

This Act is current to 30 November 2016.

This Act has "Not in Force" sections. See the [Table of Legislative Changes](#).

## **COOPERATIVE ASSOCIATION ACT**

[SBC 1999] CHAPTER 28

Assented to July 15, 1999

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#### Part 1 — Interpretation and Application

##### Definitions and interpretation

##### 1 (1) In this Act:

"affiliate" means a corporation that is affiliated with another corporation within the meaning of section 3;

"association" means an association incorporated or continued under this Act or a former Act, and includes a housing cooperative and a community service cooperative;

"call" includes an instalment and any other sum paid or payable or agreed to be paid for a membership share;

"community service cooperative" means an association referred to in section 178.1 (1);

" Company Act, 1996" means the Company Act, R.S.B.C. 1996, c. 62;

"corporate purposes" means, in relation to an association, any effort to

(a) influence the voting of members, investment shareholders or debentureholders of the association at any meeting,

(b) acquire or sell shares or debentures of the association, or

(c) effect an amalgamation involving, or a reorganization of, the association;

"court", except in sections 79, 135, 162 (1) (b) and 202, means the Supreme Court;

"director" means a person who is appointed or elected to the governing body of a corporation and includes every person, by whatever name designated, who performs functions of a director, but does not include a person exempted, conditionally or unconditionally, from this definition by regulation;

"eligible organization" means an organization that under section 32 may be admitted to membership in an association;

"extraprovincial association" means an extraprovincial corporation that is registered under section 181 or under regulations made in accordance with Part 11.1 as an extraprovincial association;

"federal corporation" means a corporation to which both of the following apply:

(a) the most recent of the following was effected by or under an Act of Canada:

(i) the incorporation of the corporation;

(ii) a continuation of the corporation, or any other transfer by a similar process, into the federal jurisdiction;

(iii) an amalgamation or similar process from which the corporation resulted;

(b) the corporation has not, since that incorporation, continuation or amalgamation or similar process, been discontinued by or under an Act of Canada;

"federation" means an association or extraprovincial association whose membership is comprised substantially of other associations or corporate bodies organized on a cooperative basis;

"first nation" means an aboriginal governing body, however organized and established by aboriginal people within their traditional territory in British Columbia or another province;

"former Act" means the Cooperative Association Act, R.S.B.C. 1996, c. 71, and any predecessor Act, and includes

(a) the Agricultural Act, 1915, S.B.C. 1915, c. 2, in relation to a subsisting association or society having a share capital that was incorporated under or was at any time subject to or governed by that Act, and

(b) the Industrial and Provident Societies Act, R.S.B.C. 1911, c. 105;

"housing cooperative" means an association providing accommodation for persons the majority of whom are members of the association and are ordinarily resident in the accommodation;

"investment share" means a share in an association that is not a membership share;

"investment shareholder" means a person whose name is entered in the register of investment shareholders of an association as an owner of an investment share of the association;

"joint member" means a person who is one of 2 or more persons who jointly hold one membership in an association;

"marketing board" means a marketing board appointed or established under the Natural Products Marketing (BC) Act or under another Act of British Columbia, another province or Canada for the regulation of one or more natural products;

"member" means a member of an association and includes a joint member;

"membership share" means a share, in an association, of the class designated under section 30 as the membership shares and includes the shares that under section 213 or 214 are renamed as the membership shares;

"memorandum" means an association's memorandum of association, and includes the application for registration, certificate of incorporation, or a declaration or other equivalent to a memorandum of association, by whatever name called, of an association registered under this Act on its conversion under section 29 of the Farmers and Womens Institutes Act from an institute under that Act to an association under this Act;

"officer", in relation to an association, includes

(a) the chair of the board of directors, every vice chair of the board of directors, the president, every vice president, the secretary, every assistant secretary, the treasurer and every assistant treasurer,

(b) the general manager and every other individual designated, according to function performed for the association, as an officer by the rules or by resolution of the directors, and

(c) every other individual who performs functions for the association similar to those performed by the officers described in paragraphs (a) and (b) of this definition;

"ordinary resolution" means a resolution of the members of an association that is

(a) submitted to all the members who are entitled to vote on the resolution and passed by being consented to in writing by 3/4 of those members, or

(b) passed, after the required notice of meeting under this Act, in a general meeting by a simple majority of the total votes cast by the members who are entitled to vote on the resolution, including votes cast in person and, if permitted by this Act and the association's rules, votes cast by proxy and votes cast by mail ballot;

