



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

COMPANIES ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to December 2, 2015. It is intended for information and reference purposes only.

This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the Queen's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office

Tel: (902) 368-4292

Email: legislation@gov.pe.ca



COMPANIES ACT

Table of Contents

Section	Page
1. Definitions.....	7
1.1 Affiliated, subsidiary and holding bodies corporate	7
PART I	8
2. Director of Corporations	8
2.1 Signatures.....	8
3. Irregularity preliminary to issue of letters patent	8
4. Power to grant charter by letters patent.....	8
5. Seal.....	9
6. Application, details of.....	9
7. Entrenched provision	9
8. Signatures witnessed.....	9
9. Matters to be shown before issue of letters patent	10
10. Contents of letters patent.....	10
11. Notice of grant of letters patent.....	10
12. Reservation of corporate name.....	10
13. Shares, value of.....	11
14. Powers of a company incorporated under this Act.....	12
15. <i>Idem</i>	12
16. Change of corporate name	14
17. Supplementary letters patent, application for.....	15
18. Petition for supplementary letters patent.....	15
19. Effect of supplementary letters patent.....	15
20. Powers of companies subject to Act	15
21. Directors.....	15
22. First directors	15
23. Qualifying share.....	16
24. Elected annually, directors must be.....	16
25. Procedures <i>re</i> directors and general meetings subject to letters patent and bylaws	16
26. Directors continue in office until successors elected	16
27. Number of directors, increase or decrease in	16
28. Powers of directors.....	17
29. Bylaws, directors may make	17
30. Bylaw to issue, allot or sell unissued stock, valid if.....	17
31. Calling a special meeting, certain shareholders may.....	17
32. Subdivision of shares into smaller amounts	17
33. Increase in capital stock of company by bylaw.....	18
34. Decreasing capital stock by directors.....	18
35. Precondition to valid bylaw to increase or decrease capital stock	18
36. Petition to confirm bylaw.....	19
37. Grant of supplementary letters patent	19

38.	<i>Prima facie</i> evidence of bylaw	19
39.	Stock deemed personal estate	19
40.	Allotting stock	19
41.	Calls upon unpaid shares	19
42.	When call deemed to have occurred, liability of shareholder	19
43.	Maximum amount subject to call annually	20
44.	Advances in excess of amounts called for	20
45.	Forfeiture of shares, declaration of by directors	20
46.	Enforcement of payment on call by court action	20
47.	Transfer of shares restricted	20
48.	Refusal to register share	20
49.	Transfer made by personal representative of deceased	21
50.	Books to be kept by the company	21
51.	Effectiveness of transfer dependent on entry in book	21
52.	Inspection of books	21
53.	Offence, penalty <i>re</i> failure to keep books	21
54.	Liability of director or employee <i>re</i> inaccurate entries etc.	22
55.	Trust, shares held in, liability of company <i>re</i>	22
56.	Liability of shareholder for unpaid portion of shares	22
57.	Limitation on liability of shareholders	22
58.	Liability of personal representative holding stock	22
59.	Powers of personal representative <i>re</i> stock	22
60.	Contracts etc. signed by officers etc. of company, extent of company liability	23
61.	Purchase of stock in other companies	23
62.	Dividends not to impair capital	23
63.	Deduction from payment amount owing on call	23
64.	Indemnification of a director	23
65.	Offence, & penalty <i>re</i> payment of dividends	23
66.	Exoneration from liability	23
67.	Registered office	24
68.	Service of process	24
69.	Prohibited loans and guarantees	24
70.	Actions between shareholder and company	25
71.	Mode of incorporation, reference to not required in legal proceedings	25
72.	Dissolution of inactive companies	25
73.	Revival of company	26
74.	Surrender of charter	26
75.	Forfeiture of undisposed of personalty or realty	27
76.	Prospectus, contents	27
77.	Amalgamation of similar companies	27
78.	Borrowing powers of the directors	28
79.	Annual report of directors	29
80.	Annual return	29
81.	Regulations	30
82.	Forms	30
83.	Liability of directors	30
84.	Omission, addition or abbreviation of company name	30
85.	Application for continuance in the province	30
86.	Application for certificate of continuance in another jurisdiction	31
87.	Bylaws for creating and issuing preference stock	32
88.	Redemption or conversion of preferred shares	33
88.1	Company holding its own shares	33
88.2	Exception	33
88.3	Voting, shares	33
88.4	Acquisition of company's own shares	33



88.5	Alternative acquisition of company's own shares.....	34
88.6	Redemption of shares.....	34
88.7	Directors' liability	35
PART II		35
89.	Incorporation of companies without share capital for non-profit purposes.....	35
90.	Application for letters patent, contents	35
91.	Sections applying to Part II.....	36





COMPANIES ACT

CHAPTER C-14

1. Definitions

In this Act

- (a) “**company**” means a company incorporated by letters patent under this Act;
- (b) “**Director**” means the Director of Corporations appointed under section 2;
- (c) “**letters patent**” means the letters patent incorporating a company for any purpose contemplated by this Act;
- (d) “**Minister**” means the Minister of Justice and Public Safety and Attorney General;
- (e) “**private company**” means a company as to which by special Act, letters patent, or supplementary letters patent
 - (i) the right to transfer its shares is restricted,
 - (ii) the number of its shareholders, exclusive of persons who are in the employ of the company, is limited to fifty, two or more persons holding one or more shares jointly being counted as a single shareholder,
 - (iii) an invitation to the public to subscribe for any shares, debentures or debenture stock of the company is prohibited;
- (f) “**public company**” means a company not being a private company;
- (g) “**real estate**” or “**land**” includes all immovable real property of every kind;
- (h) “**shareholder**” means every subscriber to, or holder of stock in the company, and extends to and includes the personal representatives of the shareholders;
- (i) “**supplementary letters patent**” means any letters patent granted for the increasing or reducing of the capital stock of a company, or extending the powers of the company to other objects or purposes;
- (j) “**undertaking**” means the whole of the works and business of every kind which the company is authorized to carry on. *R.S.P.E.I. 1974, Cap. C-15, s.1; 1984, c.14, s.1; 1993, c.29, s.4; 1997, c.20, s.3; 2000, c.5, s.3; 2010, c.14, s.3; 2012, c.17, s.2; 2012, c.17, s.2; 2015, c.28, s.3.*

1.1 Affiliated, subsidiary and holding bodies corporate

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;
- (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;
- (c) a body corporate is controlled by a person or by two or more bodies corporate if

- (i) shares of the body corporate to which are attached more than fifty per cent 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
- (ii) the votes attached to those shares are sufficient, if exercised, to elect a majority of the directors of the body corporate;
- (d) a body corporate is the holding body corporate of another if that other body corporate is its subsidiary;
- (e) a body corporate is a subsidiary of another body corporate if
 - (i) it is controlled by
 - (A) that other body corporate,
 - (B) that other body corporate and one or more bodies corporate, each of which is controlled by that other body corporate, or
 - (C) two or more bodies corporate, each of which is controlled by that other body corporate, or
 - (ii) it is a subsidiary of a body corporate that is a subsidiary of that other body corporate. *2003,c.33,s.1.*

PART I

2. Director of Corporations

There shall be a Director of Corporations appointed pursuant to the *Civil Service Act R.S.P.E.I. 1988, Cap. C-8* who shall carry out such functions as may be conferred on him by this or any other Act. *1984, c.14, s.2.*

2.1 Signatures

Where the signature of the Director or the Minister is required on any letters patent, certificate or other document issued under this Act, the signature may be printed, stamped or otherwise mechanically reproduced thereon. *1994, c.48, s.6.*

3. Irregularity preliminary to issue of letters patent

The provisions of this Act relating to matters preliminary to the issue of letters patent or supplementary letters patent are directory only, and no letters patent or supplementary letters patent issued under this Act are void or voidable on account of any irregularity or insufficiency in respect of any matter preliminary to the issue thereof. *1984, c.14, s.2.*

4. Power to grant charter by letters patent

The Minister may, by letters patent, grant a charter to one or more persons who apply therefor, constituting that person and others who may become shareholders in the company thereby created, a body corporate and politic for any purposes or objects to which the legislative authority of the Legislature extends, except trust companies and insurance companies. *1984, c.14, s.2.*



5. Seal

The Lieutenant Governor in Council may designate the seal of office to be used by the Minister as the seal under which letters patent may be granted. *1984, c.14, s.2.*

6. Application, details of

The applicants for letters patent, who must be of full age, shall file in the office of the Director an application setting forth the following particulars:

