1972

c 138 The Business Corporations Amendment Act, 1972

Ontario

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CHAPTER 138

An Act to amend
The Business Corporations Act

Assented to December 15th, 1972
Session Prorogued December 15th, 1972

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

1.—(1) Paragraph 19 of subsection 1 of section 1 of The Business Corporations Act, being chapter 53 of the Revised Statutes of Ontario, 1970, is amended by adding at the end thereof "or any other individual who performs functions for the corporation similar to those normally performed by an individual occupying any such office".

(2) Subsection 1 of the said section 1 is amended by adding thereto the following paragraph:

23a. "resident Canadian" means a Canadian citizen who is ordinarily resident in Canada.

(3) Subparagraph ii of paragraph 26 of subsection 1 of the said section 1 is amended by adding at the end thereof "their attorney authorized in writing".

(4) Subparagraph ii of paragraph 27 of subsection 1 of the said section 1 is amended by adding at the end thereof "their attorney authorized in writing".

(5) Subsection 9 of the said section 1, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 2, is repealed and the following substituted therefor:

(9) For the purposes of this Act, a body corporate is offering its securities to the public only where,

(a) in respect of any of its securities a prospectus, statement of material facts or securities exchange take-over bid circular has been filed under The Securities Act, or any predecessor.
thereof, or in respect of which a prospectus has been filed under The Corporations Information Act, being chapter 72 of the Revised Statutes of Ontario, 1960, or any predecessor thereof, so long as any of such securities are outstanding or any securities into which such securities are converted are outstanding; or

(b) any of its shares are listed and posted for trading on any stock exchange in Ontario recognized by the Commission,

except that where, upon the application of a body corporate that has fewer than fifteen security holders, the Commission is satisfied, in its discretion, that to do so would not be prejudicial to the public interest, the Commission may order, subject to such terms and conditions as the Commission may impose, that the body corporate shall be deemed to have ceased to be offering its securities to the public.

2. Section 6 of the said Act is repealed and the following substituted therefor:

6.-(1) Upon the request of the incorporators or the corporation, the Minister may determine and assign a number in a proposed corporate name.

(2) Where the Minister assigns a number under subsection 1, the name of the corporation shall consist of the number followed by the word “Ontario” and the word “Limited”, “Incorporated” or “Corporation” or its corresponding abbreviation “Ltd.”, “Inc.” or “Corp.” as the last word thereof.

(3) Where, through inadvertence or otherwise, the Minister has assigned a number in the name of a corporation that is the same as the number in the name of any other body corporate, the Minister may issue a certificate of amendment to the articles changing the name of the corporation to the name specified in the certificate, and, upon the issuance of the certificate of amendment, the articles are amended accordingly.

3. Subsection 1 of section 8 of the said Act is amended by inserting after “corporation” in the first line “except a corporation to which the Minister has assigned a number as part of the name of the corporation”.
4. Section 10 of the said Act is amended by renumbering subsections 1 and 2 as 2 and 3, respectively, and by adding thereto the following subsection:

(1) The name of a corporation shall have the word "Limited", "Incorporated" or "Corporation" or its corresponding abbreviation "Ltd.", "Inc." or "Corp." as the last word thereof.

5. (1) Subsection 1 of section 11 of the said Act is amended by striking out "sixty" in the fourth line and inserting in lieu thereof "ninety".

(2) The said section 11 is further amended by adding thereto the following subsection:

(3) No person may reserve a corporate name to which section 6 applies.

6. Paragraph 17 of subsection 2 of section 15 of the said Act is re-enacted and the following substituted therefor:

17. where authorized to do so by a special resolution and by such additional authorization as the articles provide, to sell, lease, exchange or otherwise dispose of all or substantially all the property of the corporation for such consideration as the corporation thinks fit.

7. Subsection 2 of section 17 of the said Act is amended by striking out "or" at the end of clause c, by adding "or" at the end of clause d and by adding thereto the following clause:

(e) if it is not offering its securities to the public, give directly or indirectly by means of a loan, guarantee, the provision of security or otherwise, financial assistance to any of its shareholders or directors with a view to enabling them to purchase issued shares of the corporation.

8. (1) Subsection 2 of section 26 of the said Act is amended by inserting at the commencement thereof "Except as provided in subsection 1 of section 37".

(2) Subsection 3 of the said section 26 is amended by inserting at the commencement thereof "Except as provided in subsection 1 of section 37".
9. Clause (f) of subsection 1 of section 27 of the said Act is repealed and the following substituted therefor:

(f) the right of the corporation at its option to redeem all or part of the shares of the class or the right of a shareholder at his option to require the redemption of all or part of his shares of the class.

10. Subsection 1 of section 34 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 6, is amended by inserting after "redeemable" in the second line "at the option of the corporation".

