



PRINCE EDWARD ISLAND  
ÎLE-DU-PRINCE-ÉDOUARD

# **BUSINESS CORPORATIONS REGULATIONS**

## PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this regulation, current to June 4, 2022. It is intended for information and reference purposes only.

This document is *not* the official version of these regulations. The regulations and the amendments printed in the *Royal Gazette* should be consulted on the Prince Edward Island Government web site to determine the authoritative text of these regulations.

For more information concerning the history of these regulations, please see the *Table of Regulations* on the Prince Edward Island Government web site ([www.princeedwardisland.ca](http://www.princeedwardisland.ca)).

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## BUSINESS CORPORATIONS REGULATIONS

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## BUSINESS CORPORATIONS ACT

### BUSINESS CORPORATIONS REGULATIONS

Pursuant to subsection 143(6) and section 220 of the *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01, Council made the following regulations:

#### PART 1 - INTERPRETATION

##### 1. Definition

In these regulations, “Act” means the *Business Corporations Act* R.S.P.E.I. 1988, Cap. B-6.01, except where otherwise indicated. (EC133/19)

##### 2. Distributing corporation

- (1) For the purpose of the definition of “distributing corporation” in clause 1(1)(o) of the Act, and subject to subsection (2), “distributing corporation” means
- (a) a corporation that is a reporting issuer under the *Securities Act* R.S.P.E.I. 1988, Cap. S-3.1; or
  - (b) in the case of a corporation that is not a reporting issuer referred to in clause (a), a corporation
    - (i) that has filed a prospectus or registration statement under provincial legislation or under the laws of a jurisdiction outside Canada,
    - (ii) any of the securities of which are listed and posted for trading on a stock exchange in or outside Canada, or
    - (iii) that is involved in, formed for, resulting from or continued after an amalgamation, a reorganization, an arrangement or a statutory procedure, if one of the participating bodies corporate is a corporation to which subclause (i) or (ii) applies.

##### Exception

- (2) A corporation that is subject to an exemption under provincial securities legislation, or to an order of the relevant provincial securities regulator that provides that the corporation is not a reporting issuer for the purposes of the applicable legislation, is not a distributing corporation. (EC133/19)

**3. “Resident Canadian” classes of persons**

For the purpose of subclause (ii) of the definition of “resident Canadian” in clause 1(1)(bb) of the Act, the following classes of persons are prescribed:

- (a) persons who are full-time employees of the Government of Canada or of a province, of an agency of any of those governments or of a federal or provincial Crown corporation, if the principal reason for their residence outside Canada is to act as employees;
- (b) persons who are full-time employees, if the principal reason for their residence outside Canada is to act as employees, of a body corporate
  - (i) of which more than 50 per cent of the voting shares is beneficially owned, or over which control or direction is exercised, by resident Canadians,
  - (ii) a majority of the directors of which are resident Canadians, or
  - (iii) that is a subsidiary of a body corporate described in subclause (i) or (ii);
- (c) persons who are full-time students at a university or other educational institution recognized by the educational authorities of a majority of the provinces of Canada and who have been resident outside Canada for fewer than ten consecutive years;
- (d) persons who are full-time employees of an international association or organization of which Canada is a member;
- (e) persons who were, at the time of reaching their 60th birthday, ordinarily resident in Canada and who have been resident outside Canada for fewer than ten consecutive years. (EC133/19)

## **PART 2 - CORPORATE NAMES**

**4. Combined English and French form**

For the purpose of subsection 8(3) of the Act, a combined English and French form of the name of a corporation shall include, from among the words and expressions set out in subsection 8(1) of the Act, only the expression “Inc.”, which shall be placed at the end of the corporate name. (EC133/19)

**5. Misleading words**

- (1) For the purpose of clause 10(1)(a) of the Act, a corporate name is prohibited where the name includes the word or words
  - (a) “amalgamated”, unless the corporation is an amalgamated corporation resulting from the amalgamation of two or more corporations;
  - (b) “Anne of Green Gables” or any variation of it, unless the Anne Licensing Authority consents in writing to the use of the name;
  - (c) “co-operative”, or “co-op”, unless the Registrar referred to in the *Co-operative Associations Act* R.S.P.E.I. 1988, Cap. C-23, consents in writing to the use of the name; or
  - (d) “credit union”, unless the Registrar appointed under the *Credit Unions Act* R.S.P.E.I. 1988, Cap. C-29.1, consents in writing to the use of the name.

