

1992

CHAPTER 44

An Act to amend *The Business Corporations Act*

(Assented to August 24, 1992)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 **This Act may be cited as *The Business Corporations Amendment Act, 1992*.**

R.S.S. 1978, c.B-10 amended

2 ***The Business Corporations Act* is amended in the manner set forth in this Act.**

Section 2 amended

3 **Subsection 2(1) is amended:**

(a) **by repealing clause (o) and substituting the following:**

“(o) **`distributing corporation'** means a corporation that is a reporting issuer as defined in *The Securities Act, 1988*”;

(b) **by adding** “and includes a reserve as defined in the *Indian Act* (Canada)” **after** “northern municipality” **in clause (u); and**

(c) **by repealing subclause (aa)(iii) and substituting the following:**

“(iii) a permanent resident as defined in the *Immigration Act* (Canada)”.

Section 6 amended

4 **Clause 6(1)(b) is repealed.**

Section 10 amended

5 **Subsection 10(1) is amended by adding** “if the full and the abbreviated forms are in the same language and represent the same word” **after** “form”.

New section 12.1

6 **The following section is added after section 12:**

Costs of name change

“12.1 Where the Director, pursuant to subsection 12(2) or section 297, directs a corporation to change its name, the Director may, in accordance with the regulations, compensate the corporation for actual costs incurred”.

Section 14 amended

7 **Subsection 14(1) is repealed and the following substituted:**

“(1) Except as provided in this section:

(a) a person who enters into, or purports to enter into, a written contract in the name of or on behalf of a corporation before the corporation comes into existence:

(i) is personally bound by the contract; and

(ii) is entitled to the benefits of the contract; and

(b) the contract has effect as a contract entered into by the person mentioned in clause (a)”.

Section 18 amended

8 **Section 18 is amended:**

(a) **by striking out “or” after clause (e);**

(b) by striking out “the financial assistance referred to in section 42 or” **in clause (f);**
(c) by adding “or” after clause (f); and

(d) by adding the following clause after clause (f):

“(g) the disclosure of financial assistance required pursuant to section 42 was not given”.

Section 19 amended

9(1) Subsections 19(1) to (3) are repealed and the following substituted:

“(1) A corporation shall at all times have a registered office in Saskatchewan.

“(2) Where a corporation sends articles, other than articles of amendment or articles of dissolution, to the Director, the corporation shall also send to the Director a notice of registered office in the prescribed form, and the Director shall file the notice”.

(2) The following subsection is added after subsection 19(4):

“(4.1) Where a corporation sends an annual return to the Director pursuant to section 273 within 15 days after a change is made to the address of the corporation's registered office, the annual return is deemed to be the notice required by subsection (4)”.

(3) Subsection 19(5) is repealed.

Section 20 amended

10 Subsection 20(2) is repealed and the following substituted:

“(2) In addition to the records described in subsection (1), a corporation shall:

(a) prepare adequate accounting records and maintain them for at least six years after they are prepared; and

(b) prepare and maintain records containing minutes of meetings and resolutions of the directors and any committees of directors”.

Section 21 amended

11 Subsection 21(3) is amended by adding “and fee” after “receipt of the affidavit” wherever it appears.

New section 25.1

12 The following section is added after section 25:

Certain changes re number, class or series of shares

“25.1(1) A corporation may, by special resolution, change the shares of any class or series, whether issued or unissued, into a different number of shares of the same class or series”.

(2) Section 170 applies, with any necessary modification, to a special resolution mentioned in subsection (1) as if the special resolution were a proposal to amend the articles.

Section 26 amended

13(1) Subsection 26(1.1) is amended by adding “, net of all bona fide selling commissions,” after “receives”.

(2) Subsection 26(1.2) is amended:

(a) by striking out “or” after clause (a);

(b) by adding “or” after clause (b); and

(c) by adding the following clause after clause (b):

“(c) property of a person who, immediately before the exchange, deals with the corporation at arm's length within the meaning of the *Income Tax Act* (Canada), if the person, the corporation and all the holders of shares in the class or series of shares so issued consent”.

(3) Subsection 26(4) is amended by striking out “, clause 42(1)(d)”.

New section 42

14 Section 42 is repealed and the following substituted:

Permitted loans and guarantees

“42(1) A corporation or any affiliate of a corporation may give financial assistance by means of a

loan, guarantee or otherwise to any of the persons described in subsection (2) if the corporation or affiliate of the corporation discloses that giving of financial assistance in accordance with subsection (3) or (4), as the case may require.

(2) Subsection (1) applies to the giving of financial assistance:

(a) to a shareholder, director, officer or employee of the corporation or an affiliate of the corporation or an associate of any of those persons; or

(b) to any person for the purpose of, or in connection with, a purchase of a share issued or to be issued by the corporation or an affiliate of the corporation.

(3) A corporation that is not a distributing corporation shall give a notice that contains the information required by subsection (5) to all shareholders within 90 days after the giving of financial assistance.

