, or that a new document be submitted in its place.

"anniversary month" defined

270. (1) In this section "anniversary month" means the month in each year that is the same as the month in which the corporation was incorporated or a certificate of amalgamation was issued to the corporation.

Annual return

(2) Every corporation shall, on or before the last day of the month immediately following its anniversary month, file an annual return in prescribed form with the Registrar.

Annual return not required

(3) A corporation to which a certificate of continuance is issued pursuant to subsection 190(3) need not file an annual return under this section where the date by which the annual return must be filed with the Registrar is in the month during which the corporation is continued under this Act or is in any of the following six months. S.N.W.T. 1998,c.5,s.4(15).

Certificate of compliance

271. (1) The Registrar may furnish any person with a certificate stating that a corporation has filed with the Registrar a document required to be filed with or sent to the Registrar under this Act.

Certificate of status

(2) The Registrar may issue a certificate stating that, according to his or her records, the body corporate named in the certificate

- (a) is or is not an existing corporation on the date of issue of the certificate; or
- (b) was or was not an existing corporation on the day or during the period specified in the certificate.

Errors in certificates

272. (1) If a certificate containing an error is issued to a corporation by the Registrar, the directors or shareholders of the corporation may, and on the request of the Registrar, shall, pass the resolutions and send to the Registrar the documents required to comply with this Act and shall take any other steps the Registrar may reasonably require, and the Registrar may demand the surrender of the certificate and issue a corrected certificate.

Date of corrected certificate

(2) A certificate corrected under subsection (1) shall bear the date of the certificate it replaces and shall be identified as a certificate corrected on the date the corrected certificate is issued.

Effect of certificate

(3) The issue of a corrected certificate under this section does not affect the rights of a person who acts in good faith and for value in reliance on the certificate containing the error.

Inspection

273. (1) A person who has paid the prescribed fee is entitled during normal business hours to examine a document required by this Act or the regulations to be sent to the Registrar, other than a report sent under subsection 233(2).

Copies

(2) The Registrar shall furnish any person who has paid the prescribed fee with a copy or a certified copy of a document required by this Act or the regulations to be sent to the Registrar other than a report sent under subsection 233(2).

Records of Registrar

274. (1) Records required by this Act to be prepared and maintained by the Registrar may be in bound or loose-leaf form or in a photographic film form, or may be entered or recorded by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

Obligation to furnish

- (2) Where records are maintained by the Registrar other than in written form,
- (a) the Registrar shall furnish any copy required to be furnished under subsection 273(2) in legible written form; and
 - (b) a reproduction of the text of those records, if it is certified by the Registrar, is admissible in evidence to the same extent as the original written records would have been admissible.

Form of publication

275. Information or notices required by this Act to be published by the Registrar may be made available to the public or published by any system of mechanical or electronic data processing or by any other information storage device that is capable of reproducing any required information or notice in intelligible form within a reasonable time.

Mandatory continuance

276. (1) Every company subject to the *Companies Act*, other than an extra-territorial company, shall

- (a) apply to the Registrar for a certificate of continuance under this Act on or before January 31, 1999; and
- (b) pay the prescribed fee.

Application of section 190

(2) Subsections 190(3) to (5) and (7) to (12) apply with such modifications as the circumstances require to an application for a certificate of continuance under this section as if the company were an extra-territorial corporation.

Duty of shareholder

(3) The shareholders of the company entitled to vote at meetings of shareholders

- (a) shall adopt articles of continuance;
- (b) shall authorize the directors to apply for a certificate of continuance under this section; and
- (c) may adopt by-laws to become effective on the issue of the certificate of continuance.

Surrender of share certificates

(4) By-laws adopted under paragraph (3)(c) may authorize the directors to require a shareholder to surrender his or her share certificate for the purpose of having it cancelled and replaced by a new share certificate that complies with section 49.

Shareholders to act by special resolution

(5) The shareholders of a company shall act under subsection (3) by a special resolution as defined in the *Companies Act*.