**Misleading suggestion**

- (2) For the purpose of clause 10(1)(a) of the Act, a corporate name is prohibited where, in the opinion of the Director, the name suggests that the corporation





- (a) has royal, vice-regal or governmental patronage, approval or authority, unless the appropriate government department or agency consents in writing to the use of the name;
- (b) is sponsored or controlled by or is affiliated with the Government of Canada, the government of a province or territory of Canada, the government of a country other than Canada, or the governing authority of any city, town or other municipality or has authority from or exercises any function of government, or a political subdivision or agency of a government or governing authority, unless the appropriate government, political subdivision or agency consents in writing to the use of the name;
- (c) is sponsored or controlled by or is affiliated with a university, college, or technical institute that is regulated by the laws of Canada or a province or territory of Canada, unless the university, college or technical institute consents in writing to the use of the name;
- (d) is governed by a professional or occupational association or a licensing agency that is regulated or established by an enactment of Prince Edward Island, unless the professional or occupation association or licensing agency consents in writing to the use of the name; or
- (e) carries on the business of a bank, loan company, insurance company, trust company, financial intermediary, stock exchange or other financial institution that is regulated by the laws of Canada or a province or territory of Canada, unless the appropriate government department or agency consents in writing to the use of the name.

**Conflicts or confused with**

- (3) For the purpose of clause 10(1)(a) of the Act, a corporate name is prohibited where, in the opinion of the Director, the name conflicts or is liable to be confused with the name of a registered corporation or a registered business name in Prince Edward Island, unless the registered corporation or registered business name owner, as the case may be, consents in writing to the use of the name.

**Obscene or otherwise objectionable**

- (4) For the purpose of clause 10(1)(a) of the Act, a corporate name is prohibited where the name includes a word or expression that, in the opinion of the Director, is obscene or otherwise objectionable in the public interest.

**Name not distinctive**

- (5) For the purpose of clause 10(1)(a) of the Act, a corporate name is prohibited where, in the opinion of the Director, the name is not distinctive because it is too general. (EC133/19)

## PART 3 - CORPORATE INTERRELATIONSHIPS

### 6. Definitions

In this Part,

- (a) “**delivery shares**” means shares issued by a corporation to a particular subsidiary for the purpose of an acquisition made under subsection 38(4) of the Act;
- (b) “**particular subsidiary**” means a subsidiary body corporate referred to in subsection 38(4) of the Act. (EC133/19)

## 7. Conditions precedent

For the purpose of subsection 38(4) of the Act, the prescribed conditions are that

- (a) the consideration received by the corporation for the delivery shares is equal to the fair market value of those shares at the time of their issuance;
- (b) the class of shares of which the delivery shares are a part is widely held and shares of that class are actively traded on any of the following stock exchanges in Canada, namely,
  - (i) the Canadian Venture Exchange,
  - (ii) The Montreal Exchange, or
  - (iii) the Toronto Stock Exchange;
- (c) the sole purpose of effecting the acquisition by the particular subsidiary of delivery shares is to transfer them, as set out in clause 8(b), to the shareholders of another body corporate;
- (d) immediately before the acquisition of the delivery shares by the particular subsidiary, the other body corporate and its shareholders deal at arm's length, to be determined in accordance with the *Income Tax Act* (Canada), with the corporation and the particular subsidiary; and
- (e) immediately before the acquisition of the delivery shares by the particular subsidiary, the particular subsidiary and the other body corporate are not resident in Canada, for the purposes of the *Income Tax Act* (Canada). (EC133/19)

## 8. Conditions subsequent

For the purposes of subsection 38(5) of the Act, the prescribed conditions are that

- (a) the particular subsidiary does not acquire a beneficial interest in the delivery shares as a result of its acquisition of those shares and the beneficial interest is acquired by the shareholders of the other body corporate;
- (b) the acquisition by the particular subsidiary of the delivery shares is followed immediately by a transfer of the delivery shares by the particular subsidiary to shareholders of the other body corporate;
- (c) immediately after the transfer of the delivery shares to the shareholders of the other body corporate, the particular subsidiary and the other body corporate are not resident in Canada, for the purposes of the *Income Tax Act* (Canada); and
- (d) after the transfer of the delivery shares to the shareholders of the other body corporate, the other body corporate is a subsidiary body corporate of the particular subsidiary. (EC133/19)

## 9. Conditions not met

For the purpose of subsection 38(6) of the Act, the prescribed consequences are that within 30 days after one of the conditions described in section 7 or 8 is not met or ceases to be met, the corporation shall

- (a) cancel the delivery shares on the condition that, if the articles of the corporation limit the number of authorized shares, the delivery shares may be restored to the status of authorized but unissued shares;
- (b) return the consideration received by the corporation for the delivery shares to the particular subsidiary; and
- (c) cancel the entry for the consideration in the corporation's stated capital account. (EC133/19)



## PART 4 - MEETINGS OF SHAREHOLDERS

### 10. Fixing record date, dividend or liquidation

- (1) For the purpose of clauses 103(1)(a), (b) and (e) of the Act, the prescribed period for the directors to fix the record date is not more than 60 days before the day on which the particular action is to be taken.