11. Subsection 1 of section 37 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 8, is repealed and the following substituted therefor:

(1) Where the only undertaking of a corporation is the business of investing the funds of the corporation, its articles may provide for the issuing of one or more classes of special shares that are mutual fund shares and fractions or parts thereof that have attached thereto conditions requiring the corporation to accept, at the demand of the holder thereof and at prices determined and payable in accordance with the conditions, the surrender of the shares, or fractions or parts thereof, and where a corporation to which this section applies has one or more classes of mutual fund shares of which one class has attached thereto no conditions, restrictions, limitations or prohibitions on the right to vote, the corporation is not required to have any other class of shares.

12. Subsection 3 of section 38 of the said Act is repealed.

13. Section 39 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 9, is repealed and the following substituted therefor:

(1) A corporation may purchase any of its issued shares if the purchase is made for the purpose of eliminating fractions of shares or for the purpose of collecting or compromising indebtedness to the corporation.

(2) Where authorized in its articles and subject to any restrictions contained therein, a corporation may purchase any of its issued common shares.
(3) A corporation shall not purchase shares under this section if the corporation is insolvent or if the purchase would render the corporation insolvent.

(4) No purchase of shares shall be made under this section by a corporation unless the purchase is authorized by a resolution of the board of directors.

(5) Where a corporation purchases shares under subsection 2, the purchase shall be made at the lowest price at which, in the opinion of the directors, such shares are obtainable, and,

(a) pursuant to tenders received by the corporation upon request for tenders addressed to all the holders of the shares of the class and the corporation shall accept only the lowest tenders; or

(b) from bona fide full-time employees and former employees of the corporation; or

(c) where the shares to be purchased are of a body corporate that is offering its shares to the public, by purchase on the open market.

(6) Where, in response to the invitation for tenders, two or more shareholders submit tenders at the same price and the tenders are accepted by the corporation as to part only of the shares offered, the corporation shall accept part of the shares offered in each tender in proportion as nearly as may be to the total number of shares offered in each tender.

14. Sections 40, 41 and 42 of the said Act are repealed and the following substituted therefor:

40.—(1) Shares or fractions thereof purchased under subsection 1 of section 39 are thereby cancelled and the authorized and issued capital are thereby decreased and the articles are amended accordingly.

(2) Where its issued common shares are purchased by a corporation under subsection 2 of section 39, where mutual fund shares are accepted for surrender by a corporation under section 37, where a corporation accepts the donation of any of its shares under section 43, or where a corporation purchases the shares of a dissenting shareholder under section 100,

(a) if the articles so require, the shares shall be cancelled and thereupon the authorized and issued capital of the corporation are thereby
decreased, and the articles are amended accordingly;

(b) if the articles do not require the shares to be cancelled,

(i) the board of directors may cancel the shares at such time as it determines, in which case the authorized and issued capital of the corporation are thereby decreased and the articles are amended accordingly; or

(ii) the board of directors may resell the shares at such time and price and on such terms as it determines.

41. Where a corporation purchases its issued common shares under subsection 2 of section 39, accepts a donation of any of its shares under section 43, purchases any of its shares under section 100, or resells them, the corporation shall be deemed to be an insider in respect of the purchase or resale, and sections 148 to 152 apply to the purchase or resale.

42. An agreement for the purchase by a corporation of its shares under section 39 is not invalid or unenforceable because of the possibility that the corporation may not be able to comply with section 39, but such agreement is,

(a) subject to subsection 2 of section 135, valid if performed; and

(b) if not performed, valid and enforceable to the extent the corporation is able to purchase its shares at the time for performance.

15. Subsection 2 of section 43 of the said Act is repealed.

16. Section 57 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 15, is repealed and the following substituted therefor:

57.—(1) In this section and in sections 58 to 62,

(a) "trust indenture" means any deed, indenture or document howsoever designated, including any supplement or amendment thereto, by the terms of which a body corporate issues
or guarantees debt obligations and in which a trustee is appointed as trustee for the holders of the debt obligations issued or guaranteed thereunder;

(b) “trustee” means any person appointed as trustee under the terms of a trust indenture, whether or not the person is a trust company authorized to carry on business in Ontario;

(c) “event of default” means any event specified in a trust indenture on the occurrence of which,

(i) the security interest, if any, constituted by the trust indenture shall become enforceable, or

(ii) the principal, interest and other moneys payable thereunder shall become or may be declared to be payable prior to maturity,

provided that any such event shall not be an event of default unless all conditions prescribed by the trust indenture in connection with such event for the giving of notice or the lapse of time or otherwise has been satisfied.

(2) Sections 57 to 62 apply to a trust indenture, whether entered into before or after the date on which this Act comes into force, if, in respect of any of the debt obligations outstanding or guaranteed thereunder or to be issued or guaranteed thereunder, a prospectus or securities exchange take-over bid circular has been filed under The Securities Act or any predecessor thereof or in respect of which a prospectus has been filed under The Corporations Information Act, being chapter 72 of the Revised Statutes of Ontario, 1960, or any predecessor thereof.