Proof of compliance

(6) A company shall, before a certificate of continuance is issued, provide proof satisfactory to the Registrar that the resolution required by subsection (5) has been passed.

Where unanimous written consent needed

(7) The articles of continuance shall not contain anything that would result in a change from the company's memorandum of association or articles of association, if the change is of a kind referred to in subsection 178(1), unless all shareholders entitled to vote under that subsection have consented in writing.

Proof of compliance

(8) Where articles of continuance effect a change of a kind referred to in subsection (7), the company shall, before a certificate of continuance is issued, provide proof satisfactory to the Registrar that the written consent required by subsection (7) has been given.

No dissent under section 193

(9) A shareholder is not entitled to dissent under section 193 in respect of the adoption of articles of continuance under subsection (3).

Where proposed articles oppressive

- (10) The Court may, on the application of a shareholder of a company,
- (a) restrain the company from adopting the proposed articles of continuance or proceeding with the application for a certificate of continuance, and
 - (b) change the provisions of the articles of continuance before they are filed by the Registrar,

if the Court is satisfied that the articles of continuance adopted or proposed to be adopted would, if the company were continued as a corporation, effect a result that is oppressive or unfairly prejudicial to or unfairly disregards the interests of that shareholder.

Where special resolution not accepted

- (11) Where the required majority cannot be obtained under subsection (5), the Court may, on application by the company or a shareholder,
- (a) settle the terms of the articles of continuance and the by-laws; and
 - (b) give directions respecting the application for a certificate of continuance.

Powers of the Court

(12) In exercising its powers under paragraph (10)(b) or (11)(a) with respect to a company, the Court shall make as little change as practicable in the rights of shareholders and in the relative rights of classes and series of shareholders.

Fees where failure to comply

(13) A company that applies to the Registrar for a certificate of continuance under this Act after January 31, 1999, shall pay a fee for continuance that is twice the fee in effect in respect of continuance on January 31, 1999.

Automatic dissolution

- (14) A company that is not continued on or before March 31, 1999 is dissolved.

Capital redemption reserve fund

277. Where a company is continued under section 276, the capital redemption reserve fund, if any, of the company is, on the date shown in the certificate of continuance, deemed

- (a) to be cancelled; and
- (b) to be added to the retained earnings of the corporation.

PART XXI

EXTRA-TERRITORIAL CORPORATIONS

Definitions

278. In this Part,

"charter" includes

- (a) a statute, ordinance or other law incorporating an extra-territorial corporation, as amended from time to time,
- (b) letters patent of incorporation and any letters patent supplementary to them,
- (c) a memorandum of association, as amended from time to time,
- (d) any other instrument of incorporation, as amended from time to time,
- (e) articles of organization or any other instrument of formation of a limited liability company, and
- (f) any certificate, licence or other instrument evidencing incorporation or the formation of a limited liability company; (*charte*)

"internal regulations" includes by-laws, articles of association, rules or regulations relating to the management of the business and affairs of an extra-territorial corporation, by whatever name they are called, if they are made by the members or a class of members of, or by the board of directors, board of management or other governing body of, the extra-territorial corporation; (*règlements internes*)

"registered" means registered under this Part. (*enregistré*)

Carrying on business

279. For the purposes of this Part, an extra-territorial corporation carries on business in Nunavut if

- (a) its name, or any name under which it carries on business or operations, is listed in a telephone directory for any part of Nunavut;
- (b) its name, or any name under which it carries on business or operations, appears or is announced in any advertisement in which an address in Nunavut is given for the extra-territorial corporation;

- (c) it has a resident agent or representative or a warehouse, office or place of business or operations in Nunavut;
 - (d) it solicits business in Nunavut;
 - (e) it is the owner of any estate or interest in land in Nunavut;
 - (f) it is licensed or registered or required to be licensed or registered under any Act of Nunavut entitling it to do business or carry on operations; or
 - (g) it otherwise carries on business or operations in Nunavut.
- S.N.W.T. 1998,c.24,s.2(5); S.Nu. 2013,c.20,s.4(3).