"patronage return" means an amount that an association 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 association;

"registrar" means the Registrar of Companies or an authorized individual performing the registrar's duties;

"reporting association" means

(a) an association that was a reporting association under a former Act immediately before the coming into force of this definition and has not ceased under section 2 of this Act to be a reporting association, or

(b) a community service cooperative that is ordered to be a reporting association under section 178.2 and has not ceased under section 2 to be a reporting association;

"rules" means the rules adopted by an association, as amended from time to time;

"separate resolution" means a resolution of

(a) the investment shareholders if the association has only one class of investment shares, or

(b) the investment shareholders of a particular class of investment shares, if the association has more than one class of investment shares

that is

(c) submitted to all the investment shareholders who are entitled to vote on the resolution and passed by being consented to in writing by all of them, or

(d) passed after the required notice of meeting under this Act, in a meeting of the investment shareholders entitled to vote on the resolution, by a majority that the association's rules specify is required, of the votes cast, in person or by proxy, if that specified majority is at least 2/3 but not more than 3/4 of those votes or, if the association's rules do not specify the required majority, at least 3/4 of those votes;

"special resolution" means a resolution of the members of an association

(a) that is submitted to all the members who are entitled to vote on the resolution and passed by being consented to in writing by all of them, or

(b) that is

(i) passed, after the required notice of meeting under this Act, in a general meeting by a majority that the association's rules specify is required, of the total votes cast by the members who are entitled to vote on the resolution, including votes cast in person and, if permitted by this Act and the association's rules, votes cast by proxy and votes cast by mail ballot, if the specified majority is at least 2/3, but not more than 3/4 of those votes or, if the association's rules do not specify the required majority,

(A) at least 2/3 of those votes, in the case of an association other than a housing cooperative, or

(B) at least 3/4 of those votes, in the case of a housing cooperative, and

(ii) if the association's rules provide as set out in section 41 and the resolution pertains to a matter specified by the association's rules that are authorized under that section, the resolution receives at least the percentage or percentages of favourable votes specified under those rules;

"special rights or restrictions", in relation to investment shares of an association, includes special rights and restrictions, whether preferred, deferred or otherwise, in regard to

(a) redemption or return of capital,

(b) conversion into or exchange for the same or any other number of any other kind, class or series of securities of the association or of any other corporation,

(c) dividends,

(d) voting,

(e) nomination, appointment or election of directors or other control, or

(f) any other matter;

"subscriber" means a person or eligible organization that makes and subscribes the memorandum that is filed with the registrar.

(2) [Repealed 2007-7-34.]

(3) For the purposes of the definition of "special rights or restrictions", the expressions "special rights" and "restrictions", whether used together or separately, have a corresponding meaning.

(4) A reference in an association's memorandum or rules to an extraordinary resolution must be read as a reference to a special resolution.

(5) [Repealed 2007-7-34.]

When status as reporting association ceases

2 (1) An association ceases to be a reporting association, but continues as an association under this Act, if the registrar on application by ordinary resolution of the association orders that it ceases to be a reporting association.

(2) In making an order under subsection (1), the registrar must take into account prescribed criteria.

Corporate relationships

3 (1) For the purposes of this Act, one corporation is affiliated with another corporation if

(a) one of them is the subsidiary of the other,

(b) both of them are subsidiaries of the same corporation, or

(c) each of them is controlled by the same person.

(2) 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 controlled by that other corporation, or

(iii) 2 or more corporations controlled by that other corporation, or

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

(3) For the purposes of this Act,

(a) a corporation is controlled by a person if

(i) shares of the corporation carrying more than 50% of the votes for the appointment or election of directors are held, other than by way of security only, by or for the benefit of that person, and

(ii) the votes carried by the shares mentioned in paragraph (a) are sufficient, if exercised, to appoint or elect a majority of the directors of the corporation, and

(b) an association is controlled by a person if the person has the right to exercise more than 50% of the voting rights that may be cast at an annual general meeting or to elect or appoint a majority of the directors.

(4) For the purposes of this Act, a corporation is the holding corporation of another corporation that is its subsidiary.

#### Share ownership

4 (1) For the purposes of this Act, shares are held for the benefit of a person if they are beneficially owned by

(a) the person,

(b) a corporation controlled by the person, or

(c) an affiliate of a corporation controlled by the person.

(2) For the purposes of this Act, a corporation is deemed to beneficially own securities that are beneficially owned by its affiliates.