(3) The person appointed as trustee under a trust indenture, or at least one of such persons if more than one is so appointed, shall be resident or authorized to do business in Ontario.

17. Sections 58, 59, 60, 61 and 62 of the said Act are repealed and the following substituted therefor:

58. — (1) In the exercise of the rights and duties prescribed or conferred by the terms of a trust indenture, a trustee shall exercise that degree of care, diligence and skill that a reasonably prudent trustee would exercise in comparable circumstances.
59. A person shall not be appointed a trustee under a trust indenture if a material conflict of interest exists in the trustee's role as a fiduciary thereunder at the time of such appointment, but if, notwithstanding the provisions of this section, such a material conflict of interest exists, the validity and enforceability of the said trust indenture, the security interest created thereby and thereunder and the securities issued thereunder shall not be affected in any manner whatsoever by reason only that such material conflict of interest exists but such trustee shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office, and where a material conflict of interest arises subsequently to the appointment of the trustee under a trust indenture, the trustee shall, within ninety days after ascertaining that he has such material conflict of interest, either eliminate such material conflict of interest or resign from office.

60.—(1) The issuer or guarantor of debt obligations issued or to be issued under a trust indenture shall furnish to the trustee evidence of compliance with the conditions precedent provided for in the trust indenture relating to,

(a) the certification and delivery of debt obligations under the trust indenture;

(b) the release or release and substitution of property subject to any mortgage, charge, lien or other encumbrance created by the trust indenture;

(c) the satisfaction and discharge of the trust indenture; or

(d) the taking of any other action to be taken by the trustee at the request of or on the application of the issuer or guarantor.

(2) The evidence of compliance required under subsection 1 shall consist of,

(a) a statutory declaration or a certificate made by any officer of the issuer or guarantor
stating that such conditions precedent have been complied with in accordance with the terms of the trust indenture;

(b) in the case of conditions precedent compliance with which are, by the trust indenture, made subject to review or examination by a solicitor, an opinion of a solicitor that such conditions precedent have been complied with in accordance with the terms of the trust indenture; and

(c) in the case of conditions precedent compliance with which are, by the trust indenture, made subject to review or examination by auditors or accountants, an opinion or report of the auditor of the issuer or guarantor or any accountant licensed under The Public Accountancy Act or R.S.O. 1970, c. 373 comparable legislation of the jurisdiction in which such accountant practises, in each case approved by the trustee, that such conditions precedent have been complied with in accordance with the terms of the trust indenture.

(3) The evidence of compliance required under subsection 1 shall include,

(a) a statement by the person giving the evidence that he has read and is familiar with those provisions of the trust indenture relating to the conditions precedent with respect to compliance with which such evidence is being given;

(b) a brief statement of the nature and scope of the examination or investigation upon which the statements or opinions contained in such evidence are based;

(c) a statement that, in the belief of the person giving such evidence, he has made such examination or investigation as is necessary to enable him to make the statements or give the opinions contained or expressed therein; and

(d) a statement whether in the opinion of such person the conditions precedent with respect to compliance with which such evidence is being given have been complied with or satisfied.
Certificate of Issuer or Guarantor

(4) The issuer or guarantor of debt obligations under the trust indenture shall furnish the trustee annually, and at any other reasonable time if the trustee so requires, its certificate that the issuer or guarantor has complied with all covenants, conditions or other requirements contained in the trust indenture, the non-compliance with which would, with the giving of notice or the lapse of time, or both, or otherwise, constitute an event of default thereunder, or if such is not the case, specifying the covenant, condition or other requirement that has not been complied with and giving particulars of such non-compliance.

Evidence of Compliance

(5) The issuer or guarantor of debt obligations under the trust indenture shall, whenever the trustee so requires, furnish the trustee with evidence by way of statutory declaration, opinion, report or certificate as specified by the trustee as to any action or step required or permitted to be taken by the issuer or guarantor under the trust indenture or as a result of any obligation imposed by the trust indenture.

Reliance on Opinions

(6) In the exercise of his rights and duties, the trustee may, if he is acting in good faith, rely, as to the truth of the statements and the accuracy of the opinions expressed therein, upon a statutory declaration, opinion, report or certificate furnished to the trustee under this section or a provision of the trust indenture or at the request of the trustee where,

(a) in the case of a statutory declaration, opinion, report or certificate furnished under this section, the trustee examines the same and determines that it complies with the applicable requirements, if any, of this section; or

(b) in the case of a statutory declaration, opinion, report or certificate furnished pursuant to a provision of the trust indenture or at the request of the trustee, the trustee examines the same and determines that it complies with the applicable requirements, if any, of the trust indenture.