Application re insurers

280. (1) This Part does not apply to an extra-territorial corporation required to be licensed as an insurer under the *Insurance Act*.

Limitation on trust companies

(2) No extra-territorial corporation may carry on the business of a trust company unless authorized to do so by the Registrar under subsection (3).

Registrar may authorize exercise of trustee power

(3) Where the Registrar is satisfied that an extra-territorial corporation is complying with the laws of any province or territory relating to carrying on the business of a trust company, the Registrar may authorize the extra-territorial corporation to exercise such powers within Nunavut.

Order may be retroactive and is conclusive evidence

- (4) An authorization given pursuant to subsection (3)
- (a) may have retroactive effect to the day on which the extra-territorial corporation named in the authorization was registered under this Part;
 - (b) shall be deemed to be conclusive evidence that the extra-territorial corporation named in the order may carry on the business of a trust company within Nunavut; and
 - (c) may be revoked if the extra-territorial corporation
 - (i) ceases to be registered as an extra-territorial corporation, or
 - (ii) does not comply with the laws of any province or territory relating to carrying on the business of a trust company.

Order under *Companies Act*

(5) For the purposes of subsection (2), the Registrar is deemed to have authorized an extra-territorial corporation to carry on the business of a trust company where an order of the Commissioner has been issued under subsection 9(2) of the *Companies Act* and has not been revoked on the day this Act comes into force. S.Nu. 2013,c.20,s.4(3).

Registration

Requirement to register

281. (1) Subject to this section, every extra-territorial corporation shall be registered under this Part before or within 30 days after it commences carrying on business in Nunavut.

Requirement to register after issue of certificate of discontinuance

(2) If a corporation becomes an extra-territorial corporation by reason of the operation of subsection 191(8) and is then carrying on business in Nunavut, the extra-territorial corporation shall register under this Part within 30 days after the date shown in the certificate of discontinuance issued under section 191.

Extra-territorial company exempt from registration

(3) An extra-territorial corporation that carried on business in Nunavut before the coming into force of this Act but was not required to be registered as an extra-territorial company under the *Companies Act* shall register under this Part within 60 days after the coming into force of this Act.

Transitional

- (4) On the coming into force of this Act,
- (a) an extra-territorial company registered under the *Companies Act* is deemed to be registered under this Part;
 - (b) section 295 applies to an extra-territorial company that was struck from the register under the *Companies Act*;
 - (c) the register of extra-territorial companies and other records maintained by the Registrar of Companies under the *Companies Act* are deemed to be the register and records of extra-territorial corporations maintained by the Registrar under this Act;
 - (d) where an extra-territorial company is in default of filing a document with the Registrar of Companies under the *Companies Act*, the document is deemed to be a document required to have been sent to the Registrar under this Act;
 - (e) where an extra-territorial company has not fulfilled an undertaking given to the Registrar of Companies under the *Companies Act*, the undertaking is deemed to have been given to the Registrar under this Act; and
 - (f) the address of an individual who is an attorney of an extra-territorial corporation immediately before the coming into force of this Act and whose appointment is filed with the Registrar of Companies is deemed to be the address of the registered office of the extra-territorial corporation under this Act.
- S.Nu. 2013,c.20,s.4(3).

Application for registration

282. (1) An extra-territorial corporation shall apply for registration by sending to the Registrar a statement in prescribed form together with

- (a) a copy of the charter of the extra-territorial corporation verified in a manner satisfactory to the Registrar;
- (b) documents relating to the name of the extra-territorial corporation that are prescribed by the regulations;
- (c) a notice of the address of the registered office in accordance with section 287; and
- (d) such other documents or information as the Registrar may require.

Charter in languages other than English or French

(2) If all or any part of the charter is not in English or French, the Registrar may require a translation of the charter or that part of the charter, verified in a manner satisfactory to the Registrar, before the extra-territorial corporation is registered.