Repealed

### Cooperative basis

8 (1) An association must be organized and operated and must carry on business on a cooperative basis.

(2) An association, other than as described in subsection (3), is organized, operated and administered on a cooperative basis if it is substantially organized, operated and administered on the following principles and methods:

(a) membership in the association is open in a non-discriminatory manner to persons who can use the services of the association and are willing and able to accept the responsibilities of membership;

(b) subject to sections 40 (3) and (4), 42 (1) and 45, each member or delegate has one vote;

(c) members contribute to the capital of the association;

(d) members receive limited or no return on capital subscribed to as a condition of membership;

(e) surplus funds arising from the association's operations are used for any or all of the following purposes:

(i) developing the association;

(ii) providing or improving services to members;

(iii) establishing reserves;

(iv) paying dividends;

(v) community welfare or the propagation of cooperative enterprise;

(vi) distribution among its members as a patronage return;

(f) education is provided on the principles and techniques of cooperative enterprise.

(3) An association having as its business or as one of its businesses the business of acting as a designated agency of one or more marketing boards, despite subsection (2) is organized, operated and administered on a cooperative basis with respect to that business, if it carries on that business on a basis the association's directors consider expedient in order to exercise and carry out the powers, duties, obligations and restrictions vested in and placed on the association by the marketing board or marketing boards, as the case may be.

(4) An association that is substantially organized, operated and administered on the principles and methods set out in subsection (2) but, by its rules restricts the classes of persons to whom membership is available, is organized, operated and administered on a cooperative basis, despite

the restrictions, if the restrictions are consistent with applicable laws with respect to human rights and are reasonable in relation to

(a) any business restrictions set out in the memorandum or rules of the association, and

(b) the association's ability to compete commercially in offering services to members and prospective members.

#### Patronage returns

9 (1) An association may allocate among and credit or pay to the members, as a patronage return, all or a part of the surplus arising from the operations of the association in a financial year in proportion to the business done by the members with or through the association in that financial year, calculated in the manner described in subsection (2) at a rate set by the directors.

(2) For the purpose of subsection (1), the directors of an association may calculate the amount of the business done by each member with or through the association 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 association,

(b) the services rendered

(i) by the association on behalf of or to the member, and

(ii) by the member on behalf of or to the association, and

(c) differences that are, in the opinion of the directors, appropriate for different classes, grades or qualities of things and services.

(3) The association's rules may provide that an association may allocate among and credit or pay to persons who use the services of the association 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.

(4) If an association allocates among and credits or pays to persons referred to in subsection (3) a share of any surplus, the directors must calculate the business done by the non-member patrons in the manner described in subsection (2).

## Part 2 — Incorporation

### Division 1 — Formation of Associations

#### Formation of association

10 (1) Any 3 or more persons, eligible organizations or both may be incorporated as an association under this Act to carry on any lawful business or activity on a cooperative basis.

(2) An association must not carry on business without at least 3 members but, if at any time it does so for more than 6 months, every director and officer of the association during the time that it so carries on business is jointly and separately liable for the payment of the whole of the debts of the association contracted during that time.

Filing memorandum and rules

11 The persons, eligible organizations or both wishing to form an association must

(a) make and subscribe, in duplicate,

(i) a memorandum in a form established by the registrar, and

(ii) the rules adopted by the subscribers,

(b) file with the registrar 2 copies of the memorandum and rules and fulfill the requirements of sections 12 and 13, and

(c) at the time of filing, pay the prescribed fee.

Memorandum requirements

12 The memorandum must

(a) show opposite the name of every subscriber the number of membership shares taken by the subscriber,

(b) show opposite the name of every subscriber the number of each class of investment shares, if any, taken by the subscriber and, for each class taken, whether the shares are without par value or the par value of those shares,

(c) contain every restriction, if any, on the business to be carried on by the association or on the powers of the association,

(d) state the purpose of the association,

(e) if applicable, state that

(i) section 173 of the Cooperative Association Act applies to the association and identify that statement as an unalterable provision, or

(ii) section 196 (1) of the Cooperative Association Act applies to the association and, if applicable, identify that statement as an unalterable provision,

- (e.1) if the association is a community service cooperative, comply with section 178.1 (1),
- (f) state the par value of its membership shares or that its membership shares are without par value,
- (g) state
- (i) the maximum number of membership shares that the association is permitted to issue, or
- (ii) that the association is permitted to issue an unlimited number of membership shares, and
- (h) be consistent with section 49.

