



Province of Alberta

# **COOPERATIVES ACT**

Statutes of Alberta, 2001  
Chapter C-28.1

Current as of July 1, 2015

Office Consolidation

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### Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

### Regulations

The following is a list of the regulations made under the *Cooperatives Act* that are filed as Alberta Regulations under the Regulations Act

	<b>Alta. Reg.</b>	<i>Amendments</i>
<b>Cooperatives Act</b>		
Cooperatives.....	55/2002 .....	242/2002, 44/2005, 198/2006, 35/2007, 68/2008, 107/2009, 329/2009, 134/2013, 152/2015

# **COOPERATIVES ACT**

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

**Interpretation****1(1)** In this Act,

- (a) “affairs” means the relationship between a cooperative and its affiliates and their members, shareholders, directors and officers, but does not include the business carried on by those corporations;
- (b) “affiliate” means an affiliated corporation within the meaning of subsection (2);
- (c) “articles” means the articles of incorporation of a cooperative and amendments to them;
- (d) “associate”, in respect of a relationship with a person, means
  - (i) a corporation of which the person beneficially owns or controls, directly or indirectly, shares or securities currently convertible into shares carrying more than 10% of the voting rights under all circumstances or by reason of the occurrence of an event that has occurred and is continuing, or a currently exercisable option or right to purchase such shares or such convertible securities;
  - (ii) a cooperative entity of which the person beneficially owns more than 10% of the voting rights in respect of which votes can be cast at a meeting of the cooperative entity;
  - (iii) an unincorporated entity of which the person beneficially owns more than 10% of the ownership interests;
  - (iv) a partner of the person acting on behalf of the partnership in which they are partners;
  - (v) a trust or an estate or succession in which the person has a substantial beneficial interest or serves as a trustee, administrator, executor or liquidator of a succession or in a similar capacity;
  - (vi) a spouse or adult interdependent partner or child of the person;
  - (vii) any of the following who has the same residence as the person:
    - (A) a relative of the person;

- (B) the spouse or adult interdependent partner of a relative of the person;
- (C) a relative of the person's spouse or adult interdependent partner;
- (D) the spouse or adult interdependent partner of a relative referred to in paragraph (C);
- (e) "auditor" includes a firm of accountants;
- (f) "auxiliary member" means a person who is not, or who is no longer, a full member of a cooperative but has an association with it, as determined by the articles or the bylaws;
- (g) "bearer", in respect of a security, means the person who is in possession of a security that is payable to bearer or endorsed in blank;
- (h) "beneficial ownership" includes ownership through a trustee, legal representative, agent or other intermediary;
- (i) "Commission" means the Alberta Securities Commission;
- (j) "cooperative" means a cooperative incorporated under this Act;
- (k) "cooperative basis" has the meaning given to it by section 2;
- (l) "cooperative entity" means a corporation that, by the law under which it is organized and operated, must be organized and operated on, and is organized and operated on, a cooperative basis;
- (m) "corporation" means a corporate entity, however incorporated;
- (n) "Court" means the Court of Queen's Bench;
- (o) "debt obligation" means a bond, debenture, note or other evidence of indebtedness or guarantee of an entity, whether secured or unsecured;
- (p) "delegate" means an individual who is appointed or elected to represent a member at a meeting of members;
- (q) "director" means a member of the board of directors of a cooperative by whatever name the director or board is called;

- (r) “Director” means the Director of Cooperatives appointed under this Act;
- (s) “distributing cooperative” means a cooperative any of whose issued securities, other than membership shares, investment shares issued to members or member loans, are or were part of a distribution to the public and remain outstanding and are held by more than one person;
- (t) “entity” means a corporation, a trust, a partnership, a fund or an unincorporated organization;
- (u) “Executive Director” means the Executive Director of the Alberta Securities Commission as defined in the *Securities Act*;
- (v) “extra-provincial cooperative” means a cooperative entity that is incorporated as a cooperative otherwise than by or under an enactment of Alberta;
- (w) “federation” means a cooperative whose membership is composed wholly or substantially of other cooperatives;
- (x) “firm of accountants” means a professional accounting firm engaged in a professional accounting practice or public accounting practice registered under the *Chartered Professional Accountants Act*, or a corporation that is incorporated by or under an Act of the legislature of a province other than Alberta and is engaged in a professional accounting practice or a public accounting practice;
- (y) “holder” means
  - (i) in respect of a security certificate, the person in possession of the certificate issued or endorsed to the person or to bearer or in blank;
  - (ii) in respect of the ownership of a membership share, the person referred to in section 102(2), and
  - (iii) in respect of the ownership of an investment share, the person referred to in section 108(2);
- (z) “individual” means a natural person;
- (aa) “investment share” means a share in the capital of a cooperative that is not a membership share;
- (bb) “investment shareholder” means the person referred to in section 108(2);

- (cc) “issuer”, in respect of a security, means the entity that issues the security;
- (dd) “meeting of the cooperative” means
- (i) a meeting of members or of a class of member, or
  - (ii) a meeting of holders of investment shares or of holders of any class or series of investment shares of a cooperative,
- as the context requires;
- (ee) “member” means a member of a cooperative other than an auxiliary member;
- (ff) “member loan” means a loan required by the cooperative from its members as a condition of membership or to continue membership in the cooperative and, if a cooperative is incorporated without membership shares, a member loan is deemed to be a membership share issued at par value for the purpose of Parts 5, 12, 14 and 16 and section 144(2);
- (gg) “membership share” means a share described in section 102;
- (hh) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (ii) “officer” includes the chair of the board of directors, a vice-chair of the board of directors, the president, a vice-president, the secretary, an assistant secretary, the treasurer, an assistant treasurer and the general manager of a cooperative and any other individual designated as an officer of the cooperative by bylaw or by resolution of the directors, or any other individual who performs functions for the cooperative similar to those normally performed by an individual occupying any such office;
- (jj) “ordinary resolution” means a resolution that is submitted to a meeting of the cooperative or a meeting of the directors and passed at the meeting by a majority of the votes cast;
- (kk) “patronage return” means an amount that the cooperative allocates among and credits or pays to its members or to its member and non-member patrons based on the business done by them with or through the cooperative, and includes patronage dividends or bonus payments

- issued to members who hold investment shares issued by a cooperative referred to in Part 18, Division 4;
- (ll) “person” means an individual or an entity and includes a legal representative;
  - (mm) “prescribed” means prescribed by regulation;
  - (nn) “proxy” means a completed and executed form of proxy by means of which an investment shareholder appoints a proxyholder to attend and act on the investment shareholder’s behalf at a meeting of the investment shareholders;
  - (oo) “record date” means the date fixed or determined as the record date by the regulations;
  - (pp) “redeemable”, with respect to a share, means
    - (i) that the cooperative may acquire or redeem the share on the demand of the cooperative, or
    - (ii) that the cooperative is required by its articles to acquire or redeem the share at a specified time or on the demand of the holder;
  - (rr) “security” includes an investment share, a debt obligation of a cooperative and a certificate evidencing such a share or debt obligation and, for the purposes of Part 16, includes a membership share;
  - (ss) “security interest” means an interest in or charge on property of a cooperative to secure payment of a debt or the performance of an obligation of the cooperative;
  - (tt) “send” includes deliver;
  - (uu) “series”, in respect of investment shares, means a division of a class of those shares;
  - (vv) “share” means a membership share or an investment share;
  - (ww) “special resolution” means a resolution that is submitted to a meeting of the cooperative or a meeting of the directors and passed at the meeting by at least 2/3 of the votes cast;
  - (ww.1) “spouse” means the spouse of a married person but does not include a spouse who is living separate and apart from the person if the person and spouse have separated pursuant to a written separation agreement or if their

support obligations and family property have been dealt with by a court order;

- (xx) “unanimous agreement” means a written agreement to which all the members and investment shareholders, if any, of a cooperative are or are deemed to be parties, whether or not any other person is also a party, that provides for any of the matters listed in Part 4, Division 10.

**(2)** For the purposes of this Act,

- (a) a corporation is affiliated with another corporation if one of them is a subsidiary of the other, if both are subsidiaries of the same corporation or if each of them is controlled by the same person, and
- (b) if 2 corporations are affiliated with the same corporation at the same time, they are deemed to be affiliated with each other.

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

**(4)** For the purposes of this Act, a corporation is a subsidiary of another corporation if

- (a) it is controlled by
- (i) that other corporation,
- (ii) that other corporation and one or more corporations, each of which is controlled by that other corporation, or
- (iii) 2 or more corporations, each of which is controlled by that other corporation,

or

- (b) it is a subsidiary of a corporation that is that other corporation’s subsidiary.

**(5)** For the purposes of this Act, securities of a cooperative

- (a) issued on a conversion of other securities, or
- (b) issued in exchange for other securities

are deemed to be securities that are part of a distribution to the public if those other securities were part of a distribution to the public.

**(6)** Subject to subsection (7), for the purposes of this Act, a security of a corporation

- (a) is part of a distribution to the public if, in respect of the security, there has been a filing of a prospectus, statement of material facts, registration statement, securities exchange take-over bid circular or similar document under the laws of Canada, a province or territory of Canada or a jurisdiction outside Canada, or
- (b) is deemed to be part of a distribution to the public if the security has been issued and a filing referred to in clause (a) would be required if the security were being issued currently.

**(7)** On the application of a cooperative, the Commission may determine that a security of the cooperative is not or was not part of a distribution to the public if it is satisfied that its determination would not prejudice any holder of a security certificate of the cooperative.

**(8)** This Act applies to a cooperative incorporated or continued under this Act.

**(9)** No provisions of any Act specified in the regulations apply to a cooperative incorporated or continued under this Act.

2001 cC-28.1 s1;2002 cA-4.5 s28;2014 c8 s17;  
2014 cC-10.2 s171

### **Cooperative principles**

**2(1)** For the purposes of this Act, a cooperative is organized and operated, and carries on business, on a cooperative basis if

- (a) membership is available to persons who can use the services of the cooperative and who are willing and able to accept the responsibilities of and abide by the terms of membership,
- (b) each member or delegate has only one vote,
- (c) no member or delegate may vote by proxy,
- (d) interest on any member loan is limited to a maximum rate fixed in the articles,
- (e) dividends on any membership share are limited to the maximum rate fixed in the articles,

- (f) to the extent feasible, members provide the capital required by the cooperative,
  - (g) surplus funds arising from the cooperative's operations are used
    - (i) to develop its business,
    - (ii) to provide or improve common services to members,
    - (iii) to provide for reserves or the payment of interest on member loans or dividends on shares,
    - (iv) for community welfare or the propagation of cooperative enterprises, or
    - (v) as a distribution among its members as a patronage return,
- and
- (h) it provides education on the principles of cooperative enterprises.

(2) Subsection (1)(a) is subject to any restrictions set out in the articles so long as the restrictions are consistent with applicable laws with respect to human rights.

## **Part 1 Incorporating a Cooperative**

### **Division 1 Application to Incorporate**

#### **Who may incorporate a cooperative**

- 3(1)** Three or more persons who intend to be members of the cooperative may apply to the Director to become incorporated as a cooperative.
- (2)** One or more cooperatives, with or without other persons who intend to be members of the cooperative, may apply to the Director to become incorporated as a cooperative.
- (3)** A person may not apply to incorporate a cooperative if
- (a) that person is an individual under 18 years of age,
  - (b) the person
    - (i) has the status of bankrupt,

- (ii) is a represented adult under the *Adult Guardianship and Trusteeship Act*,
- (iii) is a formal patient under the *Mental Health Act*, or
- (iv) is the subject of or detained by a warrant of committal or assessment order, or is detained otherwise, under the *Criminal Code (Canada)*.

2001 cC-28.1 c3;2008 cA-4.2 s125

#### How to apply for incorporation

**4** To make an application for incorporation as a cooperative, the applicant must send to the Director

- (a) articles of incorporation;
- (b) a notice of the registered office in the detail required by the Director;
- (c) a notice of the names and addresses of directors in the detail required by the Director;
- (d) a declaration signed by the one or more incorporators that after incorporation the cooperative will be organized and operated, and will carry on business, on a cooperative basis;
- (e) information about the applicants that may be required by regulations made under the *Agricultural and Recreational Land Ownership Act* or section 35 of the *Citizenship Act (Canada)* in the form and manner prescribed by those regulations;
- (f) if applicable, a declaration signed by the one or more incorporators that after incorporation the cooperative will comply with the applicable division of Part 18;
- (g) any other information that the Director may require to make a decision about whether to incorporate a cooperative;
- (h) the fee prescribed by the regulations, if any;
- (i) anything else required by the regulations.

#### Contents of articles of incorporation

**5(1)** Articles of incorporation must be signed by the incorporators and must contain the following particulars:

- (a) the name of the cooperative;

- (b) where in Alberta the cooperative's proposed registered office will be located;
- (c) the name and residential address of each of the incorporators;
- (d) the number of directors or the minimum and maximum numbers of directors;
- (e) any restriction on the business that the cooperative may carry on;
- (f) any restriction on the class of membership in the cooperative;
- (g) a statement that the cooperative will be organized and operated, and will carry on business, on a cooperative basis;
- (h) whether the cooperative is to be incorporated with or without membership share capital;
- (i) if there is to be membership share capital, whether the number of membership shares to be issued is unlimited or limited and, if limited the maximum number of membership shares that may be issued and, if the membership shares are to have a par value, their par value and, if they are not to have par value, whether the membership shares are to be issued, purchased, redeemed or otherwise acquired at a fixed price or at a price determined in accordance with a formula and, if a formula is used, the particulars of the formula;
- (j) any provision for a maximum rate of return that may be paid on member loans;
- (k) any provision for a maximum dividend that may be paid on membership shares;
- (l) whether there is to be investment share capital and, if so, the rights and restrictions attaching to investment shares, or each class of them;
- (m) the price or formula to be used for the issuance of investment shares and the redemption of redeemable investment shares;
- (n) if there is to be investment share capital, procedures for member authorization of the issuance of investment shares;

- (o) if there are to be constraints on investment shares, any constraints respecting
  - (i) the issue or transfer of investment shares of any class or series to persons who are not resident in Canada,
  - (ii) the issue or transfer of investment shares of any class or series to enable the cooperative or any of its affiliates or associates to qualify under any prescribed law of Canada or a province or territory
    - (A) to obtain a licence to carry on a business,
    - (B) to become a publisher of a Canadian newspaper or periodical, or
    - (C) to acquire investment shares of a financial intermediary as defined in the regulations,

or

- (iii) the issue, transfer or ownership of investment shares of any class or series to assist the cooperative or any of its affiliates or associates to qualify under any prescribed law of Canada or a province or territory to obtain licences, permits, grants, payments or other benefits by reason of attaining or maintaining a specified level of Canadian ownership or control;
- (p) any provisions for the distribution of the property of the cooperative on its dissolution;
- (q) any provision by which the members, other than by means of a unanimous agreement, may restrict, in whole or in part, the powers of the directors to manage the business of the cooperative;
- (r) any provisions for the transfer of a member interest as defined in section 48(1);
- (s) anything else that is required by the regulations.

**(2)** The articles may include any provisions that could be included in the bylaws of the cooperative and if they do, any reference in this Act to the bylaws of the cooperative is also a reference to those provisions of the articles.

**(3)** The articles or a unanimous agreement may, in order to effect an action, require a greater number of votes of directors, members or investment shareholders than is required by this Act to effect the action.

**Capital structure**

**6** A cooperative may be incorporated with or without membership shares and with or without the power to issue investment shares.

**Conditions for incorporation and Director's decision**

**7(1)** No cooperative is to be incorporated under this Act unless

- (a) the cooperative will carry on its undertaking, in whole or in part, in Alberta, and
- (b) the cooperative has its registered office in Alberta.

**(2)** An association that may be incorporated under the *Rural Utilities Act* is not to be incorporated as a cooperative under this Act, and this Act does not apply to that association.

**(3)** Subject to subsections (1) and (2), the Director must issue an incorporation certificate for a cooperative if the Director is satisfied that

- (a) the articles comply with this Act and the regulations;
- (b) the cooperative will be organized and operated, and will carry on business, on a cooperative basis;
- (c) if applicable, the cooperative will comply with Part 18.

**(4)** For the purposes of deciding whether to issue an incorporation certificate, the Director may rely on the articles and the declarations of the incorporators.

**(5)** A cooperative comes into existence and the incorporators become members of the cooperative on the day set out in its incorporation certificate.

**Division 2****Bylaws and Amendments to Bylaws****Adoption of bylaws**

**8** The directors must hold a meeting of members within 180 days of the issuance of the certificate of incorporation to make bylaws for the cooperative.

**Contents of bylaws**

**9(1)** The Minister may make regulations governing the subject-matter that must be included in the bylaws of a cooperative.

**(2)** The bylaws of a cooperative may provide for

- (a) the representation of members by delegates and, if so,
  - (i) the designation of the classes of members, if any, who may be represented by delegates,
  - (ii) the procedure for altering classes of members, if applicable, and
  - (iii) the powers, duties, selection, qualifications, term of office, voting rights and procedures for the removal of delegates;
- (b) the division of members into classes and, if so,
  - (i) the qualifications for membership in each class,
  - (ii) the conditions precedent to membership in each class,
  - (iii) the method, time and manner of withdrawing from a class or transferring membership from one class to another and any applicable conditions on a transfer, and
  - (iv) the conditions on which membership in a class ends;
- (c) anything that this Act or the regulations provide for the making of a bylaw;
- (d) the referral of disputes between a member and the cooperative to a process of dispute resolution, including mediation, or arbitration under the *Arbitration Act*, or both, and for that purpose may adopt, with or without modifications, model clauses prescribed by the regulations;
- (e) any other matter that the members consider necessary or desirable.

#### **Making or amending bylaws**

**10(1)** Unless the bylaws provide otherwise, the members may make, amend or repeal any bylaw by ordinary resolution.

**(2)** If the bylaws so provide, the directors may, by ordinary resolution, make a bylaw or amend a bylaw of the cooperative on the terms and conditions set out in the bylaw, but the bylaw or amendment may not be contrary to a bylaw made by the members.

**(3)** The directors must present a bylaw or an amendment to a bylaw made by them to the members at the next meeting of members, and the members may confirm it or amend it.

- (4) If a bylaw or an amendment to a bylaw made by the directors
- (a) is not submitted to the members, or
  - (b) is not confirmed under subsection (3), with or without amendments,

the bylaw or amendment is repealed as of the date of the meeting of members at which it was not confirmed.

#### **Proposal for bylaw**

**11** A member may make a proposal in accordance with the regulations to make, amend or repeal a bylaw.

#### **Effective date of bylaw**

**12** A bylaw or an amendment to a bylaw comes into force on the day on which the bylaw or amendment is made, or on any later date specified in the bylaw or amendment or in the resolution adopting either of them.

#### **Binding effect of articles and bylaws**

**13(1)** The articles and bylaws of a cooperative bind it and its members to the same extent as if the articles and bylaws

- (a) had been signed by the cooperative and every member, and
- (b) contained undertakings by all members and their successors, assigns and legal representatives to observe all the provisions of the articles and bylaws.

(2) A cooperative must file a bylaw or an amendment to a bylaw with the Director within 60 days of the date the bylaw or amendment comes into force.

#### **Copies of articles, bylaws and unanimous agreements**

**14(1)** Each member and investment shareholder is entitled to receive free of charge from the cooperative, on request, not more than once in each calendar year, one copy of the cooperative's articles, bylaws and any unanimous agreement, and one copy of any amendments to them.

(2) The cooperative must, on payment of a reasonable fee, provide each creditor and, where the cooperative is a distributing cooperative, any other person, with a copy of the cooperative's articles, bylaws and any unanimous agreement and any amendments to them.

**Pre-incorporation contracts**

**15(1)** This section applies unless the person referred to in subsection (2) and all parties to the contract referred to in that subsection

- (a) believe that the cooperative exists and is incorporated under, or
- (b) intend that the cooperative is to be incorporated under

the laws of a jurisdiction other than Alberta.

**(2)** Except as provided in this section, if a person enters into a written contract in the name of or on behalf of a cooperative before it comes into existence,

- (a) that person is deemed to warrant to the other party to the contract
  - (i) that the cooperative will come into existence within a reasonable time, and
  - (ii) that the contract will be adopted within a reasonable time after the cooperative comes into existence,
- (b) that person is liable to the other party to the contract for damages for a breach of that warranty, and
- (c) the measure of damages for that breach of warranty is to be the same as if the cooperative existed when the contract was made, the person who made the contract on behalf of the cooperative had no authority to do so and the cooperative refused to ratify the contract.

**(3)** A cooperative may, within a reasonable time after it comes into existence, by any act or conduct signifying its intention to be bound by it, adopt a written contract made in its name or on its behalf before it came into existence, and on the adoption

- (a) the cooperative is bound by the contract and is entitled to the benefits of the contract as if the cooperative had been in existence at the date of the contract and had been a party to it, and
- (b) a person who purported to act in the name of or on behalf of the cooperative ceases, except as provided in subsection (5), to be liable under subsection (2) in respect of the contract.

**(4)** If a person enters into a contract in the name of or on behalf of a cooperative before it comes into existence and the contract is not

adopted by the cooperative within a reasonable time after it comes into existence, that person or the other party to the contract may apply to the Court for an order directing the cooperative to restore to the applicant any benefit received by the cooperative under the contract, in the form directed by the Court.

(5) Except as provided in subsection (6), whether or not a written contract made before the coming into existence of a cooperative is adopted by the cooperative, a party to the contract may apply to the Court for an order

- (a) fixing obligations under the contract as joint or joint and individual, or
- (b) apportioning liability between the cooperative and a person who purported to act in the name of or on behalf of the cooperative,

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

(6) A person who enters into a written contract in the name of or on behalf of a cooperative before it comes into existence is not in any event liable for damages under subsection (2) if the contract expressly provides that the person is not to be so liable.

### **Division 3 Cooperative Names and Control over Names**

#### **Names of cooperatives**

**16(1)** A cooperative

- (a) must have the word “cooperative”, “co-operative”, “coop”, “co-op”, “coopérative”, “united” or “pool”, or another grammatical form of any of those words, as part of its name, and
- (b) may use and be legally designated by any of those words or forms.

(2) Subject to section 19, the name of a cooperative may be in an English form or a French form or in a combined English and French form, and the cooperative may use and be legally designated by any of those forms.

(3) A cooperative must set out its name in legible characters in all contracts, invoices, negotiable instruments and orders for things or services made by or on behalf of the cooperative and in all documents filed with the Director.

(4) The name of a cooperative must comply with this Act and the regulations.

#### **Use of other names**

**17** Subject to sections 16 and 19, a cooperative may carry on business or identify itself by a name in addition to the name set out in its articles.

**18** Repealed 2011 c13 s2.

#### **Prohibited names**

**19** A cooperative may not be incorporated with, have, carry on business under or identify itself by a name that is

- (a) prohibited, or deceptively misdescriptive, or otherwise contrary to the regulations, or
- (b) reserved under this or any other enactment for another cooperative or corporation or prospective cooperative or corporation.

#### **Change of name**

**20(1)** The Director may direct a cooperative to change its name if the cooperative's name contravenes this Act or the regulations when the cooperative comes into existence or is continued.

(2) If a cooperative does not comply with a Director's direction to change its name within 60 days after it is served with a written copy of the direction, the Director may issue a certificate of amendment revoking the name of the cooperative and assigning a new name to it.

(3) The articles of a cooperative are deemed to be amended on the date shown in the certificate of amendment.

(4) On issuing a certificate of amendment, the Director must give notice of the change of name without delay in a publication generally available to the public.

(5) If a cooperative acquires a name as a result of a person undertaking to dissolve or to change names and the undertaking is not honoured, the Director may direct the cooperative to change its name in accordance with section 264(1)(a) unless the undertaking is honoured within the period specified in subsection (2).

**Improper use of protected names**

**21(1)** Except as provided in subsection (2), a person is guilty of an offence who uses or authorizes the use of the word “cooperative”, “co-operative”, “coop”, “co-op” or “coopérative” or an abbreviation of any of those words or any other grammatical form of any of those words as part of its name, or in any manner in connection with the conduct of its business.

**(2)** Subsection (1) does not apply to

- (a) a cooperative incorporated or continued under this Act or any other enactment,
- (b) an extra-provincial cooperative, or
- (c) a cooperative under the *Canada Cooperatives Act* (Canada).

## **Division 4 Legal Capacity and Powers of Cooperatives**

**Legal capacity**

**22(1)** Subject to this Act, a cooperative

- (a) has the capacity and the rights, powers and privileges of a natural person, and
- (b) may carry on business in accordance with this Act and its articles and bylaws.

**(2)** Subject to this Act, a cooperative has the capacity to carry on its business, conduct its affairs and exercise its powers in any jurisdiction outside Alberta to the extent and in the manner that the laws of that other jurisdiction permit.

**Restriction on powers**

**23(1)** It is not necessary for a cooperative to make a bylaw in order to confer any particular power on a cooperative or its directors.

**(2)** No cooperative and no subsidiary of a cooperative may carry on any business contrary to a restriction set out in the articles of the cooperative.

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

**Knowledge of articles and bylaws**

**24(1)** A member of a cooperative is deemed to have knowledge of the contents of the articles and bylaws of the cooperative.

**(2)** Subject to subsection (1), no person is deemed to have knowledge of the contents of a document by reason only that it is filed with the Director or is available for inspection at the cooperative.

**Reliance on cooperative's records**

**25(1)** No cooperative and no guarantor of an obligation of a cooperative may assert against a person dealing with the cooperative or against a person who acquired rights from the cooperative that

- (a) the cooperative's articles, bylaws or any unanimous agreement have not been complied with;
- (b) the persons named in the most recent notice of directors filed with the Director are not the directors;
- (c) the place named in the most recent notice of registered office filed with the Director is not the registered office;
- (d) a person held out as a director, an officer or an agent of the cooperative has not been duly appointed or has no authority to exercise the powers and perform the duties that are customary in the business of the cooperative or usual for a director, officer or agent;
- (e) a document issued by a director, officer or agent of the cooperative with actual or usual authority to issue it is not valid or genuine;
- (f) any financial assistance referred to in section 140 was not disclosed in accordance with that section;
- (g) a sale, lease or exchange of all or substantially all of the property of the cooperative was not authorized.

**(2)** Subsection (1) does not apply in respect of a person who has, or ought to have, knowledge to that effect by virtue of that person's relationship to the cooperative.

**No personal liability of members and shareholders**

**26** The members and holders of shares of a cooperative are not liable, by reason only of being members or holders of shares, for any liability, act or default of the cooperative except as provided in this Act.

## Division 5 Registered Office, Records and Corporate Seal

### Registered office

**27(1)** A cooperative must maintain a registered office in the place set out in its articles.

**(2)** A notice of registered office in the form set by the Director must be sent to the Director together with any articles that designate or change the cooperative's registered office.

**(3)** The directors may change the address of the cooperative's registered office within the place specified in the articles.

**(4)** A cooperative must send to the Director, within 15 days after any change of address of its registered office, a notice in a form set by the Director.

### Record keeping

**28(1)** A cooperative must prepare and maintain the following records at its registered office or at any other place in Alberta designated by the directors:

- (a) the cooperative's articles and bylaws, including any amendments, and a copy of any unanimous agreement;
- (b) the minutes of meetings of the members and investment shareholders;
- (c) copies of all notices of who is a director and notices of change of directors;
- (d) a list of its members in a members register, setting out their names and addresses, the number of any membership shares owned and the amount of any member loans;
- (e) a list of its investment shareholders, setting out their names and addresses and the number of investment shares owned;
- (f) a register of its directors, setting out the names and addresses of the individuals who are or who have been directors and the dates on which they became or ceased to be directors;
- (g) if the cooperative issues securities in registered form, a securities register that complies with section 167.

- (2) In addition to the records under subsection (1), a cooperative must prepare and maintain adequate
- (a) accounting records,
  - (b) records containing minutes of meetings and resolutions of directors and any committee of directors, and
  - (c) records sufficient for the purpose of calculating patronage returns that show for each member particulars of the transactions between the cooperative and the member.
- (3) A cooperative may keep all or any of the records mentioned in subsections (1)(a), (b), (c) and (f) and (2)(a) and (b) at a place other than its registered office if the records are available for inspection during regular office hours at the registered office or another office in Alberta by means of electronic technology, in which case the cooperative must provide a means by which the records can be accessed.
- (4) Subject to any other enactment that provides for a longer retention period, a cooperative must retain its accounting records for a period of 6 years after the end of the financial year to which they relate.
- (5) For the purposes of subsection (1)(b) and subsections (2) to (4), “records” includes similar records required by law to be maintained by a cooperative before it was continued under this Act.
- (6) Unless the bylaws provide otherwise, the records described in this section, other than those described in subsection (2)(c), must be open for inspection by the directors at any reasonable time.
- (7) Members, creditors and investment shareholders of the cooperative, their legal representatives and the Director may examine the records referred to in subsection (1)(a), (b), (c) and (f) during the cooperative’s usual business hours and may take extracts from the records, free of charge, or have copies of them made after payment of a reasonable fee.

#### **Form of records**

- 29(1)** Any register or record required by this Act must be prepared and maintained in a form that is capable of reproducing any required information in legible written form within a reasonable time.
- (2) A cooperative and its agents must take reasonable precautions respecting the registers and records required by this Act

- (a) to prevent their loss or destruction,

- (b) to prevent the falsification of entries in them, and
- (c) to facilitate the detection and correction of inaccuracies in them.

#### **Lists of members and shareholders**

**30(1)** Members and investment shareholders of a cooperative and their legal representatives and, when the cooperative is a distributing cooperative, any other person may, in accordance with and for the reasons specified in the bylaws, request that the cooperative provide them with a list of members or investment shareholders.

**(2)** A request for the list must be accompanied by

- (a) a reasonable fee set by the cooperative, if any;
- (b) the name and address of the applicant;
- (c) an undertaking that the list of members or investment shareholders obtained will not be used except as permitted in the bylaws.

**(3)** The cooperative must provide the list no later than 10 days after the cooperative receives a complete and valid request under this section.

**(3.1)** Where a list is provided under this section, it may be used by the person to whom it was provided for the following purposes:

- (a) to carry out, in relation to the affairs of the cooperative, efforts to influence the voting of members or investment shareholders of the cooperative;
- (b) to carry out activities to promote an offer to acquire shares of the cooperative;
- (c) to carry out any activity or matter, not referred to in clause (a) or (b), relating to the affairs of the cooperative.

**(4)** Unless the bylaws provide otherwise, a member or investment shareholder may advise the cooperative in writing that that person's name is not to be included in a list referred to in this section, in which case the cooperative must delete that name from the list and must mention on the list that the list is incomplete.

2001 cC-28.1 s30;2003 cP-6.5 s66

#### **Corporate seal**

**31(1)** A cooperative may, but need not, adopt a corporate seal and may change a corporate seal that is adopted.

(2) A document executed on behalf of a cooperative is not invalid merely because a corporate seal is not affixed to it.

## **Part 2 Membership in Cooperatives**

### **Division 1 Becoming a Member**

#### **Bylaws govern membership**

**32** Membership in a cooperative is governed by its bylaws unless this Act or the articles provide otherwise.

#### **Application for membership**

**33(1)** No person may become a member of a cooperative unless

- (a) the person applies for membership in accordance with the bylaws,
- (b) the application is approved by the directors, and
- (c) the person complies with the membership provisions of the bylaws.

(2) The directors may delegate any of the powers vested by subsection (1)(b) to one or more members or officers of the cooperative.

(3) Subject to the bylaws, 2 or more persons may hold a joint membership.

(4) Subject to the bylaws, where a membership is jointly held, the membership may be held as a joint tenancy or a tenancy in common, but where the members do not specify to the cooperative how the membership is to be held, the membership is deemed to be held as a joint tenancy and the joint members are jointly and severally liable for all obligations proposed or payable by members.

#### **Right to vote**

**34(1)** Subject to subsection (2) and the delegate system of voting provided for in the bylaws of a cooperative, a member has one vote on all matters to be decided by the members.

(2) If the bylaws provide that the voting rights of a member are vested in one or more delegates to be elected or appointed by the members, the delegates so elected or appointed may exercise all or any of those rights.

(3) When a cooperative has a bylaw providing for the appointment of delegates, a reference in this Act to a meeting of members refers, for that cooperative, to a meeting of delegates.

#### **Members under 18 years of age**

**35(1)** Subject to the bylaws, an individual under 18 years of age may be a member of a cooperative and may vote at meetings of the cooperative.

(2) The articles and bylaws of a cooperative and any unanimous agreement are binding on a member who is under 18 years of age.

### **Division 2 Cessation of Membership**

#### **Withdrawal of membership**

**36(1)** A member may voluntarily withdraw from membership in a cooperative on the terms and conditions provided in the bylaws by giving written notice to the cooperative.

(2) Unless the bylaws provide otherwise, the withdrawal is effective on the later of

- (a) the date stated in the notice, and
- (b) the date on which the cooperative receives the notice.

#### **Redemption of membership shares and loans**

**37(1)** Unless the bylaws provide otherwise, the cooperative must, no later than one year after the effective date of a notice of voluntary withdrawal of a member,

- (a) redeem all membership shares held by the withdrawing member at the redemption price determined in accordance with section 128, and
- (b) repay to the member all member loans, all other amounts held to the member's credit and all amounts outstanding on loans made to the cooperative by the member, if any, together with any interest accrued on those amounts up to the date of the payment.

(2) Notwithstanding subsection (1), the directors may delay the redemption and payment if

- (a) the directors believe, on reasonable grounds, that the redemption or payment would affect the financial well-being of the cooperative, or

- (b) the directors believe, on reasonable grounds, that
  - (i) the cooperative is, or after the redemption or payment would be, unable to pay its liabilities as they become due, or
  - (ii) the realizable value of the cooperative's assets after the redemption or payment would be less than the total of
    - (A) its liabilities, and
    - (B) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or liquidation, rateably with or in priority to the holders of the shares to be purchased or redeemed.
- (3) Unless the directors decide otherwise,
  - (a) the withdrawal of a member from the cooperative does not release the member from any debt or obligation to the cooperative or contract with the cooperative, and
  - (b) despite subsection (1), the cooperative need not repay to the member amounts outstanding on loans made to the cooperative that have a fixed maturity date, until that date arrives.

#### **Termination of membership by directors**

**38(1)** The directors may terminate the membership of a member by special resolution.

(2) Unless a shorter time period is specified in the bylaws, the cooperative must give to the member written notice of the termination and the reasons for it within 10 days after the date on which the special resolution terminating membership is made.

(3) The effective date of the termination is the later of

- (a) the date specified in the written notice, and
- (b) 30 days, or any shorter or longer period specified in the bylaws, after the member receives the notice.

#### **Right of appeal**

**39(1)** Within 30 days, or a longer or shorter period specified in the bylaws, after receiving notice of termination of membership, the

member may give to the cooperative written notice of intention to appeal the decision of the directors at the next meeting of members.

(2) If a member gives a written notice of intention to appeal, the member remains a member until the appeal is determined.

#### **Appeal to members**

**40(1)** If a member appeals a termination of membership, a vote of members must be taken at the next meeting of members as to whether the membership should be terminated as of the effective date referred to in section 38(3).

(2) The vote must be by ordinary resolution unless a greater number of votes is specified in the articles or a unanimous agreement.

#### **Redemption of member interests**

**41(1)** If a member's membership is terminated, a cooperative must, no later than one year after the effective date of the termination under section 38(3) or a vote of the members under section 40, whichever is later,

- (a) redeem all membership shares held by the member at the redemption price determined in accordance with section 128;
- (b) repay to the member all member loans, all other amounts held to the member's credit and all amounts outstanding on loans made to the cooperative by the member, if any, together with any interest accrued on those amounts up to the date of the payment.

(2) Notwithstanding subsection (1), the directors may delay the redemption and payment if

- (a) the directors believe, on reasonable grounds, that the redemption of shares or payment would affect the financial well-being of the cooperative, or
- (b) the directors believe, on reasonable grounds, that
  - (i) the cooperative is, or after the redemption or payment would be, unable to pay its liabilities as they become due, or
  - (ii) the realizable value of the cooperative's assets after the redemption or payment would be less than the total of

- (A) its liabilities, and
- (B) the amount that would be required to pay the holders of shares that have a right to be paid, on a redemption or liquidation, rateably with or in priority to the holders of the shares to be purchased or redeemed.

**Termination does not release debts**

**42** The termination of the membership of a member does not release the member from any debt or obligation to the cooperative or contract with the cooperative unless the directors determine otherwise.

**Reserve fund for missing members**

**43(1)** If

- (a) the address of a member whose membership has been terminated by the directors is unknown to the cooperative after all reasonable efforts have been made to ascertain it, and
- (b) at least 2 years has passed since the membership was terminated,

the cooperative must transfer all amounts owing to the former member to a reserve fund, but despite section 41(1)(b) those amounts are not to include any interest that would have accrued after the end of the 2 years.

**(2)** No interest is payable in respect of the amounts owing after 2 years from the date the membership was terminated.

**(3)** If any amounts are transferred to the reserve fund, the cooperative must pay those amounts to any person who, within 10 years after the transfer, shows evidence of entitlement satisfactory to the cooperative.

**(4)** If no person appears to show the evidence referred to in subsection (3) within the 10 years, the amounts become the property of the cooperative and cease to be owned by any other person.

**Limitation on bylaw**

**44** No bylaw governing the withdrawal of a member from membership or the termination of the membership of a member may authorize a redemption of shares or member loans if

- (a) the cooperative is, or after redeeming the member's shares and repaying loans and other money held to the member's credit would be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the cooperative's assets after the redemption or payment would be less than the total 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 liquidation, rateably with or in priority to the holders of the shares to be purchased or redeemed.

#### **Termination of inactive membership**

**45(1)** A cooperative may, by written notice to a member, terminate the membership if the member

- (a) is a corporation and winding-up proceedings have commenced with respect to that corporation, or
- (b) has failed, for at least 2 consecutive years, to transact any business with the cooperative.

**(2)** Sections 41 to 44 apply to a termination under this section.

#### **Non-profit housing cooperatives**

**46** If the membership of a person in a non-profit housing cooperative is terminated, any right of the person to possession or occupancy of residential premises acquired by virtue of membership in the cooperative is subject to Part 18, Division 1.

### **Division 3 Readmission and Transfer of Memberships**

#### **Readmission to membership**

**47(1)** Subject to the bylaws, a person whose membership has been terminated by the directors may be readmitted to membership by the directors.

**(2)** A person whose membership has been terminated by the members may be readmitted to membership only by special resolution of the members.

**(3)** The bylaws may specify

- (a) how long this section applies with respect to former members;
- (b) the conditions to be met by a former member before a readmission may be considered;
- (c) when a readmission is to be considered to be an application for membership instead of a readmission to membership.

**Member interest**

**48(1)** In this section, “member interest” means a membership, membership shares, member loans or investment shares designated pursuant to section 427(a).

**(2)** A transfer of a member interest is valid if it is approved by the directors and the transferee meets the requirements of the articles and the bylaws of the cooperative and, if applicable, becomes a party to a unanimous agreement.

**(3)** If an individual who is under 18 years of age exercises a right of ownership in a member interest, no subsequent repudiation or avoidance is effective against the cooperative.

**(4)** Subject to the articles and the bylaws, if satisfactory proof of death of a joint holder of a member interest is provided to the cooperative, it may treat any surviving joint holder as the owner of the member interest.

**(5)** If a personal representative of a deceased holder of a member interest is entitled, pursuant to the articles and bylaws of the cooperative, to become the holder of the member interest or to designate the holder of the member interest, the personal representative must deposit with the cooperative, together with any reasonable assurances that the cooperative may require,

- (a) any certificates or other documents reasonably required by the cooperative to prove that the deceased held the member interest,
- (b) a document proving the death of the holder of the member interest, and
- (c) a document proving that the personal representative has the right under the law of the place in which the deceased was domiciled immediately before death to deal with the member interest.