Name of extra-provincial corporation

283. (1) Subject to the circumstances and conditions prescribed by the regulations, an extra-territorial corporation other than a Canada corporation shall not be registered with a name or carry on business within Nunavut under a name

- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations;
- (b) that is identical to the name of
 - (i) a body corporate incorporated or continued under the laws of Nunavut, whether in existence or not,
 - (ii) an extra-territorial corporation registered in Nunavut,
 - (iii) a Canada corporation, or
 - (iv) a name reserved under section 11;
- (c) that is similar to
 - (i) the name of a body corporate incorporated or continued under the laws of Nunavut,
 - (ii) the name of an extra-territorial corporation registered in Nunavut,
 - (iii) the name of a Canada corporation, or
 - (iv) a name reserved under section 11, if the use of that name would be likely to confuse or mislead;
- (d) that is similar to
 - (i) the name of a business, association, partnership or firm, or
 - (ii) a trade-mark registered pursuant to the *Trade-marks Act* (Canada), if the use of that name would be likely to confuse or mislead; or
- (e) that does not meet the prescribed requirements.

Reserving name

(2) Subsections 11(2) and (3) apply to an extra-territorial corporation.

Inadvertent registration

(3) If through inadvertence or otherwise an extra-territorial corporation is registered with or later acquires a name that contravenes subsection (1), the Registrar may, on giving notice in writing with reasons, direct the extra-territorial corporation to either change its name to one that is approved by the Registrar or adopt an assumed name that is approved by the Registrar within 90 days after the date of the notice.

Registrar may give notice

(4) The Registrar may give a notice under subsection (3) on his or her own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1). S.N.W.T. 1998,c.5,s.4(16); S.Nu. 2013,c.20,s.4(3).

Registration by assumed name

284. (1) An extra-territorial corporation having a name that contravenes section 283 may, with approval of the Registrar,

- (a) be registered with its own name; and
- (b) carry on business in Nunavut under an assumed name that is approved by the Registrar and that does not contravene section 283.

Acquisition of property

(2) The extra-territorial corporation

- (a) shall acquire all property and rights in Nunavut under its assumed name; and
- (b) is entitled to all property and rights acquired and subject to all obligations and liabilities incurred under its assumed name as if the same had been acquired and incurred under its own name.

Right to sue

(3) The extra-territorial corporation may sue or be sued in its own name, its assumed name, or both.

Cancellation of assumed name

(4) An extra-territorial corporation that assumes a name pursuant to subsection (1) may, with the approval of the Registrar and on application in the prescribed form and payment of the prescribed fee, cancel its assumed name and carry on business in Nunavut under the name in which it was registered or change its assumed name to another assumed name. S.Nu. 2013,c.20,s.4(3).

Certificate of registration

285. (1) On receipt of the statement and other documents required by section 282 together with the prescribed fees, the Registrar shall issue a certificate of registration in accordance with section 268.

Conclusive proof

(2) A certificate of registration issued under this section to an extra-territorial corporation is conclusive proof for the purposes of this Act and for all other purposes that the provisions of this Act in respect of registration of the extra-territorial corporation and all requirements precedent and incidental to registration have been complied with, and that the extra-territorial corporation has been registered under this Part as of the date shown in the certificate of registration.

Information

Use of corporate name

286. An extra-territorial corporation shall set out its name or, if the corporation has an assumed name, its assumed name, in legible characters in or on all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the extra-territorial corporation in the course of carrying on business in Nunavut. S.Nu. 2013,c.20,s.4(3).

Registered office

287. (1) A registered extra-territorial corporation shall at all times have a registered office in Nunavut.

Notice of registered office

(2) An extra-territorial corporation shall send to the Registrar, together with the statement referred to in section 282, a notice in prescribed form of

- (a) the address of the registered office; and
- (b) the post office box designated as the address for service by mail, if any.