- (a) the proposed corporate name of the company, the last word of which shall be the word "Limited", "Limitée", "Incorporated", "Incorporée" or "Corporation" or the abbreviation "Ltd.", "Ltée.", "Inc." or "Corp.";
- (b) whether the company is a private company or a public company;
- (c) the purposes for which its incorporation is sought;
- (d) the place within the province where the registered office is to be situated;
- (e) the proposed amount of its capital stock;
- (f) the number of shares and the amount of each share; and in the case of shares without nominal or par value, the maximum aggregate amount for which such shares may be issued or allotted except where all such shares are stated in the application to be issued or allotted for a consideration other than cash, in which case the total value of such consideration shall be stated;
- (g) where the shares are to be of more than one class, the special rights, preferences, restrictions, conditions and limitations attaching to each class of shares;
- (h) the name in full and the address and calling of each of the applicants, with special mention of the names of those who are to be the first or provisional directors of the company;
- (i) the names and addresses of the beneficial owners of the shares in the company and the proportion of the total number of shares to be subscribed by each beneficial owner. *1984, c.14, s.2.*

7. Entrenched provision

- (1) The application shall be in the form prescribed by regulations, and may ask to have embodied in the letters patent any provision that could under this Act be contained in a bylaw of the company, which provision so embodied shall not, unless power is given therefor in the letters patent or supplementary letters patent, be subject to repeal or alteration by bylaw.

Idem

- (2) Any similar provision that is embodied in any supplementary letters patent shall not, unless power is given therefor in the supplementary letters patent, be subject to repeal or alteration by bylaw. *1984, c.14, s.2.*

8. Signatures witnessed

- (1) The signatures of the applicants shall be witnessed.

Execution by attorneys

- (2) The application may be executed by the attorneys of the applicants duly authorized in writing.

Attorney's statement

- (3) The application shall be accompanied by a statement given by a practising attorney in the province to the effect that, in his opinion, the provisions of this Act relating to the application have been complied with. *1984, c.14, s.2.*

9. Matters to be shown before issue of letters patent

- (1) Before the letters patent are issued the applicants shall establish to the satisfaction of the Director the sufficiency of their application and the truth and sufficiency of the facts therein set forth, and that the proposed name is not the name of any other known corporation or association, incorporated or unincorporated, or of any syndicate or partnership or of any individual or any name under which any known business is being carried on or so nearly resembling the same as to be liable to be confused therewith, or otherwise on public grounds objectionable.

Proof

- (2) Proof of any matter that may be necessary to be made under this Act may be by affidavit sworn before the Director or before any justice of the peace, notary public or commissioner for taking affidavits. *1984, c.14, s.2.*

10. Contents of letters patent

- (1) The letters patent shall recite such of the established averments in the application as seem expedient to the Director.

Corporate name

- (2) The Minister may give to the company a corporate name different from that proposed by the applicants if the proposed name is objectionable.

Designated number as name

- (2.1) If requested to do so by the applicants the Director shall assign to the corporation as its name a designating number determined by the Director.

Corrections

- (3) In the case of any misnomer, misdescription or clerical error in the letters patent or supplementary letters patent, the Minister may direct the correction thereof, and upon so doing shall cause notice of the correction to be published in the Gazette. *1984, c.14, s.2; 1994, c.48, s.6.*

11. Notice of grant of letters patent

The Minister shall give notice of the granting of letters patent by publication of a notice in the Gazette in the form prescribed by regulations. *1984, c.14, s.2.*

12. Reservation of corporate name

- (1) The Director may, on request and on payment of the prescribed fee, reserve any name which may be desired by an intended company for such time as he may allow.

Registration of corporate name

- (2) The Director may, on request of any corporation incorporated under the laws of Canada or any province thereof and on payment of the prescribed fee, register the name of that



corporation and on registration no other company may be incorporated under this Act by that name. *1984, c.14, s.2.*

13. Shares, value of

- (1) Any or all of the shares of any company may be issued without any nominal or par value, but there must be included in its letters patent, the following statements:
- (a) the total number of shares that may be issued by the company;
 - (b) the number of shares, if any, which are to have a par value and the par value of each;
 - (c) the number of shares which are to be without par value; and
 - (d) either one of the following clauses:
 - (i) the capital of the company shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus.....dollars (the blank space being filled in with some number representing one dollar or more) in respect to every issued share without par value, plus such amounts as, from time to time, by bylaw of the company, may be transferred thereto, or
 - (ii) the capital of the company shall be at least equal to the sum of the aggregate par value of all issued shares having par value, plus the aggregate amount of consideration received by the company for the issuance of shares without par value plus such amounts as, from time to time, by bylaw of the company, may be transferred thereto.

Statement of minimum capital

- (2) There may also be included in the letters patent an additional statement that the capital shall not be less than dollars (the blank space being filled in with a number); such statements in the letters patent shall be in lieu of any statements prescribed by this Part, as to the amount of its capital stock or the number of shares into which the same shall be divided, or of which it shall consist.

Equality of shares

- (3) Subject to the designation, preferences, privileges and voting powers or restrictions or qualifications granted or imposed in respect to any class of shares, each share with or without par value shall be equal to every other share of the same class.

Sale of authorized shares by company

- (4) A company may issue and may sell its authorized shares without par value
- (a) for such consideration as may be prescribed in the letters patent;
 - (b) for such consideration as is the fair market value of the shares, and in the absence of fraud in the transaction, the judgment of the board of directors as to that value is conclusive;
 - (c) in the absence of fraud in the transaction, for such consideration as may be fixed by the board of directors pursuant to authority conferred in the letters patent; or
 - (d) for such consideration as shall be consented to or approved by the holders of a majority of the shares entitled to vote at a meeting called in the manner prescribed by the bylaws, but the call for the meeting must contain notice of that purpose,

and any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable and the holder of the shares is not liable to the company or its creditors in respect thereto. *1984, c.14, s.2.*

14. Powers of a company incorporated under this Act

Every company incorporated under this Act may acquire, hold, alienate and convey real estate, sue and be sued, subject to any restrictions or conditions set forth in the letters patent and requisite for the carrying on of the undertaking of such company, have a common seal which may be altered at pleasure by the directors, and shall become and be invested with all rights, real and personal, held by or for the company under any trust created for its incorporation, and with all the powers, privileges and immunities necessary for the carrying on of its undertaking, as if it were incorporated by a special Act of the legislature, embodying all the provisions of this Part and of the letters patent. *R.S.P.E.I. 1974, Cap. C-15, s.12.*

15. *Idem*

- (1) Every company incorporated under this Act shall have as ancillary and incidental to the purposes or objects set forth in the letters patent or supplementary letters patent the following powers unless such powers or any of them are expressly excluded by the letters patent or supplementary letters patent, namely
- (a) to carry on any other business, whether manufacturing or otherwise, capable of being conveniently carried on in connection with its business or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights;
 - (b) to purchase or otherwise acquire and undertake all or any of the assets, business, property, privileges, contracts, rights, obligations and liabilities of any other company or any society, firm or person carrying on any business which the company is authorized to carry on, or possessed of property suitable for the purposes of the company;
 - (c) to apply for, purchase or otherwise acquire any patents, patent rights, copyrights, trademarks, formulae, licenses, concessions and the like conferring any exclusive or non-exclusive or limited right to use, or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the company, or the acquisition of which may seem calculated directly or indirectly to benefit the company, and to use, exercise, develop or grant licenses in respect of, or otherwise turn to account, the property, rights or information so acquired;
 - (d) to amalgamate or enter into partnership or into any arrangement for sharing of profits, union of interests, cooperation, joint adventure, reciprocal concession or otherwise, with any other company or any society, firm or person, carrying on or engaged in or about to carry on or engage in any business or transaction which the company is authorized to carry on or engage in, or any business or transaction capable of being conducted so as directly or indirectly to benefit the company; and to lend money to, guarantee the contracts of, or otherwise assist any such company, society, firm or person, and to take or otherwise acquire shares and securities of any such company, and to sell, hold, or otherwise deal with the same;
 - (e) to take, or otherwise acquire and hold, shares, debentures or other securities of any other company having objects altogether or in part similar to those of the company, or carrying on any business capable of being conducted so as, directly or indirectly, to benefit the company, and to sell or otherwise deal with the same;
 - (f) to enter into any arrangements with any government or authority, municipal, local or otherwise, that may seem conducive to the company's objects, or any of them, and to obtain from any such government or authority any rights, privileges, and concessions which the company may think it desirable to obtain, and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;