**(6)** Deposit of the documents required by subsection (5) empowers a cooperative to record the transfer of a member interest from the

deceased member to the personal representative or to any person that the personal representative may designate and to treat the transferee as the owner of the member interest.

### **Part 3 Meetings**

#### **Regulations**

**49** The Minister may make regulations

- (a) respecting the location of meetings of members and investment shareholders of a cooperative;
- (b) governing the holding of meetings by means of a telephonic, electronic or other communication facility;
- (c) prescribing the time within which the directors of a cooperative must hold a first meeting of the members after the issuance of a certificate of incorporation;
- (d) respecting the business that must be conducted at the first meeting of the cooperative;
- (e) prescribing the time within which the directors of a cooperative must hold the first annual meeting of members or a special meeting of the cooperative;
- (f) respecting the rights of a director, member or investment shareholder to call a meeting where a meeting is not called within the time provided for in the regulations, the articles, the bylaws or a unanimous agreement;
- (g) respecting the right of an investment shareholder to call a special meeting of the investment shareholders;
- (h) governing the giving of a notice of the date, time and place of a meeting of members or investment shareholders of a cooperative and the manner of giving notice and the persons entitled or not entitled to receive the notice;
- (i) respecting any additional requirements for notice of meetings of investment shareholders;
- (j) respecting waiver of a notice of a meeting;
- (k) determining the right to vote of a person entitled to vote who does not receive a notice of a meeting;

- (l) respecting or determining the record dates of a cooperative and the manner of giving notice of record dates;
- (m) providing that all matters dealt with at an annual general meeting or a special meeting of the cooperative are special business and providing for any matters that are not special business;
- (n) governing the contents of a notice of a meeting where special business is to be transacted;
- (o) governing the manner in which the text of any special resolution not included in a notice referred to in clause (n) must be available to the members and the shareholders;
- (p) respecting the rules for requisition of a meeting of members or investment shareholders and the requirement for directors to transact the business stated in the requisition and any exceptions to that requirement and the rights of any person who signed the requisition to call a meeting of members if a meeting is not called within the prescribed time;
- (q) providing that the manner of calling a meeting referred to in clause (p) may be determined in accordance with the articles, the bylaws or a unanimous agreement;
- (r) respecting the reimbursement by the cooperative of persons who sign a requisition referred to in clause (p);
- (s) providing for a person who is entitled to vote at a meeting or, in the case of a distributing cooperative, the Executive Director to apply to the Court for an order to call, hold and conduct a meeting of a cooperative;
- (t) respecting the submission and contents of proposals submitted by a member to a cooperative for meetings of members other than special meetings;
- (u) governing the categories of persons who may submit a proposal to the cooperative to amend the articles, any proof required to demonstrate that a person is authorized to submit a proposal and the time for providing that proof;
- (v) respecting the liability incurred for circulating a proposal referred to in clause (t);
- (w) providing for

- (i) exceptions from the requirement for a cooperative to include a proposal for consideration at a meeting of members, and
- (ii) written notice of a refusal by a cooperative to include a proposal in a notice of meeting, the time for that written notice to be given and a requirement for reasons for the refusal to be provided by the cooperative;
- (x) respecting applications to the Court by a person aggrieved by a refusal referred to in clause (w)(ii) or a person aggrieved by a proposal;
- (y) providing for rules governing the preparation of lists of members, delegates of members or investment shareholders and the number of investment shares held by each investment shareholder for the purpose of determining the entitlement to vote at meetings of the cooperative and prescribing the right of members, delegates and investment shareholders to examine the list that relates to the meeting;
- (z) respecting the number of votes a member or investment shareholder is entitled to at a meeting of the cooperative;
- (aa) respecting quorum at meetings of members or investment shareholders;
- (bb) respecting the voting rights of members who are not individuals, holders of joint memberships and investment shares;
- (cc) respecting the manner of voting at meetings of the cooperative or authorizing resolutions instead of a meeting of the cooperative;
- (dd) respecting any other matter for the operation of this Part.

## **Part 4 Directors and Officers of Cooperatives**

### **Division 1 Number, Qualifications and Functions of Directors**

#### **Number of directors**

**50(1)** A cooperative must have at least 3 directors or any greater minimum number that is set out in the articles.

**(2)** The term of any incumbent director is not affected by an amendment to the articles to decrease the number of directors.

**(3)** At a meeting to amend the articles to increase the number of directors, the persons who are entitled to do so may elect or appoint the additional directors.

#### **Member/non-member directors**

**51(1)** Not fewer than 2/3 of the directors, or any greater proportion that is provided for by the articles, must be members of the cooperative, or representatives of members that are entities, or members of members that are cooperative entities.

**(2)** Nothing in subsection (1) prevents more than one director being elected or appointed as director by a person entitled to elect or appoint directors as provided for in the bylaws.

**(3)** The articles may provide for the appointment of directors who are representatives of an entity, government or any other person or organization having an interest in the activities of the cooperative, but who are not members of the cooperative, as not more than 20% of the directors.

#### **Disqualification of director**

**52(1)** A person is disqualified from becoming or continuing as a director if that person

- (a) is not an individual;
- (b) is under 18 years of age;
- (c) is an individual who
  - (i) is a represented adult as defined in the *Adult Guardianship and Trusteeship Act* or is the subject of

a certificate of incapacity that is in effect under the *Public Trustee Act*,

- (ii) is a formal patient as defined in the *Mental Health Act*,
  - (iii) is the subject of an order under the *Mentally Incapacitated Persons Act* (RSA 1970 c232) appointing a committee of the individual's person or estate or both, or
  - (iv) has been found to be a person of unsound mind by a court elsewhere than in Alberta;
- (d) has the status of bankrupt.

**(2)** A cooperative may provide in its bylaws for additional qualifications or disqualifications.

**(3)** Unless Division 2 of Part 18 applies to the cooperative, a majority of the directors must be individuals who are not full-time officers or employees of the cooperative.

**(4)** A majority of the directors must be resident in Canada.

**(5)** Subject to section 51(3) and section 108(4) and (5), all directors must be elected by the members or, if members are represented by delegates, by the delegates of members.

2001 cC-28.1 s52;2008 cA-4.2 s125

#### **Functions of directors**

**53** The directors must manage or supervise the management of the business and affairs of the cooperative, subject to this Act, the regulations and the articles, any unanimous agreement and the bylaws.

#### **Duties of directors**

**54(1)** Every director and officer must, in exercising the powers and performing the duties of office,

- (a) act honestly and in good faith with a view to the best interests of the cooperative, and
- (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**(2)** Every director and officer must comply with this Act, the regulations, the articles, the bylaws and any unanimous agreement.

(3) Subject to section 97, no provision in a contract, the articles, the bylaws, a unanimous agreement or a resolution relieves a director or officer from complying with this Act and the regulations or relieves the director from liability for breach of that duty.

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

#### **First directors**

**55(1)** When a cooperative comes into existence, the individuals identified in the notice of directors provided with the application for incorporation are members and directors and have all the powers and duties of directors until the end of the first meeting of members.

(2) At the first meeting of members after a cooperative comes into existence, the directors must be elected or appointed in accordance with this Act, the articles, the bylaws and any unanimous agreement.

#### **Organizational meeting**

**56(1)** After a cooperative comes into existence, a meeting of directors must be held at which the directors may

- (a) adopt forms of security certificates and of cooperative records;
- (b) admit persons to membership in the cooperative and issue or authorize the issuance of membership shares and arrange for member loans;
- (c) appoint officers;
- (d) appoint an auditor to hold office until the close of the first meeting of members;
- (e) make financial arrangements for the cooperative;
- (f) transact any other business necessary to organize the cooperative.

(2) An incorporator or a director may call a meeting of directors referred to in subsection (1) by giving at least 5 days' notice of the

meeting to each director, stating the date, time and place of the meeting.

## **Division 2 Rules for Election of Directors**

### **Rules for election of directors**

**57(1)** Unless the articles, the bylaws or a unanimous agreement provides otherwise, the election and appointment of the directors must be in accordance with this section and sections 52(5), 59, 60, 61, 62, 64, 65, 66(2) and 108(4) and (5).

**(2)** Elections of directors must be held and appointment of directors must be made annually at a meeting of the persons who are entitled to elect or appoint them.

**(3)** A cooperative's directors hold office until the close of the meeting at which their successors are elected.

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

**(5)** A person who is elected or appointed as a director is not a director unless

- (a) that person was present at the meeting when the election was held or appointment was made and did not refuse to act as a director, or
- (b) if that person was not present at the meeting,
  - (i) the person, before the election or appointment or within 10 days after it, consented in writing to act as a director, or
  - (ii) the person has acted as a director pursuant to the election or appointment.

**(6)** A person who is elected or appointed as a director and refuses or fails to consent or act is deemed not to have been elected or appointed as a director.

**(7)** If the number of nominees exceeds the number of directors to be elected, directors are to be elected by secret ballot.

**(8)** A ballot that is cast for the election of more directors than the number to be elected is to be considered a spoiled ballot.

**(9)** The individual who receives the greatest number of votes at an election of directors is elected a director and the individuals who

receive the next greatest numbers of votes are also elected directors, in descending order until the number of directors to be elected has been elected, but if 2 individuals receive an equal number of votes for the last vacancy, the directors already elected must determine which of the 2 individuals is to be elected.

**(10)** If investment shareholders have a right to elect one or more directors, they must vote separately from the members.

**(11)** Where the articles of a cooperative provide that

- (a) an investment share confers on its holder the right to vote at an election of directors, or
- (b) under section 108(4), the investment shareholders, any class of investment shareholders or the holders of a series of investment shares may elect a fixed number or percentage of directors,

a director may only be elected either as a director elected by the investment shareholders or as a director elected by the members.

#### **Court review of election**

**58(1)** A cooperative, a director or any person who is entitled to vote in the election or appointment of a director or an auditor may apply to the Court to resolve any dispute in respect of the election or appointment of a director or an auditor of the cooperative.

**(2)** The Court may make any order it thinks fit, including an order

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

### Division 3 Terms and Vacancies

#### Terms of office for directors

**59** Subject to section 64, no director may hold office for a term of more than 3 years, but a director may be re-elected or reappointed.

#### Vacancy on the board of directors

**60(1)** Unless the bylaws provide otherwise, if there is a vacancy on the board of directors the remaining directors must, subject to subsection (3), call a special meeting of the persons who are entitled to vote for the purpose of electing or appointing directors to fill the vacancy.

**(2)** If, at the close of a meeting of a cooperative, the persons at the meeting have failed to elect or appoint the number or minimum number of directors required by this Act or the articles, the purported election or appointment of directors at the meeting

- (a) is valid if the directors purported to be elected or appointed and the incumbent directors, if any, whose terms did not expire at the close of the meeting together constitute a quorum, or
- (b) is void if the directors purported to be elected or appointed and the incumbent directors, if any, whose terms did not expire at the close of the meeting together do not constitute a quorum.

**(3)** If there is a vacancy on the board of directors, except a vacancy because of an increase in the number or minimum number of directors or because of a failure to elect or appoint the number of directors required by the articles, and there is still a quorum on the board, the remaining directors may

- (a) continue to fulfil their functions without filling the vacancy, or
- (b) subject to subsection (5), appoint a director to fill the vacancy.

**(4)** If the directors holding office no longer constitute a quorum, the remaining directors must, without delay, call a special meeting of the persons who are entitled to vote to fill the vacancy, and if they fail to do so, any person who is entitled to vote at a meeting of the cooperative may call the meeting.

**(5)** If there is a vacancy in the position of a director who is to be elected by a class vote of either the members or the investment shareholders,

- (a) any remaining directors elected or appointed by that class may act under subsection (3), or
- (b) if there are no remaining directors of that class, any member of the class may call a special meeting to elect a director to fill a vacancy.

**Board of directors vacant**

**61(1)** If the board of directors is vacant, any person who is entitled to vote at a meeting of the cooperative may call a special meeting to elect directors to fill the vacancies.

**(2)** If all of the directors have resigned or been removed without replacement, a person who manages or supervises the management of the business and affairs of the cooperative is, subject to any unanimous agreement, deemed to be a director for the purposes of this Act.

**(3)** Subsection (2) does not apply to

- (a) an officer who manages the business or affairs of the cooperative under the direction or control of a member, shareholder or other person,
- (b) a lawyer, accountant or other professional who participates in the management of the cooperative solely for the purpose of providing professional services, or
- (c) a trustee in bankruptcy, receiver, receiver-manager or secured creditor who participates in the management of the cooperative or exercises control over its property solely for the purpose of the realization of security or, in the case of a trustee in bankruptcy, the administration of a bankrupt's estate.

**Unexpired term of director's office**

**62** Unless the bylaws provide otherwise, a director who is elected or appointed to fill a vacancy holds office for the unexpired term of the director's predecessor in office.

**Right to attend meetings**

**63** A director is entitled to receive notice of, to attend and to be heard at every meeting of the cooperative.

**Continuation in office**

**64** If the election of directors does not occur at the time fixed by this Act, the bylaws or a unanimous agreement, the directors then in office continue in office until their successors are elected.

### **Division 4 Resignation and Termination of Directors**

**Ceasing to hold office**

**65(1)** A director ceases to hold office when that director

- (a) dies,
- (b) resigns,
- (c) is removed from office, or
- (d) becomes disqualified from continuing as a director under section 52.

**(2)** The resignation of a director becomes effective on the later of

- (a) the day a written letter of resignation is received by the cooperative, and
- (b) the date specified in the letter of resignation.

**Removal of directors**

**66(1)** A director may be removed from office at a special meeting by an ordinary resolution cast by or on behalf of the persons who, pursuant to the bylaws, are entitled to vote on the resolution.

**(2)** The vacancy created by the removal of a director may be filled at the meeting at which the director was removed.

**Resignation statement**

**67(1)** A director who

- (a) resigns,
- (b) receives a notice or otherwise learns of a meeting of members called for the purpose of removing the director from office, or
- (c) receives a notice or otherwise learns of a meeting of directors or members at which another person is to be elected or appointed to fill the office of director, whether

because of resignation or removal or because the director's term of office has expired or is about to expire,

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

(2) When the cooperative receives a written statement from a director giving reasons why the director opposes any proposed action or resolution, it must ensure that a copy of the statement is given or sent without delay, in the same way in which a notice of meeting is given or sent pursuant to the regulations, to every person who is entitled to receive notice of the meeting.

(3) No cooperative or person acting on its behalf incurs any liability by reason only of circulating a director's statement to comply with subsection (2).

#### **Notice of change**

**68** Within 15 days after a change of its directors, the cooperative must send the Director a notice setting out the change in the form set by the Director.

### **Division 5 Meetings and Quorum of Directors**

#### **Place of directors meetings**

**69(1)** Unless the articles or bylaws provide otherwise, the directors may meet anywhere.

(2) Unless the bylaws provide otherwise, notice of the date, time and place of a meeting of directors must be given to every director by sending the notice at least 10 days before the date of the meeting to the latest address of the director as shown on the records of the cooperative.

#### **Contents of notice**

**70** Notice of a meeting of directors must specify the date, time and place of the meeting but need not specify the matters to be dealt with at the meeting, except the matters listed in section 89(3).

#### **Waiver of notice**

**71** A director may, in any manner, waive notice of a meeting of directors, and attendance at a meeting constitutes waiver of notice unless the director is attending for the purpose of objecting to the meeting on the ground that it was not lawfully called.

**When notice not required**

**72** There is no need to give notice for the continuation of a meeting of directors that is adjourned or for a meeting of directors that immediately follows an annual meeting.

**Quorum**

**73** Unless the articles, the bylaws or a unanimous agreement provides for a greater proportion, a majority of directors, subject to section 74, constitutes a quorum at any meeting of directors or of a committee of directors and, despite any vacancy among the directors, a quorum of directors may exercise all the powers of the directors.

**How a quorum is constituted**

**74(1)** To constitute a quorum, a majority of the directors at the meeting must be

- (a) resident in Canada, and
- (b) members of the cooperative, representatives of members that are entities, or members of members that are cooperative entities.

**(2)** Notwithstanding subsection (1), a meeting of directors may be held without the required majority of directors who are resident in Canada if

- (a) a director who is resident in Canada and who is not present approves, in writing or by telephonic, electronic or other communication facilities, the business transacted at the meeting, and
- (b) the required majority would have been present had that director been present at the meeting.

**Electronic meeting**

**75(1)** Subject to the bylaws, a director may attend a meeting of directors by means of a telephonic, electronic or other communication facility that permits all persons participating in the meeting to communicate adequately with each other during the meeting.

**(2)** A director participating in a meeting by a means referred to in subsection (1) is considered to be present at the meeting.

**Validity of acts**

**76** An act of a director or officer is valid despite an irregularity in the person's election or appointment or a defect in that person's qualifications.

**Resolution in place of directors meeting**

**77(1)** A resolution in writing signed by all the directors entitled to vote on that resolution at a meeting of directors or of a committee of directors is as valid as if it had been passed at a meeting of directors or of a committee of directors.

**(2)** A copy of every resolution signed by the directors must be kept with the minutes of the meetings of the directors or committee of directors.

**(3)** An entry in the minutes of a meeting of a cooperative of a vote taken, including one taken in a meeting held in accordance with section 75, or a resolution made under subsection (1) is, in the absence of evidence to the contrary, proof of the outcome of the vote or resolution.

## **Division 6 Liability of Directors**

**General liability**

**78(1)** All directors who vote for or consent to a resolution authorizing the issue of a share in exchange for a thing or service other than money are jointly and individually liable to the cooperative for any amount by which the consideration received is less in value than the money that the cooperative would have received if the share had been issued for money on the date of the resolution.

**(2)** A director is not liable under subsection (1) if the director proves that the director did not know and could not reasonably have known that the share was issued for consideration less in value than the money that the cooperative would have received if the share had been issued for money on the date of the resolution.

**(3)** All directors who vote for or consent to a resolution authorizing any of the following matters are jointly and individually liable to the cooperative for any amounts so distributed or paid and not otherwise recovered by the cooperative:

- (a) a redemption of shares or other acquisition of investment shares or the repayment of member loans contrary to this Act;
- (b) a commission contrary to this Act;

- (c) a payment of a dividend, a patronage return or interest contrary to this Act;
  - (d) financial assistance contrary to this Act;
  - (e) a payment of an indemnity contrary to this Act;
  - (f) any other payment contrary to this Act.
- (4) A director is not liable under subsection (3) if the director proves that the director did not know and could not reasonably have known that the amounts so distributed or paid were paid contrary to this Act.
- (5) A director who satisfies a judgment for a debt owed under this section is entitled to contribution from the other directors who were liable for the debt.
- (6) A director who is liable under subsection (3) may apply to the Court for an order to recover any money or property referred to in subsection (3).
- (7) The Court may, if it is satisfied that it is equitable to do so,
- (a) order any person to pay or deliver to the director any money or property referred to in subsection (3) that was paid or distributed to that person;
  - (b) order a cooperative to return or issue shares to a person from whom the cooperative redeemed or otherwise acquired shares;
  - (c) order any person to repay to the cooperative the amount of a member loan that was repaid;
  - (d) make any further order that it thinks fit.
- (8) An action to enforce a liability imposed by this section may not be commenced more than 2 years after the date of the resolution authorizing the action complained of.

**Directors' liability for wages**

**79(1)** The directors of a cooperative are jointly and individually liable to employees of the cooperative for all debts not exceeding 6 months' wages payable to each employee for services performed for the cooperative while they are directors.

**(2)** Subsection (1) does not render a director liable for debts for wages

- (a) if the director believes on reasonable grounds that the cooperative can pay the debts as they become due, or
  - (b) if the debts are payable to employees for services performed while the property of the cooperative is under the control of a receiver, receiver-manager, trustee in bankruptcy or liquidator.
- (3) A director is not liable under subsection (1) unless
- (a) the cooperative has been sued for the debt within 6 months after it has become due and writ proceedings have been returned unsatisfied in whole or in part,
  - (b) the cooperative has commenced liquidation and dissolution proceedings or has been dissolved and a claim for the debt has been proved within 6 months after the earlier of the date of commencement of the liquidation and dissolution proceedings and the date of dissolution, or
  - (c) the cooperative has made an assignment or a receiving order has been made against it under the *Bankruptcy and Insolvency Act* (Canada) and a claim for the debt has been proved within 6 months after the date of the assignment or receiving order.
- (4) No action may be brought against a director under this section more than 2 years after the date that person ceased to be a director.
- (5) If writ proceedings referred to in subsection (3)(a) have issued, the amount recoverable from a director is the amount remaining unsatisfied.
- (6) If a director pays a debt referred to in subsection (1) that is proved in liquidation and dissolution or bankruptcy proceedings, the director is entitled to any preference that the employee would have been entitled to, and if a judgment has been obtained, the director is entitled to an assignment of the judgment.
- (7) A director who has satisfied a claim under this section is entitled to contribution from the other directors who were liable for the claim.

## Division 7 Disclosure of Interests

### What must be disclosed

**80(1)** A director or officer must, in accordance with this Division, disclose to the cooperative the nature and extent of any interest that the director or officer has in a material contract or transaction, or a

proposed material contract or transaction, with the cooperative, and any material change to any such interest, if the director or officer

- (a) is a party to the contract or transaction,
- (b) is a director or officer, or an individual acting in a similar capacity, of a party to the contract or transaction, or
- (c) has a material interest in a party to the contract or transaction.

(2) This section does not require the disclosure of an interest in a contract or transaction that is available to and customarily entered into between the cooperative and its members if the contract or transaction is on the same terms as are generally available to members.

(3) The director or officer must make the disclosure in writing to the cooperative or request to have it entered in the minutes of a meeting of directors.

#### **When disclosure must be made**

**81** A director must make the disclosure referred to in section 80(1)

- (a) at the meeting of directors at which the proposed contract or transaction is first considered;
- (b) if the director did not have an interest in the proposed contract or transaction at the time of the meeting referred to in clause (a), at the first meeting after the director acquires an interest in it;
- (c) if the director acquires an interest in a contract or transaction after it is made, at the first meeting after the director acquires an interest in it;
- (d) if there is a material change in the director's interest in the contract, transaction, proposed contract or proposed transaction, at the first meeting after the change;
- (e) if the director had an interest in the contract or transaction or proposed contract or proposed transaction before becoming a director, at the first meeting after becoming a director;
- (f) if the contract or transaction or proposed contract or proposed transaction is one that would not, in the ordinary course of business, require the approval of the directors,

as soon as the director becomes aware of the contract or transaction or proposed contract or proposed transaction.

#### **Disclosure of interest by officers**

**82** An officer who is not a director must make the disclosure referred to in section 80(1)

- (a) immediately after becoming aware that the contract, transaction, proposed contract or proposed transaction is to be considered or has been considered at a meeting of directors;
- (b) if the officer acquires an interest in a contract or transaction after it is made, immediately after the officer acquires an interest in it;
- (c) if there is a material change in the officer's interest in the contract, transaction, proposed contract or proposed transaction, immediately after the change;
- (d) if the officer had an interest in the contract or transaction or proposed contract or proposed transaction before becoming an officer, immediately after becoming an officer;
- (e) if the contract or transaction or proposed contract or proposed transaction is one that would not, in the ordinary course of business, require the approval of the directors, as soon as the officer becomes aware of the contract or transaction or proposed contract or proposed transaction.

#### **Access to disclosures**

**83** The members and investment shareholders may examine the portions of minutes of meetings of directors, of other documents that contain disclosures under sections 80 to 86 and of the general notice referred to in section 86 during the usual business hours of the cooperative.

#### **Modification of procedural requirements**

**84** The members and investment shareholders may, by unanimous agreement, modify the procedural requirements of sections 80 to 88.

#### **Voting on contracts and transactions when there is a conflict**

**85(1)** A director who is interested in a contract or transaction or proposed contract or proposed transaction referred to in section

80(1) may not be present for the vote or vote on any resolution to approve the contract or transaction.

**(2)** Subsection (1) does not apply to

- (a) a contract or transaction or proposed contract or proposed transaction that relates primarily to the director's remuneration as a director, officer, employee or agent of the cooperative or of one of its subsidiaries, or
- (b) a contract for indemnity or insurance under section 94.

#### **Continuing disclosure**

**86** It is a sufficient declaration of interest in a contract or transaction or proposed contract or proposed transaction if the director or officer gives a general notice to the directors declaring that the director or officer has an interest in a contract or transaction or proposed contract or proposed transaction made with an entity

- (a) because the director or officer is a director or officer of an entity, or acts in a similar capacity,
- (b) because the director or officer has a material interest in an entity, or
- (c) because there has been a change in the nature of the director's or officer's interest in the entity.

#### **Effect of disclosure**

**87** A contract or transaction for which disclosure must be made under section 80 is not invalid, and the director or officer is not accountable to the cooperative or its members or investment shareholders for any profit realized from the contract or transaction, by reason only of the interest of the director or officer in the contract or transaction, if

- (a) disclosure of the interest was made in accordance with this Act, or
- (b) disclosure of the interest was not made in accordance with this Act but
  - (i) disclosure of the interest was made,
  - (ii) the contract or transaction was approved by a majority of the members of the cooperative or a majority of the members present at a meeting of the members, and

- (iii) the contract or transaction was reasonable and fair to the cooperative at the time it was approved.

**Court order to set aside transaction**

**88** If a director or officer of a cooperative

- (a) fails to disclose an interest in a material contract or transaction in accordance with section 80, 81, 82 or 86, or
- (b) otherwise fails to comply with section 80, 81, 82, 85, 86 or 87,

the Court may, on the application of the cooperative or a member or investment shareholder, set aside the contract or transaction on any terms that it thinks fit or order that the director or officer account to the cooperative or its members or investment shareholders for any profit realized from the contract or transaction.

**Appointment of managing director or committee**

**89(1)** The directors may appoint any committee they consider necessary, which may exercise any powers that are delegated to it by the directors, subject to any restrictions imposed by the directors.

**(2)** The directors may appoint a managing director, who must be resident in Canada.

**(3)** The directors may delegate to a managing director or to a committee referred to in subsection (1) any powers of the directors except the power to

- (a) fill a vacancy among the directors or in the office of the auditor, or appoint additional directors,
- (b) declare dividends on shares, interest on member loans or patronage returns,
- (c) approve a financial statement of the cooperative,
- (d) submit to the persons who are entitled to vote on them questions or matters required to be approved at a meeting of the cooperative,
- (e) make decisions that by this Act, the articles or a unanimous agreement are required to be made by a special resolution,

- (f) redeem shares or otherwise acquire investment shares issued by the cooperative,
- (g) pay a commission referred to in section 112,
- (h) approve a management proxy circular referred to in Part 6, or
- (i) issue securities, except in the manner and on the terms authorized by the directors.

**(4)** A director who is appointed to a committee may remain on the committee until the appointment is revoked or the person ceases to be a director.

#### **Deemed consent of directors**

**90(1)** A director who is present at a meeting of directors or a meeting of a committee of directors is deemed to have consented to any resolution made or action taken at the meeting unless

- (a) the director requests that a dissent be entered in the minutes of the meeting or the dissent is so entered,
- (b) the director sends a written dissent to the secretary of the meeting before it is adjourned, or
- (c) the director sends a written dissent by confirmed delivery service, or delivers it personally, to the registered office of the cooperative immediately after the meeting is adjourned.

**(2)** A director who votes for or expressly consents to a resolution or action taken at a meeting of directors or of a committee of directors is not entitled to dissent later.

**(3)** A director who is not present at a meeting of directors or of a committee of directors is deemed to have consented to any resolution made or action taken at the meeting unless the director, within 7 days after becoming aware of the resolution or action,

- (a) causes a dissent to be entered in the minutes of the meeting, or
- (b) sends a written dissent by confirmed delivery service, or delivers it personally, to the registered office of the cooperative.

**Defence for directors**

**91** A director is not liable under this Part if the director exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstances to prevent the failure to fulfil the director's duties, including reliance in good faith on financial statements of the cooperative, on the reports of experts and on information presented by officers or professionals.

**Remuneration**

**92** Unless the articles, the bylaws or a unanimous agreement provides otherwise, the directors may fix the remuneration of the directors, officers and employees of the cooperative.

**Division 8  
Officers of a Cooperative****Types of offices and functions**

**93** Subject to the articles, the bylaws and any unanimous agreement, the directors may

- (a) designate the offices of the cooperative;
- (b) specify the powers and duties of each office;
- (c) appoint any individual 18 years of age or older, including a director, to be an officer;
- (d) appoint one individual to hold more than one office;
- (e) delegate to the officers the power to manage the business and affairs of the cooperative, except a power referred to in section 89(3).

**Division 9  
Indemnification of Directors and Officers****Nature of indemnification**

**94(1)** A cooperative may indemnify an individual who is or was a director or officer of the cooperative or who at the cooperative's request acts or acted

- (a) as a director or officer of the cooperative,
- (b) as a director or officer of another entity, or
- (c) as an individual in a similar capacity for the cooperative or other entity,

against all costs, charges and expenses, including an amount paid to settle an action or satisfy a claim reasonably incurred by the individual in respect of any civil, criminal, administrative, investigative or other proceeding in which the individual is involved by reason of the individual's association with the cooperative or entity.

**(2)** A cooperative may advance money to a director, officer or other individual for the costs of a proceeding referred to in subsection (1), but the individual must repay the money if the Court determines that the individual did not fulfil the conditions of subsection (3), unless the members and investment shareholders decide, by separate resolutions, that the individual need not repay the money.

**(3)** A cooperative may not indemnify an individual under subsection (1) unless the individual

- (a) acted honestly and in good faith with a view to the best interests of the cooperative or, as the case may be, to the best interests of the entity for which the individual acted as director or officer or in a similar capacity at the cooperative's request, and
- (b) in the case of a criminal or administrative proceeding, had reasonable grounds for believing that the individual's conduct was lawful.

**(4)** A cooperative may not indemnify an individual under subsection (1) or advance money for costs under subsection (2) in respect of an action by or on behalf of the cooperative or entity, unless the Court so orders.

**(5)** An individual referred to in subsection (1) is entitled to indemnity from the cooperative for the costs, charges and expenses referred to in that subsection if the individual

- (a) was judged by the Court not to have committed any fault or omitted to do anything that the individual ought to have done,
- (b) fulfils the conditions in subsection (3), and
- (c) is fairly and reasonably entitled to indemnity.

**(6)** A cooperative may purchase and maintain insurance for the benefit of an individual referred to in subsection (1) against any liability incurred by the individual by reason of being or having been

- (a) a director or officer of the cooperative,

- (b) a director or officer of another entity, or
- (c) an individual that has acted in a similar capacity for the cooperative or other entity, if the individual acts or acted in that capacity at the cooperative's request.

#### **Application to Court to approve indemnity**

**95(1)** The Court may, on the application of a cooperative or an individual referred to in section 94, approve an indemnity under that section and make any further order that it sees fit.

**(2)** On an application under subsection (1), the Court may order notice to be given to any interested person, and the interested person is entitled to appear and be heard in person or by counsel.

### **Division 10 Unanimous Agreements**

#### **Restricting powers of directors**

**96(1)** If a provision in the articles of a cooperative or in a unanimous agreement

- (a) restricts, in whole or in part, the discretion or powers of the directors to manage, or supervise the management of, the business and affairs of the cooperative, or
- (b) vests in the members, in whole or in part, the power to manage, or supervise the management of, the business and affairs of the cooperative,

that provision is valid as long as the cooperative has at least 3 directors or any greater minimum number that is set out in the articles.

**(2)** Subject to this section but notwithstanding section 164(2), any purchaser or transferee of a share that is subject to a unanimous agreement is deemed to be a party to the unanimous agreement.

**(3)** If notice of the existence of a unanimous agreement is not given to the purchaser or transferee, the purchaser or transferee may, no later than 30 days after becoming aware of its existence, rescind the transaction by which the shares were acquired.

**(4)** A notice of the initial execution or the termination of a unanimous agreement must be sent to the Director, in the form set by the Director, at the same time as the annual return referred to in section 333.

**Rights of members**

**97** To the extent that a provision in the articles of the cooperative or in a unanimous agreement restricts the discretion or powers of the directors to manage, or supervise the management of, the business and affairs of the cooperative, members who are given the power to manage, or supervise the management of, the business and affairs of the cooperative have all the rights, powers, duties and liabilities of directors, whether they arise under this Act or otherwise, and any defences available to the directors, and the directors are relieved of their rights, powers, duties and liabilities, including their liability under section 79, to the same extent.

**Provisions for meetings in unanimous agreements**

**98** A unanimous agreement may contain provisions respecting the rules and procedures governing meetings under this Act and provisions that eliminate the need for annual meetings of investment shareholders and meetings of directors.

**Financial information when no annual meeting required**

**99** If there is to be no annual meeting of investment shareholders because of a provision in a unanimous agreement, the cooperative must send to any investment shareholder who requests them

- (a) comparative financial statements referred to in section 228(1)(a),
- (b) the report of the auditor, and
- (c) any further information about the financial position of the cooperative required by the bylaws or unanimous agreement.

**Part 5  
Capital Structure****Division 1  
Membership Capital****Loan capital**

**100** The capital of a cooperative without membership shares may be in the form of member loans, and those loans may be in the amounts, payable at the times, and with or without interest, as the articles of the cooperative provide.

**Membership shares**

**101** A cooperative with membership shares must have at least one class of membership shares, designated as such in the articles.

**Issuance to members**

**102(1)** Where membership shares are issued by a cooperative, membership shares may only be issued to members, each of whom must hold the minimum number of membership shares specified in the bylaws.

**(2)** A member is the holder of a membership share of a cooperative when, according to the members register of the cooperative, the member is the owner of the membership share or is entitled to be entered in the members register as the owner of the membership share.

**(3)** Subject to Part 18, the membership shares of a cooperative confer on their holders equal rights, including equal rights

- (a) to receive dividends declared on membership shares, and
- (b) subject to the articles, to receive the remaining property of the cooperative on dissolution.

**(4)** The articles may not include any preference, right, condition, restriction, limitation or prohibition on membership shares, except as provided for by this Act.

**(5)** A transfer of membership shares is valid only if it complies with section 48.

**(6)** The right to vote attaches to membership in accordance with section 34, not to a membership share.

**(7)** Subject to sections 128 and 131, membership shares may be redeemed by the cooperative.

**Division 2  
Certificates****Issue of membership certificates**

**103(1)** Unless required by the bylaws of a cooperative, no certificates need be issued in respect of membership shares or member loans.

**(2)** On the request of a member, a cooperative must issue a statement of the number of membership shares held by, or the amount of any member loan of, the member.

(3) Where a cooperative issues certificates in respect of membership shares or member loans, the face of each certificate that the cooperative issues after the coming into force of this section must contain

- (a) the name of the cooperative,
- (b) a statement that the cooperative is subject to this Act,
- (c) the name of the person to whom it is issued,
- (d) a statement that the certificate represents membership shares in, or member loans to, the cooperative, and the number of membership shares or the amount of the member loans,
- (e) a statement that the certificate is not transferable without the approval of the directors, and
- (f) a statement that there is a charge on the membership shares or member loans represented by the certificate in favour of the cooperative for any indebtedness of the member to the cooperative.

(4) Each member is entitled to a certificate of membership.

#### **Authorized capital**

**104(1)** The membership shares of a cooperative may be issued with or without a par value.

(2) If the membership shares of a cooperative are issued with a par value, the articles must specify that fact and specify their par value and any limit on their number.

(3) If the membership shares of a cooperative are without par value, the articles must specify that fact and specify any limit on their number.

#### **Fixed or determined value**

**105** If any no-par-value membership shares of a cooperative are to be issued and are to be redeemed at a fixed or determined value, the articles must set out those facts and state the fixed price or the formula to be used to determine the value.

#### **Distribution on dissolution**

**106(1)** The articles of a cooperative may provide for the payment of all debts and liabilities on dissolution of the cooperative, including

- (a) any declared and unpaid dividends,
- (b) the amount to be paid to the holders of any investment shares, and
- (c) the amount to be paid on the redemption of membership shares.

**(2)** The articles of the cooperative, except the articles of a cooperative that is governed by Part 18, may provide that after the payment of all debts and liabilities pursuant to subsection (1), the value of the remaining property of the cooperative is to be distributed to any person, including distribution

- (a) among the members at the time of dissolution in any manner, including equally among the members irrespective of the number of membership shares or amount of member loans, if any, held or made by a member,
- (b) among the members at the time of dissolution on the basis of patronage returns accrued to those members during a stated period before the dissolution, or
- (c) to charitable organizations or cooperative entities.

#### **Charge on membership shares for amounts**

**107(1)** A cooperative has a charge on a membership share, membership loan or any amount standing to the credit of a member or the legal representative of a member for a debt of that member to the cooperative.

**(2)** A cooperative may

- (a) enforce a charge referred to in subsection (1) in the manner set out in its bylaws, or
- (b) apply any money standing to the credit of a member toward payment of a debt due by the member to the cooperative.

### **Division 3 Investment Shares**

#### **Investment shares**

**108(1)** The articles of a cooperative may provide that the cooperative may issue investment shares, and if they do, the articles must set out the following:

- (a) whether the investment shares may be issued to non-members,
  - (b) whether the number of investment shares is to be unlimited and, if not, the maximum number of investment shares that may be issued,
  - (c) the number of classes of investment shares, and
  - (d) the preferences, rights, conditions, restrictions, limitations and prohibitions attaching to investment shares and, if there is to be more than one class, the designation of each class and the special preferences, rights, conditions, restrictions, limitations and prohibitions attaching to each class.
- (2) A person is an investment shareholder of a cooperative when, according to the securities register of the cooperative, the person is the owner of an investment share or is entitled to be entered in the securities register of the cooperative as the owner of an investment share.
- (3) Subject to the articles and to this Act, no right to vote at a meeting of the members attaches to an investment share.
- (4) The articles may provide that
- (a) an investment shareholder has the right to vote at an election of directors by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled, or
  - (b) the investment shareholders, any class of investment shareholders or the investment shareholders of a series of investment shares may elect a fixed number or a percentage of the directors.
- (5) Notwithstanding subsections (3) and (4), neither the articles nor a unanimous agreement may provide that the investment shareholders have the right to elect more than 20% of the directors.
- (6) If investment shareholders are entitled to vote in accordance with subsection (4) or otherwise in accordance with this Act, each investment share entitles the investment shareholder to one vote.
- (7) Notwithstanding section 34, a member who holds an investment share may exercise any voting right that an investment shareholder has.

**No-par-value shares**

**109(1)** Investment shares of a cooperative must be in registered form and without par value.

**(2)** Investment shares of a cooperative that is continued under this Act are deemed to be investment shares without par value.

**Shares in series**

**110(1)** The articles may authorize, subject to any limitations set out in them and subject to subsection (2), the issue of any class of investment shares in one or more series and may

- (a) fix the number of investment shares in, and determine the designation, rights, privileges, restrictions and conditions attaching to the investment shares of, each series, or
- (b) authorize the directors to fix the number of investment shares in, and to determine the designation, rights, privileges, restrictions and conditions attaching to the investment shares of, each series.

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

**(3)** No rights, privileges, restrictions or conditions attaching to a series of investment shares authorized under this section confer a priority in respect of dividends or return of capital on a series over any other series of investment shares of the same class that are then outstanding.

**(4)** If the directors exercise their authority under subsection (1)(b), they must, before the issue of investment shares of the series, send to the Director articles of amendment in the form that the Director sets to designate a series of investment shares.

**(5)** On receipt of articles of amendment designating a series of investment shares under subsection (4), the Director must issue a certificate of amendment.

**Pre-emptive right**

**111(1)** If the articles so provide, no investment shares of any class may be issued unless the investment shares are first offered to the investment shareholders of that class in proportion to their holdings of the investment shares of that class, at the price at which and on the terms on which those investment shares are to be offered to others.