#### Fixing record date, meeting

- (2) For the purposes of clauses 103(1)(c) and (d) of the Act, the prescribed period for the directors to fix the record date is not less than 21 days and not more than 60 days before the date of the meeting.

#### Notice of record date

- (3) For the purpose of subsection 103(3) of the Act, the prescribed period for the directors to provide notice of the record date is at least seven days before the date fixed. (EC133/19)

### 11. Notice of meeting

For the purpose of subsection 104(1) of the Act, the prescribed period for the directors to provide notice of the time and place of a meeting of shareholders is not less than 21 days and not more than 60 days before the meeting. (EC133/19)

### 12. Telephonic or electronic voting at meeting

- (1) For the purpose of subsection 110(3) of the Act, when a vote is to be taken at a meeting of shareholders, the voting may be carried out by means of a telephonic, electronic or other communication facility, if the facility
- (a) enables the votes to be gathered in a manner that permits their subsequent verification; and
  - (b) permits the tallied votes to be presented to the corporation without it being possible for the corporation to identify how each shareholder or group of shareholders voted.

#### Voting while participating telephonically or electronically

- (2) For the purpose of subsection 110(4) of the Act, a person who is entitled to vote at a meeting of shareholders may vote by means of a telephonic, electronic or other communication facility, if the facility
- (a) enables the vote to be gathered in a manner that permits its subsequent verification; and
  - (b) permits the tallied vote to be presented to the corporation without it being possible for the corporation to identify how the person voted. (EC133/19)

## PART 5 - SHAREHOLDER PROPOSALS

### 13. Eligibility to submit proposal

For the purpose of subsection 106(2) of the Act,

- (a) the prescribed number of shares is the number of voting shares

- (i) that is equal to one per cent of the total number of the outstanding voting shares of the corporation, as of the day on which the shareholder submits a proposal, or
- (ii) whose fair market value, as determined at the close of business on the day before the shareholder submits the proposal to the corporation, is at least \$2,000; and
- (b) the prescribed period is the six-month period immediately before the day on which the shareholder submits the proposal. *(EC133/19)*

**14. Proof of eligibility**

For the purpose of subsection 106(5) of the Act,

- (a) a corporation may request that a shareholder provide the proof referred to in that subsection within 14 days after the corporation receives the shareholder's proposal; and
- (b) the shareholder shall provide the proof within 21 days after the day on which the shareholder receives the corporation's request or, if the request was mailed to the shareholder, within 21 days after the postmark date stamped on the envelope containing the request. *(EC133/19)*

**15. Maximum words**

For the purpose of subsection 106(7) of the Act, a proposal and a statement in support of it shall together consist of not more than 500 words. *(EC133/19)*

**16. Deadline to submit proposal**

For the purpose of clause 106(9)(a) of the Act, the prescribed number of days for submitting a proposal to the corporation is at least 90 days before the anniversary date. *(EC133/19)*

**17. Deadline to present proposal**

For the purpose of clause 106(9)(d) of the Act, the prescribed period before the receipt of a proposal is two years. *(EC133/19)*

**18. Minimum support required**

- (1) For the purpose of clause 106(9)(e) of the Act, the minimum amount of support required for a shareholder's proposal is
  - (a) three per cent of the total number of shares voted, if the proposal was introduced at an annual meeting of shareholders;
  - (b) six per cent of the total number of shares voted at its last submission to shareholders, if the proposal was introduced at two annual meetings of shareholders; and
  - (c) ten per cent of the total number of shares voted at its last submission to shareholders, if the proposal was introduced at three or more annual meetings of shareholders.

**Duplicate proposal**

- (2) For the purpose of clause 106(9)(e) of the Act, the prescribed period is five years. *(EC133/19)*



**19. Refusal to include proposal**

For the purpose of subsection 106(10) of the Act, the prescribed period during which the corporation is not required to set out a proposal in a management proxy circular is two years. *(EC133/19)*

**20. Notice of refusal**

For the purpose of subsection 106(12) of the Act, the prescribed period for giving notice is 21 days after the receipt by the corporation of the proposal. *(EC133/19)*

**PART 6 - PROXIES AND PROXY SOLICITATION****21. National Instrument 51-102**

In this Part, “NI 51-102” means National Instrument 51-102 of the Canadian Securities Administrators, entitled Continuous Disclosure Obligations, published in both official languages on December 19, 2003, as amended from time to time. *(EC133/19)*

**22. Form of proxy**

For the purpose of subsection 119(1) of the Act, a form of proxy shall be in the form provided for in section 9.4 (Content of Form of Proxy) of NI 51-102. *(EC133/19)*

**23. Management proxy circular**

- (1) Subject to subsection (3), a management proxy circular shall be in the form provided for in Form 51-102F5 (Information Circular) of NI 51-102, and shall, in the circumstances described in Item 8 of Part 2 of that Form, include the statement referred to in that Item.