- (g) to establish and support or aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit employees or ex-employees of the company or its predecessors in business, or the dependants or connections of such persons, and to grant pensions and allowances, and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition or for any public, general or useful object;
- (h) to promote any other company or companies for the purposes of acquiring or taking over all or any of the property and liabilities of the company, or for any other purposes which may seem directly or indirectly calculated to benefit the company;
- (i) to purchase, take on lease or in exchange, hire, and otherwise acquire and hold, sell or otherwise deal with any real and personal property and any rights or privileges which the company may think necessary or convenient for the purposes of its business and in particular any land, buildings, easements, machinery, plant and stock-in-trade;
- (j) to construct, improve, maintain, work, manage, carry out or control any roads, ways, branches, or sidings, bridges, reservoirs, watercourses, wharves, manufactories, warehouses, electric works, shops, stores and other works and conveniences which may seem calculated directly or indirectly to advance the company's interests, and to contribute to, subsidize or otherwise assist or take part in the construction, improvement, maintenance, working, management, carrying out or control thereof;
- (k) to lend money to any other company, or any society, firm or person, having dealings with the company or with whom the company proposes to have dealings or to any other company any of whose shares are held by the company;
- (l) to draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, bills of lading, warrants and other negotiable or transferable instruments;
- (m) to sell or dispose of the undertaking of the company or any part thereof as an entirety or substantially as an entirety for such consideration as the company may think fit, and in particular for shares, debentures or securities of any other company having objects altogether or in part similar to those of the company, if authorized so to do by the vote of the shareholders present or represented by proxy, at a general meeting duly called for considering the matter, and holding not less than two-thirds of the issued capital stock represented at such meeting;
- (n) to apply for, secure, acquire by grant, legislative enactment, assignment transfer, purchase or otherwise, and to exercise, carry out and enjoy any charter, license, power, authority, franchise, concession right or privilege, which any government or authority or any corporation or other public body may be empowered to grant, and to pay for, aid in and contribute towards carrying the same into effect, and to appropriate any of the company's shares, debentures, or other securities and assets to defray the necessary costs, charges and expenses thereof;
- (o) to procure the company to be registered and recognized in any foreign country or province of Canada, and to designate persons therein according to the laws of such foreign country or province of Canada to represent the company and to accept service for and on behalf of the company of any process or suit;
- (p) to adopt such means of making known the products of the company as may seem expedient, and in particular by advertising in the press, by circulars, by purchase and exhibition of works of art or interest, by publication of books and periodicals and by granting prizes, rewards and donations;
- (q) to sell, improve, manage, develop, exchange, lease, dispose of, turn to account or otherwise deal with all or any part of the property and rights of the company;

- (r) to issue and allot fully or partly paid shares of the capital stock of the company in payment or part payment of any real or personal property purchased or otherwise acquired by the company or any services rendered to the company provided that a statement of the consideration therefor be filed with the Director at or before the issue of said shares unless the same already appears in the petition for incorporation of the company;
- (s) to distribute among the shareholders of the company in kind, specie or otherwise as may be resolved, by way of dividend, bonus or in any other manner deemed advisable, any property or assets of the company or any proceeds of the sale or disposal of any property of the company and in particular any shares, bonds, debentures, debenture stock or other securities of or in any other company belonging to the company, or of which it may have power to dispose; but no such distribution shall effect a reduction of the capital of the company, unless made in accordance with the provisions of this Part;
- (t) to pay out of the funds of the company all or any of the expenses of or incidental to the formation and organization thereof, or which the company may consider to be preliminary;
- (u) to establish agencies and branches;
- (v) to invest and deal with the moneys of the company not immediately required in such manner as may be determined;
- (w) to take or hold mortgages, hypothecs, warrants of attorney, judgments, liens and charges to secure payment of the purchase price, or for any unpaid balance of the purchase price of any part of the company's property of whatever kind sold by the company, or any money due to the company from purchasers and others and to sell or otherwise dispose of said mortgages, hypothecs, judgments, liens and charges;
- (x) to carry out all or any of the objects of the company and do all or any of the above things as principal, agent, contractor, or otherwise, and either alone or in conjunction with others;
- (y) to do all such other things as are incidental or conducive to the attainment of the objects and the exercise of the powers of the company.

Additional powers in letters patent

- (2) Nothing in this section prevents the inclusion in the letters patent or supplementary letters patent of other powers in addition to or in modification of the powers mentioned in subsection (1). *R.S.P.E.I. 1974, Cap. C-15, s.13; 1983, c.1, s.6.*

16. Change of corporate name

- (1) Any company incorporated under this Part, with the sanction of a special resolution of the company and with the approval of the Minister may change its name, and upon such change being made, the Director shall enter the new name upon the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

Affect of alteration on rights and obligations

- (2) No alteration of name affects any rights or obligations of the company, or renders defective any legal proceedings instituted or to be instituted by or against the company, and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name. *R.S.P.E.I. 1974, Cap. C-15, s.14; 1984, c.14, s.3.*



17. Supplementary letters patent, application for

The company may, by a resolution passed by a vote of at least two-thirds in value of the total shareholders of the company, at a special general meeting called for the purpose, authorize the directors to apply for supplementary letters patent extending the powers of the company to such other purposes and objects within the purview of this Act, or reducing, limiting, amending or varying such powers or any of the provisions of the letters patent or supplementary letters patent issued to the company as may be defined in the resolution.

R.S.P.E.I. 1974, Cap. C-15, s.15.

18. Petition for supplementary letters patent

- (1) The directors thereupon, and at any time within six months after the passing of the resolution referred to in section 17, may apply to the Minister, through the Director, for the issue of such supplementary letters patent.

Proof of resolution

- (2) The applicants must satisfy the Director of the passing of the resolution referred to in section 17.

Notice

- (3) The Minister shall give notice of the granting of supplementary letters patent by publication of a notice in the Gazette in the form prescribed by regulations. *R.S.P.E.I. 1974, Cap. C-15, s.16; 1984, c.14, s.4.*

19. Effect of supplementary letters patent

From the date of supplementary letters patent granted by the Minister the provisions of the existing letters patent or supplementary letters patent are amended as set out in the supplementary letters patent. *1984, c.14, s.5.*

20. Powers of companies subject to Act

All powers given to the company by the letters patent or supplementary letters patent shall be exercised subject to the provisions and restrictions contained in this Act. *R.S.P.E.I. 1974, Cap. C-15, s.19.*

21. Directors

- (1) The affairs of every company shall be managed by a board of one or more directors.

Number of directors

- (2) The minimum number of directors of a public company is three. *R.S.P.E.I. 1974, Cap. C-15, s.20; 1984, c.14, s.7.*

22. First directors

The persons named as such in the letters patent shall be the directors of the company until replaced by others duly appointed in their stead. *R.S.P.E.I. 1974, Cap. C-15, s.21.*

23. Qualifying share

Unless the letters patent otherwise provide, a director of a company is not required to hold shares issued by the company. *R.S.P.E.I. 1974, Cap. C-15, s.22; 1984, c.14, s.8; 1985, c.1, s.1.*

24. Elected annually, directors must be

Directors of the company shall be elected annually by the shareholders in a general meeting of the company assembled at some place within this province, at such times and in such wise as the letters patent, or in default thereof, the bylaws of the company may prescribe. *R.S.P.E.I. 1974, Cap. C-15, s.23; 1984, c.14, s.9.*

25. Procedures re directors and general meetings subject to letters patent and bylaws

Unless otherwise provided by the letters patent, or bylaws of the company

- (a) at such election all the members of the board shall retire and if otherwise qualified, are eligible for *re*-election;
- (b) notice of the time and place for holding general meetings of the company shall be given at least fourteen days previously thereto, in some newspaper in the county where the head office is situated, or if none is there published then in the Gazette;
- (c) at all general meetings of the company, every shareholder is entitled to as many votes as he owns shares in the company, and may vote by proxy, the holder of such proxy being himself a shareholder; but no shareholder is entitled either in person or by proxy to vote at any meeting of the company, unless he has paid all calls upon all shares held by him; all questions proposed for the consideration of the shareholders shall be determined by the majority of votes represented at the meeting, the chairman presiding at such meeting having the casting vote, in case of any equality of votes;
- (d) elections of directors shall be by ballot;
- (e) vacancies occurring in the board of directors may be filled for the unexpired remainder of the term, by the board, from among the qualified shareholders of the company;
- (f) the directors shall elect from among themselves a president of the company, and if they see fit, a vice-president, and shall name all other officers thereof. *R.S.P.E.I. 1974, Cap. C-15, s.24.*

26. Directors continue in office until successors elected

If at any time an election of directors is not made or does not take effect at the proper time the company shall not be held to be thereby dissolved, but such election may take place at any general meeting of the company duly called for that purpose, and the retiring directors shall continue in office until their successors are elected. *R.S.P.E.I. 1974, Cap. C-15, s.25.*

27. Number of directors, increase or decrease in

- (1) A company incorporated under this Part may by bylaw increase or decrease the number of its directors, or may change the place of the company's head office within the province.