Trustee Not to Be Receiver

61. A trustee under a trust indenture and any related person to such trustee shall not be appointed a receiver or receiver and manager or liquidator of the assets or undertaking of the issuer or guarantor of the debt obligations under the trust indenture.
62. The trustee shall be required to give to the holders of debt obligations issued under the trust indenture, within a reasonable time but not exceeding thirty days after the trustee becomes aware of the occurrence thereof, notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee in good faith determines that the withholding of such notice is in the best interests of the holders of the debt obligations and so advises the issuer in writing.

18. Clause i of subsection 1 of section 63 of the said Act is repealed and the following substituted therefor:

(i) "security" means a document that evidences a security or that is a warrant.

19. Clause b of subsection 2 of section 68 of the said Act is repealed and the following substituted therefor:

(b) of any security not accepted by the buyer if its resale would be unduly burdensome or there is no readily available market.

20. Section 93 of the said Act is amended by adding thereto the following subsection:

(5) If an issuer demands assurance additional to that specified in this section for a purpose other than the purposes of subsection 3 and obtains a copy of a will, trust or partnership agreement, by-law or similar document, the issuer shall be deemed to have notice of all matters contained therein affecting the transfer.

21. Section 94 of the said Act is amended by adding thereto the following subsection:

(4) A written notice of adverse claim received by an issuer is effective for only twelve months from the date when it was received unless the notice is renewed in writing.

22. Subsection 1 of section 97 of the said Act is repealed and the following substituted therefor:

(1) An authenticating trustee, transfer agent, registrar or other agent for an issuer has in respect of the issue, registration of transfer, and cancellation of a security of the issuer,
(a) a duty to the issuer and to the holder or owner to exercise good faith and due diligence; and

(b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer.

23. Section 98 of the said Act is repealed and the following substituted therefor:

98.—(1) Where a person is shown on the records of a corporation as holding a share as a personal representative, the receipt by such person is a valid and binding discharge to the corporation for any payment or other distribution made in respect of the share whether notice of any trust has been given to the corporation or not, and the corporation is not bound to see to the application of such payment or other distribution.

(2) Where its own shares are purchased by a corporation under subsection 2 of section 39 or subsection 2 of section 100 or accepted by a corporation under section 37 or 43 and are not thereby cancelled, no person is entitled to receive notice of or to vote at meetings of shareholders or to receive any payment or other distribution made in respect of the shares until such shares are resold.

24.—(1) Clause a of subsection 1 of section 100 of the said Act is repealed and the following substituted therefor:

(a) a resolution passed by the directors authorizing the sale, lease, exchange or other disposition of all or substantially all the property of the corporation is confirmed with or without variation by the shareholders.

(2) Subsection 1 of the said section 100 is amended by striking out “or” at the end of clause b, by inserting “or” at the end of clause c and by adding thereto the following clause:

(d) a resolution passed by the directors under section 199 is confirmed by the shareholders.

(3) Subsection 2 of the said section 100 is repealed and the following substituted therefor:
(2) Within ninety days from,

(a) the date of the completion of the sale, lease, exchange or other disposition;

(b) the date set forth in the certificate of amendment or amalgamation; or

(c) the date of delivery to the Minister of a request in writing for his authorization under section 199,

the corporation, or amalgamated corporation, shall purchase the shares of every shareholder who has given notice under subsection 1, and every such shareholder shall sell his shares to the corporation.

(4) Subsections 5 and 6 of the said section 100 are repealed and the following substituted therefor:

(5) If the sale, lease, exchange or other disposition is not completed, the certificate of amendment or amalgamation is not issued, or the authorization of the Minister is not given, the rights of the dissenting shareholder under this section cease and the corporation shall not purchase the shares of such shareholder under this section.

25.—(1) Clause b of subsection 4 of section 101 of the said Act is repealed and the following substituted therefor:

(b) if the by-law or resolution requires confirmation at a general meeting of the shareholders before it is effective, call a general meeting of the shareholders for the purpose of confirming the by-law or resolution,

(2) Subsection 8 of the said section 101 is repealed and the following substituted therefor:

(8) Where a by-law or resolution in respect of which a meeting of directors is requisitioned under this section is not passed or confirmed at a meeting of the shareholders, no requisition for a meeting of directors in respect of a similar by-law or resolution shall be made for a period of at least two years.

26. Clause a of subsection 1 of section 106 of the said Act is repealed and the following substituted therefor:

(a) notice of the time and place for holding a meeting of the shareholders shall be given to each person who is
entitled to notice of meetings and who on the record date for notice appears on the records of the corporation as a shareholder and to each director by sending the notice by prepaid mail to his latest address as shown on the records of the corporation.