#### Rules

13 (1) Subject to subsection (2), the rules adopted by an association may be in the prescribed form.

(2) The rules adopted by an association must provide for each of the prescribed matters.

(3) The association's rules may allow for joint members and if so

(a) must set out the rights of joint members,

(b) must require the joint members to jointly own the membership shares held by the joint membership,

(c) may set out whether the membership shares held by the members jointly are to be held

(i) in joint tenancy or tenancy in common, or

(ii) in either joint tenancy or tenancy in common, at the option of the members applying for the joint membership shares, and

(d) must be consistent with the requirements of sections 42 and 49.

(4) If the association's rules allow for joint membership, but are silent as to the matters described in subsection (3) (c), the membership shares held by the members jointly are to be held in joint tenancy.

(5) If the association's rules under subsection (3) (c) allow for joint tenancy or tenancy in common at the option of the members applying, but the members do not specify, the membership shares held by the members jointly are to be held in joint tenancy.

#### List of directors

14 At the time of filing the memorandum and rules of an association under section 11, the persons wishing to form an association must also file with the registrar each of the following:

(a) a list of the persons named as the first directors of the association under section 73, stating their full names and addresses;

(b) a notice setting out the address of the registered office of the association as required by section 27.

#### Registration documents

15 (1) After receiving the material required to be filed with the registrar under sections 11 and 14, the registrar, if the memorandum appears to the registrar to comply with this Part, must

(a) file the memorandum and rules and enter the name of the association in the registrar's records,

(b) issue a certificate of incorporation showing that the association is incorporated under this Act, and

(c) publish, in the Gazette or in any other prescribed manner, notice of the incorporation of the association together with a statement of the purpose of the association.

(2) The registrar must retain one copy of the memorandum and rules and return the other copy, certified as having been filed with the registrar, to the applicants.

#### Conclusiveness of certificate

16 A certificate of incorporation given by the registrar for an association is conclusive evidence

(a) of compliance with the requirements of this Act for incorporation, and

(b) that the association has been incorporated in accordance with this Act.

#### Incorporation from date of certificate

17 On and after the date of the certificate of incorporation, the subscribers and other persons who may become members of the association, are a corporation by the name described, subject to this Act.

#### Effect of memorandum and rules

18 The memorandum and rules, when filed, bind the association, its members and its investment shareholders to the same extent as if the memorandum and rules

(a) had each been signed and sealed by the association, each member and each investment shareholder, and

(b) each contained covenants on the part of each member and investment shareholder to observe the memorandum and rules.

## Power and capacity

19 An association has the capacity and the rights, powers and privileges of an individual of full capacity.

## Restricted business and powers

20 (1) An association must not carry on a business that it is restricted from carrying on by its memorandum.

(2) An association must not exercise

(a) a power that it is restricted from exercising by its memorandum, or

(b) any of its powers in a manner inconsistent with the restrictions in its memorandum.

(3) An act of an association, including any transfer of property to or by an association, is not invalid merely because the act or transfer is contrary to the association's memorandum or rules or to this Act.

## No constructive notice

21 In proceedings by or against an association, a person is not affected by or deemed to have notice or knowledge of the contents of a document or other record concerning the association merely because the document or other record has been filed with the registrar or is available for inspection at an office of the association.

## Division 2 — Name

### Name reservation

22 On request, the registrar may reserve a name

(a) for a period of 56 days from the date of reservation,

(i) for an intended association,

(ii) for an association about to change its name, and

(iii) for an extraprovincial corporation intending to

(A) apply for registration as an extraprovincial association, or

(B) change its name, and

(b) for the period the registrar allows, for an association or extraprovincial association intending to amalgamate with another.

Form of name

23 (1) An association must include the word "cooperative", "co-operative", "coop", "co-op" or "coopérative", or another grammatical form of any of those words, as part of its name.

(2) An association may include only one of the following words in its name:

(a) "association";

(b) "society";

(c) "union";

(d) "exchange";

(e) a similar word approved by the registrar.

(3) An association must not include in its name the words "not for profit" or "non profit" or any words of similar import unless it is

(a) a housing cooperative to which section 173 applies, or

(b) a community service cooperative.

(4) An association must not include in its name either the word "company" or the word "limited".