Bylaw to be sanctioned by shareholders

- (2) No bylaw to increase or decrease the number of its directors is valid or shall be acted upon unless it is sanctioned by a vote of not less than two-thirds in value of the shareholders present in person or by proxy at a general meeting duly called for the purpose of considering



the bylaw, nor until a copy of the bylaw has been filed with the Director. *R.S.P.E.I. 1974, Cap. C-15, s.26; 1984, c.14, s.10.*

28. Powers of directors

The directors of the company have full power in all things to administer the affairs of the company, and may make or cause to be made for the company any description of contract which the company may by law enter into. *R.S.P.E.I. 1974, Cap. C-15, s.27.*

29. Bylaws, directors may make

The directors may make bylaws, not contrary to law or to the letters patent of the company, or to this Part, to regulate

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

but every bylaw and every repeal, amendment, and *re-enactment* thereof, unless in the meantime confirmed at a meeting of the company duly called for that purpose, only has force until the next annual meeting of the company, and in default of confirmation thereat, at and from that time ceases to have force. *R.S.P.E.I. 1974, Cap. C-15, s.28.*

30. Bylaw to issue, allot or sell unissued stock, valid if

Any bylaw authorizing the issue, allotment, or sale of any portion of the unissued stock of the company at a discount, or for the payment of the president or any director, is valid, if it has been confirmed at an annual meeting or a general meeting duly called for the purpose. *R.S.P.E.I. 1974, Cap. C-15, s.29; 1984, c.14, s.11.*

31. Calling a special meeting, certain shareholders may

One-fourth part in value of the shareholders of the company shall at all times have the right to call a special meeting thereof for the transaction of any business specified in any written requisition or notice as they may issue. *R.S.P.E.I. 1974, Cap. C-15, s.30.*

32. Subdivision of shares into smaller amounts

The directors of the company at any time may make a bylaw subdividing the existing shares into shares of smaller amount, or consolidating or dividing all or any of its share capital into shares of larger amount than its existing shares. *R.S.P.E.I. 1974, Cap. C-15, s.31.*

33. Increase in capital stock of company by bylaw

- (1) The directors of the company may make a bylaw for increasing the capital stock of the company to any amount which they may consider requisite for the due carrying out of the objects of the company.

Bylaw, contents of

- (2) A bylaw passed under subsection (1) shall declare the number and value of the shares of the new stock and may prescribe the manner in which the same is to be allotted, and in default of its so doing the control of such allotment shall be held to vest absolutely in the directors.

Company incorporated by statute

- (3) Any company incorporated by the legislature may increase or decrease its capital stock by proceeding in the same manner as if it had been incorporated under and by virtue of this Part. *R.S.P.E.I. 1974, Cap. C-15, s.32; 1984, c.14, s.12.*

34. Decreasing capital stock by directors

- (1) The directors of the company may make a bylaw for decreasing the capital stock of the company to any amount which they may consider advisable and sufficient for the due carrying out of the undertaking of the company.

Bylaw to decrease, contents

- (2) A bylaw passed under subsection (1) shall declare the number and value of the shares of the stock so decreased, and the allotment thereof or the rule or rules by which the same is to be made. *R.S.P.E.I. 1974, Cap. C-15, s.33.*

35. Precondition to valid bylaw to increase or decrease capital stock

- (1) No bylaw for increasing or decreasing the capital stock of the company, or subdividing the shares or consolidating or dividing share capital into shares of larger amount than its existing shares, has any force or effect whatever until after it has been sanctioned by a vote of not less than two-thirds in value of the shareholders at a general meeting of the company, duly called for considering the same, and afterwards confirmed by supplementary letters patent.

Liability of shareholders, affect of reduction

- (2) The liabilities of shareholders to persons, who were at the time of the reduction of the capital creditors of the company, remain as though the capital had not been decreased.

Exchange of common for preferred shares

- (3) Any company incorporated under this Part or by virtue of any statute of this province and having by its charter the right to issue both common and preferred shares, if there is nothing inconsistent therewith in the charter of the company, has the right to issue to any of its shareholders, at their request any number of preferred shares in exchange for the same number of common shares of the same denomination and value, surrendered to the company to be cancelled or *vice versa*; the exchange shall be authorized by a resolution supported by not less than two-thirds in value of the shareholders at an annual meeting of the company or at a special general meeting of the company, duly called for considering the same, but need not be further sanctioned by supplementary letters patent or other authority, if the capital stock of the company is not thereby increased or decreased. *R.S.P.E.I. 1974, Cap. C-15, s.34; 1957, c.6, s.1; 1984, c.14, s.13.*



36. Petition to confirm bylaw

- (1) At any time within six months from the sanction of a bylaw under section 35, the directors may apply to the Minister through the Director, for the issue of supplementary letters patent to confirm the same.

Evidence to accompany petition

- (2) With the application they must produce the bylaw, and establish to the satisfaction of the Director the due passage and sanction of the bylaw, and the genuine character and expediency of the increase or decrease of capital thereby provided for. *R.S.P.E.I. 1974, Cap. C-15, s.35; 1980, c.10, s.21; 1984, c.14, s.14.*

37. Grant of supplementary letters patent

- (1) The Minister may thereupon grant supplementary letters patent and give notice in the Gazette of the granting thereof in the form prescribed by regulations.

Effect

- (2) From the date of supplementary letters patent granted under subsection (1) the shares shall be subdivided, or the capital stock of the company shall be increased or decreased, as the case may be, to the amount, in the manner and subject to the conditions, set forth by the bylaw. *R.S.P.E.I. 1974, Cap. C-15, s.36; 1984, c.14, s.15.*

38. Prima facie evidence of bylaw

A copy of any bylaw of the company under its seal, and purporting to be signed by any authorized officer of the company, shall be received as *prima facie* evidence of such bylaw in all courts. *R.S.P.E.I. 1974, Cap. C-15, s.38.*

39. Stock deemed personal estate

The stock of the company shall be deemed personal estate for all purposes and is transferable in such manner only, and is subject to all such conditions and restrictions as by this Part or by letters patent, or bylaws of the company, may be prescribed. *R.S.P.E.I. 1974, Cap. C-15, s.39.*

40. Allotting stock

If the letters patent make no other definite provision, the stock of the company, so far as it is not allotted thereby, shall be allotted when and as the directors by bylaw may ordain. *R.S.P.E.I. 1974, Cap. C-15, s.40.*

41. Calls upon unpaid shares

The directors of the company may make such calls upon the members in respect of all moneys unpaid upon their respective shares as they think fit, at such times and places, and in such payments or instalments, as the letters patent or this Part or the bylaws of the company may require or allow. *R.S.P.E.I. 1974, Cap. C-15, s.41.*

42. When call deemed to have occurred, liability of shareholder

A call shall be deemed to have been made at the time when the resolution of the directors authorizing such call was passed, and if a shareholder fails to pay any call due from him before or on the day appointed for the payment thereof he is liable to pay interest upon the

same at the legal rate from the day appointed for payment of the call. *R.S.P.E.I. 1974, Cap. C-15, s.42.*

43. Maximum amount subject to call annually

Not less than ten per cent upon the allotted stock of the company shall by means of one or more calls be made payable and called in within one year from the incorporation of the company, the residue when and as the bylaws of the company direct. *R.S.P.E.I. 1974, Cap. C-15, s.43.*

44. Advances in excess of amounts called for

The directors may receive from any member willing to advance the same, all or any part of the amount of the shares held by such member beyond the sums then actually called for, and upon the moneys so paid in advance or so much thereof as shall from time exceed the amount of the calls then made upon the shares in respect of which the advance was made, the company may pay interest not exceeding eight per cent per year. *R.S.P.E.I. 1974, Cap. C-15, s.44.*