**Required contents**

- (2) A management proxy circular shall also set out the following:
- (a) the percentage of votes required for the approval of any matter that is to be submitted to a vote of shareholders at the meeting, other than the election of directors;
  - (b) a statement of the right of a shareholder to dissent under section 159 of the Act with respect to any matter to be acted on at the meeting and a brief summary of the procedure to be followed to exercise that right;
  - (c) a statement, signed by a director or an officer of the corporation, that the contents and the sending of the circular have been approved by the directors;
  - (d) a statement indicating the final date by which the corporation must receive a proposal for the purpose of paragraph 106(9)(a) of the Act.

**Exception, not a distributing corporation**

- (3) A management proxy circular for a corporation that is not a distributing corporation is not required to set out the information provided for in Part 1(c) or Item 9, 10 or 16 of Part 2 of Form 51-102F5 (Information Circular) of NI 51-102, or the statement referred to in Item 8 of Part 2 of that Form. *(EC133/19)*

**24. Dissident's proxy circular**

- (1) A dissident's proxy circular shall be in the form provided for in Form 51-102F5 (Information Circular) of NI 51-102, and shall, in the circumstances described in Item 8 of Part 2 of that Form, include the statement referred to in that Item.

**Exception, not a distributing corporation**

- (2) A dissident's proxy circular for a corporation that is not a distributing corporation is not required to set out the information provided for in Part 1(c) or Item 9, 10 or 16 of Part 2 of Form 51-102F5 (Information Circular) of NI 51-102, or the statement referred to in Item 8 of Part 2 of that Form. *(EC133/19)*

**25. Exception, information not known or ascertainable**

Information that is not known to a dissident and that cannot be ascertained by the dissident on reasonable inquiry may be omitted from a dissident's proxy circular, but the circumstances that render the information unavailable shall be disclosed in the proxy circular. *(EC133/19)*

**26. Statement of approval**

A dissident's proxy circular shall contain a statement signed by the dissident or a person authorized by the dissident that the contents and the sending of the circular have been approved by the dissident. *(EC133/19)*

**27. Preparation of financial statements**

- (1) If financial statements accompany or form part of a management proxy circular, the statements shall be prepared in the manner described in Part 7.

**Accompanying report**

- (2) The financial statements referred to in subsection (1), if not reported on by the auditor of the corporation, shall be accompanied by a report of the chief financial officer of the corporation stating that the financial statements have not been audited but have been prepared in the manner described in Part 7. *(EC133/19)*

**28. Dissident's proxy circular not required**

- (1) For the purpose of subsection 120(3) of the Act, the prescribed circumstances are those in which the solicitation conveyed by public broadcast, speech or publication sets out the information provided for in Items 3.2, 3.4, 5(b) and 11 of Part 2 of Form 51-102F5 (Information Circular) of NI 51-102.

**Information and documents required**

- (2) A person making a solicitation referred to in subsection (1) shall send the required information and a copy of any related written communication to the Director and to the corporation before soliciting proxies. *(EC133/19)*



## PART 7 - FINANCIAL DISCLOSURE

### 29. Preparation of financial statements

- (1) Subject to subsection (2), the financial statements referred to in Part XIII of the Act shall be prepared in accordance with the standards recommended in the Handbook of the Chartered Professional Accountants of Canada, as amended from time to time.

#### Exception, distributing corporation

- (2) A distributing corporation may prepare the financial statements referred to in Part XIII of the Act in accordance with the standards permitted in the rules made under section 169 of the *Securities Act*. (EC133/19)

### 30. Required contents of financial statements

- (1) The financial statements referred to in section 125 of the Act shall include at least
- (a) a balance sheet;
  - (b) an income statement;
  - (c) a statement of retained earnings; and
  - (d) a statement of changes in financial position.

#### Names of statements may vary

- (2) Financial statements need not be designated by the names set out in clauses (1)(a) to (d). (EC133/19)

## PART 8 - FUNDAMENTAL CHANGES

### 31. Corporate name, vertical amalgamation

- (1) Despite subclause 153(1)(c)(ii) of the Act, the resolutions approving the amalgamation of a holding corporation with one or more of its subsidiary corporations may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating holding corporation.