Registrar's discretion as to name

24 An association must not be incorporated under section 10, a corporation must not be continued under section 185 and an extraprovincial corporation must not be registered as an extraprovincial association under section 181 or under regulations made in accordance with Part 11.1 under a name that

(a) the registrar for a good and valid reason disapproves, or

(b) does not comply with the applicable requirements of this Division.

Use of "cooperative" and its derivatives in business name restricted

25 A person must not carry on any business or activity under any name that includes the word "cooperative", "co-operative", "coop", "co-op" or "coopérative", or another grammatical form of any of those words, or adopt any new name including that word, or grammatical form, unless the person is

- (a) an association,
- (b) incorporated under an Act of Canada as a cooperative association, insurance company or credit society,
- (c) a corporation incorporated under another Act that at the time this section comes into force is the subject of a subsisting approval of the superintendent under a former Act, or
- (d) an extraprovincial association.

#### Publication of name

26 An association must do the following:

- (a) display its name, and keep its name displayed, in legible letters in a conspicuous position at each place in which its business is carried on;
- (b) have its name engraved in legible characters on its seal, if any;
- (c) have its name mentioned in legible characters
  - (i) on all notices, advertisements and other official publications of the association,
  - (ii) on all commercial paper or goods purporting to be signed by or on behalf of the association, and
  - (iii) on all bills or parcels, invoices, receipts and letters of credit of the association.

#### Division 3 — Registered Office

##### Registered office

27 An association must

- (a) have a registered office in British Columbia to which all communications and notices may be delivered, and
- (b) file with the registrar notice of every change in its address.

##### Service of documents

28 A document or other record may be served on an association by

(a) leaving it at, or mailing it by registered mail to, the registered office of the association as recorded under this Act, or

(b) personally serving a director or officer of the association.

### Part 3 — Membership and Voting

#### Division 1 — Membership

##### Membership

29 The members of an association are the subscribers and the persons and eligible organizations admitted to membership in the association according to its rules.

##### Membership share requirement

30 An association, in its rules, must designate a class of shares as the membership shares and provide, as a condition of the admission of a person or eligible organization as a member of the association, that the person or eligible organization subscribe for a minimum number of membership shares.

##### Members under 19 years of age

31 (1) An association may provide in its rules for the admission to membership in the association of persons under 19 years of age who are at least 16 years of age.

(2) Rules referred to in subsection (1) are subject to subsection (3).

(3) Despite the Infants Act, the Age of Majority Act or the common law and subject to subsection (4) of this section, an individual admitted to membership in an association who is under 19 years of age and who is at least 16 years of age

(a) has the same obligations, rights and legal capacity as a member of the association who has reached 19 years of age, and

(b) may be sued,

but only in respect of membership in an association and of any indebtedness or obligation to the association.

(4) An individual under 18 years of age is not eligible to be a director or officer of an association.

## Government, first nations and corporations as members

32 Each of the following may be admitted to membership in an association and represented by an individual authorized on its behalf:

- (a) the government;
- (b) a first nation;
- (c) a corporation.

## Withdrawal from membership

33 (1) An association

- (a) must permit the withdrawal of members from the association, and
  - (b) subject to section 38 (1) and paragraph (a) of this subsection, may provide in the association's rules for the withdrawal of members from the association and the transfer of their membership shares.
- (2) Withdrawal from membership in an association is subject to any rules of the association that are made in accordance with subsection (1) (b).

## Termination of membership in an association other than a housing cooperative

34 (1) This section applies only to an association other than a housing cooperative.

- (2) An association may provide in its rules for the termination of the membership of a member.
  - (3) Rules referred to in subsection (2) are subject to this section and sections 36 to 39.
  - (4) Subject to any rules of an association for termination of membership, and to subsections (5) and (6) of this section and sections 36 to 39, an association may terminate the membership of a member if
- (a) the member has engaged in conduct detrimental to the association,
  - (b) the member has not paid money due by the member to the association within a reasonable time after receiving written notice to do so from the association, or
  - (c) in the opinion of the directors, based on reasonable grounds, the member
    - (i) has breached a material condition of an agreement with the association, and
    - (ii) has not rectified the breach within a reasonable time after receiving written notice to do so from the association.

(5) An association may exercise the powers under this section to terminate the membership of a member only by a resolution of the directors requiring a majority of at least 3/4 of all the directors and passed at a meeting of the directors called to consider the resolution.

(6) Sections 156 and 208 do not apply to termination of a membership in an association on the grounds described in subsection (4) (b) or (c).