27. Subsection 1 of section 112 of the said Act is repealed and the following substituted therefor:

(1) The by-laws may fix in advance or may authorize the directors to fix in advance a time and date as the record date,

(a) for the determination of the shareholders entitled to notice of meetings of the shareholders, which record date for notice shall not be more than fifty days before the date of the meeting and not fewer than the minimum number of days for notice of the meeting and where no such record date for notice is fixed, the record date for notice shall be at the close of business on the day next preceding the day on which notice is given or sent; and

(b) for the determination of the shareholders entitled to vote at meetings of the shareholders, which record date for voting shall not be more than two days, excluding Saturdays and holidays, before the date of the meeting and where no such record date for voting is fixed, the record date for voting shall be the time of the taking of the vote; and

(c) for the determination of the shareholders entitled to receive the financial statement of the corporation pursuant to subsection 1 of section 184, which record date for the financial statement shall be not more than fifty days and not fewer than twenty-one days before the date of the annual meeting of the shareholders and where no such record date is fixed, the record date shall be at the close of business on the day next preceding the day on which the financial statement is given or sent.

28. Section 117 of the said Act is amended by striking out “or prior to” in the second line.

29. Clause b of section 120 of the said Act is amended by striking out “other than the election of directors and the
appointment of auditors" in the seventh, eighth and ninth lines and inserting in lieu thereof "other than the appointment of auditors and the fixing of their remuneration and the election of directors".

30. Section 122 of the said Act is amended by adding thereto the following subsection:

(3) A majority of directors on the board of directors of every corporation shall be resident Canadians.

31. Section 126 of the said Act is amended by adding thereto the following subsection:

(5) It shall not be necessary for all directors to hold office for the same term.

32. Subsections 1 and 2 of section 128 of the said Act are repealed and the following substituted therefor:

(1) Subject to subsections 2, 2a, and 3, where a vacancy occurs in the board and a quorum of directors remains, the directors remaining in office may appoint a qualified person to fill the vacancy for the remainder of the term but the articles may provide that such vacancy may only be filled by election at a general meeting of the shareholders duly called for that purpose.

(2) Where the number of directors is increased, the vacancies resulting from such increase shall only be filled by election at a general meeting of the shareholders duly called for that purpose.

(2a) Where part of the board of directors has been elected by the holders of the shares of a class of special shares as provided in clause d of subsection 1 of section 27, and a vacancy occurs in that part of the board, the remaining directors or director, if any, in that part of the board may appoint a qualified person to fill the vacancy for the remainder of the term, and, if there is no such remaining director, the holders of that class of shares at a meeting thereof that may be called by any holder of shares of that class may elect a qualified person to fill the vacancy for the remainder of the term but the articles may provide that such vacancy may only be filled by election at a general meeting of the holders of that class of shares duly called for that purpose.
33. (1) Subsection 2 of section 130 of the said Act is repealed and the following substituted therefor:

Exception

(2) Where the by-laws of the corporation so provide, the meetings of the board of directors and of the executive committee may be held at any place within or outside Ontario, but in any financial year of the corporation a majority of the meetings of the board of directors and a majority of the meetings of the executive committee shall be held at a place within Canada.

34. Subsection 2 of section 132 of the said Act is repealed and the following substituted therefor:

Conduct of business

(2) Subject to section 133 and subsection 1 of section 23, no business of a corporation shall be transacted by its board of directors except at a meeting of directors at which a quorum of the board is present and at which a majority of the directors present are resident Canadians.

35. (1) Subsection 1 of section 133 of the said Act is repealed and the following substituted therefor:
(1) Where the number of directors of a corporation is more than six, and if authorized by a special by-law, the directors may elect from among their number an executive committee consisting of not fewer than three of whom a majority shall be resident Canadians and may delegate to the executive committee any powers of the board of directors, subject to the restrictions, if any, contained in the by-law or imposed from time to time by the directors.

(2) The said section 133 is amended by adding thereto the following subsection:

(3) No business shall be transacted by an executive committee except at a meeting of its members at which a quorum of the executive committee is present and at which a majority of the members present are resident Canadians.

36. -(1) Subsections 1 and 3 of section 134 of the said Act are repealed and the following substituted therefor:

(1) Every director of a corporation who has, directly or indirectly, any interest in any contract or transaction to which the corporation or a subsidiary thereof is or is to be a party, other than a contract or transaction in which his interest is limited solely to his remuneration as a director, officer or employee, shall declare his interest in such contract or transaction at a meeting of the directors of the corporation and shall at that time disclose the nature and extent of such interest including, as to any contract or transaction involving the purchase or sale of property by or to the corporation or a subsidiary thereof, the cost of the property to the purchaser and the cost thereof to the seller, if acquired by the seller within five years before the date of the contract or transaction, to the extent to which such interest or information is within his knowledge or control, and shall not vote and shall not in respect of such contract or transaction be counted in the quorum.

(3) The declaration required by this section shall be made at the meeting of the directors at which the proposed contract or transaction is first considered, or if the director is not at the date of the meeting interested...
in the proposed contract or transaction, at the next meeting of the directors held after he becomes so interested, or if the director becomes interested in a contract or transaction after it is entered into, at the first meeting of the directors held after he becomes so interested, or if a contract or a proposed contract or transaction is one that in the ordinary course of the corporation's business, would not require approval by the directors or shareholders, at the first meeting of the directors held after the director becomes aware of it.