(2) No pre-emptive right under subsection (1) will entitle an investment shareholder to acquire investment shares

- (a) in exchange for a thing or service other than money,
- (b) as an investment share dividend or as payment of a patronage return, or
- (c) pursuant to the exercise of conversion privileges, options or rights previously granted by the cooperative.

#### **Commissions**

**112** The directors may authorize the cooperative to pay a reasonable commission to any person in consideration of the person

- (a) purchasing or agreeing to purchase investment shares from the cooperative or from some other person, or
- (b) procuring or agreeing to procure purchasers for any such investment shares.

#### **Charge on investment shares**

**113(1)** Subject to section 164(2), the articles may provide that the cooperative has a charge on an investment share registered in the name of an investment shareholder or the legal representative of an investment shareholder for a debt obligation of the investment shareholder to the cooperative, including an amount in respect of an investment share issued by a corporation that is unpaid as of the date the corporation is continued under this Act.

(2) A cooperative may enforce a charge referred to in subsection (1) in accordance with its bylaws.

(3) If the articles of a cooperative provide that investment shares are subject to the charge referred to in subsection (1), the cooperative or transferor, as the case may be, must bring to the attention of a subscriber or transferee that the investment shares will be subject to the charge referred to in subsection (1).

## **Division 4 Constraints**

#### **Constraints on shares**

**114(1)** Subject to section 265(4), a distributing cooperative that has issued investment shares that are or were part of a distribution to the public, that remain outstanding and that are held by more than one person may, by a special resolution of the members and by a separate special resolution of the investment shareholders of

each class, amend its articles to incorporate any matter referred to in section 5(1)(o).

(2) If the ownership of investment shares by a person would adversely affect the ability of a cooperative or any of its affiliates or associates to attain or maintain a level of Canadian ownership or control specified in its articles, the cooperative may limit the number of investment shares of the cooperative that may be owned, or prohibit the ownership of investment shares, by that person.

(3) A cooperative may, by a special resolution of the members and by a separate special resolution of the investment shareholders of each class, amend its articles to change or remove any constraint on the issue, transfer or ownership of its investment shares.

(4) The directors may, if authorized by a special resolution effecting an amendment under subsection (1) or (3), revoke the resolution before it is acted on without further approval.

(5) The Minister may make regulations with respect to a cooperative that constrains the issue, transfer or ownership of its investment shares, prescribing

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

#### **Election of directors by investment shareholders**

**115(1)** If the investment shareholders of a class or series of investment shares of a cooperative have, under section 108, a right to elect one or more directors, or have a right to elect one or more directors by reason of an event that has occurred and is continuing or by reason of a condition that has been fulfilled, the directors must call the following meetings for the purpose of electing the director or directors:

- (a) a special meeting of the investment shareholders of the class or series of investment shares, to be called within 6 months, or at any earlier date that may be specified in the articles, after the date on which investment shares of the class or series are first issued or after the event has occurred or the condition has been fulfilled, and
  - (b) an annual meeting of those investment shareholders for every subsequent year.
- (2) If the articles so provide, directors who are to be elected by investment shareholders may be elected by cumulative voting.
- (3) If the articles provide for cumulative voting,
- (a) the articles must require a fixed number of directors to be elected by the investment shareholders, not a minimum and maximum number of directors,
  - (b) each investment shareholder who is entitled to vote at an election of directors by investment shareholders has the right to cast a number of votes equal to the number of votes attached to the investment shares held by that investment shareholder multiplied by the number of directors to be elected, and the investment shareholder may cast all the votes in favour of one candidate or distribute them among the candidates in any manner,
  - (c) a separate vote of investment shareholders must be taken with respect to each candidate nominated for director unless a resolution is passed unanimously permitting 2 or more persons to be elected at the same time,
  - (d) if an investment shareholder has voted for more than one candidate without specifying the distribution of votes among the candidates, the investment shareholder is deemed to have distributed votes equally among the candidates for whom the investment shareholder voted,
  - (e) if the number of candidates nominated for director exceeds the number of positions to be filled, the candidates who receive the least number of votes are eliminated until the number of candidates remaining equals the number of positions to be filled,
  - (f) each director ceases to hold office at the close of the first annual meeting after election by the investment shareholders entitled to elect that director,
  - (g) a director may be removed from office only if the number of votes cast by or on behalf of the persons who pursuant

to the bylaws are entitled to vote in favour of the director's removal is greater than the product of the number of directors and the number of votes cast against the motion, and

- (h) the number of directors required by the articles may be decreased only if the votes cast in favour of the motion to decrease the number of directors is greater than the product of the number of directors and the number of votes cast against the motion.

#### **Amendment of articles**

**116(1)** The holders of investment shares of a class or, subject to subsection (4), of a series are, unless the articles provide otherwise in the case of an amendment referred to in clause (a), (b) or (e), entitled to vote separately as a class or series on a proposal to amend the articles to

- (a) increase or decrease any maximum number of authorized investment shares of the class, or increase any maximum number of authorized investment shares of a class having rights or privileges equal or superior to the rights or privileges attached to the investment shares of that class,
- (b) effect an exchange, reclassification or cancellation of all or part of the investment shares of the class,
- (c) add, change or remove the rights, privileges, restrictions or conditions attached to the investment shares of the class, including
  - (i) remove or prejudicially change rights to accrued dividends or rights to cumulative dividends,
  - (ii) add, remove or prejudicially change redemption rights,
  - (iii) reduce or remove a dividend preference or a liquidation preference, or
  - (iv) add, remove or prejudicially change conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of a cooperative, or sinking fund provisions,
- (d) increase the rights or privileges of any class of investment shares having rights or privileges equal or superior to the rights or privileges attached to the investment shares of that class,

- (e) create a new class of investment shares having rights or privileges equal or superior to the rights or privileges attached to the investment shares of that class,
- (f) make the rights or privileges attached to any class of investment shares having rights or privileges inferior to the rights or privileges attached to the investment shares of that class equal or superior to the rights or privileges attached to the investment shares of that class,
- (g) effect an exchange or create a right of exchange of all or part of the investment shares of another class into the investment shares of the class, or
- (h) constrain the issue, transfer or ownership of the investment shares of the class or change or remove a constraint.

**(2)** Subsection (1) does not apply in respect of a proposal to amend the articles to add a right or privilege for an investment shareholder to convert investment shares of a class or series into investment shares of another class or series that is subject to a constraint permitted under section 5(1)(o)(iii) but otherwise equal to the class or series first mentioned.

**(3)** For the purpose of subsection (1)(e), a new class of investment shares, the issue, transfer or ownership of which is to be constrained by an amendment to the articles under section 5(1)(o)(iii), that is otherwise equal to an existing class of investment shares is deemed not to be equal or superior to the existing class of shares.

**(4)** The investment shareholders of a class are entitled to vote separately as a series under subsection (1) only if the effect of an amendment on the series is different from the effect of the amendment on other investment shares of the same class.

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

**(6)** A proposed amendment to the articles referred to in subsection (1) is adopted when it is approved by a special resolution of the members and by a separate special resolution of the investment shareholders of each class.

## Division 5 Corporate Finance

### Power to issue investment shares

**117** Subject to this Act, the articles, the bylaws and any unanimous agreement, membership shares may only be issued to members, and investment shares may be issued to any person, at any time and for money or in exchange for any thing or service that the directors may determine.

### Payment for investment shares

**118(1)** A cooperative may not issue an investment share until it is fully paid in money, or past service or any other thing that is not less in value than the money that the cooperative would have received if the investment share had been issued for money, and neither a promissory note nor a promise to pay made by a person to whom the investment shares are to be issued is acceptable in payment of an investment share.

**(2)** Membership shares may be paid for in money, or past service or any other thing that is not less in value than the money that the cooperative would have received if the membership share had been issued for money.

### Borrowing

**119** Unless the articles, the bylaws or a unanimous agreement provides otherwise, the articles of a cooperative are deemed to state that the directors may, without the authorization of the members or investment shareholders,

- (a) borrow money,
- (b) give debt obligations,
- (c) subject to section 140, give guarantees,
- (d) create security interests in its property, and
- (e) notwithstanding sections 89(3) and 93(e), delegate any power referred to in clauses (a) to (d).

### Stated capital account

**120(1)** A cooperative that is authorized to issue investment shares must maintain a stated capital account for each class and series of investment shares that it issues.

**(2)** A cooperative must add to the appropriate stated capital account the full amount of any money, or the value of any thing or service, that it receives for investment shares it issues.

**(3)** Notwithstanding subsection (2), a cooperative may, subject to subsection (4), add to the stated capital accounts maintained for the investment shares of classes or series the whole or any part of the amount of the money, or the value of the things and services, it receives in an exchange if the cooperative issues investment shares

- (a) in exchange for
  - (i) property, other than a promissory note or promise to pay, or
  - (ii) investment shares of, or another interest in, an entity that, immediately before the exchange, or because of the exchange, did not deal with the cooperative at arm's length within the meaning of that expression in the *Income Tax Act* (Canada), or
- (b) under an amalgamation or arrangement or to members or investment shareholders of an amalgamating corporation who receive the investment shares in addition to or instead of securities of the amalgamated cooperative.

**(4)** On the issue of an investment share, a cooperative must not add to a stated capital account in respect of the investment share it issues an amount greater than the amount of the money, or the value of the thing or service, it receives for the investment share.

**(5)** The proposed addition of an amount to a stated capital account maintained by a cooperative in respect of a class or series of investment shares must be approved in advance by a special resolution of the members and, if the cooperative has issued investment shares, by a separate special resolution of the investment shareholders, the class of investment shareholders or the investment shareholders of the series of investment shares that is affected by the special resolution, if

- (a) the amount to be added was received by the cooperative but not as consideration for the issue of the investment shares, and
- (b) the cooperative has issued investment shares of more than one class or series that are outstanding.

**(6)** If a cooperative issues membership shares with a par value, the cooperative is deemed, for the purposes of sections 129(2), 133, 136 and 274(2)(d), to have a stated capital account for its membership shares that includes each amount that has been received by the cooperative for the membership shares.

**Other additions to stated capital account**

**121(1)** When a corporation is continued under this Act, it may add to a stated capital account any money, or the value of any thing or service, received by it for an investment share it has issued.

**(2)** When a corporation is continued under this Act, section 120(2) does not apply to the money, or the value of things or services, received by it before it was so continued unless the investment share in respect of which the money, thing or service was received is issued after the corporation is continued.

**(3)** When a corporation is continued under this Act, any amount unpaid in respect of an investment share issued by the corporation before it was so continued and paid after it was so continued is added to the stated capital account maintained for the investment shares of that class or series.

**(4)** For the purposes of sections 129(2), 133, 136 and 274(2)(d), when a cooperative is continued under this Act, its stated capital account is deemed to include the amounts that would have been included if the cooperative had been incorporated under this Act.

**(5)** When a cooperative is continued under this Act, section 120(6) applies if the cooperative has membership shares with a par value.

**(6)** A cooperative must not reduce its stated capital or any stated capital account except in the manner provided for in this Act.

**Surplus accounts**

**122** Subject to section 120(5), a cooperative continued under this Act may at any time add to a stated capital account any amount it has credited to a retained earnings or other surplus account.

**Shares not assessable**

**123** The shares of a cooperative are non-assessable and the members and investment shareholders are not liable to the cooperative or to its creditors in respect of them.

**Options and rights**

**124(1)** A cooperative may issue certificates, warrants or other evidence of conversion privileges, options or rights to acquire securities or membership shares of the cooperative.

**(2)** A conversion privilege, option or right to acquire membership shares may only be granted to members and is non-transferable.

**(3)** Subject to subsection (2), conversion privileges, options or rights to acquire securities of a cooperative may be made

transferable or non-transferable, and options and rights to acquire securities of a cooperative may be made separable or inseparable from any securities to which they are attached.

**(4)** The terms and conditions of any conversion privilege, option or right must be set out in

- (a) a certificate, a warrant or other evidence, or
- (b) the certificates evidencing the securities to which the conversion privileges, options or rights are attached.

### **Reserves**

**125** If the articles limit the number of authorized shares, the cooperative must reserve sufficient authorized shares to meet the exercise of any conversion privileges or any options or rights issued or granted by the cooperative to acquire shares.

### **Holding own shares**

**126(1)** Subject to sections 127 to 131, a cooperative may not

- (a) hold any shares in itself or in its holding corporation, or
- (b) permit any of its subsidiaries to hold shares in the cooperative, other than
  - (i) the minimum number of membership shares required by the bylaws of the cooperative to qualify for membership in it, and
  - (ii) shares subscribed for and issued to the subsidiary by the application of patronage returns to their purchase.

**(2)** A cooperative must cause any subsidiary that holds shares in the cooperative contrary to subsection (1) to dispose of those shares no later than 5 years after the date on which

- (a) it became a subsidiary, or
- (b) the cooperative was continued under this Act.

### **Exception for holding own shares**

**127(1)** A cooperative may hold and may permit its subsidiaries to hold, in the capacity of a legal representative, shares in itself, in its holding corporation, or in its subsidiaries only if the cooperative, holding corporation or subsidiaries do not have a beneficial interest in the shares.

(2) A cooperative may hold shares in itself, its holding corporation or its subsidiaries 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.

#### **Redemption of membership shares**

**128(1)** Subject to section 131, a cooperative may at any time redeem any of its membership shares, if issued on a par-value basis, at par value, and if issued on a no-par-value basis, in accordance with the price or formula that is set out in its articles, or, if no such price or formula is set out in the articles, at a fair market value.

(2) No cooperative may redeem its membership shares if a result of doing so would be to reduce the membership of the cooperative so that section 307 applies.

#### **Acquisition of investment shares**

**129(1)** Subject to its articles and to subsection (2), a cooperative may at any time acquire any investment share issued by it.

(2) A cooperative must not make a payment to acquire investment shares if there are reasonable grounds to believe that

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

(3) Subject to section 131, a cooperative may at any time exercise any right to redeem any of its investment shares in accordance with any price or formula that is set out in its articles or, if no such price or formula is set out in the articles, at fair market value.

#### **Alternative investment share acquisition**

**130** Subject to section 131, a cooperative may acquire investment shares issued by it

- (a) to satisfy the claim of investment shareholders who dissent under section 277,
- (b) to comply with an order under section 357,
- (c) to settle or compromise a debt or claim asserted by the cooperative,

- (d) to eliminate fractional investment shares, or
- (e) to fulfil the terms of a non-assignable option or obligation to purchase investment shares owned by a director, officer or employee.

**Limitation on acquisition or redemption**

**131** A cooperative may not make a payment to acquire or redeem a share under section 128, 129(3) or 130 if there are reasonable grounds to believe that

- (a) the cooperative is, or after the payment would be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the cooperative's assets after the payment would be less than the total 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 liquidation, rateably with or in priority to the holders of the shares to be purchased or redeemed.

**Cancellation or redemption of shares**

**132** Shares of a cooperative that are redeemed or otherwise acquired by it are cancelled or, if the articles limit the number of authorized shares, restored to the status of unissued shares.

**Reduction of stated capital**

**133(1)** Subject to subsection (2), a cooperative may reduce its stated capital for any purpose by a special resolution of its members and, if an investment share is proposed to be affected by the reduction, by a special resolution of the investment shareholders.

**(2)** A cooperative may not reduce its stated capital if there are reasonable grounds to believe that

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

**(3)** Subsection (2) does not apply to a reduction of stated capital by an amount that is not represented by realizable assets.

- (4) If a cooperative maintains more than one stated capital account, the special resolution to reduce stated capital required by subsection (1) must specify the stated capital account or accounts that will be reduced.
- (5) A creditor of a cooperative may apply to the Court for an order compelling a person
- (a) to pay to the cooperative an amount equal to any liability of the person that was extinguished or reduced contrary to this section, or
  - (b) to pay or deliver to the cooperative any money or property that was paid or distributed to the person as a consequence of a reduction of stated capital made contrary to this section.
- (6) No action may be commenced to enforce a liability imposed by this section more than 2 years after the date of the act complained of.

#### **Adjustment of stated capital account**

- 134(1)** On a redemption or acquisition of any of its shares, a cooperative must adjust the stated capital account in relation to those shares by the ratio of the stated capital for those shares to that class.
- (2) A cooperative must adjust its stated capital account in accordance with any special resolution made under section 133(1).
- (3) On a conversion of investment shares of a cooperative into investment shares of another class or series or a change under section 264, a reorganization under section 278 or the redemption or exchange of investment shares under an order made under section 357, the cooperative must
- (a) deduct from the stated capital account maintained for the class or series of investment shares converted or changed, or subjected to the reorganization, redemption or exchange, an amount equal to the result obtained by multiplying the stated capital of the investment shares of that class or series by the number of investment shares of that class or series converted or changed, or subjected to the reorganization, redemption or exchange, divided by the number of issued investment shares of that class or series immediately before the conversion, change, reorganization, redemption or exchange, and
  - (b) add the result obtained under clause (a) and any additional amount received pursuant to the conversion, change,

reorganization, redemption or exchange to the stated capital account maintained or to be maintained for the class or series of investment shares into which the investment shares have been converted or changed.

(4) For the purposes of subsection (3) and subject to the articles, if a cooperative issues 2 classes of investment shares and there is attached to each such class a right to convert an investment share of the one class into an investment share of the other class, if an investment share of one class is converted into an investment share of the other class, the amount of stated capital attributable to an investment share in either class is the aggregate of the stated capital of both classes divided by the number of issued investment shares of both classes immediately before the conversion.

(5) For the purposes of this section, a cooperative holding investment shares in itself as permitted by section 127 is deemed not to have redeemed or acquired them.

(6) Investment shares issued by a cooperative and converted into investment shares of another class or series, changed under section 264 or subjected to a reorganization under section 278 or the redemption or exchange of investment shares under an order made under section 357 become investment shares of the other class or series of investment shares.

(7) If the articles limit the number of authorized investment shares of a class of investment shares of a cooperative and issued investment shares of that class or of a series of that class have become, under subsection (6), issued investment shares of another class or series, the number of unissued investment shares of the first-mentioned class is, unless the articles provide otherwise, increased by the number of investment shares that, under subsection (6), became investment shares of another class or series.

#### **Form of dividend**

**135(1)** A cooperative may pay a dividend by issuing fully paid shares of the cooperative and, subject to section 136, a cooperative may pay a dividend in money or property, except that membership shares may only be issued to members.

(2) If shares of a cooperative are issued in payment of a dividend, the declared amount of the dividend stated as an amount of money must be added to the stated capital account.

#### **Limitation on paying dividends**

**136** A cooperative may not declare or pay a dividend if there are reasonable grounds to believe that

- (a) the cooperative is, or after the payment would be, unable to pay its liabilities as they become due, or
- (b) the realizable value of the cooperative's assets after payment of the dividend would be less than the total of its liabilities and the stated capital of all its issued shares.

**Patronage returns**

**137(1)** A cooperative may allocate among and credit or pay to the members, as a patronage return, all or a part of the surplus in a financial year in proportion to the business done by the members with or through the cooperative in that financial year calculated in the manner described in subsection (3) at a rate set by the directors or, where the bylaws provide, at a rate set by the members.

**(2)** Where the bylaws provide that the members may set the rate under subsection (1), the members may set the rate by an ordinary resolution.

**(3)** For the purpose of subsection (1), the directors may calculate the amount of the business done by each member with or through a cooperative in a financial year by taking into account

- (a) the quantity, quality, kind and value of things bought, sold, handled, marketed or dealt in by the cooperative,
- (b) the services rendered
  - (i) by the cooperative on behalf of or to the member, and
  - (ii) by the member on behalf of or to the cooperative,
- and
- (c) differences that are, in the opinion of the directors, appropriate for different classes, grades or qualities of things and services.

**(4)** The bylaws may provide that a cooperative may allocate among and credit or pay to persons who use the services of the cooperative but who are not members a share of any surplus at a rate that is equal to or less than the rate at which the surplus is distributed to members.

**(5)** If a cooperative allocates among and credits or pays a share of any surplus to persons referred to in subsection (4), the directors must calculate the business done by the non-member patrons in the manner described in subsection (3).

**Investment of patronage return**

**138(1)** A cooperative may provide by bylaw that the whole, or any part that the directors may determine, of the patronage return of each member in respect of each financial year be applied to the purchase of shares in the cooperative for the member.

**(2)** A bylaw under subsection (1) must provide for the giving of notice to each member of the number of shares purchased or to be purchased for the member, the manner of issuance or transfer of shares, the payment for the shares out of the patronage returns of members and, if applicable, the issuance and forwarding of certificates to members representing shares so issued or transferred.

**(3)** No member is required under this section to purchase membership shares,

- (a) in the case of membership shares with a par value, at a price in excess of their par value, and
- (b) in the case of membership shares with no par value or investment shares,
  - (i) if the articles provide for a fixed price or a price determined in accordance with a formula, in excess of that price, and
  - (ii) in any other case, in excess of the fair market value of the membership shares or the fair market value of the investment shares.

**(4)** If shares of a cooperative are issued in payment of a patronage return, the amount of the patronage return, stated as an amount of money, must be added to the stated capital account.

**Loans from patronage returns**

**139** A cooperative may, by bylaw, require its members to lend to it the whole, or any part that the directors may determine, of the patronage returns to which they may become entitled in each financial year, on the terms and at the rate of interest that the directors determine, so long as the rate of interest does not exceed the rate that is set out in the articles or the bylaws.

**Division 6  
Loans and Guarantees****Financial assistance**

**140(1)** In this section and section 141, “financial assistance” means financial assistance by means of a loan, guarantee or otherwise.

(2) A cooperative may give financial assistance to any person for any purpose.

(3) Subject to section 141, a cooperative must disclose to its members and investment shareholders, in accordance with the regulations, financial assistance that the cooperative gives to

- (a) a member, investment shareholder or director of the cooperative or of an affiliated cooperative,
- (b) an associate of a member, investment shareholder or director of the cooperative or of an affiliated cooperative, or
- (c) any person for the purpose of or in connection with a purchase of an investment share issued or to be issued by the cooperative or an affiliated cooperative.

**When no disclosure required**

**141(1)** A cooperative is not required to disclose to its members and investment shareholders financial assistance that it gives

- (a) to any person in the ordinary course of business if the lending of money is part of the ordinary business of the cooperative,
  - (b) to any person on account of expenditures incurred or to be incurred on behalf of the cooperative,
  - (c) to a holding corporation if the cooperative is a wholly owned subsidiary of the holding corporation,
  - (d) to a subsidiary corporation of the cooperative,
  - (e) to employees of the cooperative or any of its affiliates
    - (i) to enable them to purchase or erect or to assist them in purchasing or erecting living accommodation for their own occupation, or
    - (ii) in accordance with a plan for the purchase of investment shares of the cooperative or any of its affiliates to be held by a trustee,
- or
- (f) to any person if all the members and investment shareholders have consented to giving the financial assistance.

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

#### **Enforcement of contract to buy shares**

**142(1)** A cooperative must fulfil its obligations under a contract to buy investment shares of the cooperative unless the cooperative can prove that enforcement of the contract would put it in breach of section 129(2) or section 131.

(2) Until the cooperative has fulfilled all its obligations under a contract referred to in subsection (1), the other party retains the status of claimant entitled to be paid as soon as the cooperative is lawfully able to do so or, in a liquidation, to be ranked subordinate to the rights of creditors and to the rights of any class of investment shareholders whose rights were in priority to the rights given to the class of investment shares being purchased, but in priority to the rights of members and other investment shareholders.

#### **Debt obligations**

**143(1)** Debt obligations issued by a cooperative are not redeemed by reason only that the indebtedness evidenced by the debt obligation is repaid.

(2) Debt obligations issued by a cooperative and purchased, redeemed or otherwise acquired may be cancelled or may secure any obligation of the cooperative existing then or incurred later.

## **Part 6 Proxies**

#### **Interpretation**

**144(1)** In this Part,

- (a) “form of proxy” means a written or printed form that, on completion and execution by or on behalf of an investment shareholder, becomes a proxy;
- (b) “intermediary” means a securities broker or dealer required to be registered to trade or deal in securities under the laws of any jurisdiction and includes
  - (i) a securities depository,
  - (ii) a financial institution,
  - (iii) in respect of a clearing agency, a securities dealer, trust company, bank or other person, including another clearing agency, on whose behalf the

clearing agency or its nominees hold securities of an issuer,

- (iv) a trustee or administrator of a self-administered retirement savings plan, retirement income fund, education savings plan or other similar self-administered savings or investment plan registered under the *Income Tax Act* (Canada),
  - (v) a nominee of a person referred to in subclauses (i) to (iv), and
  - (vi) a person that carries out functions similar to those carried out by individuals or entities referred to in subclauses (i) to (iv) and that holds a security registered in that person's name, or in the name of that person's nominee, on behalf of another person who is not the registered holder of the security;
- (c) "solicit" or "solicitation" includes
- (i) a request for a proxy whether or not accompanied with or included in a form of proxy,
  - (ii) a request to execute or not to execute a form of proxy or to revoke a proxy,
  - (iii) the sending of a form of proxy or other communication to an investment shareholder under circumstances reasonably calculated to result in the procurement, withholding or revocation of a proxy, and
  - (iv) the sending of a form of proxy to an investment shareholder under section 146,
- but does not include
- (v) the sending of a form of proxy in response to an unsolicited request made by or on behalf of an investment shareholder,
  - (vi) the performance of administrative acts or professional services on behalf of a person soliciting a proxy,
  - (vii) the sending by an intermediary of the documents referred to in section 150,
  - (viii) a solicitation by a person in respect of investment shares of which that person is the beneficial owner,

- (ix) a public announcement by an investment shareholder of how the investment shareholder intends to vote and the reasons for that decision,
  - (x) anything that would be a solicitation under this definition but is conveyed by public broadcast, speech or publication, if a proxy circular in final form is sent to the cooperative and is filed with the Executive Director, or
  - (xi) a communication other than a solicitation by or on behalf of the management of a cooperative that is made to investment shareholders in any circumstances that may be prescribed;
- (d) “solicitation by or on behalf of the management of a cooperative” means a solicitation by a person pursuant to a resolution or instructions of, or with the acquiescence of, the directors or a committee of directors.

(2) This Part does not apply to a member or membership shares, but a member who is an investment shareholder may exercise the rights given to an investment shareholder by this Part for all investment shares held.

#### **Appointing proxy holder**

**145(1)** An investment shareholder who is entitled to vote at a meeting of investment shareholders may appoint a proxy holder or one or more alternate proxy holders, who are not required to be investment shareholders, to attend and act at the meeting in the manner and to the extent authorized by the proxy and with the authority conferred by the proxy.

(2) For a proxy to be valid, it must be executed by the investment shareholder or by a legal representative of the investment shareholder authorized in writing.

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

(4) An investment shareholder may revoke a proxy

- (a) by depositing a document in writing executed by the investment shareholder or by a legal representative of the investment shareholder authorized in writing
  - (i) at the registered office of the cooperative at any time up to and including the last business day before the day of the meeting or continuation of the meeting at which the proxy is to be used, or

(ii) with the chair of the meeting on the day of the meeting or continuation of the meeting;

(b) in any other manner permitted by law.

**(5)** The directors may specify in a notice calling a meeting of investment shareholders a time not more than 48 hours, excluding Saturdays and holidays, before the meeting or the continuation of the meeting before which proxies to be used at the meeting must be deposited with the cooperative or its agent.

#### **Mandatory solicitation**

**146(1)** Subject to subsection (2), the management of a cooperative must, concurrently with giving notice of a meeting of investment shareholders, send a form of proxy in prescribed form to each investment shareholder who is entitled to receive notice of the meeting.

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

- (a) it is not a distributing cooperative, and
- (b) it has fewer than 15 investment shareholders entitled to vote at a meeting, 2 or more joint holders being counted as one investment shareholder.

#### **Soliciting proxies**

**147(1)** No person may solicit a proxy unless the applicable circular described in subsection (2) is sent to the auditor of the cooperative, to each investment shareholder whose proxy is solicited, to each director and, if subsection (2)(b) applies, to the cooperative.

**(2)** The circular that is to be sent under subsection (1) is

- (a) in the case of a solicitation by or on behalf of the management of a cooperative, a management proxy circular in the prescribed form, either as an appendix to or as a separate document accompanying the notice of the meeting, and
- (b) in the case of any other solicitation, a dissident's proxy circular in the prescribed form stating the purposes of the solicitation.

**(3)** If the cooperative is a reporting issuer under Alberta securities law as defined in the *Securities Act*, a copy of any management proxy circular or dissident's proxy circular sent under subsection

(1) must be sent to the Executive Director together with a statement in the prescribed form and a copy of any notice of meeting, form of proxy and any other documents for use in connection with the meeting.

(4) Notwithstanding subsection (1), a person may commence a solicitation if the person has filed a preliminary proxy circular with the cooperative and with the Executive Director, as long as the form of proxy is not sent before the proxy circular in final form is sent.

(5) A management proxy circular need not be sent

- (a) if all the investment shareholders of a cooperative are members, and
- (b) if the management has sent to the investment shareholders substantially the same information as that required to be sent in the circular, not less than 21 days and not more than 60 days before the meeting at which the vote to which the circular relates is to be held.

#### **Exemption order**

**148** On the application of any interested person, the Commission may exempt the person, on any terms that the Commission thinks fit, from any of the requirements of section 146 or 147(1).

#### **Attendance at meeting**

**149(1)** An individual who solicits a proxy and is appointed as a proxy holder must

- (a) attend the meeting in respect of which the proxy is given in person, or cause an alternate proxy holder to attend it, and
- (b) comply with the directions of the investment shareholder who appointed the proxy holder.

(2) A proxy holder or an alternate proxy holder has the same rights as the investment shareholder who appointed the proxy holder

- (a) to speak at a meeting of investment shareholders in respect of any matter,
- (b) to vote by way of ballot at the meeting, and
- (c) unless the proxy holder or alternate proxy holder has conflicting instructions from more than one investment

shareholder, to vote at the meeting in respect of any matter by a show of hands.

(3) Notwithstanding subsections (1) and (2), if the chair of a meeting of investment shareholders declares to the meeting that, if a ballot is conducted, the total number of votes attached to investment shares represented at the meeting by proxy required to be voted against what to the knowledge of the chair will be the decision of the meeting in relation to any matter or group of matters is less than 5% of all the votes that might be cast by investment shareholders present in person or represented by proxy at the meeting on the ballot, unless an investment shareholder or proxy holder demands a ballot,

- (a) the chair may conduct the vote in respect of that matter or group of matters by a show of hands, and
- (b) a proxy holder or alternate proxy holder may vote in respect of that matter or group of matters by a show of hands.

#### **Duty of intermediary**

**150(1)** Investment shares of a cooperative that are registered in the name of an intermediary or a nominee of an intermediary and not beneficially owned by the intermediary must not be voted unless the intermediary, without delay after receipt of the notice of the meeting, management proxy circular, dissident's proxy circular and any other documents other than the form of proxy sent to investment shareholders by or on behalf of any person for use in connection with the meeting, sends a copy of the document to the beneficial owner and, except when the intermediary has received written voting instructions from the beneficial owner, a written request for written voting instructions.

(2) An intermediary may not vote or appoint a proxy holder to vote investment shares that the intermediary does not beneficially own registered in the name of the intermediary or in the name of a nominee of the intermediary unless the intermediary receives written voting instructions from the beneficial owner.

(3) A person by or on behalf of whom a solicitation is made must provide, at the request of an intermediary, without delay, to the intermediary at the person's expense the necessary number of copies of the documents referred to in subsection (1), other than the document requesting voting instructions.

(4) An intermediary must vote or appoint a proxy holder to vote any investment shares referred to in subsection (1) in accordance with any written voting instructions received from the beneficial owner.

- (5) If requested by a beneficial owner, an intermediary must appoint the beneficial owner or a nominee of the beneficial owner as proxy holder.
- (6) The failure of an intermediary to comply with this section does not render null or void any meeting of investment shareholders or any action taken at the meeting.
- (7) Nothing in this section gives an intermediary the right to vote investment shares that the intermediary is otherwise prohibited from voting.

#### **Restraining order**

**151(1)** If a form of proxy, management proxy circular or dissident's proxy circular contains an untrue statement about a material fact or omits to state a material fact required in it or necessary to make a statement contained in it not misleading in the light of the circumstances in which it is made, the Executive Director or any other interested person may apply to the Court, and the Court may make any order it thinks fit, including

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

(2) An applicant under this section must give the Executive Director notice of the application, and the Executive Director is entitled to appear and to be heard in person or by counsel.

## **Part 7 Insider Trading**

#### **Interpretation**

**152(1)** In this Part,

- (a) "business combination" means an acquisition of all or substantially all the property of one entity by another or an amalgamation of 2 or more entities;
- (b) "call" means an option, transferable by delivery, to demand delivery of a specific number or amount of securities at a fixed price within a specified time but does

not include an option or right to acquire securities of the cooperative that granted the option or right to acquire;

- (c) “insider” means
- (i) a director or officer of a distributing cooperative,
  - (ii) a member who controls more than 10% of the voting rights that may be exercised to elect or appoint a director of a distributing cooperative,
  - (iii) a person who beneficially owns more than 10% of a class or series of investment shares of a distributing cooperative or who exercises control or direction over more than 10% of the votes attached to a class or series of investment shares of a distributing cooperative, excluding a securities underwriter who owns investment shares under an underwriting agreement while those investment shares are in the course of a distribution to the public,
  - (iv) a distributing cooperative that acquires investment shares, except for the purpose of redemption, and
  - (v) a distributing cooperative that acquires or sells investment shares issued by any of its affiliates;
- (d) “officer” means
- (i) the chair of the board of directors, president, vice-president, secretary, treasurer, comptroller, general counsel, general manager, managing director or any other individual who performs functions for an entity similar to those normally performed by an individual occupying any of those offices, and
  - (ii) each of the 5 highest paid employees of a distributing cooperative, including any individual referred to in subclause (i);
- (e) “put” means an option, transferable by delivery, to deliver a specified number or amount of securities at a fixed price within a specified time;
- (f) “share” means an investment share that carries voting rights under the articles or in the circumstances in which voting rights are exercisable with respect to it under this Act, and includes
- (i) a security currently convertible into such an investment share, and

- (ii) currently exercisable options and rights to acquire such an investment share or such a convertible security.

**(2)** For the purposes of this Part,

- (a) a director or an officer, or an individual acting in a similar capacity, of an entity that is an insider of a distributing cooperative is deemed to be an insider of the distributing cooperative,
- (b) a director or an officer, or an individual acting in a similar capacity, of an entity that is a subsidiary is deemed to be an insider of its holding distributing cooperative,
- (c) a person is deemed to beneficially own shares beneficially owned by an entity controlled directly or indirectly by the person,
- (d) an entity is deemed to beneficially own shares beneficially owned by its affiliates, and
- (e) the acquisition or disposition by an insider of an option or right to acquire a share is deemed to be a change in the beneficial ownership of the share to which the option or right to acquire relates.

**(3)** For the purposes of this Part, the sale of membership shares to members or the making of a member loan to a cooperative is not a distribution to the public.

**(4)** For the purposes of this Part, a director or an officer of an entity, or an individual acting in a similar capacity, or a member or a holder of a share of the entity who is a person referred to in subsection (1)(c)(ii) or (iii) is deemed to have been an insider of the distributing cooperative for the previous 6 months or for any shorter period during which the person was a director, an officer, such an individual or such a member or holder of a share of the entity if

- (a) the entity becomes an insider of the distributing cooperative or enters into a business combination with the distributing cooperative, or
- (b) the distributing cooperative becomes an insider of the entity or enters into a business combination with the entity.

**Prohibition of short sale**

**153(1)** No insider shall knowingly sell, directly or indirectly, a share of the distributing cooperative or any of its affiliates if the insider selling the share does not own or has not fully paid for the share to be sold.

**(2)** No insider shall knowingly, directly or indirectly, buy a put or sell a call in respect of a share of the distributing cooperative or any of its affiliates.

**(3)** Notwithstanding subsection (1), an insider may sell a share that the insider does not own if the insider owns another share convertible into the share sold or an option or right to acquire the share sold and, no later than 10 days after the sale, the insider

- (a) exercises the conversion privilege, option or right and delivers the share so acquired to the purchaser, or
- (b) transfers the convertible share, option or right to the purchaser.

**Specified insider**

**154(1)** In this section, “specified insider”, with respect to a cooperative, means

- (a) the cooperative;
- (b) an affiliate of the cooperative;
- (c) a director or an officer of the cooperative;
- (d) a member who controls more than 10% of the voting rights that may be exercised to elect or appoint a director of the cooperative;
- (e) a person who beneficially owns more than 10% of a class or series of investment shares of the cooperative or who exercises control or direction over more than 10% of the votes attached to a class or series of investment shares of the cooperative, excluding a securities underwriter who owns investment shares under an underwriting agreement while those investment shares are in the course of a distribution to the public;
- (f) a person employed or retained by the cooperative on a professional or consulting basis;
- (g) an individual who receives specific confidential information from a person described in this subsection or

in subsection (2), and who has knowledge that the information is given by such a person.

**(2)** For the purposes of this section, a director or an officer of an entity, or an individual acting in a similar capacity, is deemed to have been a specified insider of the cooperative for 6 months, or any shorter period during which the individual was a director or an officer of the entity, or acted in a similar capacity, before

- (a) the entity becomes a specified insider of the cooperative or enters into a business combination with the cooperative, or
- (b) the cooperative becomes a specified insider of the entity.

**(3)** A specified insider who, in connection with a transaction in a security of the cooperative or any of its affiliates, makes use of any specific confidential information for the insider's own benefit or advantage that, if generally known, might reasonably be expected to have a material effect on the value of the security

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

**(4)** An action under subsection (3) may be commenced only within 2 years after discovery of the facts that gave rise to the cause of action.

## **Part 8 Compulsory Acquisition**

### **Definitions**

**155** In this Part,

- (a) "dissenting offeree" means a holder of a share of a class for which a take-over bid is made who does not accept the take-over bid, and includes a subsequent holder of that share who acquires it from the first-mentioned holder;
- (b) "offer" includes an invitation to make an offer;
- (c) "offeree" means a person to whom a take-over bid is made;

- (d) “offeree cooperative” means a cooperative whose shares are the object of a take-over bid;
- (e) “offeror” means a person, other than an agent, who makes a take-over bid, and includes 2 or more persons who, directly or indirectly,
  - (i) make take-over bids jointly or in concert, or
  - (ii) intend to exercise jointly or in concert voting rights attached to shares for which a take-over bid is made;
- (f) “share” means an investment share, with or without voting rights, and includes
  - (i) a security currently convertible into such a share, and
  - (ii) currently exercisable options and rights to acquire such a share or such a convertible security;
- (g) “take-over bid” means an offer made by an offeror to investment shareholders at approximately the same time to acquire all of the shares of any class of issued shares of an offeree cooperative.

**Right to acquire**

**156(1)** If within 120 days after the date of a take-over bid the take-over bid is accepted by the holders of not less than 90% of the shares of any class of shares to which the bid relates, other than shares held at the date of the take-over bid by or on behalf of the offeror or an affiliate or associate of the offeror, the offeror is entitled, on complying with this section, to acquire the shares held by the dissenting offerees.