#### Corporate name, horizontal amalgamation

- (2) Despite subclause 153(2)(b)(ii) of the Act, the resolutions approving the amalgamation of two or more wholly owned subsidiary corporations of the same holding body corporate may provide that the corporate name set out in the articles of amalgamation is not the same as that set out in the articles of the amalgamating subsidiary corporation whose shares are not cancelled. (EC133/19)

## PART 9 - CONSTRAINED SHARE CORPORATIONS

### Interpretation

#### 32. Definitions

In this Part,

- (a) “**Canadian**” means
  - (i) a resident Canadian;
  - (ii) a partnership of which a majority of the members are resident Canadians and in which interests representing more than 50 per cent of the total value of the partnership property are owned by resident Canadians;
  - (iii) a trust established by a resident Canadian
    - (A) a majority of the trustees of which are resident Canadians, or
    - (B) in which beneficial interests representing more than 50 per cent of the total value of the trust property are owned by resident Canadians;
  - (iv) the Government of Canada or of a province or territory of Canada or a municipal corporation or public board or commission in Canada; or
  - (v) a body corporate
    - (A) incorporated under the laws of Canada or a province,
    - (B) of which a majority of the directors are resident Canadians, and
    - (C) over which persons described in any of subclauses (i) to (iv) or in this subclause exercise control or direction or of which the persons beneficially own shares or securities currently convertible into shares carrying more than 50 per cent of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing, including currently exercisable options or rights to acquire the shares or convertible securities;
- (b) “**constrained class**” means the class of persons specified in the articles of a constrained share corporation as being ineligible to hold, as a class, more than the maximum aggregate holdings;
- (c) “**constrained share corporation**” means a corporation that has provisions in its articles imposing a constraint;
- (d) “**constraint**” means a restriction on
  - (i) the issue or transfer of shares of any class or series to persons who are not resident Canadians,
  - (ii) the issue or transfer of shares of any class or series to enable a corporation or any of its affiliates or associates to qualify under a law referred to in clause 41(1)(a)
    - (A) to obtain a licence to carry on any business,
    - (B) to become a publisher of a Canadian newspaper or periodical, or
    - (C) to acquire shares of a financial intermediary as defined in clause 41(1)(b), or
  - (iii) the issue, transfer or ownership of shares of any class or series in order to assist a corporation or any of its affiliates or associates to qualify under a law referred to in subsection 41(2) to receive licences, permits, grants, payments





or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control;

- (e) **“control”** means control in any manner that results in control in fact, whether directly through the ownership of shares or indirectly through a trust, a contract, the ownership of shares of any other body corporate or otherwise;
- (f) **“maximum aggregate holdings”** means the total number of voting shares of a constrained share corporation that may be held by or on behalf of persons in the constrained class and their associates in accordance with the articles of the corporation;
- (g) **“maximum individual holdings”** means the total number of voting shares of a constrained share corporation that may be held by or on behalf of any one person in the constrained class and their associates in accordance with the articles of the corporation;
- (h) **“voting share”** means a share that is subject to a constraint referred to in subclause (d)(i) or (ii) and that carries voting rights under all circumstances or by reason of the occurrence of an event that has occurred and that is continuing, and includes a security currently convertible into such a share and a currently exercisable option or right to acquire such a share or convertible security. (EC133/19; 423/22)

### Disclosure Required

#### 33. Disclosure required

Each of the following documents issued or published by a constrained share corporation shall indicate conspicuously the general nature of its constrained share provisions:

- (a) a certificate representing a voting share;
- (b) a management proxy circular; and
- (c) a prospectus, statement of material facts, registration statement or similar document. (EC133/19)

### Powers and Duties of Directors

#### 34. Refusal to register transfer of voting share

- (1) The directors of a constrained share corporation that has provisions in its articles imposing a constraint referred to in subclause 32(d)(i) or (ii) shall refuse to register a transfer of a voting share of the corporation in accordance with the articles if
  - (a) the total number of voting shares held by or on behalf of persons in the constrained class exceeds the maximum aggregate holdings and the transfer is to a person in the constrained class;
  - (b) the total number of voting shares held by or on behalf of persons in the constrained class does not exceed the maximum aggregate holdings and the transfer would cause the number of shares held by persons in the constrained class to exceed the maximum aggregate holdings;
  - (c) the total number of voting shares held by or on behalf of a person in the constrained class exceeds the maximum individual holdings and the transfer is to that person; or
  - (d) the total number of voting shares held by or on behalf of a person in the constrained class does not exceed the maximum individual holdings and the transfer would cause the number of shares held by that person to exceed the maximum individual holdings.

**Exception, beneficial owner**

- (2) Despite subsection (1), the directors of a constrained share corporation that is described in that subsection shall register a transfer of a voting share of the corporation to a person in the constrained class if that person establishes that they were the beneficial owner of that share on the day on which the corporation became a constrained share corporation.