(2) The said section 134, as amended by the Statutes of Ontario, 1971, chapter 26, section 20, is further amended by adding thereto the following subsection:

For the purposes of this section, a general notice to the directors by a director declaring that he is a director or officer of or has a material interest in a person that is a party to a contract or proposed contract with the corporation is a sufficient declaration of interest in relation to any contract so made.

(2) The said section 140 is further amended by adding thereto the following subsection:

Where a class of shares carries the exclusive right to elect a part of the board of directors, no director so elected may be removed from office before the expiration of his term except by resolution passed by a majority of votes cast at a meeting of holders of shares of the class duly called for that purpose.

(1) A corporation shall have a president and a secretary and such other officers as are provided for by by-law or by resolution of the directors and the same person may hold two or more offices.

Section 146 of the said Act is repealed and the following substituted therefor:
146. Those directors and officers of a corporation who authorize or consent to a loan in contravention of clause a of subsection 1 of section 17 or the giving, directly or indirectly by means of a loan, guarantee, the provision of security or otherwise, any financial assistance in contravention of clause b of subsection 1 of section 17 are jointly and severally liable to the corporation and to its creditors for any actual loss to the corporation arising out of the contravention, together with interest at the rate of 6 per cent a year.

40. — (1) Paragraph 3 of section 157 of the said Act is amended by adding thereto the following subparagraph:

iii: all persons who are or have been within six years after the date of expiry of a warrant registered as holders of warrants of the corporation and the address including the street and number, if any, of every such person while a holder, setting out the class or series and number of warrants held by such holder.

(2) Paragraph 4 of the said section 157 is amended by inserting after "addresses" in the second line "while directors".

41. Section 159 of the said Act is repealed and the following substituted therefor:

159. A corporation may appoint a registrar to keep the register of security holders and a transfer agent to keep the register of transfers and may also appoint one or more branch registrars to keep branch registers of security holders and one or more branch transfer agents to keep branch registers of transfers but one person may be appointed both registrar and transfer agent.

42. — (1) Subsection 1 of section 160 of the said Act is amended by inserting after "office" in the third line "or offices" and by inserting after "place" in the third line "or places".

(2) The said section 160 is amended by adding thereto the following subsection:

(5) A corporation, registrar or transfer agent is not liable to produce a security certificate, a warrant or documents any document that is evidence of the issue or transfer of the security certificate or warrant after six years, (a) in the case of a share certificate from the date of its cancellation;
(b) in the case of a warrant from the date of its expiry; or

c) in the case of a certificate representing a debt obligation, from the date of retirement of the whole debt obligation of which that certificate represents a part.

43. Subsection 1 of section 162 of the said Act is amended by striking out "of executive committees" in the fourth line and inserting in lieu thereof "any executive committee".

44. Subsections 1 and 2 of section 163 of the said Act are repealed and the following substituted therefor:

(1) A shareholder or creditor or the agent or personal representative of any of them shall not make or cause to be made a list of all or any of the security holders or registered warrant holders of the corporation unless he has filed with the corporation or its agent his affidavit in the following form, and, where the shareholder or creditor is a body corporate, the affidavit shall be made by the president or other officer authorized by resolution of the board of directors of the body corporate:

Form of Affidavit

<table>
<thead>
<tr>
<th>Province of Ontario</th>
<th>In the matter of</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Insert name of corporation)</td>
</tr>
</tbody>
</table>

1. ...................., of the ............ of ............

in the .................... of ...............

make oath and say:

1. I am a shareholder (or creditor) of the above-named corporation.

(Where the shareholder or creditor is a body corporate, indicate office and authority of deponent in paragraph 1.)

2. I am applying to make a list of the shareholders (debt obligation holders) (registered warrant holders) of the above-named corporation.

3. I require the above-mentioned list(s) only for purposes connected with the above-named corporation.

4. The above-mentioned list(s) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

(2) No person, other than the corporation or its agent, shall use a list obtained under this section,
(a) for the purpose of delivering or sending to all or any of the security holders or registered warrant holders advertising or other printed matter relating to securities, other than the securities of the corporation; or

(b) for any purposes not connected with the corporation.

45. Subsections 1, 2, 4 and 6 of section 164 of the said Act are repealed and the following substituted therefor:

(1) Any person, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent the affidavit referred to in subsection 2, may require a corporation, other than a corporation that is not offering its securities to the public, or its transfer agent to furnish within ten days from the filing of the affidavit a basic list of security holders or registered warrant holders of the corporation setting out the information required in section 157 to be set out in the register of security holders or warrant holders made up to a date not more than ten days before the date of filing the affidavit and having required such basic list, upon payment of a reasonable charge therefor and upon filing with the corporation or its agent a written demand, may require the corporation or its transfer agent to furnish supplementary lists of transfers of securities or registered warrants for each business day following the date to which the basic list is made up, and the supplementary lists shall be furnished concurrently with the basic list and thereafter on the next business day following the day to which the supplementary list relates.