**(2)** An offeror may acquire shares held by a dissenting offeree by sending, by confirmed delivery service within 60 days after the date of termination of the take-over bid or within 180 days after the date of the take-over bid, a notice to each dissenting offeree stating that

- (a) the offerees holding not less than 90% of the shares to which the take-over bid relates accepted the bid,
- (b) the offeror is bound to take up and pay for or has taken up and paid for the shares of the offerees who accepted the take-over bid,
- (c) a dissenting offeree is required to elect

- (i) to transfer the dissenting offeree's shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or
  - (ii) to demand payment of the fair value of the dissenting offeree's shares in accordance with subsections (9) to (17) by notifying the offeror within 20 days after the offeree receives the notice,
- (d) a dissenting offeree who does not notify the offeror as described in clause (c)(ii) is deemed to have elected to transfer the shares to the offeror on the same terms on which the offeror acquired the shares from the offerees who accepted the take-over bid, and
- (e) a dissenting offeree must send the shares to which the take-over bid relates to the offeree cooperative within 20 days after the offeree receives the offeror's notice.
- (3)** Concurrently with sending the notice under subsection (2), the offeror must send to the offeree cooperative a notice of adverse claim in accordance with section 221 with respect to each share held by a dissenting offeree.
- (4)** A dissenting offeree to whom a notice is sent under subsection (2) must, within 20 days after receiving the notice,
- (a) send the share certificates of the class of shares to which the take-over bid relates to the offeree cooperative, and
  - (b) elect
    - (i) to transfer the shares to the offeror on the terms on which the offeror acquired the shares of the offerees who accepted the take-over bid, or
    - (ii) to demand payment of the fair value of the shares in accordance with subsections (9) to (17) by notifying the offeror.
- (5)** A dissenting offeree who does not notify the offeror in accordance with subsection (4)(b)(ii) is deemed to have elected to transfer the shares to the offeror on the same terms on which the offeror acquired the shares from the offerees who accepted the take-over bid.
- (6)** Within 20 days after the offeror sends a notice under subsection (2), the offeror must pay or transfer to the offeree cooperative the amount that the offeror would have had to pay to

dissenting offerees if all the dissenting offerees had elected to accept the take-over bid under subsection (4)(b)(i).

**(7)** The offeree cooperative is deemed to hold in trust for the dissenting offerees the amounts it receives under subsection (6), and the offeree cooperative must deposit the amounts in a separate account in a corporation any of whose deposits are insured by the Canada Deposit Insurance Corporation or guaranteed by the Quebec Deposit Insurance Board or by any other similar entity created by the law of a province, and must place anything received in lieu of money in the custody of such a corporation.

**(8)** Within 30 days after the offeror sends a notice under subsection (2), the offeree cooperative must

- (a) if the payments required by subsection (6) have been made and the money or things have been deposited as required by subsection (7), issue to the offeror a share certificate in respect of the shares that were held by dissenting offerees,
- (b) if the payments required by subsection (6) have been made and the money or things have been deposited as required by subsection (7), give to each dissenting offeree who elects to accept the take-over bid terms under subsection (4)(b)(i) and who sends share certificates as required by subsection (4)(a) the money or thing to which the offeree is entitled, disregarding fractional shares, which may be paid for in money, and
- (c) if the payments required by subsection (6) have been made and the money or things have been deposited as required by subsection (7), send to each dissenting offeree who has not sent share certificates as required by subsection (4)(a) a notice stating that
  - (i) the dissenting offeree's shares have been cancelled,
  - (ii) the offeree cooperative or some designated person holds in trust for the dissenting offeree the money or other consideration to which that offeree is entitled as payment for or in exchange for the shares, and
  - (iii) the offeree cooperative will, subject to subsections (9) to (17), send that money or thing to that offeree without delay after receiving the share certificates.

**(9)** If a dissenting offeree has elected to demand payment of the fair value of the shares under subsection (4)(b)(ii), the offeror may, within 20 days after it has paid the money or transferred the things

under subsection (6), apply to the Court to fix the fair value of the shares of that dissenting offeree.

**(10)** If an offeror fails to apply to the Court under subsection (9), a dissenting offeree may apply to the Court for the same purpose within a further period of 20 days.

**(11)** If no application is made to the Court under subsection (10) within the period set out in that subsection, a dissenting offeree is deemed to have elected to transfer shares to the offeror on the same terms on which the offeror acquired the shares from the offerees who accepted the take-over bid.

**(12)** A dissenting offeree is not required to give security for costs in an application made under subsection (9) or (10).

**(13)** On an application under subsection (9) or (10),

- (a) all dissenting offerees who made an election under subsection (4)(b)(ii) whose shares have not been acquired by the offeror must be joined as parties and are bound by the decision of the Court, and
- (b) the offeror must notify each affected dissenting offeree of the date, time, place and consequences of the application and of the right to appear and be heard in person or by counsel.

**(14)** On an application to the Court under subsection (9) or (10), the Court may determine whether any other person is a dissenting offeree who should be joined as a party, and the Court must then fix a fair value for the shares of all dissenting offerees.

**(15)** The Court may in its discretion appoint one or more appraisers to assist the Court in fixing a fair value for the shares of a dissenting offeree.

**(16)** The final order of the Court must be made against the offeror in favour of each dissenting offeree for the amount for shares as fixed by the Court.

**(17)** In connection with proceedings under this section, the Court may make any order it thinks fit, including an order to

- (a) fix the amount of money or things that are required to be held in trust under subsection (7),
- (b) order that the money or things be held in trust by a person other than the offeree cooperative,
- (c) allow a reasonable rate of interest on the amount payable to each dissenting offeree from the date the offeree sends

or delivers the share certificates under subsection (4) until the date of payment, and

- (d) order that any money payable to an investment shareholder who cannot be found be paid to the President of Treasury Board and Minister of Finance, in which case section 328 applies.

**(18)** If a cooperative makes an offer to its investment shareholders to repurchase all of the shares of any class of its shares, the offer is deemed to be a take-over bid and the cooperative must

- (a) comply with this section, except subsections (3) and (6), and
- (b) in accordance with subsection (7), within 20 days after it sends an offeror's notice under subsection (2), deposit the amount the cooperative would have had to pay to dissenting offerees if all the dissenting offerees had elected to accept the take-over bid under subsection (4)(b)(i).

**(19)** If, pursuant to an offer under subsection (18), the cooperative is prohibited by section 129

- (a) from depositing or placing the consideration for the shares pursuant to subsection (7), or
- (b) from paying the amount for the shares fixed by the Court pursuant to subsection (14),

the cooperative

- (c) must re-issue to the dissenting offerees the shares for which the cooperative is not allowed to pay, and
- (d) is entitled to use for its own benefit any money or consideration deposited or placed under subsection (7),

and the dissenting offerees are reinstated to the full rights of investment shareholders.

2001 cC-28.1 s156;2013 c10 s32

#### **Distributing cooperative**

**157(1)** If an investment shareholder holding shares of a distributing cooperative does not receive a notice under this Part, the investment shareholder may, within 90 days after the date of the end of the take-over bid or, if the investment shareholder did not receive an offer pursuant to the take-over bid, within 90 days after learning of the take-over bid, require the offeror to acquire those investment shares.

(2) If an investment shareholder requires the offeror to acquire shares under subsection (1), the offeror must acquire the shares on the same terms under which the offeror acquired or will acquire the shares of the offerees who accepted the take-over bid.

## **Part 9 Security Certificates, Registers and Transfers**

### **Division 1 Interpretation and Application**

#### **Interpretation**

**158(1)** In this Part,

- (a) “adverse claim”, in respect of a security, includes a claim that a transfer was or would be wrongful or that a particular adverse person is the owner of or has an interest in the security;
- (b) “bearer” means the person who is in possession of a security that is payable to bearer or endorsed in blank;
- (c) “broker” means a person who is engaged in whole or in part in the business of buying and selling securities and who, in the transaction concerned, acts for, or buys a security from, or sells a security to, a customer;
- (d) “delivery” means voluntary transfer of possession;
- (e) “fiduciary” means a trustee, guardian, committee, curator, tutor, executor, administrator, representative of a deceased person, or any other person acting in a fiduciary capacity;
- (f) “fungible”, in relation to securities, means securities of which any unit is, by nature or usage of trade, the equivalent of any other like unit;
- (g) “genuine” means free of forgery or counterfeiting;
- (h) “good faith”, with respect to a transaction, means honesty in fact in the conduct of the transaction;
- (i) “good faith purchaser”, with respect to a security in bearer form or order form or a security in registered form issued to the purchaser or endorsed to the purchaser or endorsed in blank, means a purchaser for value in good faith and without notice of any adverse claim who takes delivery of the security;

- (j) “holder” means a person who is in possession of a security that is issued or endorsed to the person or to bearer or in blank;
- (k) “issuer” includes a cooperative that
  - (i) is required by this Act to maintain a securities register, or
  - (ii) directly or indirectly creates fractional interests in its rights or property and issues securities as evidence of the fractional interests;
- (l) “overissue” means the issue of securities in excess of any maximum number of securities that the issuer is authorized by its articles or a trust indenture to issue;
- (m) “purchaser” means a person who obtains an interest in a security by sale, mortgage, hypothec, pledge, issue, reissue, gift or any other voluntary transaction;
- (n) “security” or “security certificate” means a document issued by a cooperative that is
  - (i) in bearer, order or registered form,
  - (ii) of a type commonly dealt in on securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment,
  - (iii) one of a class or series or by its terms divisible into a class or series of documents, and
  - (iv) evidence of an investment share, participation or other interest in or obligation of a cooperative, but does not include
    - (A) a membership share or a document evidencing a membership share, or
    - (B) a member loan or a document evidencing a member loan;
- (o) “transfer” includes transmission by operation of law;
- (p) “trust indenture” means a trust indenture as defined in section 247(d);
- (q) “valid” means issued in accordance with the applicable law and the articles of the issuer, or validated under section 177.

- (2) Except when a transfer is restricted and noted on a security in accordance with section 164(2), a security is a negotiable instrument.
- (3) A security is in registered form if it
- (a) specifies a person who is entitled to the security or to the rights it evidences, and its transfer is capable of being recorded in a securities register, or
  - (b) bears a statement that it is in registered form.
- (4) A debt obligation is in order form if, by its terms, it is payable to the order of a person specified with reasonable certainty in it or to a person to whom it is assigned.
- (5) A security is in bearer form if it is payable to bearer according to its terms and not by reason of an endorsement.
- (6) A guarantor for an issuer is deemed to be an issuer to the extent of the guarantee, whether or not the obligation is noted on the security.

#### **Application**

**159** This Part governs the transfer or transmission of a security.

### **Division 2 Security Certificates**

#### **Security certificate**

- 160(1)** Unless required by the bylaws of a cooperative, no security certificate need be issued.
- (2) Every security holder is entitled, at the security holder's option, to obtain from the cooperative
- (a) a security certificate that complies with this Act, or
  - (b) a non-transferable written acknowledgment of the security holder's right to obtain a security certificate.
- (3) Subsection (2) does not apply to a debt obligation or a certificate evidencing such a debt obligation.

#### **Fee**

**161** Where a security of a cooperative is transferred, the cooperative may charge a reasonable fee for a new security certificate issued in respect of the security and may require any

security certificate previously issued in respect of the security to be deposited with the cooperative.

**Joint owners**

**162** If securities are held jointly by more than one person,

- (a) a cooperative is not required to issue more than one security certificate in respect of those securities, and
- (b) delivery of a security certificate to one of the joint owners is sufficient delivery to them all.

**Signatures**

**163(1)** A security certificate must be signed manually by at least one of the following individuals, or a facsimile of the signature must be reproduced on the certificate:

- (a) a director or officer;
- (b) an individual on behalf of a director, transfer agent or branch transfer agent of the cooperative;
- (c) a trustee who certifies the certificate in accordance with a trust indenture.

**(2)** A cooperative may issue security certificates that contain the signature of a person who is no longer a director or officer, and the validity of the certificate is not adversely affected.

**Contents of certificate**

**164(1)** The following information must be stated on the face of each security certificate issued by a cooperative:

- (a) the name of the cooperative;
- (b) a statement that the cooperative is subject to this Act and the words "Incorporated under the Laws of Alberta" or words to that effect;
- (c) the name of the person to whom it was issued;
- (d) the number and class of investment shares and the designation of any series that the certificate represents.

**(2)** No restriction, charge or endorsement described in subsection (3) is effective against a transferee of a security issued by a cooperative or by a corporation before it is continued under this Act who has no actual knowledge of the restriction, charge or

endorsement unless it or a reference to it is noted conspicuously on the security certificate.

**(3)** The restrictions, charges and endorsements referred to in subsection (2) are

- (a) a restriction on transfer other than a constraint under section 114,
- (b) a charge in favour of the cooperative,
- (c) a unanimous agreement, and
- (d) an endorsement under section 277(9).

**(4)** If the issued investment shares of a cooperative are or were part of a distribution to the public, remain outstanding and are held by more than one person, the cooperative must not restrict the transfer or ownership of its investment shares of any class or series except by way of a constraint under section 114.

#### **Contents of certificate for investment share**

**165(1)** Every share certificate for an investment share of a cooperative that is authorized to issue shares of more than one class or series must clearly state

- (a) the rights, privileges, restrictions and conditions attached to the investment shares of each class and series that exist when the share certificate is issued, or
- (b) that the class or series of investment shares that it represents has rights, privileges, restrictions or conditions attached to it and that the cooperative will provide an investment shareholder, on demand and without charge, with a full copy of the text of
  - (i) any rights, privileges, restrictions and conditions attached to each class or series of investment shares authorized to be issued that have been fixed by the directors, and
  - (ii) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series.

**(2)** If a share certificate for an investment share contains the statement referred to in subsection (1)(b), the cooperative must provide the investment shareholder, on demand and without charge, with a copy of

- (a) the rights, privileges, restrictions and conditions attached to each class or series of investment shares authorized to be issued, and
- (b) the authority of the directors to fix the rights, privileges, restrictions and conditions of subsequent series of investment shares in the same class.

### **Fractional shares**

**166(1)** A cooperative may issue a certificate for a fractional investment share or may instead issue a scrip certificate in bearer form that entitles the holder to receive a certificate for a full investment share in exchange for scrip certificates equalling a full investment share.

**(2)** The directors may attach conditions to scrip certificates issued by the cooperative, including conditions that

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

**(3)** A holder of a fractional investment share is not entitled to exercise voting rights or to receive a dividend in respect of the investment share unless

- (a) the fractional share results from a consolidation of investment shares, or
- (b) the articles of the cooperative provide otherwise.

**(4)** A holder of a scrip certificate is not entitled to exercise voting rights or to receive a dividend in respect of the scrip certificate.

## **Division 3 Registers**

### **Securities register**

**167(1)** A cooperative that issues securities must maintain a securities register in which it records the securities issued by it in registered form, showing with respect to each class or series

- (a) the names, in alphabetical order, and the latest known address of each person who holds or previously held the security,

- (b) the number of securities held by each security holder, and
- (c) the date and particulars of the issue and transfer of each security.

**(2)** A cooperative must keep the information entered in the securities register referred to in subsection (1) for the period of time prescribed in the regulations.

**(3)** The securities register must be maintained at the cooperative's registered office or at any other place in Canada designated by the directors.

**(4)** A cooperative may maintain additional branch securities registers in other places designated by the directors.

**(5)** A branch securities register must contain particulars only of securities issued or transferred at the branch.

**(6)** The information referred to in subsection (5) must also be recorded in the register referred to in subsection (3).

**(7)** A cooperative or its agent or a trustee as defined in section 247(e) is not required to produce

- (a) a cancelled security certificate in registered form, an instrument referred to in section 124(1) or (4) that is cancelled or a like cancelled instrument in registered form 6 years after the date of its cancellation,
- (b) a cancelled security certificate in bearer form or an instrument referred to in section 124(1) or (4) that is cancelled or a like cancelled instrument in bearer form after the date of its cancellation, or
- (c) an instrument referred to in section 124(1) or (4) or a like instrument, irrespective of its form, after the date of its expiration.

#### **Agent**

**168** A cooperative may appoint an agent to maintain securities registers on its behalf.

#### **Registration**

**169** The registration of the issue or transfer of an investment share in a securities register maintained by the cooperative is complete and valid registration for all purposes.

**Dealing with registered holders**

**170** A cooperative or a trustee as defined in section 247(e) may, subject to the regulations, treat the person whose name appears on the securities register as the owner of a security as its owner for all purposes.

**Evidence of ownership**

**171** If a cooperative restricts the right to transfer its investment shares, the cooperative may, despite section 170, treat a person as the registered holder of a security if the person provides the cooperative with evidence that reasonably meets the requirements of the cooperative that the person is

- (a) the heir of a deceased security holder, or the fiduciary of the estate or succession of a deceased security holder, or of a registered security holder who is a minor, an incompetent or incapable person or a missing person, or
- (b) a liquidator of, or a trustee in bankruptcy for, a registered security holder.

**Proof of ownership**

**172** A cooperative must treat a person as being entitled to exercise the rights and privileges attached to a security if the person provides proof that the person has acquired ownership of the security by operation of law or has legal authority to exercise the rights and privileges.

**Joint holders**

**173** If satisfactory proof of the death of a joint holder of a security is provided to a cooperative, it may treat any surviving joint holders as the owners of the security.

**Duties of cooperative**

**174** A cooperative is not required to inquire into the existence of, or to see to the performance of, any duty owed to a third person by a registered holder or a person who may be treated as a registered holder of a security.

**Minors**

**175** If an individual who is under 18 years of age exercises a right of ownership in a security of a cooperative, no subsequent repudiation or avoidance is effective against the cooperative.

**Deceased owner**

**176(1)** Subject to any applicable law relating to the collection of taxes, a person who is an heir or a fiduciary of an estate or succession of a deceased security holder is entitled to become the registered holder or to designate a registered holder if the person deposits the following information with the cooperative or its transfer agent, together with any reasonable assurances that the cooperative may require:

- (a) the security certificate or, in default of one, a document proving that the deceased was the security holder;
- (b) a document proving the death of the security holder;
- (c) a document proving that the heir or fiduciary has the right under the law of the place in which the deceased was domiciled immediately before death to deal with the security.

**(2)** A security certificate referred to in subsection (1)(a) must be endorsed

- (a) in the case of a transfer to an heir or fiduciary, by that person, and
- (b) in any other case, in a manner acceptable to the cooperative.

**(3)** Deposit of the documents required by subsection (1) empowers a cooperative or its transfer agent to record in a securities register the transfer of a security from the deceased holder to the heir or fiduciary or to any person that the heir or fiduciary may designate and to treat the person who becomes a registered holder as the owner of the securities.

**Overissue**

**177(1)** Subject to this section, the provisions of this Part that validate a security or compel its issue or reissue do not apply if the validation, issue or reissue of a security would result in overissue.

**(2)** The person who is entitled to a validation or issue may, if there has been an overissue and if a valid security that is similar in all respects to the security involved in the overissue is reasonably available for purchase, compel the issuer to purchase and deliver that security against the surrender of the security that the person holds.

**(3)** If there is no valid security that is similar in all respects to the security involved in the overissue reasonably available for purchase, the person who is entitled to the validation or issue may

recover from the issuer an amount equal to the price the last purchaser for value paid for the invalid security.

**(4)** Overissued securities are valid from the date they were issued only if the issuer increases the number of its authorized securities to a number equal to or greater than the number of securities previously authorized plus the number of the overissued securities.

#### **Exemptions**

**178** Sections 129 to 131 and 134 do not apply to a payment or purchase by an issuer under section 177.

### **Division 4 Proceedings**

#### **Rules of action**

**179** The following rules apply in an action on a security:

- (a) each signature on the security or in a necessary endorsement is admitted unless specifically denied in the pleadings;
- (b) a signature on the security is presumed to be genuine and authorized but, if the effectiveness of the signature is in issue, the burden of establishing that it is genuine and authorized is on the party claiming under the signature;
- (c) if a signature is admitted or established, production of a certificate entitles the holder to recover on it unless the other party establishes a defence or defect going to the validity of the security;
- (d) if the other party establishes the defence or defect, the plaintiff has the burden of establishing that the defect is ineffective against the plaintiff or some other person under whom the claim is made.

### **Division 5 Delivery**

#### **Delivery of securities**

**180(1)** A person who is required to deliver securities may deliver any security of the specified issue

- (a) in bearer form,
- (b) in registered form in the name of the transferee, or

(c) endorsed to the person or in blank.

(2) Subsection (1) is subject to any agreement to the contrary, to any applicable law or to any applicable regulation or stock exchange rule.

## **Division 6 General**

### **Incorporation by reference**

**181(1)** The terms of a security include those stated on the security and those incorporated by reference to another document, to any applicable law or to any applicable regulation, rule or order to the extent that the incorporated terms do not conflict with those stated on the security.

(2) Subsection (1) applies to a good faith purchaser but the incorporation by reference is itself not notice of a defect to the purchaser even if the security expressly states that a person accepting it admits that notice.

### **Validity of security**

**182** A security is valid in the hands of a good faith purchaser.

### **Defence**

**183** Subject to section 186, the fact that a security is not genuine is a complete defence even against a good faith purchaser.

### **Defences**

**184** All other defences of an issuer, including non-delivery and conditional delivery of a security, are ineffective against a good faith purchaser.

### **Deemed notice**

**185(1)** A purchaser is deemed to have notice of any defect in the issue of a security or any defence of the issuer if the security becomes stale within the meaning of subsection (2).

(2) A security becomes stale if

- (a) the purchaser takes the security more than 2 years after
  - (i) the date on which performance of the principal obligation evidenced by the security was due, or

(ii) the set date on or after which the security is to be presented or surrendered for redemption or exchange,

or

(b) the payment of money or the delivery of securities is required in order to present or surrender the security, the money or securities are available on the day for the payment or delivery and the purchaser takes the security more than one year after that day.

#### **Unauthorized signature**

**186(1)** Subject to subsection (2), an unauthorized signature on a security before or in the course of issue is ineffective.

**(2)** An unauthorized signature on a security is effective in favour of a good faith purchaser if the signature was made by

- (a) an authenticating trustee, transfer agent or other person entrusted by the issuer with the duty to sign the security, or similar securities, or to prepare them for signing, or
- (b) an employee of the issuer or a person referred to in clause (a) who handles the security in the ordinary course of the person's duties.

#### **Completion of form**

**187** If a security contains the signatures necessary for its issue or transfer but is incomplete in another respect, any person may complete it in accordance with that person's authority.

#### **Enforceability**

**188** A security that was completed incorrectly is enforceable by a good faith purchaser.

#### **Fraud**

**189** A completed security that was improperly altered, even if fraudulently altered, remains enforceable, but only according to its original terms.

#### **Guarantees**

**190(1)** A person signing a security as an authenticating trustee, transfer agent or other person entrusted by the issuer with the duty to sign the security guarantees to a good faith purchaser that

- (a) the security is genuine,

- (b) the person's acts in connection with the security are within the person's authority, and
- (c) the person has reasonable grounds for believing that the security is in the form and within the amount the issuer is authorized to issue.

(2) Unless agreed otherwise, a person referred to in subsection (1) does not assume any further liability for the validity of the security.

#### **Acquisition of rights**

**191(1)** On delivery of a security, the purchaser of the security acquires the rights in it that the transferor had or had authority to convey.

(2) A good faith purchaser of a security acquires it free from any adverse claim.

(3) A purchaser who was a party to a fraud or illegality affecting a security or who, as a prior holder, had notice of an adverse claim does not have a better position by taking from a later good faith purchaser.

#### **Limited interests**

**192** A purchaser of a limited interest acquires rights only to the extent of the interest purchased.

#### **Deemed notice of adverse claim**

**193(1)** A purchaser of a security, or a broker for a seller or purchaser, is deemed to have notice of an adverse claim if

- (a) the security has been endorsed "for collection" or "for surrender" or for some other purpose other than transfer, or
- (b) the security is in bearer form and has a statement on it that it belongs to a person other than the transferor.

(2) The mere writing of a name on a security is not a statement for the purposes of subsection (1)(b).

#### **No duty to inquire**

**194(1)** A purchaser of a security, or a broker for a seller or purchaser, has no duty to inquire into the rightfulness of the transfer and, subject to section 195, has no notice of an adverse claim.

(2) Subsection (1) applies even if the purchaser or broker has notice that the security is held by a third person or is registered in the name of or endorsed by a fiduciary.

#### **Deemed notice**

**195** A purchaser or broker who knows that the transaction is for the personal benefit of the fiduciary or is otherwise in breach of the fiduciary's duty is deemed to have notice of an adverse claim.

#### **Staleness**

**196(1)** The following events do not constitute notice of an adverse claim unless the security becomes stale within the meaning of subsection (2):

- (a) an event that creates a right to performance of the principal obligation evidenced by the security;
- (b) an event that sets the date on or after which the security is to be presented or surrendered for redemption or exchange.

(2) A security becomes stale if

- (a) the purchaser takes the security more than one year after
  - (i) the date on which performance of the principal obligation evidenced by the security was due, or
  - (ii) the date on or after which the security was to be presented or surrendered for redemption or exchange,

or

- (b) the payment of money or the delivery of securities is required in order to present or surrender the security, the money or securities are available on the day for the payment or delivery and the purchaser takes the security more than 6 months after that day.

#### **Guarantee**

**197(1)** A person who presents a security for registration of transfer or for payment or exchange guarantees to the issuer that the person is entitled to do so.

(2) A good faith purchaser who receives a new, re-issued or re-registered security and who registers a transfer guarantees only that the purchaser has no knowledge of any unauthorized signature in a necessary endorsement.

**Contents of guarantee**

**198** A person who transfers a security to a purchaser for value guarantees by the transfer only that

- (a) the transfer is effective and rightful,
- (b) the security is genuine and has not been materially altered, and
- (c) the person knows of nothing that might impair the validity of the security.

**Guarantee of intermediary**

**199** An intermediary delivering a security to a purchaser who knows that the intermediary is an intermediary guarantees only good faith.

**Guarantee of broker**

**200** A broker gives to a customer, to the issuer and to a purchaser the guarantees provided in sections 197 to 199 and has the rights and privileges of a purchaser under those sections, and those guarantees of and in favour of the broker acting as an agent are in addition to guarantees given by the customer and guarantees given in favour of the customer.

**Right to compel endorsement**

**201** If a registered security is delivered to a purchaser without a necessary endorsement, the purchaser has the right to demand the endorsement, and the purchaser becomes a good faith purchaser after the endorsement.

**Appropriate person**

**202(1)** In this section, sections 203, 210(1), 218(1) and 222, “appropriate”, with respect to a person, means that the person is

- (a) the person who is specified by the security or by a special endorsement to be entitled to the security,
- (b) if a person described in clause (a) is described as a fiduciary but is no longer serving as one, either that person or the person’s successor,
- (c) if the security or endorsement mentioned in clause (a) specifies more than one person as fiduciaries and one or more of those persons is no longer a fiduciary, the

remaining fiduciary or fiduciaries, whether or not a successor has been appointed or qualified,

- (d) if a person described in clause (a) is an individual and is without capacity to act by reason of death, incompetence, minority or other incapacity, the person's fiduciary,
- (e) if the security or endorsement mentioned in clause (a) specifies more than one person with right of survivorship and by reason of death not all of the persons can sign, the survivor or survivors,
- (f) a person who has the legal power to sign, or
- (g) to the extent that a person described in clauses (a) to (f) may act through an agent, the person's authorized agent.

(2) The authority of an appropriate person signing is determined as of the time of signing.

#### **Endorsement**

**203(1)** An endorsement of a security in registered form for the purposes of assignment or transfer is made when an appropriate person signs either the security or a separate document, or when the signature of an appropriate person is written without more on the back of the security.

(2) An endorsement may be in blank or special.

(3) An endorsement in blank includes an endorsement to bearer.

(4) A special endorsement specifies the person to whom the security is to be transferred, or who has power to transfer it.

(5) A holder may convert an endorsement in blank into a special endorsement.

#### **Immunity of endorser**

**204** Unless agreed otherwise, the endorser does not, by the endorsement, assume any obligation that the security will be honoured by the issuer.

#### **Partial endorsement**

**205** An endorsement purporting to be an endorsement of only part of a security representing units intended by the issuer to be separately transferable is effective to the extent of the endorsement.

**Effect of failure by fiduciary to comply**

**206** Failure of a fiduciary to comply with the document that is the source of the fiduciary's power or with the law of the jurisdiction governing the fiduciary relationship does not render the fiduciary's endorsement unauthorized for the purposes of this Part.

**Effect of endorsement without delivery**

**207** An endorsement of a security does not constitute a transfer until delivery of the security on which it appears or, if the endorsement is on a separate document, until delivery of both the security and the document.

**Endorsement in bearer form**

**208** An endorsement of a security in bearer form may give notice of an adverse claim under section 193 but does not otherwise affect any of the holder's rights.

**Effect of unauthorized endorsement**

**209(1)** The owner of a security may assert the ineffectiveness of an endorsement against the issuer or a purchaser, other than a good faith purchaser who has in good faith received a new, re-issued or re-registered security on registration of transfer, unless the owner

- (a) has ratified the unauthorized endorsement of the security, or
- (b) is otherwise precluded from impugning the effectiveness of the unauthorized endorsement.

**(2)** An issuer who registers the transfer of a security on an unauthorized endorsement is liable for improper registration.

**Warranties of guarantor of signature**

**210(1)** A person who guarantees the signature of an endorser of a security warrants that, at the time of signing, the signer was an appropriate person to endorse and the signature was genuine.

**(2)** A person who guarantees the signature of an endorser does not otherwise warrant the rightfulness of the transfer to which the signature relates.

**(3)** A person who guarantees the endorsement of a security warrants both the signature and the rightfulness, in all respects, of the transfer to which the signature relates, but an issuer may not require a guarantee of endorsement as a condition to registration of transfer.

(4) The guarantees referred to in subsections (1) to (3) are made to any person who, relying on the guarantee, takes or deals with the security, and the guarantor is liable to the person for any loss resulting from breach of warranty.

#### **Presumption of delivery**

**211** Delivery of a security to a purchaser occurs when

- (a) the purchaser or a person designated by the purchaser acquires possession of it,
- (b) the purchaser's securities broker acquires possession of a security specially endorsed to or issued in the name of the purchaser,
- (c) the purchaser's securities broker sends the purchaser confirmation of the purchase and the broker in the broker's records identifies a specific security as belonging to the purchaser, or
- (d) in respect of an identified security to be delivered while still in the possession of a third person, that person acknowledges that it is held for the purchaser.

#### **Presumption of ownership**

**212(1)** A purchaser is the owner of a security held for the purchaser by a securities broker, but a purchaser is not a holder except in the cases described in sections 211(b) and (c).

(2) If a security is part of a fungible bulk, a purchaser of the security is the owner of the proportionate interest in the fungible bulk.

(3) Notice of an adverse claim received by a securities broker or by a purchaser after the broker takes delivery as a holder for value is not effective against the broker or the purchaser, except that, as between the broker and the purchaser, the purchaser may demand delivery of an equivalent security in respect of which no notice of an adverse claim has been received.

#### **Delivery of security**

**213(1)** Unless agreed otherwise, if a sale of a security is made on a stock exchange or otherwise through securities brokers,

- (a) the selling customer fulfils the duty to deliver when the customer delivers the security to the selling securities broker or to a person designated by the selling securities broker or when the selling customer causes an

acknowledgment to be made to the selling securities broker, and

- (b) the selling securities broker, including a correspondence broker, acting for a selling customer fulfils the duty to deliver by delivering the security or a like security to the buying securities broker or to a person designated by the buying securities broker or by effecting clearance of the sale in accordance with the rules of the exchange on which the transaction took place.

(2) Except as provided otherwise in this section and unless agreed otherwise, a transferor's duty to deliver a security under a contract of purchase is not fulfilled until the transferor delivers the security in negotiable form to the purchaser or to a person designated by the purchaser, or causes an acknowledgment to be made to the purchaser that the security is held for the purchaser.

(3) A sale to a securities broker purchasing for the securities broker's own account is subject to subsection (2) and not subsection (1) unless the sale is made on a stock exchange.

#### **Right to reclaim possession**

**214(1)** A person against whom the transfer of a security is wrongful, other than by reason of an unauthorized endorsement, may against anyone except a good faith purchaser

- (a) reclaim possession of the security or obtain possession of a new security evidencing all or part of the same rights, or
- (b) claim damages.

(2) If the transfer of a security is wrongful by reason of an unauthorized endorsement, the owner may reclaim possession of the security or obtain possession of a new security even from a good faith purchaser if the ineffectiveness of the purported endorsement may be asserted against the purchaser under section 209.

(3) The right to reclaim possession of a security may be specifically enforced, the transfer of the security may be restricted, and the security may be impounded pending litigation.

#### **Right to requisites for registration**

**215(1)** Unless agreed otherwise, a transferor must, on demand, supply a purchaser with proof of the transferor's authority to transfer a security or with any other requisite that is necessary to obtain registration of the transfer of a security, but if the transfer is not for value, it is not necessary for the transferor to provide proof

of authority to transfer unless the purchaser pays the reasonable and necessary costs of the proof and transfer.

**(2)** If a transferor fails to comply with a demand under subsection (1) within a reasonable time, the purchaser may reject or rescind the transfer.

#### **Seizure of security**

**216** No seizure of a security or other interest evidenced by a security is effective until the person making the seizure obtains possession of the security.

#### **Not liable if good faith delivery**

**217** An agent, or a bailee or depositary, who in good faith has received securities and sold, pledged or delivered them according to the instructions of the pledgor, depositor or principal is not in breach of a fiduciary duty or otherwise liable even though the agent, bailee or depositary had no right to dispose of the securities.

#### **Duty to register transfer**

**218(1)** If a security in registered form is presented for transfer, the issuer must register the transfer if

- (a) the security is endorsed by an appropriate person,
- (b) reasonable assurance is given that the endorsement is genuine and effective,
- (c) the issuer has no duty to inquire into adverse claims or has discharged that duty,
- (d) all applicable laws relating to the collection of taxes have been complied with,
- (e) the transfer is rightful or is to a good faith purchaser, and
- (f) any transfer fee referred to in section 161 has been paid.

**(2)** An issuer who has a duty to register a transfer of a security is liable to the person presenting it for registration for any loss resulting from an unreasonable delay in registration or from a failure or refusal to register the transfer.

#### **Assurance of endorsement**

**219(1)** An issuer may require an assurance that each necessary endorsement on a security is genuine and effective by requiring a

guarantee of the signature of the person endorsing the security and by requiring,

- (a) if the endorsement is by an agent, reasonable assurance of authority to sign,
- (b) if the endorsement is by a fiduciary, evidence of appointment or incumbency,
- (c) if there is more than one fiduciary, reasonable assurance that all who are required to sign have done so, and
- (d) in any other case, assurance that corresponds as closely as is feasible to the cases set out in clauses (a) to (c).

(2) For the purpose of subsection (1), a guarantee of the signature of a person is sufficient if it is signed by or on behalf of a person whom the issuer believes, on reasonable grounds, to be a responsible person.

(3) An issuer may adopt reasonable standards to determine responsible persons for the purpose of subsection (2).

(4) For the purpose of subsection (1)(b), the following constitute sufficient evidence of appointment or incumbency of a fiduciary:

- (a) in the case of a fiduciary of a deceased security holder's estate or succession, a certified copy of the document referred to in section 176(1)(c) dated not earlier than 60 days before the day a security is presented for transfer, or
- (b) in the case of any other fiduciary, a copy of a document showing the appointment or other evidence believed by the issuer to be appropriate.

(5) An issuer may adopt reasonable standards with respect to evidence referred to in subsection (4)(b).

(6) An issuer is deemed not to have notice of the contents of a document referred to in subsection (4) that is obtained by the issuer except to the extent that the contents relate directly to appointment or incumbency.

#### **Notice from additional documentation**

**220** If an issuer, in relation to a transfer, demands assurance other than an assurance specified in section 219(1) and obtains a copy of a will, trust or partnership agreement or a bylaw or similar document, the issuer is deemed to have notice of all matters contained in the document that affect the transfer.

**Limited duty of inquiry**

**221(1)** An issuer to whom a security is presented for registration has a duty to inquire into adverse claims if

- (a) the issuer receives written notice of an adverse claim at a time and in a manner that provide the issuer with a reasonable opportunity to act on it before the issue of a new, re-issued or re-registered security and the notice discloses the name and address of the claimant, the registered owner and the issue of which the security is a part, or
- (b) the issuer is deemed to have notice of an adverse claim from a document that it obtained under section 220.

**(2)** An issuer may discharge a duty of inquiry by any reasonable means, including notifying an adverse claimant by registered mail sent to the address provided by the adverse claimant or, if no such address has been provided, to the adverse claimant's residence or regular place of business, that a security has been presented for registration of transfer by a named person and that the transfer will be registered unless, no later than 30 days after the date of sending the notice, the issuer

- (a) is served with a restraining order or other order of a court, or
- (b) is provided with an indemnity bond sufficient in the issuer's judgment to protect the issuer and any transfer agent or other agent of the issuer from any loss that may be incurred by any of them as a result of complying with the notice of the adverse claim.

**Inquiry into adverse claim**

**222** Unless an issuer is deemed to have notice of an adverse claim from a document that is obtained under section 220 or has received notice of an adverse claim under section 221(1), if a security presented for registration is endorsed by the appropriate person, the issuer has no duty to inquire into adverse claims and, in particular,

- (a) an issuer registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent or correct description of the fiduciary relationship, and the issuer may assume without inquiry that the newly registered owner continues to be the fiduciary until the issuer receives written notice that the fiduciary is no longer acting as such with respect to the particular security,
- (b) an issuer registering a transfer on an endorsement by a fiduciary has no duty to inquire into whether the transfer

is made in compliance with the document that is the source of the fiduciary's power or with the law of the jurisdiction governing the fiduciary relationship, and

- (c) an issuer is deemed not to have notice of the contents of a court record or a registered document even if the record or document is in the issuer's possession if the transfer is made on the endorsement of a fiduciary to the fiduciary specifically or to the fiduciary's nominee.

#### **Duration of notice of adverse claim**

**223** A written notice of adverse claim received by an issuer is effective for 12 months after the day it was received unless the notice is renewed in writing.

#### **Limitation on issuer's liability**

**224(1)** Except as provided otherwise in any applicable law relating to the collection of taxes, an issuer is not liable to the owner or any other person who incurs a loss as a result of the registration of a transfer of a security if

- (a) the necessary endorsements were on or with the security, and
- (b) the issuer had no duty to inquire into adverse claims or had discharged that duty.

**(2)** If an issuer has registered a transfer of a security to a person not entitled to it, the issuer must on demand deliver a like security to the owner unless

- (a) by virtue of subsection (1) the issuer is not liable,
- (b) the owner is precluded by section 225(1) from asserting a claim, or
- (c) the delivery would result in an overissue to which section 177 applies.

#### **Lost or stolen security**

**225(1)** The owner of a security who fails to notify the issuer of an adverse claim, in writing, within a reasonable time after the owner knows of a loss, apparent destruction or wrongful taking of the security is precluded from asserting a claim to a new security against the issuer if the issuer has registered a transfer of the security.

(2) If the owner of a security claims that the security has been lost, destroyed or wrongfully taken, the issuer must issue a new security in place of the original security if the owner

- (a) so requests before the issuer has notice that the security has been acquired by a good faith purchaser,
- (b) provides the issuer with a sufficient indemnity bond, and
- (c) satisfies any other reasonable requirements imposed by the issuer.

(3) If, after the issue of a new security under subsection (2), a good faith purchaser of the original security presents the original security for registration of transfer, the issuer must register the transfer unless registration would result in an overissue to which section 177 applies.

(4) In addition to the rights on an indemnity bond, the issuer may recover the new security issued under subsection (2) from the person to whom it was issued or any person taking under that person other than a good faith purchaser.

#### **Duty**

**226** An authenticating trustee, transfer agent or other agent of 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 to exercise good faith and reasonable diligence, and
- (b) the same obligations to the holder or owner of a security and the same rights, privileges and immunities as the issuer has.

#### **Notice to agent**

**227** Notice to an authenticating trustee, transfer agent or other agent of an issuer is notice to the issuer in respect of the functions performed by the agent.