Change of address

(3) The directors of an extra-territorial corporation may

- (a) change the address of the registered office; or
- (b) designate a post office box within Nunavut as the address for service by mail of the extra-territorial corporation, or revoke or change such a designation.

Notice of change

(4) An extra-territorial corporation shall send to the Registrar a notice in prescribed form of a change under subsection (3) and the Registrar shall file it.

Access to registered office

(5) An extra-territorial corporation shall ensure that its registered office is

- (a) accessible to the public during normal business hours; and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (2).

Service of documents

(6) A notice or document required or permitted by law to be sent or served in Nunavut on an extra-territorial corporation may be

- (a) delivered to the address, according to the Registrar's records, of its registered office; or
- (b) sent by registered mail to that address.

Deemed receipt

(7) A notice or document sent by registered mail to the address of the registered office in accordance with paragraph (6)(b) shall be deemed to be received or served at the time it would be delivered in the ordinary course of mail, unless there are reasonable grounds for believing that the notice or document was not received at that time or at all. S.Nu. 2013,c.20,s.4(3).

Where address not that of corporation

288. (1) Where the registered office of an extra-territorial corporation is situated at an address where the extra-territorial corporation does not carry on business, a person at the address may, if the person no longer desires to allow his or her address to be used as the address of the registered office of the extra-territorial corporation, send a notice to that effect to the Registrar and, on or before the day the notice is sent, send a copy of the notice to the extra-territorial corporation by registered mail.

Cessation of address as registered office

(2) On the expiry of 30 days after a notice referred to in subsection (1) is sent to the Registrar, the address of the person who sent the notice ceases to be the address of the registered office of the extra-territorial corporation referred to in the notice.

Corporation must file notice of new address

(3) An extra-territorial corporation that receives a notice under subsection (1) shall send a notice to the Registrar indicating a new address for the registered office of the corporation in sufficient time that the Registrar will receive it before the expiry of the 30 days referred to in subsection (2).

Change in charter

289. (1) A registered extra-territorial corporation shall send to the Registrar,

- (a) a copy of each amendment to its charter, verified in a manner satisfactory to the Registrar, within 30 days after the effective date of the amendment,
- (b) if the amendment to the charter effects a change in the name under which the extra-territorial corporation is registered, documents relating to corporate names that are prescribed by the regulations, and

(c) a notice in prescribed form, or in such other form as the Registrar may accept, of any change in the information set out in the statement referred to in section 282, within 30 days after the effective date of the change,
and the Registrar shall file the copy or the notice, as the case may be.

Exception

(2) An extra-territorial corporation is not required to send a notice of a change under paragraph (1)(c) if

- (a) the effective date of the change occurs within 30 days before the date up to which the information in an annual return is required to be current; and
- (b) the change is reflected in the annual return filed with the Registrar under subsection 292(2).

Certificate of amendment

(3) If the amendment to its charter effects a change in the name under which an extra-territorial corporation is registered, the Registrar, on filing the copy of the amendment under paragraph (1)(a), shall issue a certificate of amendment of registration in prescribed form.

Publication

(4) The Registrar shall publish in the *Nunavut Gazette* a notice of a change of the name under which an extra-territorial corporation is registered. S.Nu. 2013,c.20,s.4(3).

Filing of instrument of amalgamation

290. (1) Where a registered extra-territorial corporation amalgamates with another extra-territorial corporation, the amalgamated extra-territorial corporation shall send to the Registrar, within 30 days after the effective date of the amalgamation,

- (a) a statement in prescribed form relating to the amalgamated extra-territorial corporation;
- (b) a copy of any instrument effecting the amalgamation; and
- (c) the documents referred to in section 282.

Certificate of registration

(2) On receiving the documents referred to in subsection (1), the Registrar shall file them and issue a certificate of registration of the amalgamated extra-territorial corporation and shall publish notice of the amalgamation in the *Nunavut Gazette*. S.Nu. 2013,c.20,s.4(3).