**Prohibition, issue of voting share**

- (3) The directors of a constrained share corporation that is described in subsection (1) shall not issue a voting share of the corporation to a person in the constrained class if the directors are required by that subsection to refuse to register a transfer of the share.

**What constitutes issued share**

- (4) For the purpose of subsection (3), the directors may count as issued shares the voting shares that the corporation is currently offering to its shareholders or prospective shareholders.  
(EC133/19)

**35. Share ownership contrary to constraint**

The directors of a constrained share corporation that has provisions in its articles imposing a constraint referred to in subclause 32(d)(iii)

- (a) shall not issue a share of the corporation to a person whose ownership of the share would be contrary to the constraint; and
- (b) shall refuse to register a transfer of a share of the corporation if the transfer is to a person whose ownership of the share is contrary to the constraint. (EC133/19)

## **Limitation on Voting Rights**

**36. Application of sections 62 and 63**

Sections 37 and 38 apply to a constrained share corporation that has provisions in its articles imposing a constraint referred to in subclause 32(d)(i) or (ii). (EC133/19)

**37. Maximum individual holdings**

- (1) If, on the day on which a corporation becomes a constrained share corporation, the total number of voting shares of the corporation held by or on behalf of a person in the constrained class exceeds the maximum individual holdings, the person or the person's nominee may only, in person or by proxy, exercise the voting rights attached to the maximum individual holdings so held on that day or on any later day.

**Exercise after reduction**

- (2) After the total number of shares held by or on behalf of the person referred to in subsection (1) is reduced below the maximum individual holdings, the person or the person's nominee may, in person or by proxy, exercise the voting rights attached to shares held. (EC133/19)

**38. Prohibition, shares exceeding maximum individual holdings**

- (1) Except as provided in subsection 37(1), if the total number of voting shares of a constrained share corporation held by or on behalf of a person in the constrained class exceeds the maximum individual holdings, no person shall, in person or by proxy, exercise the voting rights attached to those shares.



**Proxy holder, shares less than maximum**

- (2) If it appears from the securities register of a constrained share corporation that the total number of voting shares held by a shareholder is less than the maximum individual holdings, a proxyholder for the shareholder may vote those shares unless the proxyholder has knowledge that the shares beneficially owned by the shareholder exceed the maximum individual holdings.

**Prohibition, corporation or trust in constrained class**

- (3) If, after the day on which a corporation becomes a constrained share corporation, a corporation or trust that was not a person in the constrained class becomes a person in the constrained class, the corporation or trust shall not exercise the voting rights attached to any shares it holds in the constrained share corporation while it is a person in the constrained class. (EC133/19)

**Disclosure of Beneficial Ownership****39. Application of section 40**

Section 40 applies to a constrained share corporation that has provisions in its articles imposing a constraint referred to in subclause 32(d)(i) or (ii). (EC133/19)

**40. Bylaws**

- (1) Subject to section 78 of the Act, the directors of a constrained share corporation may make, amend or repeal any bylaws required to administer the constrained share provisions set out in the articles of the corporation, including bylaws
- (a) to require any person in whose name shares of the corporation are registered to provide a statutory declaration under the *Evidence Act* R.S.P.E.I. 1988, Cap. E-11, or the *Evidence Act* (Canada) concerning
- (i) whether the shareholder is the beneficial owner of the shares of the corporation or holds them for a beneficial owner,
  - (ii) whether the shareholder is an associate of any other shareholder,
  - (iii) whether the shareholder or beneficial owner is a Canadian, and
  - (iv) any further relevant facts;
- (b) to require any person seeking to have a transfer of a voting share registered in the person's name or to have a voting share issued to the person to provide a statutory declaration as described in clause (a); and
- (c) to determine the circumstances in which any declarations are required, their form and the times when they are to be provided.

**Refusal to register transfer without declaration**

- (2) If a person is required to provide a declaration under a bylaw made under subsection (1), the directors may refuse to register a transfer of a voting share in the person's name or to issue a voting share to the person until that person has provided the declaration.

**Reliance on declaration and knowledge**

- (3) In administering the constrained share provisions set out in the articles of a constrained share corporation, the directors of the corporation may rely on
- (a) a statement made in a declaration referred to in subsection (1) or (2); and

- (b) the knowledge of a director, officer, employee, agent or mandatary of the corporation.

**Reliance on securities register**

- (4) If the directors are required to determine the total number of voting shares of a constrained share corporation held by or on behalf of persons other than Canadians, the directors may rely on the sum of the voting shares held by every shareholder whose latest address as shown in the securities register is
  - (a) outside Canada; and
  - (b) in Canada but who, to the knowledge of a director, officer, employee, agent or mandatary of the corporation, is not a Canadian.