## **Part 10 Financial Disclosure**

#### **Annual financial statements to members**

**228(1)** Subject to section 229, the directors must place before the members at every annual meeting of members

- (a) the following financial statements as prescribed:

- (i) if the cooperative has not completed a financial period and the meeting is held after the end of the first 6-month period of that financial period, a financial statement for the period that began on the date the corporation came into existence and ended on a date not more than 6 months before the annual meeting;
  - (ii) if the cooperative has completed only one financial period, a financial statement for that year;
  - (iii) if the cooperative has completed 2 or more financial periods, comparative financial statements for the last 2 completed financial periods;
  - (iv) if the cooperative has completed one or more financial periods but the annual meeting is held after 6 months has expired in its current financial period, a financial statement for that period that
    - (A) began at the commencement of its current financial period, and
    - (B) ended on a date that occurred not more than 6 months before the annual meeting,in addition to any statements required under subclause (ii) or (iii),
- (b) the report of the auditor, if any, and
  - (c) any further information respecting the financial position of the cooperative and the results of its operations required by the articles, the bylaws or a unanimous agreement.

**(2)** If investment shareholders have a right to have an annual meeting under section 115(1), the directors must place the documents described in subsection (1) before the investment shareholders at every annual meeting of investment shareholders.

**(3)** Notwithstanding subsection (1)(a)(iii), the financial statements for the earlier of the 2 financial periods referred to in that subclause may be omitted if the reason for the omission is set out in the financial statements, or in a note to those statements, to be placed before the members at an annual meeting of members and, in a case to which subsection (2) applies, the investment shareholders at an annual meeting of investment shareholders.

**Exemption for distributing cooperative**

**229(1)** Section 228 does not apply to a distributing cooperative that is subject to and complies with the provisions of the *Securities Act* relating to the financial statements to be placed before the investment shareholders at every annual meeting.

**(2)** The Commission may, on application of a distributing cooperative, authorize the distributing cooperative to omit from its financial statements any prescribed item, and the Commission may, if it reasonably believes that disclosure of any information to be contained in the statements would be detrimental to the distributing cooperative, permit the omission on any reasonable conditions that the Commission thinks fit.

**Consolidated statements**

**230(1)** A cooperative must keep at its registered office a copy of the financial statements of each of its subsidiaries and of each entity the accounts of which are consolidated in its financial statements.

**(2)** The members and investment shareholders of a cooperative and their agents and legal representatives may on request examine the statements referred to in subsection (1) during the usual business hours of the cooperative and may take extracts from them free of charge.

**(3)** A cooperative may, not later than 15 days after a request to examine under subsection (2), apply to the Court for an order barring the right of any person to so examine, and the Court may, if it is satisfied that the examination would be detrimental to the cooperative or a subsidiary, bar the right and make any further order it thinks fit.

**(4)** A cooperative must give the person requesting to examine under subsection (2) notice of an application under subsection (3), and the person may appear and be heard in person or by counsel.

**Approval of financial statements**

**231(1)** The financial statements referred to in section 228 must be approved by the directors, and the approval is evidenced by the manual signature of one or more directors or a facsimile of the signatures reproduced on the statements.

**(2)** A cooperative may not issue, publish or circulate copies of the financial statements referred to in section 228 unless they are

- (a) approved and signed in accordance with subsection (1), and

- (b) accompanied by the report of the auditor of the cooperative, if any.

**Copies to investment shareholders**

**232(1)** A cooperative must send a copy of the documents referred to in section 228 to each investment shareholder, except to an investment shareholder who has informed the cooperative in writing that the investment shareholder does not want a copy of the documents,

- (a) not less than 21 days before each annual meeting of investment shareholders, if section 228(2) applies, or
- (b) not later than a resolution instead of an annual meeting is signed in accordance with the regulations.

**(2)** A cooperative must provide a member, on request, with a copy of the documents referred to in section 228.

**Copies of financial statements re distributing cooperatives**

**233(1)** If any of the securities of the cooperative that were part of a public distribution are outstanding and are held by more than one person, a distributing cooperative must send a copy of the documents referred to in section 228 to the Executive Director not less than 21 days before each annual meeting of members, or without delay after a resolution instead of an annual meeting is signed pursuant to the regulations, and in any event not later than 15 months after the last preceding annual meeting of members was held or a resolution signed pursuant to the regulations.

**(2)** A subsidiary cooperative is not required to comply with this section if its financial statements are consolidated or combined with those of its holding cooperative entity and the statements of its holding cooperative entity are sent to the Executive Director in compliance with this section.

**Qualifications of auditor**

**234(1)** Subject to subsection (5), a person is disqualified from being an auditor of a cooperative if the person is not independent of the cooperative, of any of its affiliates or of the directors or officers of the cooperative or its affiliates.

- (2)** For the purposes of this section,
- (a) independence is a question of fact, and
  - (b) a person is deemed not to be independent if the person, or another person with whom the person is in business,

- (i) is a director, officer or employee of the cooperative or any of its affiliates, is in business with the cooperative or any of its affiliates, or is in business with a director, officer or employee of the cooperative or any of its affiliates,
- (ii) beneficially owns or controls, directly or indirectly, a material interest in the securities of the cooperative or any of its affiliates, or
- (iii) has been a receiver, receiver-manager, liquidator or trustee in bankruptcy of the cooperative or any of its affiliates within 2 years of the proposed appointment of the person as auditor of the cooperative.

**(3)** An auditor who becomes disqualified under this section must, subject to subsection (5), resign without delay after becoming aware of the disqualification.

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

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

#### **Appointment of auditor**

**235(1)** Subject to section 236, the members must, by ordinary resolution, at the first annual meeting of members and at each subsequent annual meeting, appoint an auditor to hold office until the close of the next annual meeting.

**(2)** An auditor appointed under section 56 is eligible for appointment under subsection (1).

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

**(4)** The remuneration of an auditor may be fixed by ordinary resolution of the members or, if not so fixed, may be fixed by the directors.

**Dispensing with auditor**

**236(1)** A cooperative that is not required to comply with section 233 may resolve not to appoint an auditor by

- (a) special resolution of the members, and
- (b) special resolution of all investment shareholders, including those who do not otherwise have the right to vote.

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

**Ceasing to hold office**

**237(1)** An auditor of a cooperative ceases to hold office when the auditor dies, resigns or is removed under section 238.

**(2)** A resignation of an auditor becomes effective on the date on which a written resignation is sent to the cooperative or on the date specified in the resignation, whichever is later.

**Removal of auditor**

**238(1)** The members may by ordinary resolution at a special meeting remove the auditor from office unless the auditor was appointed by the Court under section 240.

**(2)** A vacancy created by the removal of an auditor may be filled at the meeting at which the auditor is removed or, if not so filled, may be filled under section 239.

**Filling vacancy**

**239(1)** Subject to subsection (3), the directors must fill a vacancy in the office of auditor without delay after it occurs.

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

**(3)** The bylaws of a cooperative may provide that a vacancy in the office of auditor may be filled only by vote of the members.

**(4)** An auditor appointed to fill a vacancy holds office for the unexpired term of the auditor's predecessor.

**Court- appointed auditor**

**240(1)** If a cooperative does not have an auditor, the Court may, on the application of a member or investment shareholder, appoint and fix the remuneration of an auditor, who holds office until an auditor is appointed by the members.

**(2)** In the case of a distributing cooperative, the Executive Director may, on the application of a member or investment shareholder, appoint and fix the remuneration of an auditor, who holds office until an auditor is appointed by the members.

**(3)** Subsection (1) does not apply if a resolution not to appoint an auditor made under section 236 in effect.

**Right to attend meeting**

**241(1)** The auditor of a cooperative is entitled to receive notice of every meeting of the cooperative and, at the expense of the cooperative, to attend and be heard at a meeting if matters relating to the auditor's duties are to be discussed at the meeting.

**(2)** A director or member of a cooperative, whether or not the member is entitled to vote at the meeting, or an investment shareholder that is entitled to vote at that meeting of investment shareholders, may give written notice not less than 10 days before a meeting of the cooperative to the auditor or a former auditor of the cooperative to attend the meeting at the expense of the cooperative.

**(3)** If the auditor or former auditor receives a written notice referred to in subsection (2), the auditor or former auditor must attend the meeting and answer questions relating to the auditor's duties.

**(4)** A director, member or investment shareholder who sends a notice referred to in subsection (2) must send a copy of the notice to the cooperative at the same time.

**(5)** An auditor is entitled to submit to the cooperative a written statement giving the reasons for the auditor's resignation or the reasons why the auditor opposes a proposed action or resolution set out in clauses (a) to (d) in any of the following situations:

- (a) the auditor resigns;
- (b) the auditor receives a notice or otherwise learns of a meeting of members called for the purpose of removing the auditor from office;
- (c) the auditor receives a notice or otherwise learns of a meeting of directors or members at which another person is to be appointed to fill the office of auditor, whether

because of the resignation or removal of the incumbent auditor or because the term of office of the incumbent auditor has expired or is about to expire;

- (d) the auditor receives a notice or otherwise learns of a meeting at which a resolution referred to in section 236 is to be proposed.

**(6)** The cooperative must without delay send a copy of the statements referred to in subsection (5)

- (a) to every person who is entitled to receive notice of a meeting referred to subsection (1),
- (b) to the Director, and
- (c) in the case of a distributing cooperative, to the Executive Director.

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

**(8)** Notwithstanding subsection (7), a person otherwise qualified may accept appointment or consent to be appointed as auditor of a cooperative if the person does not receive a reply within 15 days after making the request referred to in that subsection.

### **Examination**

**242(1)** An auditor of a cooperative must make any examination that is, in the auditor's opinion, necessary to enable the auditor to report in the manner that may be prescribed on the financial statements required by this Act to be placed before the members or investment shareholders, except any financial statements or parts of statements that relate to the earlier of the 2 financial years referred to in section 228(1)(a)(iii).

**(2)** Notwithstanding section 243, an auditor of a cooperative may reasonably rely on the report of an auditor of an entity the accounts of which are included in whole or in part in the financial statements of the cooperative.

**(3)** Subsection (2) applies whether or not the financial statements of the cooperative reported on by the auditor are in consolidated form.

**Right to information**

**243(1)** On the demand of an auditor of a cooperative, the present or former directors, officers, employees or agents of the cooperative must provide any information and explanations, and access to any documents of the cooperative or any of its subsidiaries, that are, in the opinion of the auditor, necessary to enable the auditor to make the examination and report required under section 242 and that they are reasonably able to provide.

**(2)** On the demand of the auditor of a cooperative, the directors must obtain from the present or former directors, officers, employees and agents of any subsidiary of the cooperative the information and explanations that the present or former directors, officers, employees and agents are reasonably able to provide and that are, in the auditor's opinion, necessary to enable the auditor to make the examination and report required under section 242 and provide them to the auditor.

**(3)** A person who in good faith makes an oral or written communication under subsection (1) or (2) is not liable in any civil action arising from having made the communication.

**Audit committee**

**244(1)** Subject to subsection (2), a distributing cooperative must, and any other cooperative may, have an audit committee composed of not fewer than 3 directors, a majority of whom are not full-time officers or employees of the cooperative or any of its affiliates.

**(2)** A distributing cooperative may apply to the Commission for an order authorizing the cooperative to dispense with an audit committee, and the Commission may, if satisfied that the members and investment shareholders will not be prejudiced, permit the distributing cooperative to dispense with an audit committee on any reasonable conditions that the Commission thinks fit.

**(3)** The financial statements of the cooperative must be reviewed by an audit committee before they are approved under section 231.

**(4)** The auditor of a cooperative is entitled to receive notice of every meeting of the audit committee and, at the expense of the cooperative, to attend and be heard at a meeting if matters relating to the auditor's duties are to be discussed at the meeting.

**(5)** If requested to do so by a member of the audit committee, the auditor must attend every meeting of the committee held during the auditor's term of office.

**(6)** The auditor of a cooperative or a member of the audit committee may call a meeting of the committee.

**Notice of error**

**245(1)** A director or officer of a cooperative must, without delay, notify the auditor and the audit committee, if any, of any error or misstatement of which the director or officer becomes aware in a financial statement that the auditor or a former auditor has reported on.

**(2)** If the auditor or a former auditor of a cooperative is notified or becomes aware of an error or misstatement in a financial statement on which the auditor or former auditor has reported, and if in the opinion of the auditor or former auditor the error or misstatement is material, the auditor or former auditor must inform each director accordingly.

**(3)** When under subsection (2) the auditor or former auditor informs the directors of an error or misstatement in a financial statement, the directors must

- (a) prepare and issue revised financial statements or otherwise inform the members and investment shareholders, and
- (b) if the cooperative is a distributing cooperative, the cooperative must file the revised financial statements with the Executive Director or inform the Executive Director of the error or misstatement in the same manner as the members or investment shareholders were informed of it.

**Qualified privilege**

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

## **Part 11 Trust Indentures**

### **Division 1 Interpretation and Application**

**Definitions**

**247** In this Part,

- (a) “event of default” means, in relation to a trust indenture, an event specified in the trust indenture on the occurrence of which the principal, interest and other money payable under the trust indenture become or may be declared to be payable before maturity, but the event is not an event of default until all the conditions set out in the trust indenture

in connection with that event for the giving of notice or the lapse of time or otherwise have been satisfied;

- (b) “guarantor” means a person that has guaranteed an obligation of an issuer under a trust indenture;
- (c) “issuer” means a cooperative that has issued, is about to issue or is in the process of issuing debt obligations;
- (d) “trust indenture” means a deed, indenture or other document, including a supplement or amendment to such a document, made by a cooperative under which the cooperative issues debt obligations and in which a person is appointed as trustee for the holders of the debt obligations issued under it;
- (e) “trustee” means a person appointed as trustee under the terms of a trust indenture to which a cooperative is a party, and includes a successor trustee.

#### **Application of Part**

**248(1)** This Part applies to a trust indenture if the debt obligations issued or to be issued under it are part of a distribution to the public.

**(2)** The Director may, in writing, exempt a trust indenture from the application of this Part if, in the Director’s opinion, the trust indenture and the debt obligations under it are subject to a law of another jurisdiction that is substantially equivalent to the provisions of this Act relating to trust indentures.

## **Division 2 General**

#### **Conflict of interests**

**249(1)** No person may be appointed as trustee if there is a material conflict of interests between the person’s role as trustee and any other role of the person.

**(2)** A trustee must, no later than 90 days after the trustee becomes aware that a material conflict of interests exists,

- (a) eliminate the conflict of interests, or
- (b) resign from office.

**Validity despite conflict**

**250** A trust indenture, any debt obligations issued under it and the security interest effected by them are valid even if there is a material conflict of interests of the trustee.

**Removal of trustee**

**251** If a trustee is appointed in contravention of section 249(1) or if a trustee contravenes section 249(2), any interested person may apply to the Court for an order that the trustee be replaced, and the Court may make an order on any terms that it thinks fit.

**Qualification of trustee**

**252** A trustee, or at least one of the trustees if more than one is appointed, must be a trust corporation.

**List of security holders**

**253(1)** A holder of debt obligations issued under a trust indenture may, on payment to the trustee of a reasonable fee and on delivery of a statutory declaration to the trustee, require the trustee to provide, no later than 15 days after the delivery to the trustee of the statutory declaration, a list setting out the following information, as shown on the records maintained by the trustee on the day the statutory declaration is delivered to the trustee:

- (a) the names and addresses of the registered holders of the outstanding debt obligations,
- (b) the principal amount of the outstanding debt obligations held by each such holder, and
- (c) the total principal amount of the outstanding debt obligations.

**(2)** On the demand of a trustee, the issuer must provide the trustee with the information required to enable the trustee to comply with subsection (1).

**(3)** If the person requiring the trustee to provide a list under subsection (1) is an entity, the statutory declaration required under that subsection may be made by a director or an officer of the entity or a person acting in a similar capacity.

**(4)** The statutory declaration must state

- (a) the name and address of the person requiring the trustee to provide the list and, if the person is an entity, its address for service, and

- (b) that the list will not be used except as permitted by subsection (5).

**(5)** No person may use a list obtained under this section except in connection with

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

#### **Compliance with trust indentures**

**254(1)** An issuer or a guarantor of a debt obligation issued or to be issued under a trust indenture must provide the trustee with evidence of compliance with the conditions in the trust indenture before undertaking

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

**(2)** On the demand of a trustee, the issuer or guarantor must provide the trustee with evidence of compliance with the conditions in the trust indenture by the issuer or guarantor in respect of any act to be done by the trustee at the request of the issuer or guarantor.

**(3)** The following documents constitute evidence of compliance for the purposes of subsections (1) and (2):

- (a) a statutory declaration made or certificate issued by a director or an officer of the issuer or guarantor stating that the conditions referred to in subsections (1) and (2) have been complied with,
- (b) if the trust indenture requires compliance with conditions that are subject to review by legal counsel, an opinion of legal counsel that the conditions of the trust indenture requiring review by legal counsel have been complied with, and
- (c) if the trust indenture requires compliance with conditions that are subject to review by an auditor or accountant, an opinion or report of the auditor of the issuer or guarantor,

or any other accountant that the trustee selects, that those conditions have been complied with.

- (4)** The evidence of compliance described in subsection (3) must include a statement by the person giving the evidence
- (a) declaring that the person has read and understands the conditions of the trust indenture referred to in subsections (1) and (2),
  - (b) describing the nature and scope of the examination or investigation on which the person based the statutory declaration, certificate, opinion or report, and
  - (c) declaring that the person has made any examination or investigation that the person believes necessary to enable the statements to be made or the opinions contained or expressed in the statement to be given.

#### **Trustee may require evidence**

**255(1)** On the demand of a trustee, the issuer or guarantor must provide the trustee with evidence in any form that the trustee requires of compliance with any condition relating to any action required or permitted to be taken by the issuer or guarantor under the trust indenture.

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

#### **Notice of default**

**256** A trustee must, no later than 30 days after the trustee becomes aware of the occurrence of an event of default, give to the holders of debt obligations issued under a trust indenture notice of every event of default arising under the trust indenture and continuing at the time the notice is given, unless the trustee believes on reasonable grounds that it is in the best interests of the holders of the debt obligations to withhold the notice and so informs the issuer and guarantor in writing.

#### **Duty**

**257(1)** In exercising powers and discharging duties, the trustee must

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

**(2)** Notwithstanding subsection (1), a trustee is not liable if the trustee relies in good faith on statements contained in a statutory declaration, certificate, opinion or report that complies with this Act or the trust indenture.

#### **No exculpation**

**258** No term of a trust indenture, or of an agreement between a trustee and the holders of debt obligations issued under the indenture or agreement, or between the trustee and the issuer or guarantor, operates to relieve a trustee from the duties imposed on the trustee by this Part.

## **Part 12 Fundamental Changes**

#### **Definition of “common share”**

**259** For the purposes of this Part, “common share” means a share in a corporation, the rights of the holders of which are equal in all respects, including equal rights to

- (a) receive dividends declared by the corporation on the shares, and
- (b) receive the property of the corporation remaining on dissolution.

#### **Continuance**

**260(1)** A corporation incorporated or continued otherwise than under this Act may, if so authorized by its governing legislation, apply to the Director for a certificate of continuance under this Act if the corporation

- (a) satisfies, or by its articles of continuance would satisfy, the requirements for incorporation as a cooperative under this Act,
- (b) is organized and operated and carries on its business on a cooperative basis or, by its articles of continuance, causes the corporation to be organized and operated and to carry on its business on a cooperative basis, and

- (c) has a capital and corporate structure that, if set out in its articles and bylaws, would meet the requirements of this Act.

**(2)** A corporation incorporated or continued otherwise than under this Act may, if so authorized by its governing legislation, apply to the Director for a certificate of continuance and a certificate of amalgamation under this Act if the corporation

- (a) proposes to be continued under this section for the purpose of amalgamating with another corporation in compliance with this Act and satisfies, or after the amalgamation will satisfy, the requirements for incorporation as a cooperative under this Act,
- (b) is organized and operated and carries on its business on a cooperative basis, or after the amalgamation will be organized and operated and will carry on its business on a cooperative basis, and
- (c) has a capital and corporate structure, or after the amalgamation will have a capital and corporate structure, that, if set out in its articles and bylaws, would meet the requirements of this Act.

**(3)** A corporation that applies for continuance under subsection (1) or (2) may, without so stating in its articles of continuance, effect by those articles any amendment to the documents by which it was originally incorporated if the amendment is one that a cooperative incorporated under this Act may make to its articles.

**(4)** If a corporation wishes to apply for continuance under subsection (1), articles of continuance in the form set by the Director must be sent to the Director, together with any information that the Director may require and a declaration of the directors

- (a) that after continuance the cooperative will be organized and operated and will carry on business on a cooperative basis, and
- (b) in the case of a cooperative to which Part 18 applies, that after continuance the cooperative will be in compliance with the applicable division of Part 18.

**(5)** If a corporation wishes to apply for continuance under subsection (2), articles of continuance and articles of amalgamation, in the form set by the Director, must be sent to the Director, together with an amalgamation agreement containing the particulars set out in section 271, any information that the Director may require and a declaration of the directors

- (a) that after amalgamation the cooperative will be organized and operated and will carry on business on a cooperative basis, and
  - (b) in the case of a cooperative to which Part 18 applies, that after amalgamation the cooperative will be in compliance with the applicable division of Part 18.
- (6)** The Director must issue
- (a) a certificate of continuance on receipt of the articles of continuance and the declaration required by subsection (4) if the Director is satisfied that the requirements for incorporation have been met, or
  - (b) a certificate of continuance and a certificate of amalgamation on receipt of the articles of continuance, the articles of amalgamation, the amalgamation agreement and the declaration required by subsection (5) if the Director is satisfied that the requirements for incorporation and the requirements for amalgamation have been met.
- (7)** For the purpose of subsection (6), the Director may rely on the articles and the declarations.
- (8)** On the date shown in the certificate of continuance,
- (a) the corporation becomes a cooperative to which this Act applies as if it had been incorporated under this Act,
  - (b) the articles of continuance are deemed to be the articles of incorporation of the continued cooperative, and
  - (c) the certificate of continuance is deemed to be the certificate of incorporation of the continued cooperative.
- (9)** The Director must send, without delay after the certificate of continuance is issued, a copy of that certificate to the appropriate official or public body charged with the administration of the legislation under which continuance under this Act was authorized.
- (10)** When a corporation is continued as a cooperative under this Act,
- (a) the property of the corporation continues to be the property of the cooperative,
  - (b) the cooperative continues to be liable for the obligations of the corporation,

- (c) an existing cause of action, claim or liability to prosecution is unaffected,
- (d) a civil, criminal, administrative, investigative or other action or proceeding pending by or against the corporation may continue to be prosecuted by or against the cooperative, and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the corporation may be enforced by or against the cooperative.

**(11)** When a corporation is continued as a cooperative under this Act,

- (a) its common shares that carry a right to vote are deemed to be membership shares and any class of shares which are non-voting shares are deemed to be investment shares to which are attached the rights, privileges and restrictions set out in this Act and the articles of continuance,
- (b) the holders of the common shares of the corporation that carry a right to vote are deemed to be the members of the cooperative,
- (c) if the corporation does not have share capital, each member of the corporation is deemed to be either a member of the cooperative or to hold membership shares in the cooperative, as provided in the articles of continuance, and
- (d) any agreement made before continuance under which the holders of any common shares of the corporation have agreed to vote those shares in a manner provided in the agreement is of no effect.

**(12)** Subject to section 163,

- (a) a share of a corporation issued before it was continued under this Act is deemed to have been issued in compliance with this Act and with the provisions of the articles of continuance irrespective of whether the share is fully paid and of any designation, right, privilege, restriction or condition set out on or referred to in the certificate representing the share,
- (b) continuance under this Act does not deprive a holder of any right or privilege that the holder claims under, or relieve the holder of any liability in respect of, an issued share, and

- (c) shares carry voting rights only to the extent permitted by this Act.

**(13)** If a cooperative continued under this Act had, before it was so continued, issued a share certificate in registered form that is convertible to bearer form, the cooperative may, if a holder of such a share certificate exercises the conversion privilege attached to the certificate, issue a share certificate to the holder in bearer form for the same number of shares.

**(14)** For the purposes of subsections (12) and (13), “share” includes an instrument referred to in section 124(1), (2) and (4), a share warrant or a like instrument.

2001 cC-28.1 s260;2001 c23 s1(2)

### **Continuance - other jurisdictions**

**261(1)** Subject to section 262 and Part 18, a cooperative, on a special resolution of the members and, if the cooperative has issued investment shares, a separate special resolution of the investment shareholders of each class, may, if it establishes to the satisfaction of the Director by a declaration of the directors that its proposed continuance in another jurisdiction would not

- (a) adversely affect the members, creditors or investment shareholders,
- (b) result in the cooperative carrying on its business and affairs in a manner not consistent with carrying on business on a cooperative basis, or
- (c) result in a cooperative to which Part 18 applies carrying on its business or affairs in a manner not consistent with the applicable division of Part 18,

apply to the appropriate official or public body of another jurisdiction requesting that the cooperative be continued as if it had been incorporated under the laws of that other jurisdiction.

**(2)** A notice of a meeting of the cooperative to authorize an application for continuance under this section must be sent to each member and investment shareholder and must state that a dissenting investment shareholder is entitled to the benefit of section 277, but failure to make that statement does not invalidate a discontinuance under this Act.

**(3)** The directors may, if authorized by the special resolution at the time of authorizing an application for continuance under this section, abandon the application without further approval of the members or investment shareholders.

(4) On receipt of a notice satisfactory to the Director that the cooperative has been continued under the laws of another jurisdiction and a copy of the articles of incorporation, the Director must file the notice and issue a certificate of discontinuance in the form that the Director sets.

(5) On the date shown in the certificate of discontinuance, the cooperative becomes an extra-provincial cooperative as if it had been incorporated under the laws of the other jurisdiction.

#### **Restriction from continuance in other jurisdiction**

**262** A cooperative may not be continued as a corporation under the laws of another jurisdiction unless those laws provide that

- (a) its property continues to be the property of the corporation,
- (b) the corporation continues to be liable for the obligations of the cooperative,
- (c) an existing cause of action, claim or liability to prosecution is unaffected,
- (d) a civil, criminal, administrative, investigative or other action or proceeding pending by or against the cooperative may continue to be prosecuted by or against the corporation, and
- (e) a conviction against, or ruling, order or judgment in favour of or against, the cooperative may be enforced by or against the corporation.

#### **Shareholders' right to vote**

**263(1)** Each investment share carries the right to vote on an application for continuance under section 261 whether or not it otherwise carries the right to vote.

(2) The investment shareholders of a class or series of investment shares of a cooperative are entitled to vote separately as a class or series in respect of a continuance referred to in subsection (1) if the effect of the proposed continuance on the class or series is different from the effect of the proposed continuance on other classes or series of investment shares.

#### **Amendment of articles**

**264(1)** Subject to subsection (3) and sections 116, 265 and 266, the articles of a cooperative may be amended by a special resolution to

- (a) change the name of the cooperative,
- (b) change the place in which the cooperative's registered office is located,
- (c) add, change or remove a restriction on the business or businesses that the cooperative may carry on,
- (d) convert par-value membership shares into no-par-value membership shares and provide for a maximum number of membership shares that may be issued,
- (e) change a price or formula to be used when membership shares are issued or redeemed or otherwise acquired by the cooperative,
- (f) add, change or remove restrictions on membership,
- (g) convert a cooperative that is incorporated without membership shares to a cooperative with membership shares and provide for membership shares with a par value and their par value or membership shares without a par value and the maximum number of membership shares that may be issued,
- (h) convert a cooperative with membership shares into a cooperative without membership shares and provide for the conversion of membership shares into member loans,
- (i) change any maximum number of shares that the cooperative is authorized to issue,
- (j) reduce or increase the cooperative's stated capital, which for the purposes of the amendment is deemed to be set out in the articles,
- (k) create investment shares or new classes of investment shares,
- (l) change the designation of all or any of the cooperative's investment shares and add, change or remove any rights, privileges, restrictions and conditions, including rights to accrued dividends, in respect of all or any of its investment shares, whether issued or unissued,
- (m) change the investment shares of any class or series, whether issued or unissued, into a different number of investment shares of the same class or series or into the same or a different number of investment shares of other classes or series,

- (n) divide a class of investment shares, whether issued or unissued, into series and fix the number of investment shares in each series and the rights, privileges, restrictions and conditions of them,
- (o) authorize the directors to divide any class of unissued investment shares into series and fix the number of investment shares in each series and the rights, privileges, restrictions and conditions of them,
- (p) authorize the directors to change the rights, privileges, restrictions and conditions attached to unissued investment shares of any series,
- (q) revoke, diminish or enlarge any authority conferred under clause (o) or (p),
- (r) increase or decrease the number of directors or the minimum or maximum number of directors, subject to section 50 and section 108(5),
- (s) add, change or remove restrictions on the issue, transfer or ownership of investment shares, or
- (t) add, change or remove any other provision that is permitted by this Act to be set out in the articles.

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

**(3)** If the name of a cooperative is indicative of a restriction on the business that may be carried on by it, the articles of the cooperative may not be amended to remove that restriction unless its name is also amended.

**(4)** An amendment to the articles of a cooperative may not be made if it would result in the cooperative not being organized or operated, or not carrying on business, on a cooperative basis or if, in the case of a cooperative to which Part 18 applies, it would result in the cooperative not being in compliance with Part 18.

#### **Proposal to amend**

**265(1)** Subject to subsection (2), a person authorized by the regulations may make a proposal pursuant to the regulations to amend the articles, with any modifications that the circumstances require, at any meeting of the cooperative at which the proposal is to be considered.

(2) Subject to subsection (3), notice of the meeting of a cooperative at which a proposal to amend the articles is to be considered must set out the proposed amendment and, if applicable, state that a dissenting shareholder is entitled to the benefit of section 277, but failure to make that statement does not invalidate an amendment.

(3) If the proposed amendment is too long to be included in a notice under this section, the notice must contain a statement in sufficient detail to permit the recipient to form a reasoned judgment about the proposed amendment and a statement that the full text of the proposed amendment is available at any business location of the cooperative.

(4) A proposed amendment to the articles referred to in subsection (1) is adopted when approved by a special resolution of the members and, subject to section 116, if the cooperative has issued investment shares, by a separate special resolution of the investment shareholders or the holders of a class or series of investment shares.

(5) Each investment share that is affected by a proposed amendment to the articles carries the right to vote in accordance with section 116.

#### **Delivery of articles**

**266(1)** Subject to any revocation under section 114(4) or 264(2), after an amendment has been adopted, articles of amendment must be sent to the Director in the form that the Director sets, together with any information that the Director may require and a declaration by the directors

- (a) that the cooperative will be organized and operated, and will carry on business, on a cooperative basis, and
- (b) if the cooperative is one to which Part 18 applies, that the cooperative will comply with the applicable division of Part 18.

(2) If an amendment effects or requires a reduction of stated capital, section 133(2) and (5) apply.

#### **Certificate of amendment**

**267** On receipt of articles of amendment and the declaration required by section 266(1), the Director must issue a certificate of amendment if the Director is satisfied that the articles of amendment comply with this Act and the regulations.

**Effect of certificate**

**268(1)** An amendment becomes effective on the date shown in the certificate of amendment, and the articles are amended accordingly.

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

**Restated articles**

**269(1)** The directors may at any time, and must when reasonably so directed by the Director, restate the articles of incorporation as amended.

**(2)** A restatement of articles

(a) may be done by an ordinary resolution of the directors where the restatement only consolidates previous amendments or is done in conjunction with an amendment that the directors are authorized to make without special resolution, and

(b) in all other cases must be done by special resolution of the members.

**(3)** Restated articles of incorporation must be sent to the Director in the form set by the Director.

**(4)** On receipt of restated articles of incorporation, the Director must issue a restated certificate of incorporation.

**(5)** Restated articles of incorporation are effective on the date shown in the restated certificate of incorporation.

**Amalgamation**

**270** Two or more cooperatives, including holding and subsidiary cooperatives, may amalgamate and continue as one cooperative if the amalgamation agreement sets out a capital and corporate structure for the amalgamated cooperative that would meet the requirements for a cooperative to be incorporated under this Act.

**Amalgamation agreement**

**271(1)** Each cooperative proposing to amalgamate must enter into an agreement setting out the terms and means of effecting the amalgamation and, in particular, setting out

- (a) the provisions that are required to be included in articles under section 5,
- (b) the name and address of each proposed director of the amalgamated cooperative,
- (c) the manner in which the memberships, member loans and membership shares of each of the amalgamating cooperatives are to be converted into memberships, member loans or membership shares of the amalgamated cooperative and, if applicable, the manner in which the investment shares or other securities of the amalgamating cooperatives are to be converted into investment shares or other securities of the amalgamated cooperative,
- (d) if any share of an amalgamating cooperative is not to be converted into a membership, membership share or security of the amalgamated cooperative, the amount of money or securities of a cooperative that the holders of those shares are to receive in addition to or instead of memberships, membership shares or securities of the amalgamated cooperative,
- (e) the manner of payment of money instead of the issue of fractional shares of the amalgamated cooperative or of any other corporation the securities of which are to be received in the amalgamation,
- (f) whether the bylaws of the amalgamated cooperative are to be those of one of the amalgamating cooperatives and, if not, a copy of the proposed bylaws, and
- (g) details of any arrangements necessary to perfect the amalgamation and to provide for the subsequent management and operation of the amalgamated cooperative.

**(2)** If shares of one of the amalgamating cooperatives are held by or on behalf of another of the amalgamating cooperatives, the amalgamation agreement must provide for the cancellation of the shares when the amalgamation becomes effective without any repayment of capital in respect of them, and no provision may be made in the agreement for the conversion of those shares into shares of the amalgamated cooperative.

### **Approval**

**272(1)** The directors must submit the amalgamation agreement for approval to a meeting of the members and to a meeting of the investment shareholders of each of the amalgamating cooperatives

of which they are directors and, subject to subsection (5), to the holders of each class or series of investment shares.

**(2)** A notice of a meeting of members or investment shareholders that meets the requirements of the regulations must be sent in accordance with the regulations to each member and investment shareholder of each amalgamating cooperative and must

- (a) include or be accompanied with a copy or summary of the amalgamation agreement, and
- (b) state that a dissenting investment shareholder is entitled to the benefit of section 277.

**(3)** Failure to make the statement referred to in subsection (2)(b) does not invalidate an amalgamation.

**(4)** Each investment share carries the right to vote with respect to an amalgamation agreement whether or not it otherwise carries the right to vote.

**(5)** The investment shareholders of a class or series of investment shares are entitled to vote separately as a class or series in respect of the amalgamation agreement if it contains a provision that, if contained in a proposed amendment to the articles, would entitle the investment shareholders to vote in accordance with section 116.

**(6)** Subject to subsection (5), an amalgamation agreement is adopted when the members of each amalgamating cooperative and, if any of the amalgamating cooperatives has issued investment shares, the investment shareholders, have approved the amalgamation agreement by separate special resolutions.

**(7)** An amalgamation agreement may provide that at any time before the issue of a certificate of amalgamation pursuant to section 274(4) the agreement may be terminated by the directors of an amalgamating cooperative even if the agreement has been approved by the members and investment shareholders of all or any of the amalgamating cooperatives.

#### **Short-form amalgamation**

**273(1)** A cooperative that is a holding cooperative may amalgamate with one or more of its wholly owned subsidiary cooperatives.

**(2)** The holding cooperative and subsidiaries referred to in subsection (1) may continue as one cooperative without complying with sections 270 to 272 if

- (a) the amalgamation is approved by a resolution of the directors of each amalgamating cooperative, and
  - (b) the resolutions provide that
    - (i) the shares of each subsidiary are to be cancelled without any repayment of capital in respect of them,
    - (ii) except as may be prescribed, the articles of amalgamation are to be the same as the articles of incorporation of the amalgamated holding cooperative, and
    - (iii) no membership shares or securities may be issued by the amalgamated cooperative in connection with the amalgamation.
- (3)** Two or more wholly owned subsidiary cooperatives of a holding entity may amalgamate and continue as one cooperative without complying with sections 270 to 272 if
- (a) the amalgamation is approved by a resolution of the directors of each amalgamating cooperative, and
  - (b) the resolutions provide that
    - (i) the shares of all but one of the amalgamating subsidiaries are to be cancelled without any repayment of capital in respect of them,
    - (ii) except as may be prescribed, the articles of amalgamation are to be the same as the articles of incorporation of the amalgamating subsidiary whose shares are not cancelled, and
    - (iii) the stated capital of the amalgamating subsidiaries whose shares are cancelled are to be added to the stated capital of the amalgamating subsidiary whose shares are not cancelled.
- (4)** Notwithstanding subsection (3)(b)(ii) and section 264, the directors of the holding entity of the subsidiaries referred to in subsection (3) may, by resolution, approve a new name for the amalgamated cooperative, so long as, in the case of a cooperative to which Part 18 applies, the name complies with Part 18.

#### **Sending of articles**

**274(1)** After an amalgamation has been approved under section 272 or 273, articles of amalgamation in the form that the Director sets must be sent to the Director, together with a notice of

registered office and a notice of the directors of the amalgamated cooperative.

**(2)** A declaration of the directors of each amalgamating cooperative must be attached to the articles of amalgamation and must establish

- (a) that the amalgamated cooperative will be organized and operated, and will carry on business, on a cooperative basis,
- (b) if the cooperative is one to which Part 18 applies, that the amalgamated cooperative will comply with the applicable division of Part 18,
- (c) that there are reasonable grounds to believe that
  - (i) each amalgamating cooperative is, and the amalgamated cooperative will be, able to pay its liabilities as they become due, and
  - (ii) the realizable value of the amalgamated cooperative's assets will not be less than the total of its liabilities and stated capital of all classes,

and

- (d) that there are reasonable grounds to believe that
  - (i) no creditor will be prejudiced by the amalgamation, or
  - (ii) adequate notice has been given to all known creditors of the amalgamating cooperatives and no creditor has objected to the amalgamation otherwise than on grounds that are frivolous or vexatious.

**(3)** For the purpose of subsection (2)(d)(ii), adequate notice is given if

- (a) a notice in writing is sent to each known creditor who has a claim against any of the amalgamating cooperatives that exceeds \$1000,
- (b) a notice in writing is published once in a newspaper published or distributed in the place where each amalgamating cooperative has its registered office and reasonable notice is given in each province where any of the cooperatives carries on business, and
- (c) each notice states that the cooperative intends to amalgamate with one or more specified cooperatives in

accordance with this Act and that a creditor of the cooperative may object to the amalgamation not later than 30 days after the date of the notice.

**(4)** On receipt of articles of amalgamation and the declarations required by subsection (2), the Director must issue a certificate of amalgamation if the Director is satisfied that

- (a) the articles are in accordance with section 5, the regulations and, if applicable, sections 387, 388, 392(1), 402(1), 407, 413, 419 and 422(c)(iii),
- (b) the cooperative will be organized and operated, and will carry on business, on a cooperative basis,
- (c) the requirements of subsection (2)(c) and (d) have been met, and
- (d) if applicable, the appropriate division of Part 18 has been complied with.

**(5)** For the purposes of subsection (4)(b) to (d), the Director may rely on the articles and the declarations required by subsection (2).

#### **Effect of certificate**

**275** On the date shown in a certificate of amalgamation,

- (a) the amalgamation of the amalgamating cooperatives and their continuance as one cooperative become effective,
- (b) the property of each amalgamating cooperative continues to be the property of the amalgamated cooperative,
- (c) the amalgamated cooperative continues to be liable for the obligations of each amalgamating cooperative,
- (d) an existing cause of action, claim or liability to prosecution is unaffected,
- (e) a civil, criminal, administrative, investigative or other action or proceeding pending by or against an amalgamating cooperative may continue to be prosecuted by or against the amalgamated cooperative,
- (f) a conviction against, or ruling, order or judgment in favour of or against, an amalgamating cooperative may be enforced by or against the amalgamated cooperative, and
- (g) the articles of amalgamation are deemed to be the articles of incorporation of the amalgamated cooperative and the

certificate of amalgamation is deemed to be the certificate of incorporation of the amalgamated cooperative.