Notices and returns respecting liquidation

291. (1) If liquidation proceedings are commenced in respect of a registered extra-territorial corporation, the extra-territorial corporation, or, if a liquidator is appointed, the liquidator,

- (a) shall send to the Registrar forthwith after the commencement of the liquidation proceedings a notice showing that the proceedings have commenced and the address of the liquidator if one is appointed; and
- (b) shall send to the Registrar forthwith after the completion of the liquidation proceedings a return relating to the liquidation.

Duty of Registrar

(2) The Registrar shall

- (a) on receiving a notice under paragraph (1)(a), file it and publish a notice respecting the liquidation in the *Nunavut Gazette*; and
- (b) on receiving a return under paragraph (1)(b), file it and cancel the registration of the extra-territorial corporation after the expiration of 60 days following the date of filing of the return.

Change of address of liquidator

(3) The liquidator of a registered extra-territorial corporation shall send to the Registrar a notice of any change in the liquidator's address within 30 days after the effective date of the change, and the Registrar shall file the notice.

S.Nu. 2013,c.20,s.4(3).

"anniversary month" defined

292. (1) In this section "anniversary month" means the month in each year that is the same as the month in which the extra-territorial corporation was incorporated or amalgamated.

Annual returns

(2) A registered extra-territorial corporation shall, on or before the last day of the month immediately following its anniversary month, file with the Registrar an annual return in prescribed form.

Other returns

(3) A registered extra-territorial corporation shall, at the request of the Registrar, send to the Registrar a return containing any other information that the Registrar may reasonably require.

Annual return not required

(4) An extra-territorial corporation need not file an annual return under this section where the date by which the annual return must be filed with the Registrar is in the month during which the extra-territorial corporation registers under this Act or is in any of the following six months. S.N.W.T. 1998,c.5,s.4(17).

Certificate of compliance

293. (1) The Registrar may furnish any person with a certificate that an extra-territorial corporation has filed with the Registrar a document required to be sent to the Registrar under this Act.

Certificate of status

(2) The Registrar may issue a certificate stating that, according to the Registrar's records, the extra-territorial corporation named in the certificate

- (a) is registered under this Part on the date of issue of the certificate;
or
- (b) was or was not registered on a specified day or during the period specified in the certificate.

Cancellation of registration

294. (1) The Registrar may cancel the registration of an extra-territorial corporation where

- (a) the Registrar reasonably believes that the extra-territorial corporation has ceased to carry on business in Nunavut;
- (b) the extra-territorial corporation does not have a registered office address;
- (c) the Registrar does not receive a notice or document required by this Act to be sent to the Registrar, within one year after the notice or document is required to be sent to the Registrar;
- (d) the extra-territorial corporation does not comply with a direction of the Registrar under subsection 283(3);
- (e) the extra-territorial corporation has failed to pay a fee required to be sent to the Registrar by or under this Act;
- (f) the extra-territorial corporation does not fulfil an undertaking given to the Registrar under this Act; or
- (g) the extra-territorial corporation has otherwise contravened the provisions of this Part.

Cancellation of registration

(2) Where an extra-territorial corporation has sent a notice to the Registrar under subsection (4) or the Registrar is satisfied that an extra-territorial corporation has been dissolved, the Registrar shall cancel the registration of that corporation.

Conditions precedent to cancellation

(3) The Registrar shall not cancel the registration of an extra-territorial corporation under subsection (1) until

- (a) the Registrar has given 60 days notice of the proposed cancellation, with reasons,
 - (i) to the extra-territorial corporation by mail addressed to its head office, and
 - (ii) to the extra-territorial corporation by mail addressed to its registered office in Nunavut, unless the extra-territorial corporation does not have such a registered office in Nunavut;
- (b) the Registrar has published a notice of the proposed cancellation in the *Nunavut Gazette*; and

- (c) either no appeal is commenced under section 248 or, if an appeal is commenced, it is discontinued or the Registrar's decision is confirmed on the appeal.