**Date of reliance**

- (5) For the purpose of subsection (4), the directors may rely on the securities register of the constrained share corporation as of any date after the day on which the corporation became a constrained share corporation, but that date shall not be more than four months before the day on which the determination is made. (EC133/19)

**References and Definitions for the Purpose  
of Certain Provisions of the Act**

**41. Prescribed laws**

- (1) For the purpose of clause 143(1)(b) of the Act,
  - (a) the following laws are prescribed:
    - (i) the Canadian Aviation Regulations made under the *Aeronautics Act* (Canada),
    - (ii) the *Canada Transportation Act* and any regulations made under it,
    - (iii) the Canada Oil and Gas Land Regulations C.R.C., c. 1518, and the Canada Oil and Gas Drilling and Production Regulations (SOR/2009-315),
    - (iv) the *Broadcasting Act* (Canada),
    - (v) the Northern Mineral Exploration Assistance Regulations made under *Appropriation Act No. 9, 1966*,
    - (vi) section 19 of the *Income Tax Act* (Canada),
    - (vii) any other law of Canada that has requirements in relation to Canadian ownership, or any other law of a province, as amended from time to time, that has requirements in relation to Canadian ownership; and
  - (b) “financial intermediary” means a bank, trust company, loan company, insurance company, investment company and body corporate that carries on business as a securities broker, a dealer or an underwriter.

**Prescribed laws**

- (2) For the purposes of subsection 39(1) and clause 143(1)(c) of the Act, the following laws are prescribed:
  - (a) the *Canada Petroleum Resources Act* and any regulations made under it;
  - (b) the *Canada Transportation Act* and any regulations made under it.

**Prescribed laws**

- (3) For the purpose of clause 143(1)(d) of the Act, the following laws are prescribed:



- (a) the *Insurance Companies Act* (Canada) and any regulations made under it;
- (b) the *Trust and Loan Companies Act* (Canada) and any regulations made under it.  
(EC133/19)

## PART 10 - APPLICATIONS FOR EXEMPTIONS

### 42. Application of Part

This Part applies to an application for an exemption under subsection 8(2), 57(3) or 140(2) or section 121 of the Act. (EC133/19)

### 43. Time of filing application for exemption

- (1) An application for an exemption under
  - (a) subsection 8(2) of the Act shall be made before the date of issue of the certificate of continuance referred to in subsection 156(4) of the Act;
  - (b) subsection 57(3) of the Act shall be made at least 30 days before the corporation is required to comply with Part VIII of the Act;
  - (c) section 121 of the Act shall be made before the date of the notice referred to in subsection 119(1) of the Act; and
  - (d) subsection 140(2) of the Act may be made at any time.

#### Extension of time

- (2) Despite subsection (1), the Director shall extend the time for making an application for an exemption if the applicant establishes that no prejudice will result from the extension.  
(EC133/19)

### 44. Written notice of refusal

The Director shall, within 30 days after receipt of an application for an exemption, grant the exemption requested or send to the applicant written notice of the Director's refusal, together with reasons for the refusal. (EC133/19)

### 45. Request for further information

The Director may request that an applicant for an exemption provide the Director with further information or that any other person provide the Director with information in writing that is relevant to the application. (EC133/19)

### 46. Copy to applicant

The Director shall give the applicant for an exemption a copy of any information received from any other person under section 45 and shall allow the applicant a reasonable opportunity to respond in writing. (EC133/19)

### 47. Information not provided

If an applicant for an exemption or a person from whom the Director has requested information under section 45 does not provide the information within the time specified by the Director, the Director may deal with the application without regard to the information.  
(EC133/19)

**48. Demand refusal**

If the Director does not grant an exemption or send written notice of the Director's refusal within the time specified in section 44, the applicant may exercise the applicant's rights under section 199 of the Act as if the Director had refused to grant the exemption. (EC133/19)

## **PART 11 - GENERAL**

### **Documents**

**49. Annual return**

The annual return referred to in section 224 of the Act shall be sent to the Director within 60 days after the anniversary date of incorporation of the corporation, and shall set out the required information as of the anniversary date. (EC133/19)

**50. Prescribed notices, documents**

For the purpose of section 207 of the Act, the prescribed notices, documents or other information are the notices, documents or other information referred to in sections 52 to 56 of the Act. (EC133/19)

**51. Consent in writing**

- (1) For the purpose of clause 208(2)(a) of the Act, the consent shall be in writing.