**Extraordinary disposition**

**276(1)** A sale, lease or exchange of all or substantially all of the property of a cooperative, other than in the ordinary course of business, requires the approval of the members and investment shareholders in accordance with subsections (2) to (8).

**(2)** A notice of meeting that meets the requirements of the regulations must be sent to all members and investment shareholders and must

- (a) include a copy or summary of the proposed agreement of sale, lease or exchange, and
- (b) state that a dissenting investment shareholder is entitled to the benefit of section 277.

**(3)** Failure to make the statement referred to in subsection (2)(b) does not invalidate the disposition described in subsection (1).

**(4)** Each investment share carries the right to vote with respect to a disposition described in subsection (1), whether or not it otherwise carries the right to vote.

**(5)** The holders of investment shares of a class or series are entitled to vote separately as a class or series if the effect of the proposed disposition described in subsection (1) on the class or series is different from its effect on other classes or series of investment shares.

**(6)** Subject to subsection (5), a disposition described in subsection (1) is authorized when approved by a special resolution of the members and, if the cooperative has issued investment shares, by a separate special resolution of the investment shareholders of each class or series.

**(7)** A special resolution referred to in subsection (6) may authorize the directors to fix any terms or conditions of a sale, lease or exchange.

**(8)** The directors, if authorized by the members and investment shareholders approving a proposed disposition described in subsection (1) may, subject to the rights of third parties, abandon the disposition without further approval.

**Right to dissent**

**277(1)** Unless section 278 or 357 applies, an investment shareholder may dissent if a cooperative resolves to

- (a) amend its articles in a manner that adversely affects the rights of an investment shareholder in respect of an investment share,
- (b) amend its articles to add, change or remove a restriction on the business the cooperative may carry on,
- (c) amalgamate other than under section 273,
- (d) apply for continuance under section 261, or
- (e) sell, lease or exchange all or substantially all of its property under section 276.

**(2)** A holder of investment shares of any class or series of shares entitled to vote under section 116 may dissent if the cooperative resolves to amend its articles in a manner described in that section.

**(3)** A dissenting investment shareholder must send to the cooperative, at or before any meeting of investment shareholders at which a resolution referred to in subsection (1) or (2) is to be voted on, a written objection to the resolution, unless the cooperative did not give notice to the investment shareholder of the purpose of the meeting and of the right to dissent.

**(4)** A dissenting investment shareholder is deemed to have claimed under this section on behalf of all investment shares in a class held by the investment shareholder if the resolution is passed.

**(5)** The cooperative must, not later than 10 days after the members and investment shareholders have adopted the resolution, send to each dissenting investment shareholder notice that the resolution has been adopted.

**(6)** A dissenting investment shareholder may, no later than 21 days after receiving the notice under subsection (5) or, if no notice is received, no later than 21 days after learning that the resolution was adopted, send to the cooperative a written notice that contains

- (a) the person's name and address,
- (b) the number of investment shares and the class or classes of the investment shares held, and
- (c) a demand for payment of the fair market value of all investment shares of each class held by the investment

shareholder, fair market value being determined as of the day before the resolution was adopted.

- (7)** A dissenting investment shareholder must, not later than 30 days after sending the notice under subsection (6), send the certificates representing the investment shares held in the cooperative to the cooperative or to its transfer agent.
- (8)** A dissenting investment shareholder who fails to comply with subsection (7) has no right to claim under this section.
- (9)** Each certificate sent under subsection (7) must be endorsed by the cooperative or its transfer agent with a notice that the holder is a dissenting investment shareholder and must be returned to the investment shareholder.
- (10)** On the sending of a notice under subsection (6), an investment shareholder's rights as an investment shareholder, other than the right to be paid in accordance with subsection (6), are suspended.
- (11)** The rights of the investment shareholder are reinstated as of the date of the notice referred to in subsection (6) if
- (a) the dissenting investment shareholder withdraws the demand made under subsection (6)(c) before the cooperative makes an offer under subsection (12),
  - (b) the cooperative fails to make an offer in accordance with subsection (12) and the dissenting investment shareholder withdraws its notice, or
  - (c) the directors revoke a resolution pursuant to section 114(4) or section 264(2), terminate an amalgamation agreement pursuant to section 272(7), abandon an application for continuance pursuant to section 261(3), or abandon a sale, lease or exchange pursuant to section 276(8).
- (12)** A cooperative must, not later than 7 days after the later of the day on which the resolution under subsection (1) or (2) is effective and the day the cooperative receives the notice under subsection (6), send to each dissenting investment shareholder
- (a) a written offer to pay the amount determined in accordance with subsection (6) and a statement showing how the amount was calculated, or
  - (b) a statement that subsection (21) applies.

- (13)** Every offer for the same class or series of investment shares must be on the same terms.
- (14)** Subject to subsection (21), a cooperative must pay to the dissenting investment shareholder the amount offered under subsection (12) no later than 10 days after acceptance, but the offer lapses if it is not accepted within 30 days after being made.
- (15)** If the dissenting investment shareholder fails to accept the offer, the cooperative may, not later than 50 days after the resolution is approved or any later time that the Court may allow, apply to the Court to fix the amount to be paid.
- (16)** If the cooperative fails to make an application under subsection (15), a dissenting investment shareholder may, no later than 20 days after the end of the period referred to in subsection (15), make an application to the Court for the same purpose.
- (17)** On an application under subsection (15) or (16), all dissenting investment shareholders whose investment shares have not been purchased are joined as parties and the cooperative must notify them, advising each of them of the right to participate in, and the consequences of, the application, and no dissenting investment shareholder is required to give security for costs in the application.
- (18)** On an application under subsection (15) or (16), the Court must determine who is a dissenting investment shareholder and fix the amount to be paid and may make any further order that the Court thinks fit.
- (19)** If subsection (21) applies, the cooperative must, no later than 10 days after the determination under subsection (18), advise each dissenting investment shareholder that subsection (21) applies.
- (20)** If subsection (21) applies,
- (a) a dissenting investment shareholder, not later than 30 days after receiving the notice under subsection (19), may by notice to the cooperative withdraw the notice under subsection (6), in which case the investment shareholder is reinstated as an investment shareholder, or
  - (b) if no notice is given to the cooperative under clause (a), the dissenting investment shareholder retains the status of a claimant to be paid as soon as the cooperative may lawfully do so or, in liquidation, to be paid in priority to the remaining investment shareholders.
- (21)** The cooperative may not make a payment to a dissenting investment shareholder under this section if there are reasonable

grounds to believe that after that payment the cooperative would be in breach of section 131.

### Reorganization

**278(1)** This section applies to a reorganization made pursuant to a Court order under section 357, a Court order approving a proposal under the *Bankruptcy and Insolvency Act* (Canada) or a Court order made under any Act of the Legislature that affects the rights of the cooperative and its members, shareholders and creditors.

**(2)** No Court order for reorganization may result in a cooperative

- (a) no longer being organized or operating or carrying on business on a cooperative basis, or
- (b) if the cooperative is subject to Part 18, not complying with the applicable division of Part 18.

**(3)** If a cooperative is subject to an order referred to in subsection (1), its articles may be amended by the order to effect any changes that might lawfully be made by an amendment under this Act.

**(4)** If a Court makes an order referred to in subsection (1), the Court may also

- (a) authorize the issue of debt obligations that, if held by members, may be converted to membership shares or investment shares and otherwise may be converted to investment shares, and fix the terms of them, and
- (b) appoint directors in place of or in addition to all or any of the directors then in office.

**(5)** After an order referred to in subsection (1) has been made, articles of reorganization in the form set by the Director, together with a notice of registered office and a notice of change of directors, if applicable, must be sent to the Director.

**(6)** On receipt of articles of reorganization pursuant to subsection (5), the Director must issue a certificate of amendment.

**(7)** A reorganization becomes effective on the date shown in the certificate of amendment and the articles of incorporation are amended accordingly.

**(8)** No investment shareholder is entitled to dissent under section 277 in respect of an amendment to the articles of incorporation effected under this section.

**Definition of “arrangement”**

**279(1)** In this section, “arrangement” includes

- (a) a continuance for the purpose of amalgamation;
- (b) an amendment to the articles of a cooperative;
- (c) an amalgamation of 2 or more cooperatives;
- (d) an amalgamation of a corporation with a cooperative that results in an amalgamated cooperative;
- (e) an amalgamation of 2 corporations to become a cooperative;
- (f) a division of the business carried on by a cooperative;
- (g) a transfer of all or substantially all of the property of a cooperative to another corporation in exchange for property, money or securities of the corporation;
- (h) an exchange of securities of a cooperative for property, money or other securities of the cooperative or property, money or securities of another corporation;
- (i) a liquidation and dissolution of a cooperative;
- (j) any combination of the events set out in clauses (a) to (i).

**(2)** An application may be made to the Court by a cooperative for an order approving an arrangement in respect of the cooperative.

**(3)** If an arrangement can be effected under any other provision of this Act, an application may not be made under this section unless it is impractical to effect the arrangement under that other provision.

**(4)** If an application is made under this section, the Court may make any order it thinks fit, including an order

- (a) respecting the giving of notice of the application, subject to subsection (6),
- (b) respecting the representation of the interests of members or investment shareholders,
- (c) requiring meetings of the cooperative to be held,
- (d) permitting investment shareholders to dissent under section 277, and

- (e) approving an arrangement in any manner the Court may direct.
- (5) The Court may not make an order that would result in the cooperative
- (a) no longer being organized or operating or carrying on business on a cooperative basis, and
  - (b) if the cooperative is subject to Part 18, not complying with the applicable division of Part 18.
- (6) Repealed 2014 c17 s58.
- (7) If an order is made under subsection (4)(e), articles of arrangement in the form that the Director sets, together with a notice of registered office and notice of change of directors, if applicable, must be sent to the Director.

2001 cC-28.1 s279;2008 c43 s3;2014 c17 s58

#### **Certificate of arrangement**

- 280(1)** On receipt of articles of arrangement, the Director must issue a certificate of arrangement.
- (2) An arrangement becomes effective on the date shown in the certificate of arrangement.

## **Part 13 Investigations and Inspections**

### **Division 1 Inspections**

#### **Identification of inspectors**

- 281** An inspector who enters any place under the authority of this Act must, on request,
- (a) produce a document that identifies the person as an inspector under this Act, and
  - (b) explain the inspector's purpose for entering the place.

#### **Inspection**

- 282(1)** An inspector may enter the business premises of a cooperative at any reasonable time to conduct an inspection to determine if there is compliance with this Act and the regulations.
- (2) If an inspector has reasonable grounds to believe that

- (a) books, records or documents of a cooperative are located in another person's business premises, and
- (b) those books, records or documents are relevant to determine if there is compliance with this Act or the regulations,

the inspector may enter those other business premises at any reasonable time.

**(3)** An inspector may in the course of an inspection request a person who is working in business premises referred to in subsection (1) or (2)

- (a) to give written or oral replies to questions,
- (b) to produce any books, records, documents or other things and to provide copies of them, and
- (c) to provide any other information

to determine if there is compliance with this Act and the regulations.

**(4)** An inspector may in the course of an inspection inspect, examine and make copies of or temporarily remove books, records or documents or other things that are relevant to determine if there is compliance with this Act and the regulations.

**(5)** When an inspector removes any books, records, documents or other things under subsection (4), the inspector

- (a) must give a receipt for them to the person from whom they were taken,
- (b) may make copies of, take photographs of or otherwise record them, and
- (c) must, within a reasonable time, return them to the person to whom the receipt was given.

#### **Order compelling assistance in inspections**

**283(1)** For the purpose of enabling an inspector to conduct an inspection to determine if there is compliance with this Act and the regulations, the Director may apply to the Court for an order

- (a) compelling a cooperative or an employee or agent of a cooperative to allow an inspector to enter business premises, a private dwelling or another place occupied or controlled by the cooperative, employee or agent and requiring the cooperative, employee or agent to produce

books, records, documents or other things relevant to the inspection for the inspector's examination;

- (b) authorizing the inspector to copy or remove the books, records, documents or other things on such terms as the Court considers appropriate;
- (c) requiring a cooperative or an employee or agent of a cooperative to co-operate with the inspection on such terms as the Court considers appropriate.

**(2)** The Court may grant an order under subsection (1) if satisfied on evidence under oath by the Director that there are reasonable grounds to believe that

- (a) the inspection is reasonable,
- (b) the cooperative or agent or employee of the cooperative has not co-operated or likely will not co-operate with the investigation, and
- (c) the order is appropriate in the circumstances.

**(3)** An application under this section may be made ex parte if the Court considers it proper to do so.

**(4)** No force may be used in enforcing an order granted under this section unless a person identified in the order is specifically authorized to use force.

2001 cC-28.1 s283;2009 c53 s40

#### **Director's decision and official director**

**284** If, following an inspection, the Director is satisfied that the affairs of a cooperative

- (a) are being mismanaged,
- (b) are not being conducted in accordance with cooperative principles, or
- (c) are being conducted on an unsound basis,

the Director may

- (d) cancel the incorporation of the cooperative,
- (e) call a general meeting of the cooperative,
- (f) on written notice to the directors, act as, or appoint a person to act as, the official director of the cooperative, or

- (g) apply to the Court to appoint a receiver or receiver-manager.

**Effect of appointment of official director**

**285(1)** If the Director gives written notice under section 284(f), the person appointed as official director takes over the functions of the directors, and on the official director taking over, the directors

- (a) are removed from office, and
- (b) must turn over all books, records and funds and other effects and information required by the official director.

**(2)** Immediately before the appointment of the official director ends, the official director must call a general meeting of the cooperative and at the meeting must

- (a) render an accounting for the period the official director administered the affairs of the cooperative, and
- (b) conduct an election to reconstitute the board of directors.

**Application for directions**

**286** The Director or Executive Director may apply to the Court for directions in respect of any matter concerning the Director's or Executive Director's functions or duties under this Act or the regulations, and the Court may give any directions that it thinks fit.

**Court restraining or compliance order**

**287(1)** The Director may apply to the Court for an order directing any person to comply with or restraining any person from acting in breach of this Act or the regulations.

**(2)** The Court may order compliance and make any further order it thinks fit.

**Director not compellable**

**288** The Director is not compelled to undertake an inspection pursuant to this Division on the complaint of any person.

## Division 2 Court-Ordered Investigations

### Court-ordered investigation

**289** An interested person may apply to the Court for an order directing an investigation to be made of a cooperative or any of its affiliates, or both.

### Conditions for Court order

**290(1)** The Court may grant the order if it appears to the Court that the application is neither frivolous nor vexatious and

- (a) the business or the affairs of the cooperative are not being carried on or conducted in accordance with
  - (i) the restrictions contained in its articles,
  - (ii) its bylaws,
  - (iii) a unanimous agreement, or
  - (iv) this Act,
- (b) the business of the cooperative or any of its affiliates is or has been carried on with intent to defraud a person,
- (c) the business or the affairs of the cooperative or any of its affiliates are or have been carried on or conducted, or the powers of the directors are or have been exercised, in a manner that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, a member or a security holder,
- (d) the cooperative or any of its affiliates was formed for a fraudulent or unlawful purpose or is to be dissolved for a fraudulent or unlawful purpose, or
- (e) persons concerned with the formation, the business or the affairs of the cooperative or any of its affiliates have, in connection with the formation, business or affairs of the cooperative, acted fraudulently or dishonestly.

**(2)** An applicant under this section is not required to give security for costs.

### Powers of the Court

**291(1)** When an order for an investigation is made, or subsequently, the Court may make any order it thinks fit, including an order

- (a) to investigate,
- (b) appointing an inspector, who may be the Director, and fixing the inspector's remuneration,
- (c) replacing an inspector,
- (d) specifying the notice to be given to any interested person, or dispensing with notice,
- (e) specifying that a copy of the order be sent to the Director,
- (f) authorizing an inspector to enter land or a building when the Court is satisfied there might be relevant information in that place and to examine anything and make copies of any document or other thing,
- (g) requiring a person to produce documents to an inspector or authorizing an inspector to require a person to produce documents,
- (h) authorizing an inspector to conduct a hearing, administer oaths and examine any person on oath, and setting out rules for the conduct of hearings,
- (i) requiring any person to attend a hearing conducted by an inspector, to produce evidence and to give evidence on oath, or authorizing the inspector to issue notices to attend and produce,
- (j) giving directions to an inspector or any other interested person about any matter arising in the course of the investigation,
- (k) requiring an inspector to make an interim or final report to the Court,
- (l) determining whether a report of an inspector should be published and, if so, ordering its publication in whole or in part or ordering that copies of it be sent to any person the Court designates,
- (m) requiring an inspector to discontinue the investigation,
- (n) if the cooperative is incorporated without membership capital, requiring the cooperative to be dissolved or ordering it dissolved,
- (o) determining any matter that relates to the relationship between a member and the cooperative, or

- (p) requiring the cooperative to pay the costs of the investigation.

(2) On the making of an order under this section, the applicant must send a copy of the order to the Director.

#### **Court-appointed inspector's powers and duties**

**292(1)** On appointment by the Court, an inspector may exercise the powers and perform the functions and duties specified by the Court in an order made under section 291(1).

(2) Every report made by the Court-appointed inspector must be sent by the inspector to the Director.

(3) On request of an interested person, a Court-appointed inspector must produce a copy of the order made under section 291(1).

#### **Additional powers of Court-appointed inspector**

**293** A Court-appointed inspector may provide information to, or exchange information and otherwise co-operate with, any public official in Canada or elsewhere who

- (a) is authorized to exercise investigatory or regulatory powers, and
- (b) is investigating, in respect of the cooperative or its affiliate, any allegation relevant to or connected with the matters being investigated by the inspector.

#### **Application for hearing in private**

**294(1)** An interested person may apply to the Court for an order that a Court hearing or a hearing conducted by a Court-appointed inspector be held in private, and for directions on any matter arising in the course of the investigation.

(2) A person whose conduct is being investigated, or who is being questioned at a hearing conducted by a Court-appointed inspector, has the right to be represented by counsel.

2001 cC-28.1 s294;2009 c53 s41

#### **Compellable witnesses**

**295(1)** Any person who, in the opinion of a Court-appointed inspector, has knowledge relevant to an investigation is a compellable witness in any proceeding under this Part.

(2) A witness may be questioned under oath on anything relevant to any matter before the Court-appointed inspector and is not to be

excused from answering any question on the ground that the answer might tend to

- (a) incriminate the person,
- (b) subject the person to punishment under this Act, or
- (c) establish liability
  - (i) in a civil proceeding at the instance of the Crown or of any other person, or
  - (ii) to prosecution under any Act.

2001 cC-28.1 s295;2009 c53 s41

#### **Protection of witnesses**

**296(1)** Answers to questions given before a Court-appointed inspector that

- (a) tend to incriminate the witness, or
- (b) subject the witness to punishment or establish liability,

may not be used or received against the person in any civil proceedings, in a prosecution under this Act or the regulations or in any proceedings under any other enactment.

**(2)** The protection provided under subsection (1) does not apply in a prosecution for, or proceedings in respect of, perjury or the giving of contradictory evidence.

#### **Absolute privilege**

**297** An oral or written statement or report made by an inspector or other person in an investigation under this Part has absolute privilege.

#### **Solicitor-client privilege**

**298** Nothing in this Part affects the privilege that exists in respect of solicitors and their clients.

**Part 14**  
**Winding-up, Liquidation and**  
**Dissolution of Cooperatives**

**Division 1**  
**Receivers and Receiver-Managers**

**Appointment of a receiver or receiver-manager**

**299(1)** A person may be appointed as a receiver or as a receiver-manager of a cooperative by an instrument or by Court order.

**(2)** As soon as practicable after appointment, the receiver or receiver-manager must notify the Director in writing of the appointment.

**Duties of receivers and receiver-managers**

**300(1)** A receiver-manager may carry on the business of the cooperative to protect the security interests of those on whose behalf the receiver-manager is appointed.

**(2)** A receiver may not carry on the business of the cooperative unless a Court order provides otherwise, but may, subject to the rights of secured creditors,

- (a) receive the income from the property and pay the liabilities connected with it, and
- (b) realize the security interest of those on whose behalf the receiver is appointed.

**(3)** After a receiver or receiver-manager is appointed, directors may not exercise

- (a) any power or duty the directors would otherwise be able to exercise, or
- (b) any power or authority that a receiver or receiver-manager is authorized by instrument or Court order to exercise,

without the consent of the receiver or receiver-manager or of the Court.

**Obligations of receivers and receiver-managers**

**301(1)** A receiver or receiver-manager appointed by the Court must act in accordance with any directions of the Court.

- (2) A receiver or receiver-manager appointed under an instrument must act in accordance with the instrument and any direction given by the Court.
- (3) A receiver or receiver-manager must
- (a) act honestly and in good faith, and
  - (b) deal with any property of the cooperative in the receiver's or receiver-manager's custody or control in a commercially reasonable manner.

**Court directions**

**302** On application by an interested person or by the receiver or receiver-manager, the Court may make any order giving directions on any matter relating to the functions of a receiver or receiver-manager, including an order

- (a) appointing, replacing or discharging a receiver or receiver-manager;
- (b) approving the accounts of the receiver or receiver-manager;
- (c) determining the notice to be given to any person or dispensing with notice to any person;
- (d) fixing the remuneration of the receiver or receiver-manager;
- (e) requiring the receiver or receiver-manager, or a person by or on behalf of whom the receiver or receiver-manager was appointed,
  - (i) to make good any default in connection with the receiver's or receiver-manager's custody or control of the property and business of the cooperative, or
  - (ii) relieving a receiver or receiver-manager, or a person by or on behalf of whom a receiver or receiver-manager was appointed, from any liability on any terms that the Court considers appropriate;
- (f) confirming any act of the receiver or receiver-manager;
- (g) giving directions on any other matter relating to the duties of the receiver or receiver-manager.

**Duties of receivers and receiver-managers**

**303** A receiver or receiver-manager must

- (a) take the property of the cooperative into custody and control in accordance with the Court order or instrument under which the receiver or receiver-manager is appointed;
- (b) open and maintain a bank account as receiver or receiver-manager of the cooperative for the money of the cooperative coming under the receiver's or receiver-manager's control;
- (c) keep detailed accounts of all transactions carried out as receiver or receiver-manager;
- (d) keep accounts of the administration as receiver or receiver-manager and make them available to directors during usual business hours;
- (e) at least once in every 6-month period after appointment, prepare financial statements of the administration, as far as is feasible, in the form required by section 228;
- (f) on completion of duties, render a final account of the administration;
- (g) if section 233 would otherwise apply, file with the Executive Director a copy of any financial statement not later than 15 days after it is prepared and any final account of the administration not later than 15 days after it is rendered.

## **Division 2 Liquidation and Dissolution**

### **Application of Part**

**304** This Division, except sections 312 to 314, does not apply to a cooperative that is insolvent within the meaning of the *Bankruptcy and Insolvency Act* (Canada) or that is a bankrupt within the meaning of that Act.

### **Proceedings stayed if cooperative insolvent**

**305** Any proceedings taken under this Division to dissolve or to liquidate and dissolve a cooperative are stayed if the cooperative is at any time found, in a proceeding under the *Bankruptcy and Insolvency Act* (Canada), to be insolvent within the meaning of that Act.

**Dissolution of cooperatives**

**306(1)** A cooperative that has no property and no liabilities may be dissolved

- (a) by a special resolution of the members, and
- (b) if the cooperative has issued investment shares, by a separate special resolution of the investment shareholders of each class, whether or not they are otherwise entitled to vote.

**(2)** A cooperative that has property or liabilities, or both, may be dissolved

- (a) by a special resolution of the members, and
- (b) if the cooperative has issued investment shares, by a separate special resolution of the investment shareholders of each class, whether or not they are otherwise entitled to vote,

if the special resolutions also

- (c) authorize the directors to cause the cooperative to distribute property and discharge liabilities, and
- (d) the cooperative distributes property and discharges its liabilities before it sends articles of dissolution to the Director under subsection (3).

**(3)** After complying with subsection (1) or (2), the cooperative must send to the Director articles of dissolution in the form that the Director sets.

**(4)** On receipt of articles of dissolution, the Director must issue a certificate of dissolution.

**(5)** The cooperative ceases to exist on the date shown in the certificate of dissolution.

**If membership too low**

**307** If the membership of a cooperative is reduced to a number less than the number of members required for incorporation and, after 30 days' notice, remains at less than that number, the Director may require the cooperative to be liquidated or dissolved under this Part.

**Proposing liquidation and dissolution**

- 308(1)** The directors may propose, or a member may make a proposal in accordance with the regulations for, the voluntary liquidation and dissolution of a cooperative.
- (2)** Notice of any meeting of the cooperative at which voluntary liquidation and dissolution is to be proposed must set out the terms of the proposal.
- (3)** A cooperative may liquidate and dissolve by
- (a) a special resolution of the members, and
  - (b) if the cooperative has issued investment shares, by a separate special resolution of the investment shareholders of each class, whether or not they are otherwise entitled to vote.
- (4)** A statement of intent to dissolve in the form set by the Director must be sent to the Director.
- (5)** On receipt of a statement of intent to dissolve, the Director must issue a certificate of intent to dissolve.
- (6)** On the issue of a certificate of intent to dissolve, the cooperative must cease to carry on business except to the extent necessary for the liquidation, but its corporate existence continues until the Director issues a certificate of dissolution.

**Liquidation and dissolution**

- 309(1)** After a certificate of intent to dissolve has been issued by the Director, the cooperative named in the certificate must, without delay,
- (a) cause a notice to be sent to each known creditor of the cooperative,
  - (b) proceed to collect its property, dispose of properties that are not to be distributed in kind to its members or investment shareholders, discharge all its obligations and do all other acts required to liquidate its business, and
  - (c) after giving the notice required under clause (a) and adequately providing for the payment or discharge of all its obligations, distribute its remaining property in accordance with the articles among its members and investment shareholders, if any, according to their respective rights.

- (2) If the certificate of intent to dissolve has not been revoked under section 311 and the cooperative has complied with this section, the cooperative must send to the Director articles of dissolution in the form set by the Director.
- (3) On receipt of articles of dissolution, the Director must issue a certificate of dissolution.
- (4) The cooperative ceases to exist on the date shown in the certificate of dissolution.

#### **Supervision by Court**

- 310(1)** An interested person may, at any time during the liquidation of a cooperative, apply to the Court for an order that the liquidation be continued under the supervision of the Court, and the Court may so order and make any further order it thinks fit.
- (2) Notice of the application must be given to the Director.

#### **Revocation of intention to dissolve**

- 311(1)** After a certificate of intent to dissolve has been issued by the Director and before a certificate of dissolution is issued, the cooperative may send to the Director a statement of revocation of intent to dissolve in the form set by the Director.
- (2) The statement of revocation must be approved in the same manner as the resolution to liquidate and dissolve.
  - (3) On receipt of the statement of revocation, the Director must issue a certificate of revocation of intent to dissolve.
  - (4) On the date shown in the certificate of revocation of intent to dissolve, the revocation is effective and the cooperative may continue to carry on its business.

#### **Dissolution by Director**

- 312(1)** Subject to subsections (2) and (3), the Director may dissolve a cooperative by issuing a certificate of dissolution under this section if
- (a) the cooperative has not commenced business within 3 years after the date shown in its certificate of incorporation,
  - (b) the cooperative has not carried on its business for 3 consecutive years,

- (c) the cooperative is in default for a period of one year in sending the Director any fee, notice or document required by this Act or the regulations, or
  - (d) all the directors have resigned or been removed and have not been replaced.
- (2) The Director may not dissolve a cooperative under this section until
- (a) 120 days has elapsed since notice of intent to dissolve has been given to the cooperative and to each of its directors, and
  - (b) notice of intent to dissolve the cooperative has been published in a publication generally available to the public.
- (3) Unless cause to the contrary has been shown or an order has been made by the Court under section 302 the Director may, after the end of the 120 days referred to in subsection (2), issue a certificate of dissolution.
- (4) The cooperative ceases to exist on the date shown in the certificate of dissolution.

#### **Court-ordered dissolution for non-compliance**

- 313(1)** An interested person may apply to the Court for an order dissolving a cooperative if the cooperative has
- (a) failed for 2 or more consecutive years to comply with the requirements of this Act with respect to the holding of annual meetings, unless a unanimous agreement contains a provision that eliminates the need for meetings of investment shareholders referred to in section 98,
  - (b) contravened section 23(2), 28(1) to (5), 228 or 230, or
  - (c) procured any certificate under this Act by misrepresentation.
- (2) If the applicant under this section is not the Director, the applicant must give the Director notice of the application.
- (3) The Court may order that the cooperative be dissolved or that it be liquidated and dissolved under the supervision of the Court, and the Court may make any other order it thinks fit.
- (4) On receipt of an order under this section or section 314, the Director must

- (a) if the order is to dissolve the cooperative, issue a certificate of dissolution in the form set by the Director, or
  - (b) if the order is to liquidate and dissolve the cooperative under the supervision of the Court, issue a certificate of intent to dissolve in the form set by the Director and publish notice of the order in a publication generally available to the public.
- (5) The cooperative ceases to exist on the date shown in the certificate of dissolution.

#### **Court-ordered dissolution for questionable activities**

**314(1)** The Court may order the liquidation and dissolution of a cooperative or any of its affiliates on the application of a member or an investment shareholder if the Court is satisfied

- (a) that any of the following is oppressive or unfairly prejudicial to, or unfairly disregards the interests of, a member, investment shareholder, security holder, creditor, director or officer:
    - (i) a result effected by an act or omission of the cooperative or any of its affiliates;
    - (ii) the manner of conducting or carrying on the business or affairs of the cooperative or any of its affiliates;
    - (iii) the manner of exercising the powers of the directors of the cooperative or any of its affiliates,
  - (b) that events have occurred that entitle a member or investment shareholder to demand, in accordance with a unanimous agreement, that the cooperative be dissolved, or
  - (c) that it is just and equitable that the cooperative be liquidated and dissolved.
- (2) On an application under this section, a Court may make any order under this section or section 357 that it thinks fit.
- (3) Section 358 applies to an application under this section.

#### **Application for supervision**

**315(1)** An application to the Court to supervise a voluntary liquidation and dissolution under section 310 must state the reasons, verified by an affidavit or statutory declaration of the

applicant, why the Court should supervise the liquidation and dissolution.

(2) If the Court makes an order for supervision under section 310, the liquidation and dissolution of the cooperative continues under the supervision of the Court in accordance with this Act.

#### **Application to Court**

**316(1)** An application to the Court under section 314 must state the reasons, verified by an affidavit of the applicant, why the cooperative should be liquidated and dissolved.

(2) On an application under section 314, the Court may make an order requiring the cooperative and any person who has an interest in it or claim against it to show cause, at a specified time and place, not less than 4 weeks after the date of the order, why the cooperative should not be liquidated and dissolved.

(3) The Court may order the directors and officers of the cooperative to provide the Court with all material information known to or reasonably ascertainable by them, including

- (a) financial statements of the cooperative,
- (b) the name and address of each member and investment shareholder, and
- (c) the name and address of each known creditor or claimant, including any creditor or claimant with unliquidated, future or contingent claims, and any person with whom the cooperative has a contract.

(4) A copy of an order made under subsection (2) must be

- (a) published as directed in the order, at least once in each week before the time appointed for the hearing, in a publication generally available to the public, and
- (b) served on the Director and each person named in the order.

(5) Publication and service of an order under subsection (2) must be effected by the cooperative or by any other person, and in any manner, that the Court may order.

#### **Powers of Court**

**317** In connection with the liquidation and dissolution of a cooperative, the Court may, if it is satisfied that the cooperative is

able to pay or adequately provide for the discharge of all its obligations, make any order it thinks fit, including an order

- (a) liquidating the cooperative;
- (b) appointing a liquidator, with or without security, and fixing the liquidator's remuneration;
- (c) replacing a liquidator;
- (d) appointing inspectors, specifying their powers and fixing their remuneration, or replacing inspectors;
- (e) determining the notice to be given to any interested person, or dispensing with notice to any person;
- (f) determining the validity of any claim made against the cooperative;
- (g) at any stage of the proceedings, restraining the directors and officers from
  - (i) exercising any of their powers, or
  - (ii) collecting or receiving any debt or other property of the cooperative or paying out or transferring any property of the cooperative, except as permitted by the Court;
- (h) determining and enforcing the duty or liability of any present or former director, officer, member or investment shareholder
  - (i) to the cooperative, or
  - (ii) for an obligation of the cooperative;
- (i) approving the payment, satisfaction or compromise of claims against the cooperative and the retention of assets for those purposes, and determining the adequacy of provisions for the payment or discharge of obligations of the cooperative, whether liquidated, unliquidated, future or contingent;
- (j) disposing of or destroying documents and records of the cooperative;
- (k) on the application of a creditor, the inspectors or the liquidator, giving directions on any matter arising on the liquidation;

- (l) after notice has been given to all interested parties, relieving a liquidator from an omission or default on any terms that the Court thinks fit and confirming any act of the liquidator;
- (m) subject to section 323, approving any proposed interim or final distribution to members or investment shareholders in money or in property in accordance with their respective rights;
- (n) disposing of any property that belongs to creditors, members or investment shareholders who cannot be found;
- (o) on the application of a director, officer, member, investment shareholder or creditor or the liquidator,
  - (i) staying the liquidation on any terms and conditions that the Court thinks fit,
  - (ii) continuing or discontinuing the liquidation proceedings, or
  - (iii) requiring the liquidator to restore to the cooperative all its remaining property;
- (p) after the liquidator has rendered a final account to the Court, dissolving the cooperative.

**Effect of order**

**318** The liquidation of a cooperative commences when the Court makes an order for liquidation.

**Cessation of business and powers**

**319(1)** If the Court makes an order for liquidation of a cooperative,

- (a) the cooperative continues in existence but must cease to carry on business, except the business that is, in the liquidator's opinion, required for an orderly liquidation, and
- (b) the powers of the directors, members and investment shareholders cease and vest in the liquidator, except as specifically authorized by the Court.

**(2)** The liquidator may delegate any of the powers vested in the liquidator by subsection (1)(b) to the directors or members.

**Who may be appointed liquidator**

**320(1)** When making an order for the liquidation of a cooperative or at any time after making one, the Court may appoint any person, including a director, officer, member or investment shareholder, or any body corporate, as liquidator of the cooperative.

**(2)** If an order for the liquidation of a cooperative has been made and the office of liquidator is or becomes vacant, the property of the cooperative is under the control of the Court until the office of liquidator is filled.

**Duties of liquidator**

**321** A liquidator must, without delay after being appointed,

- (a) give notice of the appointment to each claimant and creditor known to the liquidator;
- (b) publish notice of the appointment in a publication generally available to the public and take reasonable steps to give notice of the appointment in each province or other jurisdiction where the cooperative carries on business, requiring
  - (i) any person who is indebted to the cooperative to render an account and pay any amount owing to the liquidator at the time and place specified,
  - (ii) any person who possesses property of the cooperative to deliver it to the liquidator at the time and place specified, and
  - (iii) any person who has a claim against the cooperative, whether liquidated, unliquidated, future or contingent, to present particulars of it in writing to the liquidator not later than 2 months after the first publication of the notice;
- (c) take the property of the cooperative into custody and control;
- (d) open and maintain a trust account for money received by the liquidator in the course of the liquidation;
- (e) keep accounts of the money of the cooperative received and paid out in the course of the liquidation;
- (f) maintain separate lists of the members, investment shareholders and creditors and other persons who have claims against the cooperative;

- (g) if at any time the liquidator determines that the cooperative is unable to pay or adequately provide for the discharge of its obligations, apply to the Court for directions;
- (h) deliver to the Court and to the Director, at least once in every 12-month period after appointment, or more often as the Court may require, financial statements of the cooperative in the form required by section 228 or in any other form that the liquidator may think proper or that the Court may require;
- (i) after the final accounts are approved by the Court, distribute any remaining property of the cooperative among the members and investment shareholders according to their respective rights in accordance with the articles.

#### **Powers of liquidator**

**322(1)** A liquidator may

- (a) retain any person the liquidator considers appropriate;
- (b) bring, defend or take part in any civil, criminal, administrative, investigative or other action or proceeding in the name of and on behalf of the cooperative;
- (c) carry on the business of the cooperative as required for an orderly liquidation;
- (d) sell any property of the cooperative by public auction or private sale;
- (e) do all acts and execute any documents in the name of and on behalf of the cooperative;
- (f) borrow money on the security of the property of the cooperative;
- (g) settle or compromise any claims by or against the cooperative;
- (h) do all other things necessary for the liquidation of the cooperative and the distribution of its property.

**(2)** A liquidator is not liable under this Division if the liquidator exercised the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances to prevent the failure to fulfil the liquidator's duties, including reliance in good

faith on financial statements of the cooperative, on the reports of experts and on information presented by officers or professionals.

(3) If a liquidator has reason to believe that any property of the cooperative is in the possession or control of a person or that any person has concealed, withheld or misappropriated any property of the cooperative, the liquidator may apply to the Court for an order requiring the person to appear before the Court to be questioned at the time and place designated in the order.

(4) If the questioning referred to in subsection (3) discloses that the person has in that person's possession or under that person's control or has concealed, withheld or misappropriated property of the cooperative, the Court may order the person to restore it or pay compensation to the liquidator.

2001 cC-28.1 s322;2009 c53 s41

#### **Costs of liquidator**

**323(1)** A liquidator must pay the costs of liquidation out of the property of the cooperative and must pay or make adequate provision for all claims against it.

(2) No later than one year after appointment, and after paying or making adequate provision for all claims against the cooperative, the liquidator must apply to the Court for

- (a) approval of the final accounts of the liquidator and, subject to the articles and Part 18, an order permitting a distribution in money or in kind of the remaining property of the cooperative to the members and investment shareholders, if any, according to their respective rights, or
- (b) an extension of time, setting out the reasons for the extension.

(3) If a liquidator fails to make the application required by subsection (2), a member or investment shareholder may apply to the Court for an order for the liquidator to show cause why a final accounting and distribution should not be made.

(4) A liquidator must give notice of the intention to make the application referred to in subsection (2) to the Director, to each inspector appointed under section 317, to each member or investment shareholder and to any person who provided a security or fidelity bond for the liquidation, and must publish the notice in a newspaper published or distributed in the place where the cooperative has its registered office in any manner set out in the bylaws or as otherwise directed by the Court.

- (5) If the Court approves the final accounts of the liquidator, the Court must make an order
- (a) directing the Director to issue a certificate of dissolution,
  - (b) directing the custody or disposal of the documents of the cooperative, and
  - (c) discharging the liquidator, subject to the liquidator sending to the Director, without delay, a certified copy of the order directing the issue of a certificate of dissolution.
- (6) On receipt of the certified copy of the Court order, the Director must issue a certificate of dissolution.
- (7) The cooperative ceases to exist on the date shown in the certificate of dissolution.

#### **Right to distribution in money**

**324** A member or investment shareholder may apply to the Court for an order requiring the distribution of the property of the cooperative to be in money if, in the course of the liquidation of the cooperative, the members and investment shareholders resolve or the liquidator proposes to

- (a) exchange all or substantially all the property of the cooperative for securities of another corporation that are to be distributed to the members and investment shareholders, if any, or
- (b) distribute all or part of the property of the cooperative to the members and investment shareholders, if any, in kind.