(4) Unless disclosure is made otherwise, a corporation that is a distributing corporation shall disclose the information required by subsection (5) in a financial statement that is placed before the shareholders at an annual meeting pursuant to clause 149(1)(a) with respect to:

(a) each case in which financial assistance is given during the most recent financial year or period to which the financial statement relates; and

(b) each case of financial assistance previously given that remains outstanding at the end of the most recent financial year or period to which the financial statement relates.

(5) Notices mentioned in subsection (3) and financial statements mentioned in subsection (4) are to contain the following information:

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

(b) the nature of the financial assistance given;

(c) the terms on which the financial assistance was given;

(d) the amount of the financial assistance given;

(e) the amount of financial assistance that remains outstanding.

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

Section 45 amended

15 Subsection 45(2) is amended by striking out "of not more than \$3" and substituting "not exceeding the prescribed amount".

Section 46 amended

16 Subsection 46(3) is amended by striking out "The Trust and Loans Companies Licensing Act" and substituting "The Trust and Loan Corporations Act".

Section 100 amended

17(1) Subsection 100(3) is amended by striking out "and at least one director must reside in Saskatchewan".

(2) The following subsection is added after subsection 100(3):

"(3.1) If none of the directors of a corporation resides in Saskatchewan, the corporation shall appoint an attorney pursuant to section 268 and comply with section 268 as if the corporation were an extra-provincial corporation".

Section 107 amended

18 Subsection 107(2) is amended:

(a) by adding "or decrease" after "increase"; and

(b) by striking out "additional".

Section 108 amended

19 The following subsection is added after subsection 108(1):

"(1.1) Where a corporation sends an annual return to the Director pursuant to section 273 within 15 days after a change is made among its directors, the annual return is deemed to be the notice required by subsection (1)".

Section 115 amended

20(1) Subsection 115(5) is amended:

(a) by striking out "if" in the portion that precedes clause (a) and substituting "unless";

(b) by adding "or" after clause (c);

(c) by striking out "or" after clause (d); and

(d) by striking out "but, in the case of a contract described in clause (e), no resolution shall be valid unless it is approved by not less than two-thirds of the votes of all the shareholders of the corporation to whom notice of the nature and extent of the director's interest in the contract or transaction is declared and disclosed in reasonable detail".

(2) The following subsection is added after subsection 115(8):

"(8.1) Notwithstanding subsections (1) to (8), the shareholders of a corporation may, by unanimous resolution passed at an annual meeting or a special meeting held for the purpose, approve a material contract or proposed material contract that the directors are unable to approve by reason of the material interest of some or all of the directors in the contract".

Section 119 amended

21 Subsection 119(3) is amended by adding "or an officer" after "director".

Section 132 amended

22 Clause 132(1)(a) is amended by striking out "as of a day".

Section 135 amended

23 The following subsection is added after subsection 135(2):

"(3) Unless a ballot is demanded, an entry in the minutes of a meeting of shareholders to the effect that the chairperson of the meeting declared a motion to be carried or defeated is admissible in evidence as prima facie proof of the fact without proof of the number or proportion of the votes recorded in favour of or against the motion".

Section 144 amended

24(1) Subsection 144(1) is amended by adding "to the directors," after "is sent" in the portion that follows clause (b).

(2) The following subsection is added after subsection 144(2):

"(2.1) Notwithstanding subsection (2), the documents mentioned in subsection (2) are not required to be sent to the Director where:

(a) the documents mentioned in section 143 of *The Securities Regulations* are filed with the Commission pursuant to that section or a decision of the Commission; or

(b) the Commission has made an order pursuant to section 97 of *The Securities Act, 1988* granting an exemption from the requirement to file the documents mentioned in section 143 of *The Securities Regulations* with the Commission".

New section 154.1

25 Section 154.1 is repealed and the following substituted:

Exemption from section 154

"154.1 A corporation that files financial statements in the manner required by sections 86 and 87 of *The Securities Act, 1988* is exempt from subsections 154(1) and (2) of this Act".

Section 162 amended

26 Subsection 162(6) is repealed and the following substituted:

(6) The corporation shall immediately send a copy of the statement mentioned in subsection (5):

(a) to every shareholder who is entitled to receive notice of any meeting mentioned in subsection (1), unless the statement is included in or attached to a management proxy circular

required by section 144; and
(b) to the Director”.

Section 167 amended

27(1) Subsection 167(1) is amended:

(a) by repealing clause (b);

(b) by repealing clause (c) and substituting the following:

“(c) add, change or remove any restriction on:

(i) the business or businesses that the corporation may carry on; or

(ii) the powers that the corporation may exercise”; **and**

(c) by striking out “into a different number of shares of the same class or series or” in clause (g).

(2) Clause 167(3)(b) is repealed.

Section 178 amended

28 Subclause 178(1)(b)(iii) is repealed and the following substituted:

“(iii) the stated capital of the amalgamated corporation is to be the same as that of the amalgamating holding corporation”.