45. Forfeiture of shares, declaration of by directors

If, after the demand or notice as by the letters patent or bylaws of the company may be prescribed, any call made upon any shares is not paid within such times as by such letters patent or bylaws may be limited in that behalf, the directors in their discretion by vote to that effect duly recorded in the minutes, may summarily declare forfeited any shares where such payment is not made, and the same thereupon becomes the property of the company, and may be disposed of as by bylaws of the company or otherwise they may ordain; but notwithstanding such forfeiture, the holder of the shares at the time of forfeiture continues liable to the amount unpaid on the shares at the time of forfeiture, less any sums which may have been subsequently received by the company in respect thereof. *R.S.P.E.I. 1974, Cap. C-15, s.45.*

46. Enforcement of payment on call by court action

The company may, instead of declaring forfeited any shares, enforce payment of all calls and interest thereon, by action in any court of competent jurisdiction, and in the action it is sufficient to allege in the statement of claim that the defendant is a holder of one share or more, stating the number of shares, and is indebted in the sum of money to which the calls in arrear amount in respect of one call or more upon one share or more, stating the number of calls and the amount of each, and a certificate under the seal and purporting to be signed by any authorized officer of the company to the effect that the defendant is a shareholder, that the calls have been made, and that so much is due by him and unpaid thereon, shall be received in all courts as *prima facie* evidence. *R.S.P.E.I. 1974, Cap. C-15, s.46.*

47. Transfer of shares restricted

No share is transferable until all previous calls have been fully paid in. *R.S.P.E.I. 1974, Cap. C-15, s.47.*

48. Refusal to register share

The directors may decline to register any transfer of shares belonging to any member who is indebted to the company. *R.S.P.E.I. 1974, Cap. C-15, s.48.*



49. Transfer made by personal representative of deceased

Any transfer of the share or other interest of a deceased member made by his personal representative is, notwithstanding such personal representative may not himself be a member, of the same validity as if he had been a member at the time of his execution of the instrument of transfer. *R.S.P.E.I. 1974, Cap. C-15, s.49.*

50. Books to be kept by the company

The company shall cause books to be kept by the secretary or by some other officer especially charged with the duty, wherein shall be kept recorded

- (a) a copy of the letters patent incorporating the company, or of any supplementary letters patent and of all bylaws thereof;
 - (b) the names alphabetically arranged of all persons who are or have been shareholders;
 - (c) the address and calling of every such person while such shareholder;
 - (d) the number of shares of stock held by each shareholder;
 - (e) the amounts paid in and remaining unpaid respectively on the stock of each shareholder;
 - (f) all transfers of stock with the date and other particulars of such transfer and the date of the entry thereof;
 - (g) the names, addresses and calling of all persons who are or have been directors of the company, with the several dates at which each became or ceased to be such director.
- R.S.P.E.I. 1974, Cap. C-15, s.50.*

51. Effectiveness of transfer dependent on entry in book

No transfer of shares, unless made by sale under execution, or under the decree, order or judgment of some competent court in that behalf, is valid for any purpose whatsoever, save only as exhibiting the rights of the parties thereto towards each other, or as rendering the transferee liable in the interim jointly and severally with the transferor to the company and their creditors, until the entry thereof has been duly made in such books. *R.S.P.E.I. 1974, Cap. C-15, s.51.*

52. Inspection of books

- (1) The books during reasonable business hours, shall be kept open for the inspection of shareholders and creditors of the company and their personal representatives, at the head office of the company, and every such shareholder, creditor, or personal representative, may make extracts therefrom.

Books as evidence of contents

- (2) The books shall be *prima facie* evidence of all facts therein in any action or proceeding against the company or any shareholder. *R.S.P.E.I. 1974, Cap. C-15, s.52.*

53. Offence, penalty *re* failure to keep books

The directors of every company who neglect to keep the books as aforesaid, and any director or officer who refuses to permit any person entitled thereto to inspect the books or make extracts therefrom, is guilty of an offence and liable on summary conviction to a fine not exceeding \$50 and costs. *R.S.P.E.I. 1974, Cap. C-15, s.53; 1994, c.58, s.6.*

54. Liability of director or employee *re* inaccurate entries etc.

Any director, officer or servant of the company who knowingly makes, or assists in making any untrue entry in any such book, or refuses or neglects to make any proper entry therein, besides any criminal liability which he may thereby incur, is liable in damages for any loss or injury which any person interested may have sustained thereby. *R.S.P.E.I. 1974, Cap. C-15, s.54.*

55. Trust, shares held in, liability of company *re*

The company is not bound to see the execution of any trust, whether express, implied or constructive in respect of any share, and the receipt of the shareholder in whose name the same stands in the books of the company is a valid and binding discharge to the company for any dividend or money payable in respect of such share, and whether or not notice of the trust has been given to the company, and the company is not bound to see to the application of the money paid upon the receipt. *R.S.P.E.I. 1974, Cap. C-15, s.55.*

56. Liability of shareholder for unpaid portion of shares

- (1) Each shareholder, until the whole amount of his shares has been paid up, is individually liable to the creditors of the company to an equal amount to that not paid up thereon, but is not liable to an action therefor by any creditor before an execution against the company has been returned unsatisfied in whole or in part, and the amount due on such execution is, subject to the provisions of section 57, the amount recoverable with costs against the shareholder, and any amount so recoverable being paid by the shareholder, shall be taken or paid on his shares.

Claims by way of set-off

- (2) Any shareholder may set-off or counterclaim any set-off or counterclaim he may have against the company except a claim for unpaid dividends or salary or allowance as president or director. *R.S.P.E.I. 1974, Cap. C-15, s.56.*

57. Limitation on liability of shareholders

The shareholders of the company shall not as such be held responsible for any act, default or liability whatsoever of the company, or for any engagement, claim, payment, loss, injury, transaction, matter or thing whatsoever relating to or connected with the company, beyond the unpaid amount of their respective shares in the capital stock thereof. *R.S.P.E.I. 1974, Cap. C-15, s.57.*

58. Liability of personal representative holding stock

No person holding stock in the company as a personal representative, guardian or trustee is personally subject to liability as a shareholder, but the estate and funds in the hands of that person are liable in like manner and to the same extent as the testator, intestate, ward or person interested in the trust fund would be if living and competent to act, and holding the stocks in his own name; and no person holding the stock as collateral security is personally subject to that liability, but the person pledging the stock shall be considered as holding the same, and is liable as a shareholder accordingly. *R.S.P.E.I. 1974, Cap. C-15, s.58.*

59. Powers of personal representative *re* stock

Every personal representative, guardian or trustee may represent the stock in his hands at all meetings of the company, and may vote accordingly as a shareholder. *R.S.P.E.I. 1974, Cap. C-15, s.59.*



60. Contracts etc. signed by officers etc. of company, extent of company liability

Every contract, agreement, engagement or bargain made on behalf of the company, by any agent, officer, or servant of the company, in accordance with his powers as such under the bylaws of the company, is binding on the company, and in no case is it necessary to have the seal of the company affixed to any such contract, agreement, engagement or bargain, or to prove that it was made in pursuance of any bylaw or special vote or order, nor is the party so acting as agent, officer or servant of the company thereby subjected individually to any liability whatever to any third party therefor. *R.S.P.E.I. 1974, Cap. C-15, s.60.*

61. Purchase of stock in other companies

No company shall use any of its funds in the purchase of the stock of any other corporation unless expressly authorized by bylaw confirmed at a general meeting. *R.S.P.E.I. 1974, Cap. C-15, s.61.*

62. Dividends not to impair capital

The company shall not make or declare any dividend whereby the capital will be in any degree impaired. *R.S.P.E.I. 1974, Cap. C-15, s.62.*

63. Deduction from payment amount owing on call

The company may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise. *R.S.P.E.I. 1974, Cap. C-15, s.63.*

64. Indemnification of a director

Every director of the company, and his heirs, executors and administrators, and estate and effects, may, with the consent of the company given at any general meeting, be indemnified and saved harmless out of the funds of the company from and against all costs, charges and expenses which he shall or may sustain or incur in any action or proceeding which is brought or prosecuted against him for or in respect of any act, deed, matter or thing made, done or permitted by him in or about the execution of the duties of his office, and also from and against all other costs, charges and expenses which he shall sustain or incur in or about or in relation to the affairs thereof, except such costs, charges and expenses as are occasioned by his own wilful neglect or default. *R.S.P.E.I. 1974, Cap. C-15, s.64.*

65. Offence, & penalty re payment of dividends

If the directors of the company declare and pay any dividend when the company is insolvent, or any dividend, the payment of which renders the company insolvent, or will in any degree impair the capital of the company, they are jointly and severally liable as well to the company as to the individual shareholders and creditors thereof for all the debts of the company then existing, and for all thenceforth contracted respectively during their continuance in office. *R.S.P.E.I. 1974, Cap. C-15, s.65.*

66. Exoneration from liability

Notwithstanding section 65, if any director present when the dividend is declared forthwith, or if any director then absent does within twenty-four hours after he becomes aware thereof and able so to do, enters on the minutes of the board of directors his protest against the same, and within ten days thereafter publishes such protest in at least one newspaper published at or

as near as possible to the head office of the company such director may thereby exonerate himself from that liability. *R.S.P.E.I. 1974, Cap. C-15, s.66.*

67. Registered office

- (1) A company shall at all times have a registered office in the province and shall notify the Director of the address of its registered office.