Notice of cessation of business

(4) An extra-territorial corporation that ceases to carry on business in Nunavut shall send a notice to that effect to the Registrar.

Effect of cancellation

(5) The cancellation of the registration of an extra-territorial corporation does not affect its liability for its obligations.

Certificate of cancellation

(6) Where the Registrar cancels the registration of an extra-territorial corporation under this Part, the Registrar shall issue a certificate of cancellation in prescribed form and shall publish notice of the cancellation in the *Nunavut Gazette*.

Effect of certificate

(7) An extra-territorial corporation's registration is cancelled on the date shown in the certificate of cancellation. S.Nu. 2013,c.20,s.4(3).

Reinstatement

295. (1) The Registrar may reinstate the registration of an extra-territorial corporation that was cancelled under subsection 294(1) or (2) on receiving the required fees, notices and documents together with the prescribed reinstatement fee.

New certificate of registration

(2) Subject to section 283, on the reinstatement of the registration of an extra-territorial corporation pursuant to subsection (1), the Registrar shall issue a certificate of registration in prescribed form and shall publish a notice in the *Nunavut Gazette* of the reinstatement of the registration.

Effect of certificate

(3) The registration of a corporation is reinstated on the date shown in the certificate, subject to any reasonable terms that the Registrar may impose and to any rights acquired by any person prior to reinstatement of the registration. S.Nu. 2013,c.20,s.4(3).

Errors in certificates

296. Where a certificate containing an error is issued to an extra-territorial corporation by the Registrar, the Registrar may issue a corrected certificate after receiving any documents required to comply with this Act, any undertakings by the extra-territorial corporation that the Registrar considers necessary and the certificate containing the error.

Capacity, Disabilities and Penalties

Validity of acts

297. No act of an extra-territorial corporation, including any transfer of property to or by an extra-territorial corporation, is invalid by reason only

- (a) that the act or transfer is contrary to or not authorized by its charter or internal regulations or any law of the jurisdiction in which it is incorporated; or
- (b) that the extra-territorial corporation was not then registered.

Capacity to commence and maintain legal proceedings

298. (1) While it is unregistered, an extra-territorial corporation is not capable of commencing or maintaining any action or other proceeding in any court in Nunavut in respect of any contract made in the course of carrying on business in Nunavut while it was unregistered.

Subsequent registration

(2) If an extra-territorial corporation was not registered at the time it commenced an action or proceeding referred to in subsection (1) but subsequently becomes registered, the action or proceeding may be maintained as if the extra-territorial corporation had been registered before the commencement of the action or proceeding.

S.Nu. 2013,c.20,s.4(3).

General penalty

299. A person who contravenes any provision of this Part is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

PART XXII

MISCELLANEOUS

Note

**The following provisions have been deleted for the purposes of this consolidation:
s.300, Schedule (Consequential Amendments)**

REPEAL

Companies Act repealed

301. (1) *The Companies Act is repealed, effective March 31, 1999.*

Companies Winding-Up Act repealed

(2) *The Companies Winding-Up Act is repealed, effective March 31, 1999.*

Saving

(3) Where a company is in the process of being wound up on March 31, 1999, the winding-up shall be completed under the *Companies Winding-Up Act* as if the *Companies Winding-Up Act* had not been repealed by subsection (2).

(4) **Repealed, S.N.W.T. 1996,c.19,s.301(7).**

(5) **Repealed, S.N.W.T. 1996,c.19,s.301(7).**

(6) **Repealed, S.N.W.T. 1996,c.19,s.301(7).**

(7) **Repealed, S.N.W.T. 1996,c.19,s.301(7).**

S.N.W.T. 1999,c.5,Sch.A,s.2; S.N.W.T. 1996,c.19,s.301(7).