#### **Powers of Court**

**325** On an application under section 324, the Court, subject to the articles and Part 18, may order that

- (a) all the property of the cooperative be converted into and distributed in money, or
- (b) the claims of a member or investment shareholder applying under section 324 be satisfied by a distribution in money, in which case the Court
  - (i) may determine whether any other member or investment shareholder is opposed to the proposal and, if so, join that member or investment shareholder as a party,

- (ii) may appoint one or more appraisers to assist the Court in fixing the fair value of the shares,
- (iii) must fix the fair value of the shares of the applicant and the other members or investment shareholders joined as parties as of a date determined by the Court,
- (iv) must give judgment in the amount of the fair value against the cooperative and in favour of each of the members or investment shareholders who are parties to the application, and
- (v) fix the time within which the liquidator must pay that amount to a member or investment shareholder after delivery of shares to the liquidator, if the share certificate has not been delivered to the Court or to the liquidator at the time the order is pronounced.

#### **Custody of records**

**326** A person who has been granted custody of the documents of a dissolved cooperative remains liable to produce them for 6 years after the date of its dissolution or until the end of any other shorter period that may be ordered by the Court.

#### **Heirs and representatives**

**327(1)** In this section, “member” and “investment shareholder” include their heirs and legal representatives.

**(2)** Notwithstanding the dissolution of a cooperative under this Act,

- (a) a civil, criminal, administrative, investigative or other action or proceeding commenced by or against the cooperative before its dissolution may be continued as if it had not been dissolved,
- (b) a civil, criminal, administrative, investigative or other action or proceeding may be brought against the cooperative within 2 years after its dissolution as if it had not been dissolved, and
- (c) any property that would have been available to satisfy a judgment or order if the cooperative had not been dissolved remains available for that purpose.

**(3)** Service of a document on a cooperative after its dissolution may be effected by serving the document on a person named in the

notice of directors referred to in section 4(c) or the last notice sent under section 68.

**(4)** Notwithstanding the dissolution of a cooperative under this Act, a member or investment shareholder to whom any of its property has been distributed is liable to any person claiming under subsection (2) to the extent of the amount distributed to that member or investment shareholder, but an action to enforce the liability may be brought no later than 2 years after the date of the dissolution of the cooperative.

**(5)** The Court may order an action referred to in subsection (4) to be brought against the persons who were members or investment shareholders as a class, subject to any conditions that the Court thinks fit, and if the plaintiff establishes a claim, the Court may refer the proceedings to another officer of the Court, who may

- (a) add as a party to the proceedings each member or investment shareholder who was found by the plaintiff,
- (b) determine, subject to subsection (4), the amount that each of those members and investment shareholders must contribute towards satisfaction of the plaintiff's claim, and
- (c) direct payment of the amounts so determined.

#### **Unknown claimants**

**328(1)** On the dissolution of a cooperative under this Act, the portion of the property to be distributed to a creditor, member or investment shareholder who cannot be found must be converted into money and paid to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act*.

**(2)** A payment under subsection (1) is deemed to be in satisfaction of a debt or claim of the creditor, member or investment shareholder.

**(3)** A person who asserts an entitlement to any money paid to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* must submit a claim in accordance with that Act.

2001 cC-28.1 s328;2007 cU-1.5 s70

#### **Revival**

**329(1)** When a cooperative is dissolved under this Division, an interested person, or a person who would be an interested person if a certificate of revival were issued, may apply to the Director within 5 years of the date of dissolution to have the cooperative revived.

**(1.1)** A cooperative may not be revived after the expiry of 5 years from the date of dissolution.

**(1.2)** Notwithstanding subsection (1.1), a cooperative that was dissolved before the coming into force of the *Unclaimed Personal Property and Vested Property Act* may be revived at any time within 5 years after the coming into force of that Act.

**(2)** Articles of revival in the form set by the Director must be sent to the Director together with a declaration to the same effect as one referred to in section 4(d) and, if applicable, a declaration to the same effect as one referred to in section 4(f).

**(3)** On receipt of articles of revival, the Director must issue a certificate of revival unless the Director is of the opinion that issuing the certificate

(a) would result in the cooperative

(i) no longer being organized or operating, or carrying on business, on a cooperative basis, and

(ii) if the cooperative is one to which Part 18 applies, not complying with the applicable division of Part 18,

or

(b) would not be advisable for any other valid reason.

**(4)** For the purpose of issuing a certificate of revival, the Director may rely on the articles of revival and the declarations.

**(5)** A cooperative is revived under this Act on the date shown in the certificate of revival.

**(6)** In the same manner and to the same extent as if it had not been dissolved, but subject to any reasonable terms that may be imposed by the Director and to the rights acquired by any person after its dissolution, a revived cooperative is

(a) restored to its previous position in law, including the restoration of all its property whether acquired before its dissolution or after its dissolution and before its revival, and any rights and privileges, whether arising before its dissolution or after its dissolution and before its revival, and

(b) liable for the obligations that it would have had if it had not been dissolved, whether they arise before its dissolution or after its dissolution and before its revival.

(7) Any legal action respecting the affairs of a revived cooperative, other than those with its affiliates, taken after its dissolution and before its revival is valid.

2001 cC-28.1 s329;2007 cU-1.5 s70

#### **Vesting in the Crown**

**330(1)** Subject to section 327(2) and section 328, property of a cooperative that has not been disposed of at the date of its dissolution under this Act vests in the Crown in right of Alberta.

(2) If a cooperative is revived as a cooperative,

- (a) any property of the cooperative that has not been paid, transferred or delivered to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* remains the property of the cooperative, and
- (b) the cooperative may make a claim for any of the cooperative's property that has been paid, transferred or delivered to the Minister responsible for the *Unclaimed Personal Property and Vested Property Act* in accordance with that Act.

2001 cC-28.1 s330;2007 cU-1.5 s70

## **Part 15 Administrative Matters and Regulations**

### **Division 1 Director's Appointment and Delegation**

#### **Appointment of Director and inspectors/ delegation**

**331(1)** The Minister may appoint a Director of Cooperatives.

(2) The Director may appoint individuals as inspectors.

(3) The Director may exercise the powers and perform the duties of inspectors.

(4) The Director may delegate to one or more persons any powers, duties and functions, with or without conditions, and may authorize that person or board to further delegate the power, duty or function.

(5) The Director continues to have authority to exercise any power given to the Director under this Act or the regulations even if the power is delegated.

## Division 2 Document Filing, Appeals

### Copies of documents

**332** When a notice or document is required to be sent to the Director, Executive Director or Commission under this Act, the Director, Executive Director or Commission may accept a copy of it.

### Annual return

**333** Every cooperative must, within 6 months of the end of its fiscal year, send the Director an annual return in the form set by the Director.

### Notice of refusal by Director

**334(1)** The Director must file all documents that are required to be sent to the Director under this Act or the regulations unless the document does not comply with this Act or the regulations.

**(2)** If the Director refuses to file a document, the Director must give written notice of the refusal to the person who sent the document, giving reasons for the refusal.

### Appeal from Director's decision

**335** A person who feels aggrieved by any of the following decisions may apply to the Court for an order, including an order requiring the Director to change the decision:

- (a) a refusal to file, in the form submitted, any articles or other documents required by this Act or the regulations to be sent to the Director;
- (b) a refusal to accept, change or revoke a name under this Act;
- (c) a refusal to grant an exemption that may be granted under this Act or the regulations;
- (d) a refusal to issue a certificate of discontinuance;
- (e) the issue of, or a refusal to issue, a certificate of revival or the terms for revival imposed by the Director;
- (f) a refusal to dissolve a cooperative under section 312.

**Appeal from Commission refusal**

**336** A person who feels aggrieved by a decision of the Commission to refuse to grant an exemption that may be granted under this Act or the regulations may appeal the decision to the Court of Appeal, and section 38 of the *Securities Act* applies to such an appeal.

**Filing statements**

**337(1)** In this section, “statement” means a statement of intent to dissolve referred to in section 308 and a statement of revocation of intent to dissolve referred to in section 311.

**(2)** When this Act requires that articles or a statement relating to a cooperative be sent to the Director,

- (a) the articles or statement must be signed by a director or officer or, in the case of articles of incorporation, by the incorporators, and
- (b) on receiving the articles or statement in the form set by the Director, any other required documents and the fees prescribed by the regulations, the Director must
  - (i) record the date on which it is received,
  - (ii) issue the appropriate certificate in accordance with sections 7, 260, 267, 274 and 329,
  - (iii) file the certificate and the articles or statement, or copies of them,
  - (iv) send the certificate and the articles or statement, or copies of them to the cooperative or its representative, and
  - (v) publish a notice of the issuance of the certificate in a publication generally available to the public.

**(3)** A certificate referred to in subsection (2) that is issued by the Director may be dated as of the date of the receipt of the articles or statement or as of any later date specified by the Court or the person who signed the articles or statement.

**(4)** Notwithstanding subsection (3), a certificate of discontinuance may be dated as of the day a cooperative amalgamates under another Act or is continued.

**Electronic filing**

**338(1)** Unless the Director specifies otherwise, notices, documents, information or fees that are authorized or required to be submitted to, or issued by, the Director under this Act may be submitted or issued in electronic or other form satisfactory to the Director.

**(2)** For the purposes of this Act, a document, information or a fee that is submitted in accordance with subsection (1) is deemed to have been received by the Director at the time provided for in the regulations.

**(3)** Subject to any conditions or requirements of the Director, a document or information that is received by the Director under this Act in electronic or other form may be entered or recorded by an information storage device, including a system of mechanical or electronic data processing, that is capable of reproducing stored documents or information in legible written form within a reasonable time.

**Certificate of Director is proof**

**339(1)** Where this Act or the regulations require or authorize the Director to issue a certificate or to certify a fact, the certificate must be provided by the Director or by a person authorized by the Director.

**(2)** Except in a proceeding under section 313 to dissolve a cooperative, a certificate referred to in subsection (1) or a certified copy of one, when introduced as evidence in civil, criminal, administrative, investigative or other legal proceedings, is conclusive proof of the facts so certified without proof of the signature or official character of the person appearing to have signed it.

**(3)** Where this Act or the regulations authorize the Director to issue a certificate, the Director may stamp or sign the documents required to be sent to the Director in order for the Director to issue the certificate, and the stamping and signing of the documents constitutes the issuance of the certificate.

**(4)** A signature required on a certificate issued by the Director under this Act may be printed or otherwise reproduced on the certificate or may be made in accordance with the regulations.

**When notices or documents need not be sent**

**340** The Director may, on any conditions that the Director considers appropriate, determine that notices or documents or classes of notices or documents need not be sent to the Director under this Act or the regulations if the notices or documents

contain information similar to information contained in notices or documents required to be made public under any other enactment.

**Proof required by Director**

**341** The Director may require that a document, or a fact stated in a document, required by this Act or the regulations to be sent to the Director be verified by affidavit or statutory declaration.

**Certificate of compliance**

**342** The Director may provide any person with a certificate that a cooperative has sent to the Director a document required to be sent or has paid fees prescribed by the regulations.

**Alteration of documents**

**343(1)** The Director may alter a notice or document, other than an affidavit or statutory declaration, if authorized in writing to do so by the person who sent the document or by that person's representative.

**(2)** If the Director issues a certificate that contains an error to a cooperative, the directors, members or shareholders must, on the Director's request, pass the resolutions and send the documents required to comply with this Act or the regulations and take any other steps that the Director may reasonably require.

**(3)** The Director may demand the surrender of an incorrect certificate and issue a corrected certificate.

**(4)** A corrected certificate must bear the date of the certificate it replaces.

**(5)** If the corrected certificate materially amends the terms of the original certificate, the Director must, without delay, give notice of the correction in a publication generally available to the public.

**Records maintained by Director**

**344(1)** Records required by this Act or the regulations to be maintained by the Director may be maintained in any appropriate manner, including by means of a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information in legible written form within a reasonable time.

**(2)** If records that are maintained by the Director are maintained other than in written form,

- (a) the Director must provide any copy required to be provided under section 345(2) in legible written form, and
  - (b) a report reproduced from those records, if it is certified by the Director or a person authorized by the Director, is admissible in evidence to the same extent as the original written records would be.
- (3) The Director is not required to produce any document, other than a certificate and attached articles or statement filed under section 337 more than 6 years after the date it is received.
- (4) Information or notices required by this Act or the regulations to be summarized in a publication generally available to the public or to be published by the Director may be made available to the public or published by a system of mechanical or electronic data processing or any other information storage device that is capable of reproducing any required information or notice in legible written form within a reasonable time.

#### **Public access to records**

- 345(1)** A person who has paid the fee prescribed by the regulations is entitled during usual business hours to examine a document required by this Act or the regulations to be sent to the Director, except a report of an inspector under Part 13, and to make copies of it or take extracts from it.
- (2) The Director must provide any person requesting it with a copy, extract, certified copy or certified extract of a document required by this Act or the regulations to be sent to the Director, except a report of an inspector under Part 13.

### **Division 3 Notices and Service of Documents**

#### **Notices to members, shareholders and directors**

- 346(1)** Unless otherwise specified in this Act or the bylaws, a notice or document required by this Act, the regulations, the articles, the bylaws or a unanimous agreement to be given to a member, investment shareholder or director may be sent by mail addressed to or may be personally delivered to
- (a) a member at the member's latest address as shown in the records of the cooperative,
  - (b) an investment shareholder at the investment shareholder's latest address as shown in the records of the cooperative or its transfer agent, and

(c) a director at the director's latest address as shown in the records of the cooperative or in the notice filed with the application for incorporation pursuant to section 4(c) or a notice of change sent to the Director under section 68.

(2) A director named in a notice sent by a cooperative to the Director under section 4(c) or 68 is presumed, for the purposes of this Act, to be a director of the cooperative referred to in the notice.

(3) A notice or document sent in accordance with subsection (1) to a member, investment shareholder or director is deemed to have been received 7 days, or any other period specified in the bylaws, after it was sent unless there are reasonable grounds to believe that the member, investment shareholder or director did not receive the notice or document at that time or at all.

(4) If a cooperative sends a notice or document to a member or investment shareholder in accordance with subsection (1) and the notice or document is returned on 2 consecutive occasions because the member or investment shareholder cannot be found, the cooperative is not required to send any further notices or documents to the member or investment shareholder until the cooperative is informed in writing of the member's or investment shareholder's new address.

2001 cC-28.1 s346;2001 c23 s1(3)

#### **Notice to a cooperative, Commission, Executive Director**

**347(1)** A notice or document that is required to be sent to a cooperative may be sent to the cooperative's registered office shown in the last notice of registered office filed with the Director and, if so sent, is deemed to have been received 7 days after it was sent, unless there are reasonable grounds to believe that the cooperative did not receive the notice or document at that time or at all.

(2) A notice or document that is required to be served on a cooperative may be served on it at the cooperative's registered office shown in the last notice of registered office filed with the Director.

(3) A notice or document that is required to be sent to or filed with

(a) the Commission may be sent or filed

- (i) by being left with the Secretary of the Commission during the normal office hours of the Commission, or
- (ii) by being mailed by registered mail addressed to an office of the Commission,

or

- (b) the Executive Director may be sent or filed
  - (i) by being left with the Executive Director during the normal office hours of the Commission, or
  - (ii) by being mailed by registered mail addressed to an office of the Commission.

**(4)** Where a notice or document referred to in subsection (3) is sent by registered mail, it is deemed to have been received in the office of the Commission or the office of the Executive Director 7 days after it was sent unless there are reasonable grounds for believing that the notice or document did not arrive in the office of the Commission or the office of the Executive Director at that time or at all.

#### **Waiver of notice**

**348** When a notice or document is required to be sent by this Act or the regulations, the sending of the notice or document may, subject to a unanimous agreement, be waived or the time for the sending of the notice or document may be waived at any time with the consent in writing of the person who is entitled to it.

### **Division 4 Certificates, Declarations and Copies**

#### **Certificate of cooperative**

**349(1)** A certificate that is issued on behalf of a cooperative stating a fact that is set out in the articles, the bylaws, a unanimous agreement or the minutes of a meeting of directors, a committee of directors, the members or the investment shareholders, or in a trust indenture or other contract to which the cooperative is a party, may be signed by a director, officer or transfer agent of the cooperative.

**(2)** When introduced as evidence in civil, criminal, administrative, investigative or other legal proceedings, the following things are, in the absence of evidence to the contrary, proof of the facts so certified without proof of the signature or official character of the person appearing to have signed the certificate:

- (a) a fact stated in the certificate;
- (b) a certified extract from a securities register or a members register of a cooperative;
- (c) a certified copy of minutes or certified extract from minutes of a meeting of members, investment shareholders, directors or a committee of directors.

(3) An entry in a securities register of, or a security certificate issued by, a cooperative is, in the absence of evidence to the contrary, proof that the person whose name appears in the register or certificate is the owner of the securities described in the register or certificate.

(4) An entry in a members register of, or a certificate of membership or a membership share certificate issued by, a cooperative is, in the absence of evidence to the contrary, proof that the person whose name appears in it is a member or owns the membership shares as set out in the register or membership share certificate.

#### **Declaration of directors**

**350** The Director may, for all purposes of this Act, rely on a declaration of the incorporators or directors referred to in section 4(d) or (f), 260(4) or (5), 261(1), 266(1), 274(2) or 329(2).

2001 cC-28.1 s350;2001 c23 s1(4)

## **Division 5 Regulations**

#### **Regulations**

**351** The Lieutenant Governor in Council may, by regulation, exempt any cooperative from the operation of any provision of this Act or the regulations.

#### **Ministerial regulations**

**352** The Minister may make regulations

- (a) providing for anything that by this Act is to be prescribed, required or provided for by the regulations;
- (b) defining, enlarging or restricting the meaning of any word or expression used but not defined in this Act;
- (c) prescribing the fees or the manner of determining the fees that may be charged in respect of the filing, verification or copying of a document under this Act or under a regulation made under this Act, or in respect of any service or function performed or document provided by the Director, or authorizing the Director to prescribe the fees;
- (d) respecting the payment of any prescribed fees, or authorizing the Director to set rules respecting the payment of prescribed fees, including the time when and the manner in which the fees are to be paid, the additional fees that may be charged for the late payment of fees and

- the circumstances in which any fees previously paid may be refunded in whole or in part;
- (e) prescribing that, for the purpose of section 228, the standards as they exist from time to time of an accounting body named in the regulations are to be followed;
  - (f) prescribing comparative financial statements for the purposes of section 228(1) and the manner of reporting on those statements;
  - (g) respecting what other documents or information, or both, incorporators of a cooperative must provide;
  - (h) respecting what information must be included in articles submitted with an application for incorporation in addition to the information required by this Act;
  - (i) respecting what information may be included in bylaws in addition to the information required by this Act;
  - (j) providing for the time a fee, a document or information is considered to be received under section 338(2);
  - (k) prescribing model clauses for one or more dispute resolution processes that may be adopted by bylaw;
  - (l) designating one or more agencies who may, in accordance with the bylaws of a cooperative, provide dispute resolution services;
  - (m) respecting or adopting a code of ethical conduct for mediators and arbitrators, or providing for its adoption by bylaw, and the means by which complaints arising with respect to the code are to be resolved or decided;
  - (n) respecting rules for the conduct of mediation or arbitration proceedings or providing that such rules may be adopted by bylaw;
  - (o) requiring that all or any of the matters referred to in clause (m) be included in bylaws when the cooperative is established or continued under this Act;
  - (p) governing the manner in which the membership of a member may be terminated;
  - (q) prescribing rules with respect to exemptions permitted by this Act or authorizing the Director to grant exemptions;
  - (r) respecting names of cooperatives and extra-provincial cooperatives;

- (s) subject to section 19(a), prohibiting the use of any names or any words or expressions in the name of a cooperative or extra-provincial cooperative;
- (t) respecting requirements for names of cooperatives for the purposes of sections 16(4) and 371(1);
- (u) prescribing the documents referred to in sections 369(2)(b) and 378(1)(b);
- (v) prescribing the punctuation marks and other marks or signs that may form part of a name or prohibiting punctuation marks and other marks or signs that may not form part of a name;
- (w) prescribing any forms for the purposes of this Act;
- (x) prescribing any matter to be adopted in resolutions referred to in section 273(2)(b)(ii) and (3)(b)(ii);
- (y) providing with respect to any provision of the regulations that its contravention constitutes an offence;
- (z) prescribing penalties, including imprisonment, in respect of offences created under clause (y);
- (aa) exempting a cooperative incorporated or continued under this Act from the application of provisions of any other Act;
- (bb) prescribing for the purposes of section 167(2) the period of time a cooperative must keep information entered in the securities register;
- (cc) respecting the manner in which the signature of the Director may be made in a certificate issued under this Act;
- (dd) providing for undertakings to be given by an extra-provincial cooperative for the purposes of section 374(1)(d);
- (ee) respecting the establishment of adequate reserves for a non-profit housing cooperative.

2001 cC-28.1 s352;2001 c23 s1(5)

## Part 16 Remedies, Offences and Penalties

### Division 1 Court Intervention

#### Definitions

**353** In this Part,

- (a) “complainant” means
  - (i) a member or former member;
  - (ii) a registered holder or beneficial owner, or a former registered holder or beneficial owner, of a security of a cooperative or any of its affiliates;
  - (iii) a director or an officer, or a former director or officer, of a cooperative or any of its affiliates;
  - (iv) a creditor of a cooperative;
  - (v) any other person who, in the opinion of the Court, is a proper person to make an application under this Part;
- (b) “legal proceedings” means legal proceedings taken under this Act.

#### Application to Court

**354** When this Act states that a person may apply to the Court, the application must be made in accordance with the *Alberta Rules of Court*.

2001 cC-28.1 s354;2009 c53 s41

#### Commencing derivative legal proceedings

**355(1)** Subject to subsection (2), a complainant may apply to the Court for permission to bring legal proceedings in the name and on behalf of a cooperative, or to intervene in legal proceedings to which the cooperative is a party, for the purpose of prosecuting, defending or discontinuing the legal proceedings on behalf of the cooperative.

**(2)** No permission is to be granted unless the Court is satisfied that

- (a) the complainant has given reasonable notice to the directors of the cooperative of intention to apply to the Court under subsection (1) if the directors of the cooperative do not bring, diligently prosecute, defend or discontinue the action,

- (b) the complainant is acting in good faith, and
- (c) it appears to be in the interests of the cooperative that the action be brought, prosecuted, defended or discontinued.

2001 cC-28.1 s355;2014 c13 s22

#### **Powers of the Court**

**356** In connection with an action brought or intervened in under section 355 or section 357(2)(s), the Court may at any time make any order it thinks fit, including, without limiting the generality of the foregoing, any or all of the following:

- (a) an order authorizing the complainant or any other person to control the conduct of the action;
- (b) an order giving directions for the conduct of the action;
- (c) an order directing that any amount adjudged payable by a defendant in the action must be paid, in whole or in part, directly to former and present security holders of the cooperative instead of to the cooperative;
- (d) an order requiring the cooperative to pay reasonable legal fees incurred by the complainant in connection with the action.

#### **Oppressive or prejudicial actions**

**357(1)** On the application of a complainant, the Court may order the rectification of matters complained of if it is satisfied that

- (a) an act or omission of a cooperative effects a result,
- (b) the business or affairs of the cooperative are or have been carried on or conducted in a manner, or
- (c) the powers of a director are being or have been exercised in a manner,

that is oppressive or unfairly prejudicial to, or that unfairly disregards the interests of, a member or other security holder, creditor, director or officer of the cooperative.

**(2)** For the purposes of subsection (1), the Court may make any order that it considers appropriate, including an order

- (a) restraining the conduct complained of;
- (b) appointing a receiver or receiver-manager;
- (c) requiring the cooperative to amend an agreement with members generally or with a particular member;

- (d) regulating the affairs of the cooperative by amending its articles or bylaws or creating or amending a unanimous agreement;
  - (e) directing an issue or exchange of securities;
  - (f) directing changes in the directors;
  - (g) determining whether a person is or is qualified to be a member;
  - (h) determining any matter in regard to the relations between the cooperative and a member;
  - (i) directing the cooperative or any other person to purchase securities of a security holder;
  - (j) directing the cooperative or any other person to pay to a security holder any part of the money paid by the security holder for securities;
  - (k) directing the cooperative to redeem membership shares, repay member loans or pay to a member any other amount standing to the member's credit in the records of the cooperative;
  - (l) varying or setting aside a transaction or contract to which the cooperative is a party and compensating the cooperative or any other party to the transaction or contract;
  - (m) directing the production and delivery within a specified time of financial statements of the cooperative;
  - (n) directing an accounting;
  - (o) compensating an aggrieved person;
  - (p) directing rectification of the registers or other records of the cooperative under section 359;
  - (q) liquidating and dissolving the cooperative;
  - (r) directing a special audit or an investigation under section 289;
  - (s) requiring the trial of an issue.
- (3)** If an order made under this section directs that the articles or bylaws of a cooperative be amended,

- (a) the directors, members and investment shareholders must comply with section 278(5), and
  - (b) no other amendment to the articles or bylaws may be made without the consent of the Court until the Court orders otherwise.
- (4)** An investment shareholder is not entitled to dissent under section 277 in respect of an amendment to the articles effected under this section.
- (5)** No cooperative may make a payment to a member or investment shareholder under an order of the Court if there are reasonable grounds to believe that
- (a) the cooperative is, or after the payment would be, unable to pay its liabilities as they become due, or
  - (b) the realizable value of the cooperative's assets after the payment would be less than the total of
    - (i) its liabilities, and
    - (ii) the amount that would be required to pay the holders of securities who have a right to be paid, on a redemption or liquidation, rateably with or in priority to the holders of the securities to be purchased or redeemed.
- (6)** An applicant under this section may apply for an order under section 314 instead of an order under this section.

**Evidence of member or shareholder approval not decisive**

**358(1)** No application made and no legal proceedings brought or intervened in under this Part are to be stayed or dismissed by reason only that it is shown that an alleged breach of a right or duty owed to the cooperative or any of its subsidiaries has been or may be approved by the members or investment shareholders, but evidence of approval by the members or investment shareholders must be taken into account by the Court in making an order under section 314 or this Part.

**(2)** No application made and no legal proceedings brought or intervened in under this Part are to be stayed, discontinued, settled or dismissed for want of prosecution without the approval of the Court on terms that the Court considers appropriate.

**(3)** If the Court determines that the interests of a complainant may be substantially affected by a stay, discontinuance, settlement or dismissal, the Court may order any party to the application or legal

proceedings to give notice of the application or legal proceedings to the complainant.

(4) A complainant is not required to give security for costs in an application made or legal proceedings brought or intervened in under this Part.

(5) In an application made or legal proceedings brought or intervened in under this Part, the Court may at any time order the cooperative or its subsidiary to pay to the complainant interim costs, including legal fees and disbursements, but the complainant may be held accountable for any interim costs so paid on the final disposition of the application or legal proceedings.

#### **Application to Court to rectify records**

**359(1)** If the name of a person is alleged to be or to have been wrongly entered or retained in, or wrongly deleted or omitted from, the registers or other records of a cooperative, the cooperative, a security holder of the cooperative or any aggrieved person may apply to the Court for an order that the registers or records be rectified.

(2) If the cooperative is a distributing cooperative, an applicant under this section must file notice of the application with the Executive Director.

(3) The Court may make any order it considers appropriate, including an order

- (a) requiring the registers or records of the cooperative to be rectified,
- (b) restraining the cooperative from calling or holding a meeting or allocating or paying a dividend or interest on investment shares or a patronage refund before rectification of the registers or records,
- (c) determining the right of a party to the proceedings to have the party's name entered or retained in or deleted or omitted from the registers or records of the cooperative, whether the issue arises between 2 or more members or security holders, or alleged members or security holders, or between the cooperative and a member or security holder or alleged member or security holder, or
- (d) compensating a party who has incurred a loss by reason of the wrongful entry, retention, deletion or omission.

**Appeal of Court orders**

**360** Any order made by the Court under this Act may, with the permission of a justice of the Court of Appeal, be appealed to the Court of Appeal.

2001 cC-28.1 s360;2014 c13 s22

**Division 2  
Offences and Penalties****Offences**

**361(1)** A person who contravenes any of the following provisions is guilty of an offence:

- (a) in Part 1, sections 8, 13(2), 21(1), 27(2) and (4), 28(1), (2), (3), (4), (6) and (7) and 29;
- (b) in Part 4, sections 68, 80, 81 and 82;
- (c) in Part 6, sections 146(1), 147(3), 149(1), 150 and 151;
- (d) in Part 7, section 153;
- (e) in Part 10, sections 230(1) and (2), 232, 233, 241(3), 243, 245(1) and (3);
- (f) in Part 11, section 253(5);
- (g) in Part 12, sections 266, 272(1) and (2), 274(1), 276(2), 277(12) and 279(7);
- (h) in Part 14, sections 301, 303, 309(2), 310(2), 313(2) and 326;
- (i) in Part 15, section 333;
- (j) in Part 17, sections 368(1), 377(1), (3), (4) and (5) and 381.

**(2)** A person who contravenes a provision in the regulations the contravention of which is designated by the regulations to be an offence is guilty of an offence.

**(3)** Any person who is convicted of an offence under this Act or the regulations is liable to a fine of not more than \$5000 or to imprisonment for a term of not more than 6 months, or both.

2001 cC-28.1 s361;2003 cP-6.5 s66

**Director's liability**

**362** When a cooperative commits an offence under this Act or the regulations, every principal, director, manager, employee or agent of the cooperative who authorized the act or omission that

constitutes the offence or assented to or acquiesced or participated in the act or omission that constitutes the offence is guilty of the offence whether or not the cooperative has been prosecuted for the offence.

#### **Court order to comply with Act**

**363(1)** If a person is guilty of an offence under this Act or the regulations, the court in which proceedings in respect of the offence are taken may, in addition to any punishment it may impose, order the person to comply with the provisions of this Act or the regulations for the contravention of which the person has been convicted.

**(2)** A prosecution of an offence under this Act may be instituted not later than 2 years after the time when the subject-matter of the complaint arose.

**(3)** No civil remedy for an act or omission is suspended or affected by reason that the act or omission is an offence under this Act.

**(4)** An appeal lies from an order of the Provincial Court of Alberta under subsection (1) to the Court.

#### **Alternative resolution of disputes**

**364** The Director may, in accordance with any regulations, provide assistance with respect to the alternative resolution of any dispute relating to the affairs of a cooperative.

## **Part 17 Extra-provincial Cooperatives and Extra-provincial Matters**

#### **Definitions**

**365** In this Part,

- (a) “anniversary month”, with reference to an extra-provincial cooperative, means the month in each year that is the same as the month in which its certificate of registration was issued;
- (b) “attorney for service” or “attorney” means the individual who, according to the Director’s records, is appointed as the attorney for service of an extra-provincial cooperative;
- (c) “charter” includes

- (i) an enactment, ordinance or other law incorporating an extra-provincial cooperative, as amended from time to time,
  - (ii) a memorandum of association or articles of association as amended from time to time,
  - (iii) an instrument incorporating an extra-provincial cooperative, as amended from time to time, and
  - (iv) a certificate, licence or other instrument evidencing incorporation of the cooperative;
- (d) “internal regulations” includes bylaws, rules or regulations relating to the management of the business and affairs of an extra-provincial cooperative, by whatever name they are called, if they are made by the members or a class of members, or the board of directors, board of management or other governing body, of the extra-provincial cooperative;
- (e) “registered” means registered under this Part.

#### **Carrying on business in Alberta**

**366** For the purposes of this Part, an extra-provincial cooperative carries on business in Alberta if

- (a) its name, or any name under which it carries on business, is listed in a telephone directory for any part of Alberta,
- (b) its name, or any name under which it carries on business, appears or is announced in any advertisement in which an address in Alberta is given for the extra-provincial cooperative,
- (c) it has a resident agent or representative or a warehouse, office or place of business in Alberta,
- (d) it solicits business in Alberta,
- (e) it is the owner of an estate or interest in land in Alberta,
- (f) it is licensed or registered or required to be licensed or registered under an enactment of Alberta entitling it to do business,
- (g) it is, in respect of a commercial vehicle as defined in the *Traffic Safety Act*, the holder of a certificate of registration under the *Traffic Safety Act*, unless it neither picks up nor delivers goods or passengers in Alberta,

- (h) it is the holder of a certificate as defined in section 130 of the *Traffic Safety Act*, unless it neither picks up nor delivers goods or passengers in Alberta, or
- (i) it otherwise carries on business in Alberta.

2001 cC-28.1 s366;2003 c42 s5

#### **Application of Part**

**367** This Part does not apply to

- (a) an extra-provincial cooperative required to be licensed as an insurer under the *Insurance Act*,
- (b) an extra-provincial cooperative required to be registered under the *Loan and Trust Corporations Act*, or
- (c) an extra-provincial corporation within the meaning of Part 21 of the *Business Corporations Act*.

### **Division 1 Registration of Extra-provincial Cooperatives**

#### **Requirement to register**

**368(1)** Subject to subsection (2), every extra-provincial cooperative must be registered under this Part before or within 30 days after it starts to carry on business in Alberta.

**(2)** If a cooperative becomes an extra-provincial cooperative by reason of the operation of section 261(5), and is then carrying on business in Alberta, the extra-provincial cooperative must be registered under this Part on or within 30 days after the date shown in the certificate of discontinuance issued under section 261(4).

#### **Application for registration**

**369(1)** An extra-provincial cooperative must apply for registration by sending to the Director a statement in the form set by the Director.

**(2)** The statement must be accompanied with

- (a) a copy of the charter of the extra-provincial cooperative, verified in a manner satisfactory to the Director,
- (b) documents relating to cooperative names that are prescribed by the regulations, and
- (c) the appointment of its attorney for service, in a form set by the Director.

(3) If all or any part of the applicant's charter is not in the English language, the Director may require a translation of the charter or that part of the charter to be provided, verified in a manner satisfactory to the Director, before the extra-provincial cooperative is registered.

**370** Repealed 2008 c7 s4.

#### **Names of extra-provincial cooperatives**

**371(1)** Subject to the circumstances and conditions prescribed by the regulations, an extra-provincial cooperative must not be registered with a name or carry on business within Alberta under an assumed name

- (a) that is prohibited by the regulations or contains a word or expression prohibited by the regulations,
- (b) that is identical to the name of
  - (i) a corporation or cooperative incorporated under the laws of Alberta, whether in existence or not,
  - (ii) an extra-provincial cooperative registered in Alberta, or
  - (iii) a cooperative under the *Canada Cooperatives Act* (Canada),
- (c) that is similar to the name of
  - (i) a corporation or cooperative incorporated under the laws of Alberta,
  - (ii) an extra-provincial cooperative registered in Alberta, or
  - (iii) a cooperative under the *Canada Cooperatives Act* (Canada),if the use of that name is confusing or misleading, or
- (d) that does not meet the requirements prescribed by the regulations.

(2) If through inadvertence or otherwise an extra-provincial cooperative is registered with or later acquires a name that contravenes subsection (1), the Director may, by notice in writing giving reasons, direct the extra-provincial cooperative to change its

name to one approved by the Director within 90 days after the date of the notice.

(3) The Director may give a notice under subsection (2) on the Director's own initiative or at the request of a person who feels aggrieved by the name that contravenes subsection (1).

#### **Registration by pseudonym**

**372(1)** Notwithstanding section 371, an extra-provincial cooperative the name of which contravenes section 371 may, with approval of the Director,

- (a) be registered in its own name, and
- (b) carry on business in Alberta under an assumed name that does not contravene section 371 and the use of which is approved by the Director.

(2) An extra-provincial cooperative that assumes a name pursuant to subsection (1)

- (a) must acquire all property and rights in Alberta under its assumed name, and
- (b) is entitled to all property and rights acquired and subject to all obligations and liabilities incurred under its assumed name as if the obligations and liabilities had been acquired and incurred under its own name.

(3) The extra-provincial cooperative may sue or be sued in its own name, its assumed name, or both.

(4) An extra-provincial cooperative that assumes a name pursuant to subsection (1) may, with the approval of the Director and on application in the form set by the Director, cancel its assumed name and carry on business in Alberta under the name in which it was registered.

#### **Certificate of registration**

**373(1)** Subject to section 371, on receipt of the statement and other documents required by section 369, the Director must

- (a) file the statement and documents,
- (b) register the extra-provincial cooperative, and
- (c) issue a certificate of registration in the form set by the Director in accordance with section 337.

**(2)** A certificate of registration issued under this section to an extra-provincial cooperative is conclusive proof for the purposes of this Act and for all other purposes that the provisions of this Act in respect of registration of the extra-provincial cooperative and all requirements precedent and incidental to registration have been complied with, and that the extra-provincial cooperative has been registered under this Part as of the date shown in the certificate of registration.

#### **Cancellation of registration**

**374(1)** Subject to subsection (2), the Director may cancel the registration of an extra-provincial cooperative if

- (a) the extra-provincial cooperative is in default for a period of one year in sending to the Director any fee, notice or document required by this Part,
- (b) the extra-provincial cooperative has sent a notice to the Director under subsection (4) or the Director has reasonable grounds to believe that the extra-provincial cooperative has ceased to carry on business in Alberta,
- (c) the extra-provincial cooperative has been dissolved,
- (d) the extra-provincial cooperative does not carry out an undertaking given in accordance with the regulations,
- (e) the extra-provincial cooperative does not comply with a direction of the Director under section 371(2), or
- (f) the extra-provincial cooperative has otherwise contravened this Part.

**(2)** The Director may not cancel the registration of an extra-provincial cooperative under subsection (1) until

- (a) the expiration of at least 120 days' notice of the proposed cancellation with reasons for it,
  - (i) to the extra-provincial cooperative by mail addressed to its head office, and
  - (ii) to its attorney for service in accordance with section 377 with any necessary modifications,
- (b) the Director publishes a notice of the proposed cancellation in a publication generally available to the public, and

(c) either no appeal has been commenced under section 335 or, if an appeal has been commenced, it has been discontinued or the Director's decision has been confirmed on appeal.

(3) The Director may reinstate the registration of an extra-provincial cooperative that was cancelled under subsection (1)(a) on receipt by the Director of the fees, notices and documents required for reinstatement.

(4) An extra-provincial cooperative that ceases to carry on business in Alberta must send a notice to that effect to the Director.

#### **New certificate of registration**

**375(1)** Subject to section 371, on the reinstatement of the registration of an extra-provincial cooperative pursuant to section 374(3), the Director must issue a new certificate of registration in the form set by the Director.

(2) The cancellation of the registration of an extra-provincial cooperative does not affect its liability for its obligations.

## **Division 2 Information**

#### **Use of extra-provincial cooperative's name**

**376** An extra-provincial cooperative must set out its name in legible characters in or on all contracts, invoices, negotiable instruments and orders for goods or services issued or made by or on behalf of the extra-provincial cooperative in the course of carrying on business in Alberta.

#### **Attorney for service of an extra-provincial cooperative**

**377(1)** If an attorney of an extra-provincial cooperative dies or resigns or the attorney's appointment is revoked, the extra-provincial cooperative must immediately send to the Director an appointment of an individual as its attorney for service in the form set by the Director, and the Director must file the appointment.

(2) An extra-provincial cooperative may, in the form set by the Director, appoint an individual as its alternative attorney.

(3) An extra-provincial cooperative must send to the Director

(a) each appointment by it of an alternative attorney, and

- (b) if an alternative attorney dies or resigns or the appointment is revoked, a notice to that effect,

and the Director must file the appointment or notice, as the case may be.

**(4)** An attorney for an extra-provincial cooperative who intends to resign must

- (a) give not less than 60 days' notice to the extra-provincial cooperative at its head office, and
- (b) send a copy of the notice to the Director, who must file it.

**(5)** An attorney must send the Director a notice in the form set by the Director of any change of the attorney's address as soon as possible after it occurs, and the Director must file the notice.