Change of address

- (2) The directors may change the address of the registered office upon filing with the Director a notice in the form prescribed by the regulations. *R.S.P.E.I. 1974, Cap. C-15, s.67; 1984, c.14, s.17.*

68. Service of process

Any notice, order or other process may be served on the company at its registered office in the manner prescribed by the rules of court for the service of an originating notice. *R.S.P.E.I. 1974, Cap. C-15, s.68; 1984, c.14, s.18.*

69. Prohibited loans and guarantees

- (1) Except as permitted under subsection (2), a company or any body corporate with which it is affiliated shall not, directly or indirectly, give financial assistance by means of a loan, guarantee or otherwise to

- (a) any shareholder, director, officer or employee of the company or of an affiliated body corporate or to an associate of any such person for any purpose other than the purpose described in clause (b), where there are reasonable grounds to believe that
- (i) the company is or, after giving the financial assistance, would be unable to pay its liabilities as they become due, or
 - (ii) the realizable value of the company'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, after giving the financial assistance, would be less than the aggregate of the company's liabilities and stated capital of all classes; or
- (b) any person for the purpose of or in connection with a purchase of a share issued or to be issued by the company or affiliated body corporate, where there are reasonable grounds to believe that
- (i) the company is or, after giving the financial assistance, would be unable to pay its liabilities as they become due, or
 - (ii) the realizable value of the company'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, after giving the financial assistance, would be less than the aggregate of the company's liabilities and stated capital of all classes.

Shareholders consent

- (1.1) Subclause (1)(b)(ii) does not apply where all the shareholders have consented to the giving of the financial assistance.

Permitted loans and guarantees

- (2) A company 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 company;
- (b) to any person on account of expenditures incurred or to be incurred on behalf of the company;
- (c) to a holding body corporate if the company is a wholly-owned subsidiary of the holding body corporate;
- (d) to a subsidiary body corporate of the company; and
- (e) to employees of the company 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 company or any of its affiliates to be held by a trustee.

Enforceability

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

Wholly-owned subsidiary

- (4) A company is a wholly-owned subsidiary of another body corporate for the purposes of clause (2)(c) if
- (a) all of the issued shares of the company 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. *R.S.P.E.I. 1974, Cap. C-15, s.69; 1984, c.14, s.19; 2003, c.33, s.2.*

70. Actions between shareholder and company

Any action may be prosecuted and maintained between the company and any shareholder thereof. *R.S.P.E.I. 1974, Cap. C-15, s.70.*

71. Mode of incorporation, reference to not required in legal proceedings

In any action or legal proceeding, it is not requisite to set forth the mode of incorporation of the company, otherwise than by mention of it under its corporate name; and the notice in the Gazette of the issue of letters patent or supplementary letters patent is *prima facie* proof of all things thereby declared and the letters patent or supplementary letters patent themselves, or any exemplification or copy thereof, certified by the Director, is conclusive proof of every matter and thing therein set forth, except in any proceeding for the direct impeachment thereof. *R.S.P.E.I. 1974, Cap. C-15, s.71; 1980, c.10, s.21.*

72. Dissolution of inactive companies

- (1) Subject to subsections (2) and (3), where a company
- (a) has not commenced business within three years after the date of the granting of letters patent;

- (b) has not carried on business for three consecutive years; or
- (c) is in default for a period of one year in sending to the Director any fee, notice or return required by this Act,

the Director may dissolve the company by issuing a certificate of dissolution under this section.

Notice of intention to dissolve

- (2) The Director shall not dissolve a company under this section until he has published notice of his intention to dissolve the company in the Gazette and in a newspaper published and distributed in the place where the company has its registered office.

Certificate

- (3) Unless cause to the contrary is shown, the Director may, on the expiration of ninety days after publication of the notice, issue a certificate of dissolution in the form prescribed by regulations.

Charter forfeited

- (4) Upon the issue of a certificate of dissolution the charter of the company is deemed to be forfeited.

Notice

- (5) Notice of the dissolution of a company under this section shall be published in the Gazette. *1984, c.14, s.20.*

73. Revival of company

- (1) Where a company is dissolved under section 72, any interested person may apply in the prescribed form to the Director to have the company revived.

Certificate

- (2) The Director may issue a certificate of revival and may impose such conditions as he considers appropriate.

Effect of certificate

- (3) Subject to any conditions imposed under subsection (2), a company is revived on the date shown in the certificate of revival and thereafter the company has all the rights and privileges and is liable for the obligations that it would have had if it had not been dissolved.

Notice

- (4) Notice of the revival of a company under this section shall be published in the Gazette. *1984, c.14, s.20.*

74. Surrender of charter

- (1) The charter of a company incorporated under this Part or by private Act of the legislature may be surrendered if the company proves to the satisfaction of the Director

- (a) that it has no assets or that any assets owned by it immediately prior to the application for leave to surrender its charter have been divided rateably amongst its shareholders; and either
 - (i) that it has no debts, liabilities or obligations, or



- (ii) that the debts, liabilities or other obligations of the company have been duly provided for or protected or that the creditors of the company or other persons having interests in such debts, liabilities or other obligations consent; and
- (b) that the company has given notice of the application for leave to surrender by publishing the same once in the Gazette and once in a newspaper published at or as near as may be to the place where the company has its head office.

Dissolution of company

- (2) The Director, upon a due compliance with the provisions of this section, may accept a surrender of the charter and direct its cancellation and fix a date upon and from which the company is to be dissolved, and the company shall thereby and thereupon become dissolved accordingly.

Continuing liability of shareholders after dissolution

- (3) Notwithstanding the dissolution of a company under this section, the shareholders among whom its assets have been divided are jointly and severally liable to the creditors of the company to the amount received by them respectively upon such division and an action may be brought in any court of competent jurisdiction to enforce that liability; but the action must be commenced within one year from the date of the dissolution of the company. *R.S.P.E.I. 1974, Cap. C-15, s.73; 1980, c.10, s.21.*

75. Forfeiture of undisposed of personalty or realty

Any real or personal property of a company that has not been disposed of at the time of the forfeiture of its charter under section 72 or the surrender of its charter or the dissolution of the company, as the case may be, is forfeited to the Crown. *R.S.P.E.I. 1974, Cap. C-15, s.74.*

76. Prospectus, contents

Every prospectus of the company and every notice inviting persons to subscribe for shares in the company shall specify the date and names of the parties to any contract entered into by the company or the promoters, directors or the trustees thereof, whether subject to adoption by the directors of the company, or otherwise; and any prospectus or notice specifying the same shall be deemed fraudulent on the part of the promoters, directors and officers of the company knowingly issuing the same, as regards any person taking the shares in the company on the faith of such prospectus unless he shall have had notice of such contract. *R.S.P.E.I. 1974, Cap. C-15, s.75.*

77. Amalgamation of similar companies

- (1) Any two or more companies having the same or similar objects may amalgamate and continue as one company.

Agreement to amalgamate

- (2) The companies proposing to amalgamate may enter into an agreement for the amalgamation prescribing the terms and conditions of the amalgamation, the mode of carrying the amalgamation into effect and stating the name of the amalgamated company, the names, callings and places of residence of the first directors thereof and how and when the subsequent directors are to be elected, with such other details as may be necessary to perfect the amalgamation and to provide for the subsequent management and working of the amalgamated company, the authorized capital of the amalgamated company and the manner

of converting the authorized capital of each of the companies into that of the amalgamated company.

Submission of agreement to shareholders

- (3) The agreement shall be submitted to the shareholders of each of the amalgamating companies at general meetings thereof called for the purpose of considering the agreement and if three-fourths of the votes cast at each meeting are in favour of the adoption of the agreement that fact shall be certified upon the agreement by the secretary of each of the amalgamating companies under the corporate seal thereof.