TRANSITIONAL MATTERS RELATED TO DIVISION

Deemed incorporation in Nunavut

302. (1) A corporation incorporated or continued under the *Business Corporations Act* (Northwest Territories) before April 1, 1999 is deemed as of that date to be incorporated or continued under this Act where the registered office of the corporation is located in Nunavut on March 31, 1999.

Continuation of Northwest Territories addresses

(2) The following apply until March 31, 2001;

- (a) where the records office or the address for service by mail of a corporation referred to in subsection (1) is located at a place in the Northwest Territories on April 1, 1999, the records office or the address for service by mail of the corporation may continue to be located at that place, notwithstanding section 19;
- (b) where the place for meetings of the shareholders of a corporation referred to in subsection (1) is located in the Northwest Territories on April 1, 1999, those meetings may be held at that place, notwithstanding subsection 133(1).

Deemed registration of extra-territorial corporations in Nunavut

(3) An extra-territorial corporation registered under the *Business Corporations Act* (Northwest Territories) before April 1, 1999 is deemed as of that date to be registered under this Act where the registered office of the extra-territorial corporation under section 287 of that Act is located in Nunavut on March 31, 1999.

Continuation of Northwest Territories address

(4) Where the address for service by mail of an extra-territorial corporation referred to in subsection (3) is located at a place in the Northwest Territories on April 1, 1999, the address for service by mail of the extra-territorial corporation may continue to be located at that place, notwithstanding section 287, until March 31, 2001.

S.N.W.T. 1998,c.35,Sch.A,s.1.

Operation of Northwest Territories corporations

303. (1) The following may carry on business or operations in Nunavut until March 31, 2001 without being registered as an extra-territorial corporation under this Act:

- (a) a corporation incorporated or continued under the *Business Corporations Act* (Northwest Territories) before April 1, 1999, that is not deemed to be incorporated or continued under this Act pursuant to subsection 302(1);
- (b) an extra-territorial corporation registered under the *Business Corporations Act* (Northwest Territories) before April 1, 1999, that is not deemed to be registered under this Act pursuant to subsection 302(3);
- (c) a co-operative association incorporated or continued under the *Co-operative Associations Act* (Northwest Territories) before April 1, 1999, that is not deemed to be incorporated or continued on that date under the *Co-operative Associations Act*; and
- (d) a society incorporated under the *Societies Act* (Northwest Territories) before April 1, 1999, that is not deemed to be incorporated on that date under the *Societies Act*.

Continuation of address for service and rights and liabilities

(2) Until March 31, 2001, or until registration as an extra-territorial corporation under this Act, whichever is earlier,

- (a) a corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1) may be served in respect of proceedings or matters in Nunavut at its address for service in the Northwest Territories;
- (b) all property, rights, assets, privileges and franchises of a corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1) are continued in Nunavut;
- (c) all rights of creditors against and all liens on the property, rights, assets, privileges and franchises of a corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1) are continued in Nunavut; and
- (d) all debts, contracts, criminal or civil liabilities and duties of a corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1) attach to it and may be enforced against it in Nunavut.

Protection of name of Northwest Territories corporations

(3) Subject to the circumstances and conditions prescribed by the regulations, until March 31, 2001 or until registration as an extra-territorial corporation under this Act, whichever is earlier, a corporation shall not be incorporated under this Act with, have, carry on business under or identify itself by a name, and an extra-territorial corporation shall not be registered under this Act with a name or carry on business under a name, that is

- (a) identical to the name of a corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1); or
- (b) similar to the name of a corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1), if the use of that name would be likely to confuse or mislead,

without the written consent of the corporation, extra-territorial corporation, co-operative association or society referred to in subsection (1). S.N.W.T. 1998,c.35,Sch.A,s.1.

Power of Registrar

304. The Registrar has the power to issue whatever certificates or documents he or she considers necessary to give effect to sections 302 and 303.

S.N.W.T. 1998,c.35,Sch.A,s.1.

305. Repealed, S.N.W.T. 1996,c.19,s.305(2).