**Electronic posting**

- (2) For the purpose of clause 208(2)(b) of the Act, a notice, document or other information that is not required under the Act to be sent to a specific place may be sent as an electronic document to a place other than to an information system designated by the addressee under clause 208(2)(a) of the Act by posting it on or making it available through a generally accessible electronic source, such as a website, and by providing the addressee with notice in writing of the availability and location of that electronic document. (EC133/19)

**52. Revocation of consent in writing**

For the purposes of subsection 208(3) of the Act, an addressee shall revoke his or her consent in writing. (EC133/19)

**53. Several addressees**

For the purpose of clauses 209(1)(b) and 209(3)(b) of the Act, when a notice, document or other information is provided to several addressees, the notice, document or other information shall be provided to the addressees concurrently, regardless of the manner of provision. (EC133/19)

**54. Electronic document provided**

An electronic document is considered to have been provided when it leaves an information system within the control of the originator or another person who provided the document on the originator's behalf. (EC133/19)



**55. Electronic document received**

An electronic document is considered to have been received

- (a) if the document is provided to the information system designated by the addressee, when it enters that information system; or
- (b) if the document is posted on or made available through a generally accessible electronic source, when the notice of the availability and location of the electronic document referred to in section 5 is received by the addressee or, if the notice is sent electronically, when the notice enters the information system designated by the addressee. *(EC133/19)*

**Exemption Circumstances Prescribed****56. Exemption -circumstances**

For the purpose of section 217 of the Act, the prescribed circumstances are that the exemption does not prejudice any of the shareholders or the public interest. *(EC133/19)*

**57. Cancellation of articles and certificate**

- (1) For the purpose of subsection 228(1) of the Act, the prescribed circumstances are that

- (a) there is an obvious error in the articles or in the related certificate;
- (b) there is an error in the articles or in the related certificate that was made by the Director;
- (c) the cancellation of the articles and related certificate is ordered by a court; or
- (d) the Director lacked the authority to issue the articles and related certificate.

**Cancellation on request**

- (2) For the purpose of subsection 228(3) of the Act, the prescribed circumstances are that there is no dispute among the directors or shareholders as to the circumstances of the request for cancellation and

- (a) the corporation has not used the articles and related certificate; or
- (b) if it has used them, anyone dealing with the corporation on the basis of the articles and related certificate has consented to the cancellation. *(EC133/19)*

**Retention of Records****58. Retention of records**

For the purpose of subsection 230(3) of the Act, the prescribed period is six years after the day on which the Director receives the document. *(EC133/19)*

**Fees****59. Fees**

- (1) The fee in respect of the filing, examination or copying of any document or in respect of any action that the Director is required or authorized to take under the Act, set out in column 1 of an item of the Schedule to these regulations is the applicable fee set out in column 2 of that item.

**Fee not payable**

- (2) No fee is payable for the issuance by the Director of
- (a) a certificate of amendment issued under section 147 of the Act, if the only purpose of the amendment is to add an English or a French version to a corporation's name, or to replace a corporate name that the Director has directed be changed under subsection 10(2) or (4) of the Act; or
  - (b) a corrected certificate issued under subsection 228(6) of the Act when the correction is required solely as the result of an error made by the Director.

**Maximum fee for security certificate**

- (3) For the purpose of subsection 53(2) of the Act, the prescribed maximum fee for the issuance of a security certificate is \$3. *(EC133/19)*





**SCHEDULE****FEES**

	<b>Type of document or activity under Act</b>	<b>Fee</b>
1.	Documents issued by the Director	
	(a) certificate of incorporation, section 6,	\$200
	(b) certificate of amendment, subsection 34(5), section 147 or subsection 160(5)	200
	(c) restated certificate of incorporation, subsection 149(3) (unless issued with certificate of amendment)	50
	(d) certificate of amalgamation, subsection 154(4)	200
	(e) certificate of continuance, subsection 156(4) (unless subsection 232(7) or 233(4) applies)	200
	(f) discontinuance document evidencing satisfaction of the Director, subsection 157(1)	200
	(g) certificate of arrangement, subsection 161(6)	200
	(h) certificate of revival, subsection 163(3) or 164(3)	200
	(i) certificate of dissolution, subsection 165(5)	125
	(j) certificate of revocation of intent to dissolve, subsection 166(11)	50
	(k) corrected certificate, subsection 227(1)	200
	(l) certificate of continuance, within three years after the date of the coming into force of the Act, subsection 233(4)	0
2.	Filing annual return, subsection 224(1)	30
3.	Examination by the Director of the corporation's file in connection with a request for a certificate, section 225	10
4.	Application for an exemption, subsection 8(2), 57(3), 121 or 140(2)	250
5.	Uncertified copies of documents, subsection 229(2), per uncertified copy	5
6.	Certified copies of documents, subsection 229(2), per certified copy	30
7.	Name Searches	
	(a) level 1 search of corporate and business names in the Atlantic provinces, plus federal corporations and trademarks	40
	(b) level 2 search of corporate and business names throughout Canada plus trademarks	50

(EC133/19)