Letters patent amalgamating companies

- (4) If the agreement is adopted in accordance with subsection (3), the amalgamating companies may apply jointly to the Director for the letters patent confirming the agreement and amalgamating the companies so applying and on and from the date of the letters patent such companies are amalgamated and are continued as one company by the name in the letters patent provided, and the amalgamated company possesses all the property, rights, privileges and franchises and is subject to all liabilities, contracts, disabilities and debts of each of the amalgamating companies.

Application to corporations incorporated by Act

- (5) This section applies to a corporation incorporated by a private Act except in so far as inconsistent with the provisions of the private Act. *R.S.P.E.I. 1974, Cap. C-15, s.77; 1980, c.10, s.21; 1984, c.14, s.22.*

78. Borrowing powers of the directors

- (1) If authorized by bylaw, duly passed by the directors and sanctioned by at least two-thirds of the votes cast at a special general meeting of the shareholders duly called for considering the bylaw, the directors may
- (a) borrow money upon the credit of the company;
 - (b) limit or increase the amount to be borrowed;
 - (c) issue bonds, debentures, debenture stock or other securities of the company, and pledge or sell the same for such sums and at such prices as may be deemed expedient;
 - (d) hypothecate, mortgage or pledge the real or personal property of the company, or both, to secure any such bonds, debentures, debenture stock or other securities, and any money borrowed for the purposes of the company.

Certain borrowing powers not restricted

- (2) Nothing in this section limits or restricts the borrowing of money by the company on bills of exchange or promissory notes made, drawn, accepted or endorsed by or on behalf of the company.

Irredeemable debentures not invalid

- (3) A condition contained in any debentures or in any deed for securing any debentures is not invalid by reason only that thereby the debentures are made irredeemable, or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding.



Powers of company re reissuing debentures, after redeemed

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

Reissue deemed

- (5) Where with the object of keeping debentures alive for the purpose of reissue they have been transferred to a nominee of the company, a transfer from that nominee shall be deemed to be a reissue for the purpose of this section.

Reissue not to be deemed, where

- (6) Where a company has deposited any of its debentures to secure advances from time to time on current account or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remained so deposited.

Reissue, not treated as issue of new debenture

- (7) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to, or deemed to have been possessed by, a company, shall not be treated as the issue of a new debenture for the purpose of any provision limiting the amount or number of debentures to be issued.

Powers to issue substitute debentures unimpaired

- (8) Nothing in this section prejudices any power to issue debentures in the place of any debentures paid off or otherwise satisfied or extinguished, reserved to a company by its debentures or the securities for the same. *R.S.P.E.I. 1974, Cap. C-15, s.78; 1984, c.14, s.23.*

79. Annual report of directors

The directors of every company shall lay before its shareholders a full and clear statement of the affairs and financial position of the company at or before each annual general meeting of the company. *R.S.P.E.I. 1974, Cap. C-15, s.79.*

80. Annual return

- (1) Every provincially incorporated company shall, within six months of the end of its fiscal year, file with the Director, together with the fee, an annual return stating
- (a) its name;
 - (b) the date of its incorporation;
 - (c) repealed by *1997, c.9, s.1*;
 - (d) generally the business it is carrying on within and without the province;
 - (e) the name in full and the complete residential address of each of the officers and directors of the company;
 - (f) the name and address of each shareholder of the company and the number of shares and a description of the classes of shares, held by each shareholder except that, in the case of a company having more than twenty shareholders, this clause applies only in

- respect of a shareholder who holds not less than five per cent of the shares of any class; and
- (g) the authorized capital of the company, stating the number of shares of each class or series outstanding, and the amount received therefor by the company, as of the end of the most recent fiscal year of the company.

Fee

- (2) The Lieutenant Governor in Council shall set the amount of the fee payable under subsection (1).

Penalty

- (3) Every company that fails to comply with subsection (1) is liable to a penalty of \$300 and every director or officer of the company who authorized, permitted or acquiesced in any such failure is liable to a penalty of \$300 and any such penalty is recoverable in any court of competent jurisdiction by an action at the suit of the Director.

Certificate

- (4) The Director may issue a certificate stating that a company is in default of subsection (1) for use in any legal, administrative or other proceeding. *1980, c.15, s.1; 1984, c.14, s.24; 1997, c.9, s.1.*

81. Regulations

The Lieutenant Governor in Council may make regulations prescribing fees for the purposes of this Act. *1981, c.6, s.2.*

82. Forms

The Lieutenant Governor in Council may make regulations prescribing forms for the purposes of this Act. *1984, c.14, s.25.*

83. Liability of directors

The directors of every company are personally liable for any responsibility incurred by them on account of the company, beyond the amount of the stock subscribed, without the sanction of the company, to be obtained at a meeting thereof, held in accordance with the bylaws, unless the larger amount of dealing is specially authorized by the Act or letters patent. *R.S.P.E.I. 1974, Cap. C-15, s.82.*

84. Omission, addition or abbreviation of company name

The omission or addition of the word “The” from or to the name of any incorporated body or the abbreviation of the words “Limited”, “Company”, “Association” and “Brothers” in the incorporate name of any company to “Ltd”, “L’d”, “Compy”, “Co’y”, or “Co”, “Assn” and “Bros” respectively, as the case may be, or the abbreviation of like words which have a common abbreviation do not invalidate any seal, document, contract or any suit, matter or proceedings wherein such omission or addition or abbreviation may occur. *R.S.P.E.I. 1974, Cap. C-15, s.84.*

85. Application for continuance in the province

- (1) A body corporate incorporated under the laws of any jurisdiction other than Prince Edward Island may, if so authorized by the laws of the jurisdiction in which it is incorporated, apply to the Director for a certificate of continuance.



Documentation

- (2) An application under subsection (1) shall be accompanied by
- (a) a certified copy of the articles of incorporation, letters patent, special Act or other instrument by which the body corporate was incorporated and any amendments thereto necessary to make the body corporate conform to the laws of this province;
 - (b) a notice of the name of the body corporate and the address of its proposed registered office in this province;
 - (c) a statement of the purposes for which continuance in Prince Edward Island is sought;
 - (d) a notice of the names and addresses of the directors;
 - (e) a copy of the resolution of the shareholders authorizing the application for continuance of the body corporate in this province.

Notice

- (3) Upon receipt of the documents referred to in subsection (1), the Minister may issue a certificate of continuance and may send a copy thereof to the appropriate official in the jurisdiction in which the body corporate was incorporated.

Effect of certificate

- (4) On the date of the certificate the body corporate is continued in this jurisdiction and becomes a company to which this Act applies as if it had been incorporated under this Act.

Idem

- (5) When a body corporate is continued as a company under this Act,
- (a) the company possesses all the property, rights, privileges and franchises and is subject to all the liabilities, including civil, criminal and administrative, and all contracts, disabilities and debts of the body corporate;
 - (b) a conviction against, or ruling, order or judgment in favour of or against, the body corporate may be enforced by or against the company; and
 - (c) the company shall be deemed to be the party plaintiff or the party defendant, as the case may be, in any civil action commenced by or against the body corporate. *1984, c.14, s.26.*

86. Application for certificate of continuance in another jurisdiction

- (1) Subject to subsection (6), a company may, if it is authorized by the shareholders in accordance with this section, and it establishes to the satisfaction of the Director that its proposed continuance in another jurisdiction will not adversely affect creditors or shareholders of the company, apply to the appropriate official or public body of another jurisdiction requesting that the company be continued as if it had been incorporated under the laws of that other jurisdiction.

Approval by shareholders

- (2) An application for continuance under subsection (1) must be approved by a special resolution of the shareholders.

Notice of application

- (3) At least fourteen days before making an application for continuance, notice of the application must be given in the Gazette and in a newspaper circulating in the area where the company has its registered office.

Certificate of discontinuance

- (4) Subject to subsection (1), upon receipt of a notice satisfactory to him that the company has been continued under the laws of another jurisdiction, the Director shall file the notice and issue a certificate of discontinuance.

Effect of certificate

- (5) This Act ceases to apply to the company on the date shown in the certificate of discontinuance, which shall be dated the date upon which the body corporate is continued under the laws of the other jurisdiction.

Requirements

- (6) A company shall not apply under subsection (1) to be continued as a body corporate under the laws of another jurisdiction unless those laws provide in effect that
- (a) the property of the company continues to be the property of the body corporate;
 - (b) the body corporate continues to be liable for the obligations of the company;
 - (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 company may be continued to be prosecuted by or against the body corporate; and
 - (e) a conviction against the company may be enforced against the body corporate or a ruling, order or judgment in favour of or against the company may be enforced by or against the body corporate. *1984, c.14, s.26.*

87. Bylaws for creating and issuing preference stock

- (1) The directors of every company incorporated under this Part may make bylaws for creating and issuing any part of the capital stock as preference stock, giving the same such preference and priority as respects principal or dividends or both, and in any other respect over ordinary stock as is by the bylaws declared.