Section 184 amended

29 Clause 184(1)(b) is repealed and the following substituted:

“(b) amend its articles pursuant to section 167 to add, change or remove any restriction on:

(i) the business or businesses that the corporation may carry on; or

(ii) the powers that the corporation may exercise”.

Section 186.1 amended

30(1) Subsection 186.1(5) is amended by striking out “the application” and substituting “an application for an interim or final order”.

(2) Subsection 186.1(7) is amended by striking out “amendment” and substituting “arrangement”.

(3) Subsection 186.1(8) is amended by striking out “amendment” and substituting “arrangement”.

Section 243 amended

31 Clause 243(d) is repealed.

Section 268 amended

32 Subsection 268(1) is amended by striking out “person therein named” and substituting “individual named in the power of attorney”.

Section 293 amended

33 Clauses 293(a) and (b) are repealed and the following substituted:

“(a) be the same as or similar to the name of any other corporation, or to the name of any association, partnership or firm, or to a trade-mark registered pursuant to the *Trade-marks Act* (Canada), if the use of that name would be likely to confuse or mislead, unless the corporation, association, partnership, firm or registrant of a trade-mark consents in writing to the use of the name in whole or in part and, if required by the Director:

(i) in the case of a corporation, undertakes to dissolve or change its name to a dissimilar name within six months after the filing of the articles by which the name is acquired; or

(ii) in the case of an association, partnership, firm or registrant of a trade-mark, undertakes to cease to carry on its business or activities, or to change its name to a dissimilar name, within six months after the filing of the articles by which the name is

- acquired;
- “(b) be identical to the name of a corporation previously incorporated under the laws of Saskatchewan unless:
- (i) the corporation has been dissolved for at least 10 years; and
 - (ii) the Director consents”.

New section 294.1

34 The following section is added after section 294:

Alternate names

- “294.1**(1) Notwithstanding sections 293 and 294, an extra-provincial corporation with a name that contravenes clause 293(a) or (b) or 294(c) may, with the approval of the Director:
- (a) be registered in its own name; and
 - (b) carry on business in Saskatchewan under an alternate name if:
 - (i) the use of the alternate name is approved by the Director; and
 - (ii) the alternate name does not otherwise contravene sections 293 and 294.
- (2) An extra-provincial corporation that takes an alternate name pursuant to subsection (1):
- (a) shall acquire all property and rights in Saskatchewan under the alternate name;
 - (b) is entitled to all property and rights acquired under the alternate name as if they had been acquired under the name in which it is registered;
 - (c) is subject to all obligations and liabilities incurred under the alternate name as if they had been incurred under the name in which it is registered; and
 - (d) shall sue in the alternate name.
- (3) An extra-provincial corporation that takes an alternate name pursuant to subsection (1) may be sued in the name in which it is registered, in its alternate name or in both names.
- (4) An extra-provincial corporation that takes an alternate name pursuant to subsection (1) may cancel its alternate name and carry on business in Saskatchewan under the name in which it is registered if:
- (a) the corporation applies in the prescribed form and pays the prescribed fee; and
 - (b) the Director approves”.

New section 297

35 Section 297 is repealed and the following substituted:

Objectionable name

- “297** If through inadvertence or otherwise an extra-provincial corporation, other than a Canada corporation, is granted, on registration or on a change of name or on an application pursuant to section 294.1, a name or alternate name that is, in the opinion of the Director, for any reason objectionable:
- (a) the Director may direct the corporation to change its name or alternate name; and
 - (b) within 90 days of the date of the direction, the corporation shall change its name or alternate name to a name that, in the opinion of the Director, is not objectionable”.

Section 304 amended

36 Section 304 is amended:

(a) by repealing clause (b) and substituting the following:

- “(b) requiring the payment and prescribing the amount of any fee with respect to:
- (i) the filing, examination or copying of any document;
 - (ii) any action that the Director is required or authorized to take pursuant to this Act;
 - (iii) any service provided by the Director pursuant to this or any other Act;
 - (iv) any service provided by the minister with respect to information that is required to be filed pursuant to any Act”; and

(b) by adding the following clauses after clause (e):

- “(e.1) respecting the names of corporations and extra-provincial corporations including, without limiting the generality of the foregoing, regulations:
- (i) prohibiting the use of any name or any words or expressions in a name;

- (ii) defining any word or expression used in section 293, 294 or 295;
 - (iii) prescribing the punctuation marks and other marks that may form part of a name;
- “(e.2) respecting the circumstances and conditions under which a name may be searched for availability, reserved and used;
- “(e.3) for the purposes of section 12.1:
- (i) prescribing the types of costs for which compensation may be paid where a change of name is directed;
 - (ii) governing the procedure for making a claim for compensation”.

Coming into force

37 This Act or any provision of this Act comes into force on a day or days to be fixed by proclamation of the Lieutenant Governor.