(2) The affidavit referred to in subsection 1 shall be made by the applicant and shall be in the following form:

Form of Affidavit

Province of Ontario
County of York

In the matter of (Insert name of corporation)

I, ................................ of the ................................ of ................................

in the ................................ of ................................

make oath and say:

(Where the applicant is a body corporate, indicate office and authority of deponent).
1. I require a list of the shareholders (debt obligation holders) (registered warrant holders) of the above-named corporation.

2. I require the above-mentioned list(s) only for purposes connected with the above-named corporation.

3. The above-mentioned list(s) and the information contained therein will be used only for purposes connected with the above-named corporation.

Sworn, etc.

(4) No person shall use a list obtained under this section,

\( (a) \) for the purpose of delivering or sending to all or any of the shareholders advertising or other printed matter relating to securities or warrants other than the securities or warrants of the corporation; or

\( (b) \) for any purpose not connected with the corporation.

(6) Purposes connected with the corporation include any effort to influence the voting of security holders at any meeting thereof, any offer to acquire shares of the corporation or any effort to effect an amalgamation or reorganization.

46. Section 165 of the said Act is amended by inserting after "security holders" in the third line "or registered warrant holders".

47. Subsection 6 of section 168 of the said Act is repealed and the following substituted therefor:

(6) An auditor has the right to make to the corporation, three days or more before the mailing of the notice of the meeting, representations in writing, concerning,

\( (a) \) his proposed removal as auditor;

\( (b) \) the appointment or election of another person to fill the office of auditor; or

\( (c) \) his resignation as auditor,

and the corporation, at its expense, shall forward with the notice of the meeting a copy of such representations to each shareholder entitled to receive notice of the meeting.
48. Subsection 4 of section 171 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 25, is repealed and the following substituted therefor:

(4) Where facts come to the attention of the officers or directors,

(a) which could reasonably have been determined prior to the date of the last annual meeting of the shareholders; and

(b) which if known prior to the date of the last annual meeting of shareholders, would have required a material adjustment to the financial statement presented to the meeting,

the officers or directors shall communicate such facts to the auditor who reported to the shareholders under this section and the directors shall forthwith amend the financial statement and send it to the auditor.

49. Subsection 3 of section 172 of the said Act is repealed and the following substituted therefor:

(3) The reference in clause a of subsection 1 to an annual meeting of a corporation includes the completion of the action otherwise required to be taken at an annual meeting in accordance with section 23 and subsection 2 of section 107.

(4) Subject to subsection 2 of section 107, the report of the auditor to the shareholders shall be read at the annual meeting and shall be open to inspection at the meeting by any shareholder.

50.—(1) Clause k of subsection 1 of section 173 of the said Act, as enacted by the Statutes of Ontario 1971, chapter 26, section 26, is amended by inserting at the commencement thereof "in the case of a corporation that is offering its securities to the public".

(2) Clause l of subsection 1 of the said section 173, as enacted by the Statutes of Ontario, 1971, chapter 26, section 26, is amended by inserting at the commencement thereof "in the case of a corporation that is offering its securities to the public".
(3) Subsection 2 of the said section 173 is amended by striking out “g and h” in the second line and inserting in lieu thereof “g, k, l and m”.

51. Section 178 of the said Act is amended by renumbering subsection 4 as subsection 5 and by adding thereto the following subsection:

Exceptions

(4) Paragraphs 18 to 21 of subsection 3 do not apply to a corporation that is not offering its securities to the public.

52. Section 182 of the said Act is amended by adding thereto the following subsection:

Right of auditor to be heard

(6) The auditor of a corporation shall be entitled to attend and be heard at meetings of the board of directors of the corporation on matters relating to his duties as auditor.

53. Section 183 of the said Act is amended by inserting after “report” in the fifth line “unless the corporation is exempt under section 167”.

54. Subsection 3 of section 184 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 29, is repealed and the following substituted therefor:

Financial statement on demand

(3) A shareholder of a corporation that is not offering its securities to the public is entitled to be furnished by the corporation on demand with a copy of the financial statement and, unless the corporation is exempt under section 167, a copy of the auditor’s report.