Permissible contents of bylaws re rights of preference shareholders

- (2) The bylaws referred to in subsection (1) may provide that the holders of shares of the preference stock have the right to select a certain stated portion of the number of directors, or may give them such other control over the affairs of the company as is considered expedient.

Bylaws require sanction of certain shareholders

- (3) No bylaw referred to in subsection (1) has any force or effect until after it has been sanctioned by a vote of three-fourths of the shareholders present in person or by proxy at a general meeting of the company, or at a special general meeting duly called for considering the same and representing two-thirds of the stock of the company, or until it is unanimously sanctioned in writing by the shareholders of the company.

Holders of preference stock as shareholders, rights and liabilities

- (4) Holders of shares of preference stock are shareholders within the meaning of this Part and in all respects possess the rights and are subject to the liabilities of shareholders within the meaning of this Part but
- (a) in respect of dividends or principal or both, and in any other respect declared by bylaw as authorized by this section, they are, as against the ordinary shareholders, entitled to the preferences and rights given by the bylaws;
 - (b) restrictions, whether as to voting power or to sharing in profits beyond its preferred dividend or to sharing in capital surplus, attaching to or purporting to attach to the



preference stock, whether heretofore or hereafter created and issued, are valid if they are in accordance with the provisions of the creating bylaw and notice thereof is given at the time of issue by clear indication upon each and every certificate of the stock or otherwise or if and when approved in writing by every holder of the stock.

Creditors rights protected

- (5) Nothing in this section affects, or impairs the rights of creditors of the company. *R.S.P.E.I. 1974, Cap. C-15, s.85; 1984, c.14, s.27.*

88. Redemption or conversion of preferred shares

Unless preferred shares, whether created under the authority of section 87 or by any letters patent, are issued subject to redemption or conversion, they are not subject to redemption or conversion otherwise than in accordance with the provisions of issue attaching to the shares or with the consent of the holders thereof. *R.S.P.E.I. 1974, Cap. C-15, s.86; 1976, c.28, s.1.*

88.1 Company holding its own shares

- (1) Subject to subsection (2), subsection 35(3) and sections 88.2 to 88.6, a company
- (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 company.

Subsidiary holding shares of a company

- (2) A company shall cause a subsidiary body corporate of the company that holds shares of the company to sell or otherwise dispose of those shares within five years from the date
- (a) the body corporate became a subsidiary of the company; or
 - (b) the company was continued under this Act. *2003, c.33, s.3.*

88.2 Exception

- (1) A company 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.

Idem

- (2) A company 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. *2003, c.33, s.3.*

88.3 Voting, shares

A company holding shares in itself or in its holding body corporate shall not vote or permit those shares to be voted unless the corporation holds the shares in the capacity of a legal representative. *2003, c.33, s.3.*

88.4 Acquisition of company's own shares

- (1) Subject to subsection (2) and to its letters patent and supplementary letters patent, a company may purchase or otherwise acquire shares issued by it.

Limitation

- (2) A company shall not make any payment to purchase or otherwise acquire shares issued by it if there are reasonable grounds to believe that
- (a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or
 - (b) the realizable value of the company's assets would, after the payment, be less than the aggregate of its liabilities and stated capital of all classes. *2003, c.33, s.3.*

88.5 Alternative acquisition of company's own shares

- (1) Notwithstanding subsection 88.4(2), but subject to subsection (3) and to its letters patent and supplementary letters patent, a company may purchase or otherwise acquire shares issued by it to
- (a) settle or compromise a debt or claim asserted by or against the company;
 - (b) eliminate fractional shares; or
 - (c) fulfil the terms of a non-assignable agreement under which the company has an option or is obliged to purchase shares owned by a director, an officer or an employee of the corporation.

Idem

- (2) Notwithstanding subsection 88.4(2), a company may purchase or otherwise acquire shares issued by it to comply with the decree, order or judgment of some competent court in that behalf.

Limitation

- (3) A company shall not make any payment to purchase or acquire under subsection (1) shares issued by it if there are reasonable grounds to believe that
- (a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or
 - (b) the realizable value of the company's assets would, after the payment, be less than the aggregate of
 - (i) its liabilities, and
 - (ii) the amount 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. *2003, c.33, s.3.*

88.6 Redemption of shares

- (1) Notwithstanding subsection 88.4(2) or 88.5(3), but subject to section 88 and to subsection (2) and to its letters patent or supplementary letters patent, a company may purchase or redeem any redeemable shares issued by it at prices not exceeding the redemption price thereof stated in the letters patent, supplementary letters patent or by-laws or calculated according to a formula stated in the letters patent, supplementary letters patent or by-laws.

Limitation

- (2) A company shall not make any payment to purchase or redeem under subsection (1) any redeemable shares issued by it if there are reasonable grounds to believe that
- (a) the company is, or would after the payment be, unable to pay its liabilities as they become due; or



- (b) the realizable value of the company'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. *2003, c.33, s.3.*

88.7 Directors' liability

Directors of a company who vote for or consent to a resolution authorizing a purchase, redemption or other acquisition of shares contrary to section 88.4, 88.5 or 88.6 are jointly and severally liable to restore to the company any amounts so distributed or paid and not otherwise recovered by the company. *2003, c.33, s.3.*

PART II**89. Incorporation of companies without share capital for non-profit purposes**

The Minister may by letters patent grant a charter to any three or more persons constituting such persons and others who have become subscribers to the memorandum of agreement hereinafter mentioned, and who thereafter become members of the corporation thereby created, a body corporate and politic, without share capital, for the purpose of carrying on in Prince Edward Island, without pecuniary gain to its members, objects of a patriotic, religious, philanthropic, charitable, scientific, artistic, social, professional or sporting character, or the like. *R.S.P.E.I. 1974, Cap. C-15, s.88; 1984, c.14, s.29.*

90. Application for letters patent, contents

- (1) The applicants, who must be of the full age of eighteen years, may petition the Minister, through the Director, for the issue of the letters patent, setting forth the following particulars:
 - (a) the proposed name of the corporation;
 - (b) the purpose for which its incorporation is sought;
 - (c) the place within the province where the head office of the corporation is to be situated;
 - (d) the names in full and the address and calling of each of the applicants;
 - (e) the names of the applicants, not less than three, who are to be the first or provisional directors of the corporation.

Petition to be accompanied by memorandum

- (2) The petition shall be accompanied by a memorandum of agreement signed and sealed by the applicants, setting forth the bylaws of the proposed corporation, and more particularly setting forth bylaws upon the following matters:
 - (a) conditions of membership, including societies or companies becoming members of the corporation;
 - (b) mode of holding meetings, provision for quorum, rights of voting and of enacting bylaws;
 - (c) mode of repealing or amending bylaws;
 - (d) appointment and removal of directors and officers, and their respective powers and remuneration;

- (e) audit of accounts and appointment of auditors;
- (f) whether or how members may withdraw from the corporation;
- (g) custody of the corporate seal and certifying of documents issued by the corporation.

Inclusion of bylaw subject in letters patent

- (3) The applicants may ask to have embodied in the letters patent any provision which could under this Part be contained in any bylaw of the corporation. *R.S.P.E.I. 1974, Cap. C-15, s.89; 1980, c.10, s.21; 1984, c.14, s.30.*

91. Sections applying to Part II

- (1) The following provisions of Part I apply to corporations to which this Part applies, namely: sections 3, 5, 6(a), 9, 10, 11, 12, 14-19, 20, 22, 28, 38, 50(a),(b) and (c), 52-54, 57, 61, 64, 67, 68, 70-75, 78 and 79.

Definitions

- (2) In construing the sections mentioned in subsection (1)
 - (a) the words “the company” or “a company” mean a corporation to which this Part applies;
 - (b) the word “shareholder” means a member of such corporation;
 - (c) the words “shares” or “shares in the capital stock” mean membership dues or fees.

Annual returns and filing fees

- (3) A corporation to which this Part applies shall, each year, file with the Director, together with the prescribed filing fee, an annual return indicating the names and addresses of the officers and directors of the corporation. *R.S.P.E.I. 1974, Cap. C-15, s.90; 1975, c.83, s.3; 1984, c.14, s.31, 32; 2012, c.8, s.1.*