**(6)** An extra-provincial cooperative must ensure that the address of its attorney is an office that is

- (a) accessible to the public during normal business hours, and
- (b) readily identifiable from the address or other description given in the notice referred to in subsection (5) or the appointment referred to in section 369(2)(c).

**(7)** A notice or document required or permitted by law to be sent to or served in Alberta on an extra-provincial cooperative may be

- (a) delivered to its attorney or to an alternative attorney according to the Director's records,
- (b) delivered to the address, according to the Director's records, of its attorney, or
- (c) sent by registered mail to either of those addresses.

**(8)** A notice or document sent by registered mail to the attorney's address is deemed to be received or served at the time it would be delivered in the ordinary course of mail unless there are reasonable grounds for believing that the attorney did not receive the notice or document at that time or at all.

**(9)** An individual whose appointment as an attorney or alternative attorney of an extra-provincial cooperative is on file with the Registrar of Corporations immediately before the commencement of this Act is deemed to be the extra-provincial cooperative's attorney or an alternative attorney, as the case may be, on the coming into force of this Act.

**Changes in charter, head office, directors**

**378(1)** A registered extra-provincial cooperative must send to the Director

- (a) a copy of each amendment to its charter, verified in a manner satisfactory to the Director,
- (b) if the amendment to the charter effects a change in the name under which the extra-provincial cooperative is registered, documents relating to its name that are prescribed by the regulations, and
- (c) a notice in the form set by the Director of any change in
  - (i) the address of its head office in or outside Alberta, or
  - (ii) the membership of its board of directors, board of management or other governing body, including the name and address of each new member of the board of directors, board of management or governing body

within 30 days after the effective date of the amendment or change.

**(2)** An extra-provincial cooperative is not required to send a notice of a change in the board of directors, board of management or other governing body if

- (a) the effective date of the change occurs in its anniversary month or the month following, and
- (b) the change is reflected in the annual return required to be filed under section 381(1).

**(3)** If the amendment to its charter effects a change in the name under which an extra-provincial cooperative is registered, the Director, on filing the copy of the amendment, must issue a new certificate of amendment of registration in the form set by the Director and change the Director's records accordingly.

**Filing instrument of amalgamation**

**379(1)** A registered extra-provincial cooperative must send to the Director

- (a) a copy of any instrument effecting an amalgamation of the extra-provincial cooperative with one or more other extra-provincial cooperatives,
- (b) a copy of the amalgamation agreement, if any, and

- (c) a statement in the form set by the Director relating to the amalgamated extra-provincial cooperative and the documents referred to in section 369(2),

within 30 days after the effective date of the amalgamation.

- (2) On receiving the documents referred to in subsection (1), the Director must file them and issue a new certificate of registration of the amalgamated extra-provincial cooperative.

#### **Notices and returns respecting liquidation**

**380(1)** If liquidation proceedings are commenced in respect of a registered extra-provincial cooperative, the extra-provincial cooperative or, if a liquidator is appointed, the liquidator

- (a) must send to the Director, immediately after the commencement of those proceedings, a notice showing that the proceedings have commenced and the address of the liquidator if one is appointed, and
- (b) must send to the Director immediately after the completion of those proceedings a return relating to the liquidation.

(2) The Director must

- (a) on receiving the notice, file it and publish a notice respecting the liquidation in a publication generally available to the public, and
- (b) on receiving the return, file it and cancel the registration of the extra-provincial cooperative immediately after the expiration of 90 days following the date of filing of the return.

(3) The liquidator of a registered extra-provincial cooperative must send to the Director a notice of any change of address within 30 days after the effective date of the change of address, and the Director must file the notice.

#### **Annual and other returns**

**381(1)** A registered extra-provincial cooperative must, in each year on or before the last day of the month immediately following its anniversary month, send to the Director a return in the form set by the Director, and the Director must file it.

(2) A registered extra-provincial cooperative must, at the request of the Director, send to the Director a return containing any further or other information that the Director may reasonably require.

**Certificate of compliance**

**382(1)** The Director may furnish any person with a certificate that an extra-provincial cooperative has sent to the Director a document required to be sent under this Act.

(2) A certificate purporting to be signed by the Director and stating that a named extra-provincial cooperative was or was not registered on a specified day or during a specified period is admissible in evidence in the absence of evidence to the contrary of the facts stated in it without proof of the Director's appointment or signature.

**Division 2.1  
Special Rules Respecting  
Extra-provincial Matters****Definitions**

**382.1** In this Division,

- (a) "extra-provincial director" means a person in a jurisdiction in Canada who performs a function in that jurisdiction similar to the function that the Director performs under this Act;
- (b) "extra-provincial matters" means
  - (i) matters pertaining to extra-provincial cooperatives set out in this Part and in regulations made under section 382.3, and
  - (ii) matters set out under the laws of another jurisdiction in Canada that are similar to the matters set out in this Part and in regulations made under section 382.3.

2008 c7 s4;2009 c7 s4

**Agreements**

**382.2(1)** The Director may enter into an agreement with an extra-provincial director to address the following matters:

- (a) the collection by the extra-provincial director of applications, information, forms, notices, fees and other things relating to extra-provincial matters referred to in section 382.1(b)(i) for the Director and any matter relating to the collection of those things and their transmission to the Director;

- (b) the collection by the Director of applications, information, forms, notices, fees and other things under the laws of another jurisdiction in Canada relating to extra-provincial matters referred to in section 382.1(b)(ii) for the extra-provincial director of that jurisdiction and any matter relating to the collection of those things and their transmission to the extra-provincial director.

(2) An agreement referred to in subsection (1) may provide for any matter the Director considers appropriate, including setting out the powers and duties of the Director and the extra-provincial director in respect of the matters addressed in the agreement.

2008 c7 s4;2009 c7 s4

### Regulations

**382.3** The Minister may make regulations

- (a) classifying or otherwise designating or specifying those extra-provincial directors to which a regulation made under this section applies;
- (b) classifying or otherwise designating or specifying those extra-provincial cooperatives to which a regulation made under this section applies;
- (c) respecting the collection by the Director of applications, information, forms, notices, fees and other things relating to extra-provincial matters referred to in section 382.1(b)(ii) for an extra-provincial director and the transmission of those things to the extra-provincial director;
- (d) respecting the registration of and other matters pertaining to extra-provincial cooperatives, including, without limitation, regulations respecting
  - (i) applications for registration of extra-provincial cooperatives,
  - (ii) annual returns and other returns of extra-provincial cooperatives,
  - (iii) the reinstatement of registrations of extra-provincial cooperatives,
  - (iv) changes in the name, charter, head office, directors or attorneys for service of extra-provincial cooperatives,
  - (v) amalgamations of extra-provincial cooperatives,
  - (vi) liquidations of extra-provincial cooperatives, and

- (vii) the cancellation of registrations of extra-provincial cooperatives;
- (e) respecting forms that may be required for the purposes of regulations made under this section;
- (f) respecting the documentation to be issued by the Director;
- (g) providing for fees for the provision of services under regulations made under this section and respecting the payment and collection of the fees;
- (h) respecting the furnishing of applications, information, forms, notices, fees and other things to the Director;
- (i) exempting an extra-provincial cooperative from the operation of all or part of this Part;
- (i.1) providing that a provision of this Act or a provision of a regulation made under another section of this Act does not apply in respect of extra-provincial cooperatives;
- (j) respecting the retention of documents by applicants;
- (k) defining words and expressions used but not defined in this Division.

2008 c7 s4;2009 c7 s4

#### **Regulation prevails**

**382.4** Where there is a conflict or inconsistency between a provision of a regulation made under section 382.3 and a provision of this Act or a provision of a regulation made under another section of this Act, the provision of the regulation made under section 382.3 prevails to the extent of the conflict or inconsistency.

2008 c7 s4;2009 c7 s4

### **Division 3 Legal Capacity, Disabilities and Penalties Applicable to Extra-provincial Cooperatives**

#### **Validity of acts**

**383** No act of an extra-provincial cooperative, including any transfer of property to or by an extra-provincial cooperative, is invalid by reason only

- (a) that the act or transfer is contrary to or not authorized by its charter or internal regulations or any law of the jurisdiction in which it is incorporated, or

- (b) that the extra-provincial cooperative was not then registered.

**Capacity to commence and maintain legal proceedings**

**384(1)** An extra-provincial cooperative while unregistered is not capable of commencing or maintaining any action or other proceeding in any court in Alberta in respect of any contract made in the course of carrying on business in Alberta while it was unregistered.

**(2)** If an extra-provincial cooperative was not registered at the time it commenced an action or proceeding referred to in subsection (1) but becomes registered afterward, the action or proceeding may be maintained as if it had been registered before the commencement of the action or proceeding.

**Part 18**  
**Specific Cooperatives**

**Division 1**  
**Housing Cooperatives**

**Definitions**

**385** In this Part,

- (a) “fees” means the fees a non-profit home ownership cooperative charges its members and includes fees unrelated to housing;
- (b) “housing charges” means charges a non-profit continuing housing cooperative charges its members and includes charges unrelated to housing;
- (c) “housing unit” means a self-contained housing unit or a shared housing unit and includes a non-member unit;
- (d) “member unit” means a self-contained housing unit or shared housing unit of a non-profit continuing housing cooperative other than a non-member unit;
- (e) “non-member unit” means a housing unit rented by a non-profit housing cooperative to a non-member or non-members;
- (f) “non-profit continuing housing cooperative” means a cooperative, with or without share capital, the articles of which provide for the matters referred to in section 392(1);

- (g) “non-profit home ownership cooperative” means a cooperative, with or without share capital, the articles of which provide for the matters referred to in section 402(1);
- (h) “non-profit housing cooperative” means a non-profit continuing housing cooperative or a non-profit home ownership cooperative;
- (i) “self-contained housing unit” means a housing unit that contains living, kitchen and washroom facilities that are used exclusively by one household;
- (j) “shared housing unit” means a housing unit where the living, kitchen and washroom facilities may be shared by more than one household.

**Application of Part**

**386** This Part applies to non-profit housing cooperatives that carry on business as

- (a) a non-profit continuing housing cooperative, or
- (b) a non-profit home ownership cooperative.

**Name**

**387** The articles of a non-profit housing cooperative must provide that the name of the cooperative includes the term “housing”, “mobile home” or “homes” in combination with any of the terms specified in section 16(1).

**Articles of non-profit housing cooperatives**

**388** The articles of a non-profit housing cooperative must provide that the primary object of the cooperative is to carry on business as a non-profit continuing housing cooperative or non-profit home ownership cooperative and to provide housing or housing-related facilities to its members together with ancillary services and facilities.

**Special limitations on non-profit housing cooperatives**

**389(1)** The following restrictions apply to non-profit housing cooperatives:

- (a) its activities must be carried on without the purpose of gain for its members;

- (b) subject to clause (c), on dissolution and after the payment of its debts and liabilities, the remaining property of the non-profit housing cooperative is to be transferred to, or distributed among, one or more non-profit housing cooperatives, non-profit organizations or charitable organizations;
- (c) notwithstanding section 309(1)(c), a non-profit housing cooperative must not distribute any of its property or pay any money to its members except
  - (i) amounts owed to a member, including share capital, patronage returns or interest on a member loan or any other loan from the member at a rate not exceeding the maximum annual percentage specified in the articles, or
  - (ii) reasonable amounts for goods or services provided by a member;
- (d) a non-profit housing cooperative may not pay any dividends or interest on membership shares to its members;
- (e) notwithstanding section 137 and any regulations made under section 9(1), a non-profit housing cooperative may only allocate among or credit and pay to the members all or part of the surplus arising from the operations of the cooperative in a financial year as a patronage return;
- (f) subject to section 390, a non-profit housing cooperative may not amend its articles to change from a non-profit housing cooperative to any other type of cooperative or corporation.

**(2)** A non-profit housing cooperative must incorporate in its articles the restrictions set out in subsection (1).

2001 cC-28.1 s389;2001 c23 s1(6)

#### **Amending articles**

**390** A non-profit housing cooperative may make the following amendments to its articles:

- (a) a non-profit housing cooperative incorporated with shares or a cooperative without shares may change to a cooperative of the other form;
- (b) a non-profit housing cooperative may change to a corporation under Part 9 of the *Companies Act* or the *Societies Act* if

- (i) the primary object of the corporation is to carry on business as a non-profit continuing housing corporation or a non-profit home ownership cooperative and to provide housing or housing-related facilities to its members together with ancillary services and facilities,
- (ii) the corporation is to be carried on without the purpose of gain for its members or shareholders, and
- (iii) on dissolution and after the payment of its debts and liabilities, the remaining property of the corporation is to be transferred to, or distributed among, one or more non-profit housing cooperatives, non-profit organizations or charitable organizations.

**Non-member unit**

**391(1)** The board of directors of a non-profit housing cooperative may designate one or more housing units as non-member units.

**(2)** If a non-profit housing cooperative acquires a housing unit that is occupied by a non-member, the unit is deemed to have been designated as a non-member unit.

**(3)** If at the time a cooperative becomes a non-profit housing cooperative a housing unit is occupied but none of the persons occupying the unit is a member, the housing unit is deemed to have been designated as a non-member unit.

**(4)** The board of directors may revoke a designation as a non-member unit, including a designation deemed to have been made under this section, but the designation of an occupied unit may be revoked only if all the occupants who are at least 16 years old or older consent to the revocation.

**Non-profit continuing housing cooperatives**

**392(1)** In addition to the requirements of sections 5, 387, 388 and 389, the articles of a non-profit continuing housing cooperative must provide that

- (a) the cooperative is a non-profit continuing housing cooperative subject to this Act;
- (b) the cooperative is to provide housing or housing-related facilities and ancillary services and facilities to individuals the majority of whom
  - (i) are members of the cooperative,

- (ii) are ordinarily resident in housing units, and
- (iii) occupy the housing units otherwise than as individual owners.

(2) In addition to the requirements of the regulations made under section 9(1), a non-profit continuing housing cooperative must make bylaws

- (a) respecting any obligation of a member to provide capital to the cooperative and the manner in which the capital is to be contributed;
- (b) governing the procedure for determining disputes between members and between members and the cooperative, including the requirement for a mediation process;
- (c) subject to section 395, governing the manner in which the membership of a member may be terminated;
- (d) governing the method for calculating the value of a member's shares on the member's withdrawal from the cooperative or on the termination of membership and on dissolution of the cooperative and the manner in which that value is to be repaid;
- (e) subject to the regulations, providing for the establishment of adequate reserves as good cooperative business practices dictate;
- (f) governing the period of notice to be given to the members of a meeting at which the budget and housing charges will be considered;
- (g) respecting the requirements for circulation of a budget;
- (h) governing the powers of the directors to set housing charges where a resolution setting housing charges cannot be approved by the members;
- (i) respecting whether a meeting of members is required to approve admission into membership;
- (j) respecting the nature and extent of the power of the directors to borrow;
- (k) governing the rules for occupation of member units by non-members;
- (l) providing for the cooperative's requirements regarding lease or rental of a housing unit occupied by a member.

**Non-application of other Acts**

**393** Notwithstanding anything in the *Residential Tenancies Act* or the *Mobile Home Sites Tenancies Act*, those Acts do not apply to the relationship between a non-profit continuing housing cooperative and its members unless or except to the extent that the bylaws of the cooperative expressly provide for the application of those Acts.

**Right to occupy**

**394(1)** A member and the family of a member of a non-profit continuing housing cooperative has the right to occupy a member unit of the cooperative until the member ceases to be a member.

**(2)** A member who has a right to occupy a member unit may, subject to the approval of the non-profit continuing housing cooperative granted in accordance with the bylaws, allow other persons to occupy the unit.

**(3)** If a member allows a person to occupy a member unit, that person may not occupy the member unit if the member ceases to be a member.

**Termination of membership**

**395(1)** A non-profit continuing housing cooperative may terminate the membership of a member only if, in the opinion of the directors,

- (a) the member has either breached a condition of an agreement between the member and the cooperative or contravened a bylaw respecting
  - (i) possession or occupancy of the housing unit, or
  - (ii) the use of the property connected to the housing unitand has failed to remedy the breach or contravention within a reasonable time of receiving a written notice from the cooperative to do so;
- (b) the member has caused significant problems in a shared housing unit;
- (c) the member has, on more than one occasion, contravened the bylaws of the cooperative and the contraventions have continued to occur after written notice of the contraventions has been given to the member by the cooperative.

**Termination procedure**

**396(1)** Notwithstanding section 38(1) but subject to any other procedure specified in the bylaws, if the directors of a non-profit continuing housing cooperative propose to terminate the membership of a member pursuant to section 395, the directors must do so by a resolution passed by a vote of at least 3/4 of the directors at a meeting of the board of directors called for the purpose of considering the resolution.

**(2)** Notwithstanding section 38(3) but subject to section 398, the board of directors of the cooperative must give a member whose membership may be terminated pursuant to a proposed resolution under subsection (1), in writing at least 14 days before the meeting at which the resolution is to be considered, a notice that contains

- (a) the resolution to be considered at the meeting,
- (b) a statement of the grounds for termination of the membership, and
- (c) a statement of the right of appeal of the member from a resolution passed pursuant to subsection (1) or, in a case where section 398 applies, a statement that there is no right of appeal of the member from a resolution passed pursuant to subsection (1).

**(3)** In the case of a notice given in relation to a termination for the matters listed in section 395, the cooperative may not withdraw the notice to the member after the notice has been given.

**(4)** A member may appear personally or by agent or counsel to make submissions at the meeting referred to in subsection (2).

**(5)** The cooperative must give written notice to the member whose membership is terminated within 7 days of the resolution passed pursuant to subsection (1).

**Appeal procedure**

**397(1)** Subject to section 398(2), a member of a non-profit continuing housing cooperative whose membership is terminated by a resolution of the directors under section 396 may appeal the decision by filing a notice of appeal with the cooperative within 7 days of the receipt of the notice given under section 396(5).

**(2)** An appeal under subsection (1) must be heard at the next meeting of the non-profit continuing housing cooperative.

**(3)** After hearing the appeal under subsection (2), the members may by ordinary resolution confirm or quash the termination of the membership of the member.

(4) An appeal under this section acts as a stay of the resolution of the directors passed pursuant to section 396(1) until the appeal is heard.

#### **No right of appeal**

**398(1)** The directors of a non-profit continuing housing cooperative need give only 3 days' notice in writing to a member before a meeting at which a resolution under section 396(1) is to be considered if that member

- (a) failed to pay housing charges or other money due to the cooperative in respect of a self-contained housing unit,
- (b) vandalized or destroyed property belonging to the cooperative,
- (c) used the housing unit for activities contrary to law,
- (d) threatened the safety of members of the cooperative,
- (e) is a physical danger to the members of the cooperative or other residents, or
- (f) contravened a bylaw regulating the leasing of a self-contained housing unit to a non-member.

(2) If the membership of a member is terminated by the directors for any of the matters listed in subsection (1), there is no appeal from the decision to terminate the membership.

#### **Compensation and arrears**

**399(1)** A non-profit continuing housing cooperative is entitled to compensation for the following:

- (a) occupation of a member unit by a member after the membership of that member has been terminated in accordance with this Division;
- (b) unpaid housing charges and unpaid utilities;
- (c) damages to the member unit;
- (d) costs associated with obtaining vacant possession of the housing unit, including legal costs.

(2) If a non-profit continuing housing cooperative has accepted compensation under subsection (1), the acceptance does not operate as a waiver of any right of the cooperative to terminate the membership of a member or to take possession of the member unit.

**Order of possession**

**400** A non-profit continuing housing cooperative must obtain an order of possession under section 401 in order to regain possession of a member unit unless the member unit is vacant.

2001 cC-28.1 s400;2011 c14 s5

**Application for order of possession**

**401(1)** After a person's membership and occupancy rights are terminated or if there is no member occupying a member unit, the non-profit continuing housing cooperative may apply to the Court for an order under subsection (2).

**(2)** On application under this section, the Court may make an order

- (a) declaring that the person's membership and occupancy rights are terminated or that there is no member occupying the unit, as the case may be,
- (b) directing that an order of possession be issued,
- (c) directing the payment of an amount equal to the compensation owed to the non-profit continuing housing cooperative under section 399(1)(a), (b) or (c), if any,
- (d) for costs, and
- (e) in respect of any other matter as the Court sees fit.

**(3)** An application for an order of possession must be served on the respondent at least 4 clear days before the day for the return of the application, and the application must contain

- (a) a statement respecting the procedures for disputing the application, and
- (b) a summary of the order requested if the application is not disputed.

2001 cC-28.1 s401;2011 c14 s5

**Non-profit home ownership cooperatives**

**402(1)** In addition to the requirements of sections 5, 387, 388 and 389, the articles of a non-profit home ownership cooperative must provide that

- (a) the cooperative is a non-profit home ownership cooperative subject to this Act;
- (b) the cooperative is to provide self-contained housing or housing-related facilities and ancillary services and facilities to individuals the majority of whom

- (i) are members of the cooperative,
- (ii) own their housing units or own their housing units on a co-ownership basis with the cooperative as a tenant in common, joint tenant or any other recognized form of ownership, and
- (iii) are ordinarily resident in the housing units.

**(2)** In addition to the requirements of the regulations made under section 9(1), a non-profit home ownership cooperative must make bylaws

- (a) respecting any obligation of a member to provide capital to the cooperative and the manner in which the capital is to be contributed;
- (b) governing the procedure for determining disputes between members and between members and the cooperative, including the requirement for a mediation process;
- (c) subject to section 404(1), governing the manner in which the membership of a member may be terminated;
- (d) governing the method in which a member's equity is to be determined on the member's withdrawal from the cooperative or on the termination of membership and on dissolution of the cooperative and the manner in which that equity is to be repaid;
- (e) providing for the cooperative's requirements regarding the sale of a self-contained housing unit;
- (f) providing for the cooperative's requirements regarding lease or rental of a self-contained housing unit owned by a member;
- (g) respecting the members' right to access, use and possession of the related services and ancillary facilities;
- (h) subject to the regulations, providing for the establishment of adequate reserves as good cooperative business practices dictate;
- (i) providing for the establishment and the maintenance of adequate insurance to protect the cooperative and individual members from loss, if applicable;
- (j) governing the rights of mortgagors of the individual self-contained housing units, if applicable;

- (k) governing the period of notice to be given to members of a meeting at which the budget and fees will be considered;
- (l) respecting the requirements for circulation of a budget;
- (m) governing the powers of the directors to set fees where a resolution setting fees cannot be approved by the members;
- (n) respecting whether a meeting of members is required to approve admission into membership;
- (o) respecting the nature and extent of the power of the directors to borrow.

**Withdrawal from membership**

**403** Notwithstanding section 36, no member may withdraw from membership in the cooperative while owning a self-contained housing unit whether the member owns the self-contained housing unit

- (a) as a person, or
- (b) on a co-ownership basis with the cooperative as a tenant in common, joint tenant or any other form of ownership recognized by law.

**Termination of membership**

**404(1)** No non-profit home ownership cooperative shall terminate the membership of a member from the cooperative unless that member breaches or repeatedly contravenes the share subscription agreement, the articles, the bylaws or the policies of the cooperative or any agreements between the member and the cooperative.

**(2)** The members of a non-profit home ownership cooperative may terminate the membership of a member on the grounds provided for in subsection (1) by a resolution passed by a vote of at least 3/4 of the members present at a meeting called for the purpose of considering the resolution.

**(3)** A meeting under subsection (2) must have a quorum of at least 70% of the members throughout the meeting.

**(4)** The directors of the non-profit home ownership cooperative must give a member whose membership may be terminated pursuant to a proposed resolution under subsection (2) a notice in writing at least 14 days before the meeting at which the resolution is to be considered, and the notice must contain

- (a) the resolution to be considered at the meeting, and
  - (b) a statement of the grounds for termination of the membership.
- (5) A member may appear personally or by agent or counsel to make submissions at the meeting referred to in subsection (2).

#### **Amalgamation**

**405** Notwithstanding any other provision of this Act, a non-profit housing cooperative may amalgamate with another corporation only if the entity continued after the amalgamation is a non-profit housing cooperative.

## **Division 2 Employment Cooperatives**

#### **Definition of “employment cooperative”**

**406** For the purposes of this Part, “employment cooperative” means a cooperative whose main object is to provide employment or contract work to its members and to operate an enterprise in which control rests with the members.

#### **Requirements of articles**

**407** The articles of an employment cooperative must provide that

- (a) at least 80% of its members must be permanent employees or contractors of the cooperative, and
- (b) the maximum membership investment payable by a person to be a member may not be more than 50% of the person’s expected annual salary or remuneration from the cooperative during the first year of that person’s membership, unless any amount in excess of that amount is also paid by all other members.

#### **Non-member employees**

**408** Notwithstanding section 407, an employment cooperative may provide employment or contract work to non-members if, not later than 5 years after the incorporation of the cooperative or the acquisition of a business by the cooperative, at least 75% of its permanent employees or contractors or those of any entity controlled by it are members.

**Permanent employees**

**409** For the purpose of section 408, unless the articles of an employment cooperative specify otherwise, the following persons are not permanent employees or contractors of the cooperative:

- (a) a person who is employed on a probationary period of less than 3 years;
- (b) a person who is under contract for a period of less than 2 years.

**Bylaws**

**410** An employment cooperative must make bylaws

- (a) respecting any obligation of a member to provide capital to the cooperative, which obligation, if required, must be applied fairly to all members;
- (b) subject to sections 411(1) and 412, governing the manner in which the membership of a member may be terminated;
- (c) governing the procedure for allocating, crediting or distributing any surplus earnings of the cooperative, including that not less than 50% of those earnings must be paid on the basis of the remuneration earned by the members from the cooperative or the work contributed by the members to the cooperative;
- (d) prescribing the period of probation of an applicant for membership, which may not be longer than 3 years;
- (e) respecting how work is to be allocated;
- (f) providing for the laying off or suspension of members when there is a lack of work;
- (g) providing for the recall of members to work.

**Time for appeal**

**411(1)** If a member of an employment cooperative appeals a termination of membership in accordance with this Act, the member must give the written notice of appeal to the cooperative within 7 days, or within any greater period of time specified in the bylaws, after receiving notice of termination of membership.

**(2)** If a meeting of the members of an employment cooperative is called to consider the appeal of a terminated member and a quorum of members is not available for the meeting, the directors must call a 2nd meeting, to be held not later than 7 days after the first

meeting, and if there is no quorum of members at the 2nd meeting, the decision of the directors is deemed to be confirmed.

**Laid-off or terminated member**

**412(1)** A temporary lay-off or termination of contract of a member does not result in termination of membership.

**(2)** If a member has been laid off or the member's contract has been suspended and 2 years has elapsed after the date of the lay-off or suspension without the member having resumed employment or contract work with the cooperative, the directors or the members may, in accordance with the bylaws, terminate the membership of the member.

**Name**

**413** The articles of an employment cooperative must provide that the name of the employment cooperative include the words "employment", "employee owned", "employees", "worker", "worker owned" or "workers", in combination with any of the terms provided for in section 16.

**Directors**

**414** Notwithstanding anything in this Act,

- (a) not less than 80% of the directors of an employment cooperative must be members that are permanent employees or contractors of the cooperative,
- (b) the general manager of an employment cooperative may be a director, and
- (c) members of an audit committee of an employment cooperative may be permanent employees or contractors of the cooperative.

**Reorganization**

**415** An employment cooperative may not be a party to a fundamental change to which Part 12 applies unless the change is authorized by a vote of not less than 90% of the members.

**Dissolution**

**416** Unless otherwise provided in the articles, on dissolution of an employment cooperative not less than 20% of the surplus of the cooperative, after the payment of its liabilities, must be distributed to another cooperative, a non-profit entity or a charitable entity

before any distribution is made to a member or investment shareholder.

### **Division 3 Multi-stakeholder Cooperatives**

#### **Definitions**

**417** In this Part,

- (a) “multi-stakeholder cooperative” means a cooperative the articles of which provide for the matters referred to in section 419;
- (b) “stakeholder group” means a group of members of a multi-stakeholder cooperative
  - (i) with a common interest, or
  - (ii) residing within a defined geographical area.

#### **Membership**

**418(1)** Each member of a multi-stakeholder cooperative must belong to a stakeholder group.

**(2)** No member may belong to more than one stakeholder group at the same time.

#### **Articles of cooperative**

**419** The articles of a multi-stakeholder cooperative must provide

- (a) that the cooperative is a multi-stakeholder cooperative for the purposes of this Act,
- (b) for the division of its members into 2 or more stakeholder groups,
- (c) for the method of determining the number of directors each stakeholder group may elect, and
- (d) for the requirements set out in section 418.

#### **Passing of resolutions**

**420** In the case of a multi-stakeholder co-operative, any reference in this Act to a special resolution means a resolution that is not effective until it is

- (a) passed by the directors of the multi-stakeholder co-operative, and

- (b) confirmed, with or without variation, by at least 2/3, or any greater proportion that is provided for by the articles, of the votes cast by a show of hands or by ballot by the members of each stakeholder group at
  - (i) a meeting of the members of the multi-stakeholder cooperative called for that purpose, or
  - (ii) separate meetings of each of the stakeholder groups called for that purpose.

#### **Directors**

**421(1)** Each stakeholder group of a multi-stakeholder cooperative may elect at least one director.

**(2)** In addition to the requirements set out in sections 73 and 74, there must be at least one director of each stakeholder group present at a meeting of directors to constitute a quorum of the board of directors.

### **Division 4 New Generation Cooperatives**

#### **Definitions**

**422** In this Part,

- (a) “designated shareholder” means a holder of designated shares;
- (b) “designated shares” means the class of investment shares designated under section 427(a);
- (c) “new generation cooperative” means a corporation
  - (i) that is organized and operated, and carries on business, on a cooperative basis,
  - (ii) that is incorporated or continued pursuant to this Act, and
  - (iii) whose articles restrict the business of the cooperative to one or more of the following endeavours or businesses:
    - (A) the production, processing or marketing of agricultural products;

- (B) the provision of services to persons primarily engaged in an endeavour mentioned in paragraph (A);
- (C) any prescribed business.

#### **Names of new generation cooperatives**

**423** On the request of a new generation cooperative, the Director may exempt the new generation cooperative from the requirement to have any of the words referred to in section 16(1)(a) as part of its name.

#### **Membership share**

**424(1)** Notwithstanding section 6, a new generation cooperative must be incorporated with membership shares.

**(2)** Notwithstanding section 102(6), the right to vote attaches to the membership shares held by the member, but each member is entitled to only one vote in accordance with section 34.

#### **Redemption of membership shares and repayment of loans**

**425** Notwithstanding sections 37(2), 41(2) and 44, no new generation cooperative may delay the redemption of membership shares or the repayment of loans beyond the period prescribed in sections 37(1) and 41(1) unless the bylaws of the cooperative provide otherwise.

#### **Transfer of member interest**

**426** Notwithstanding sections 48(2) and 102(5), the approval of the directors respecting a transfer of a member interest in a new generation cooperative is subject to any limitations set out in the bylaws.

#### **Capital structure: investment shares**

**427** In addition to the power to issue investment shares, the articles of a new generation cooperative may provide for

- (a) a class of investment shares that
  - (i) are issued only to members,
  - (ii) are designated as a class of investment shares, and
  - (iii) notwithstanding section 108(4), carry no right to vote at an election of directors;

- (b) rights for designated shareholders to participate
  - (i) in the surplus of the cooperative by payment of patronage dividends or bonus payments,
  - (ii) in any reserve of the cooperative by payment of dividends, or
  - (iii) in the remaining property of the cooperative on dissolution;
- (c) contracts between a new generation cooperative and designated shareholders that specify
  - (i) the obligations of designated shareholders to deliver specific goods or services to the cooperative,
  - (ii) the rights of designated shareholders to receive specific goods or services from the cooperative, and
  - (iii) that rights and obligations referred to in subclauses (i) and (ii) may vary from designated shareholder to designated shareholder in accordance with the number or percentage of designated shares held by a designated shareholder.

**Patronage returns**

**428(1)** Patronage returns allocated by a new generation cooperative to designated shareholders may be declared as patronage dividends or bonus payments and may be based on the number of designated shares held by the designated shareholders in addition to the business done by them with or through the cooperative.

**(2)** Unless the bylaws provide otherwise, a patronage return declared under subsection (1) must be calculated in the manner described in section 137.

**Bylaws**

**429** The bylaws of a new generation cooperative may provide for

- (a) the terms to be included in contracts between the cooperative and its members respecting
  - (i) the services of the cooperative,
  - (ii) the exclusive sale or delivery of goods by the members to or through the cooperative,

- (iii) the transfer or non-transfer of title of goods delivered to the cooperative pursuant to the contract,
  - (iv) the payment of money to members for the delivery or agreed delivery of goods,
  - (v) the manner of discharging expenses of the cooperative from money received from the sale of goods,
  - (vi) the deduction of an amount to be applied to the purchase of investment shares designated under section 427(a) from money received from the sale of goods, and
  - (vii) any penalties for breach of a material provision of the contract;
- (b) the operation of pools for the members and others who use the services of the cooperative and the distribution of money from the pool among the persons contributing to the pool;
- (c) limitations on the exercise of the discretion of the directors under section 426.

### Regulations

**430** The Minister may make regulations

- (a) governing the subject-matter that must be included in the articles of a new generation cooperative;
- (b) governing any special restrictions or limitations that apply to new generation cooperatives;
- (c) prescribing any words that must be included in the name of a new generation cooperative;
- (d) governing the amendments a new generation cooperative may make to its articles;
- (e) respecting the subject-matter that must be included in the bylaws of a new generation cooperative;
- (f) respecting the grounds for termination of membership of a member in a new generation cooperative;
- (g) governing the procedures for termination under clause (f);

- (h) governing the procedures for an appeal where membership in a new generation cooperative is terminated;
- (i) governing the withdrawal of a member from a new generation cooperative;
- (j) governing the continuance of a corporation or cooperative as a new generation cooperative;
- (k) governing the dissolution of a new generation cooperative;
- (l) governing the transfer of shares and member interests in a new generation cooperative;
- (m) governing investment shares issued by a new generation cooperative;
- (n) prescribing the types of businesses for the purpose of section 422(c)(iii)(C);
- (o) providing for any other matters necessary for the governance of new generation cooperatives.

## **Part 19**

### **Transitional Provisions, Consequential Amendments, Repeals and Coming into Force**

#### **Transitional Provisions**

##### **Definitions**

**431** In this Part,

- (a) “association” means an association as defined in sections 1(b) and 59 of the former Act;
- (b) “former Act” means the *Co-operative Associations Act* (RSA 2000 cC-28).

##### **Continuation under former Act**

**432** Every association that is registered under the former Act when this Part comes into force continues as an association under the former Act, and the former Act continues to apply to that association until March 31, 2005.

**Prohibition**

**433** No cooperative may be incorporated under the former Act after the coming into force of this Act.

**Continuing association as a cooperative**

**434(1)** An association continued under section 432 is dissolved on March 31, 2005 unless the association is continued under this section before that date.

**(2)** An association may be continued as a cooperative if the association submits an application to the Director that contains

- (a) the articles of the association in accordance with sections 5, 387, 388, 389, 392(1), 402(1), 407, 413 and 419, as applicable;
- (b) a declaration signed by the directors that after the association is continued under this section the cooperative will be organized and operated and will carry on business on a cooperative basis;
- (c) if applicable, a declaration signed by the incorporators that after the incorporation the cooperative will comply with the applicable division of Part 18;
- (d) the fee required by the regulations, if any;
- (e) anything else required by the regulations.

**(3)** Notwithstanding subsection (2), an extra-provincial cooperative may be continued under this Act if the cooperative submits a declaration signed by the directors that the cooperative wishes to continue under this Act.

**(4)** On receipt of a complete application under subsection (2) or a declaration under subsection (3), the Director must issue a certificate of continuance continuing an association as a cooperative or extra-provincial cooperative, as the case may be.

2001 cC-28.1 s434;2001 c23 s1(7)

**Certificate of continuance**

**435(1)** A certificate of continuance issued under this Part must set out the name of the cooperative or extra-provincial cooperative and its financial year.

**(2)** The Director may set out in the certificate of continuance any term or condition that the Director considers appropriate to deal with the particular circumstances of the cooperative or extra-provincial cooperative.

**Effect of the certificate of continuance**

**436(1)** On the date set out in the certificate of continuance,

- (a) an association continued under this Part becomes a cooperative as if it had been incorporated or registered under this Act, and
- (b) the certificate of continuance is the instrument of incorporation or registration of the cooperative.

**(2)** A certificate of continuance is conclusive proof for the purposes of this Act and for all other purposes that the cooperative or extra-provincial cooperative has been continued under this Act on the date set out in the certificate of continuance.

**Effect of continuation**

**437** When an association is continued under this Part,

- (a) the property of the association continues to be the property of the cooperative or extra-provincial cooperative,
- (b) the cooperative or extra-provincial cooperative continues to be liable for the obligations of the association,
- (c) an existing cause of action or claim by or against the association or any liability to prosecution is unaffected,
- (d) a civil, criminal or administrative action or proceeding pending by or against the association may continue to be prosecuted by or against the cooperative or extra-provincial cooperative, and
- (e) a conviction against, or any ruling, order or judgment in favour of or against, the association may be enforced by or against the cooperative or extra-provincial cooperative.

**Contracts**

**438** A contract made under section 40 of the former Act is continued under this Act and is effectual in law and binding on the cooperative or extra-provincial cooperative as if made under this Act.

**Director of Co-operative Activities**

**439** The Director of Co-operative Activities under the former Act continues as the Director of Cooperatives under this Act until a new Director is appointed pursuant to section 331.

**Bylaws**

**440(1)** If a supplemental bylaw of an association is in effect when the association is continued under this Part, the supplemental bylaw continues in effect until new bylaws are filed with the Director in accordance with this section.

**(2)** Within one year of the certificate of continuance being issued under section 434(4) or at the next annual general meeting of the cooperative, whichever occurs first, the members of the cooperative must meet to make the bylaws, which must contain the matters provided in the regulations.

**(3)** The bylaws made under subsection (2) must

- (a) be filed with the Director within 60 days of the date they are made,
- (b) be signed by the directors, and
- (c) have an affidavit attached to them verifying the signatures under clause (b).

**Shares with nominal or par value**

**441** On the continuation of an association under this Part, shares with nominal or par value of the cooperative are continued as shares with nominal or par value.

**Names**

**442** Notwithstanding section 16, the name of an association continued under this Act continues as the name of the cooperative.

**Appointment of directors and officers continued**

**443** Notwithstanding any other provision of this Act, the directors and officers of an association that are in office when the association is continued under this Part remain in office until the first annual meeting of members and investment shareholders or when their terms of office expire, whichever occurs first.

**Auditor**

**444** Notwithstanding any provision of this Act, the auditor of an association continued under this Part continues to be the auditor of the cooperative until

- (a) the cooperative's first annual meeting of members and investment shareholders, or
- (b) the office of auditor becomes vacant,

whichever occurs first.

#### **Non-member units**

**445** For the purpose of Part 18, Division 1, a housing unit of an association rented by the association to non-members when this Act comes into force is deemed to be a non-member unit.

#### **Regulations**

**446** The Minister may make regulations

- (a) respecting the transition of matters under the former Act to this Act;
- (b) respecting the continuation of cooperative associations under this Act;
- (c) respecting the revival of an association that has not been continued under this Act, including
  - (i) having the revival be retroactively effective to the date that the former Act is repealed;
  - (ii) the winding-up and dissolution of a revived cooperative association.

#### **Consequential Amendments**

**447 to 473** *(These sections make consequential amendments to other Acts. The amendments have been incorporated into those Acts.)*

#### **Repeals**

##### **Repeal**

**474** The *Co-operative Associations Act* is repealed on March 31, 2005.

#### **Coming into Force**

##### **Coming into force**

**475** This Act comes into force on April 1, 2002.

2001 cC-28.1 s475;2001 c23 s1(22).



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