55. Section 198 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 36, is repealed and the following substituted therefor:

Articles of continuation

198.—(1) A body corporate incorporated under the laws of any jurisdiction other than Ontario may, if it appears to the Minister to be thereunto authorized by the laws of the jurisdiction in which it was incorporated, deliver to the Minister articles of continuation in duplicate continuing it as if it had been incorporated under this Act.
(2) The articles of continuation shall set out,

(a) the name of the corporation to be continued;

(b) the date on which the corporation was incorporated and the jurisdiction in which it was incorporated;

(c) the objects for which the corporation is to be continued;

(d) the place in Ontario where the head office of the corporation is to be located, giving the municipality and the county or district or, where the head office is to be located in territory without municipal organization, the geographic township and district and the address giving the street and number, if any;

(e) the authorized capital, the classes of shares, if any, into which it is to be divided, the number of shares of each class, and the par value of each share, or, where the shares are to be without par value, the consideration, if any, exceeding which each share may not be issued or the aggregate consideration, if any, exceeding which all the shares of each class may not be issued;

(f) where there are to be special shares, the designations, preferences, rights, conditions, restrictions, limitations or prohibitions attaching to them or each class of them;

(g) the restrictions, if any, to be placed on the transfer of its shares or any class thereof;

(h) the number of directors of the corporation and the names in full and the residence address, giving the street and number, if any, of each person who is a director of the corporation;

(i) that the continuation has been properly authorized under the laws of the jurisdiction in which the corporation was incorporated;

(j) the date on which the continuation was authorized; and
(k) any other matter required by this Act or the regulations to be set out in the articles,

and the articles may set out any provision that is authorized by this Act to be set out in articles or that could be the subject of a by-law of the corporation and shall be executed under the seal of the corporation and signed by two officers, or by one officer and one director of the corporation and verified by affidavit of one of the officers or directors signing the articles of continuation and shall be accompanied by such other material as required by the Minister.

(3) The articles of continuation shall make any amendments to the original or restated articles of incorporation, articles of amalgamation, letters patent, supplementary letters patent, a special Act and any other instrument by which the body corporate was incorporated and any amendments thereto necessary to make the articles conform to the laws of Ontario and may make such other amendments as are permitted under this Act as if the body corporate were incorporated under the laws of Ontario.

(4) If the articles of continuation conform to law the Minister may, in his discretion, when all prescribed fees have been paid,

(a) endorse on each duplicate of the articles the word "Filed" and the day, month and year of the filing thereof;

(b) file one of the duplicates in his office; and

(c) issue to the corporation or its agent a certificate of continuation to which he shall affix the other duplicate.

(5) The Minister may issue the certificate of continuation on such terms and subject to such limitations and conditions and containing such provisions as appear to the Minister to be fit and proper.

(6) Upon the date set forth in a certificate of continuation issued under subsection 4, this Act applies to the body corporate to the same extent as if it had been incorporated under this Act.

56. Subsection 2 of section 199 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 37, is repealed and the following substituted therefor:
(2) This Act ceases to apply to the corporation on and after the date on which the corporation is continued under the laws of the other jurisdiction and the corporation shall file with the Minister a copy of the instrument of continuation certified by the proper officer of the other jurisdiction authorized to certify such documents.

57. (1) Subsection 1 of section 248 of the said Act is amended by inserting after "Minister" in the third line "within one year after the authorization".

(2) Clause f of subsection 1 of the said section 248 is amended by inserting after "place" in the third line "where it has its principal place of business in Ontario or, if it does not have a place of business in Ontario".

58. (1) Section 251 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 40, is further amended by adding thereto the following subsection:

(2a) Where the Minister is notified by the Commission that a corporation has not complied with the provisions of section 134 of The Securities Act, the Minister may give notice by registered mail to the corporation or by publication once in The Ontario Gazette that an order dissolving the corporation will be issued unless the corporation complies with the provisions of section 134 of The Securities Act within one year after the giving of the notice.

(2) Subsection 3 of the said section 251 is amended by inserting after "2" in the second line "or 2a".

59. Section 255 of the said Act, as amended by the Statutes of Ontario, 1971, chapter 26, section 42, is further amended by adding thereto the following subsection:

(1a) Where notices or other documents required by this Act, the articles or by-laws to be given or sent by a corporation to a shareholder have been mailed to the shareholder at his latest address as shown on the records of the corporation and where, on three consecutive occasions, notices or other documents have been returned by the Post Office to the corporation, the corporation is not required to mail to the shareholder any further notices or other documents until such time as the corporation receives written notice from the shareholder requesting that notices and other documents be sent to the shareholder at a specified address.
60. Subsection 1 of section 272 of the said Act, as re-enacted by the Statutes of Ontario, 1971, chapter 26, section 45, is amended by inserting at the commencement thereof "Until the 1st day of January, 1975" and by inserting after "force" in the fourth line "but which contravene this Act".

61.—(1) This Act, except subsection 2 of section 1, section 30, subsections 1 and 3 of section 33, and sections 34 and 35, comes into force on the day it receives Royal Assent.

(2) Subsection 2 of section 1, section 30, subsections 1 and 3 of section 33 and sections 34 and 35 come into force on the 1st day of October, 1973.

62. This Act may be cited as The Business Corporations Amendment Act, 1972.