#### Termination of membership in a housing cooperative

35 (1) A housing cooperative may provide in its rules for the termination of the membership of a member.

(2) Rules referred to in subsection (1) and the rules that a housing cooperative may adopt under subsection (3) of this section are subject to this section and sections 36 to 39.

(3) A housing cooperative by its rules may adopt either of the following grounds as constituting grounds for termination of the membership of a member who has a right to possession or occupancy of residential premises that is dependent on the member's membership:

(a) the member has not paid rent, occupancy charges or other money due by the member to the housing cooperative in respect of the residential premises and has not rectified the nonpayment within a reasonable time after receiving written notice to do so from the housing cooperative;

(b) the member

(i) has not paid rent, occupancy charges or other money due by the member to the housing cooperative in respect of the residential premises, or

(ii) in the opinion of the directors, based on reasonable grounds, has breached a material condition of an agreement between the member and the housing cooperative relating to the member's

(A) possession or occupancy of the residential premises, or

(B) use of the property of which those premises form part,

and has not rectified the nonpayment or breach within a reasonable time after receiving written notice to do so from the housing cooperative.

(4) Subject to any rules of a housing cooperative for termination of membership, and to subsections (5) and (6), a housing cooperative may terminate the membership of a member if the member has engaged in conduct detrimental to the housing cooperative.

(5) A housing cooperative may exercise the powers under this section to terminate the membership of a member only by a resolution of the directors requiring a majority of at least 3/4 of all the directors and passed at a meeting of the directors called to consider the resolution.

(6) Sections 156 and 208 do not apply to termination under this section of a membership in a housing cooperative.

## Rules of association respecting termination of rights or membership

### 35.1 (1) In this section:

"agreement" means an agreement between an association and a member, and includes an occupancy agreement;

"occupancy agreement" means an agreement, between a housing cooperative and a member, relating to the member's

(a) possession or occupancy of residential premises, or

(b) use of the property of which those premises form part.

(2) Despite any provision to the contrary in an agreement or in the rules of an association,

(a) a breach by a member of an association of an agreement or of the rules of the association does not constitute a termination of the member's membership, whether or not the rules of the association or the terms of the agreement provide that the breach constitutes a deemed withdrawal of the member's membership, and

(b) if the membership of a member referred to in paragraph (a) is to be terminated, it must be terminated under section 34 or 35, as the case may be, and sections 36 to 39.

(3) Without limiting subsection (2) of this section, if a member of a housing cooperative has, as a result of that membership, a right to possession or occupancy of residential premises, the housing cooperative must not terminate the member's right to possession or occupancy unless the member's membership is first terminated in accordance with sections 35 and 36 to 39.

(4) If an association's rules contain a provision that does not accord with this section, the association must amend the provision at its next general meeting so that the provision accords with this section or, if that next general meeting is to take place within one month after the coming into force of this section, at the general meeting to follow that next general meeting.

### Notices respecting the termination of members

36 (1) A member of an association whose membership is proposed to be terminated by a resolution of the directors

(a) is entitled to at least 7 days' notice of the meeting at which the resolution is to be considered, together with a statement of the grounds on which the member's membership is proposed to be terminated, and

(b) may appear, either personally or by or with an agent or counsel, to make submissions at the meeting.

(2) Within 7 days after the date on which a proposed resolution to terminate a membership referred to in subsection (1)

(a) is withdrawn,

(b) is defeated because it does not receive the required majority, or

(c) is passed by the required majority,

the directors must,

(d) subject to paragraph (e), deliver written notice of the outcome to the member, or

(e) serve written notice of the outcome on the member if

(i) membership in a housing cooperative is being terminated for non-payment of rent, occupancy charges or other money due by the member to the housing cooperative in respect of residential premises, and

(ii) the resolution is passed by the required majority.

Appeal from termination of membership

37 (1) If the directors of an association resolve under section 36 to terminate a person's membership in the association, the person may, unless the person is a member of a housing cooperative whose membership was terminated for non-payment of rent, occupancy charges or other money due by the member to the housing cooperative in respect of residential premises, appeal the termination at the next meeting of the association by delivering a notice of appeal to the association within 7 days after delivery of written notice referred to in section 36 (2) (d).

(2) A person whose membership in an association is terminated and who, being entitled to do so under subsection (1), appeals the termination of the membership under and within the time limited by subsection (1), continues, despite the resolution of the directors terminating the membership, to be a member of the association unless the members at the general meeting to which the appeal is brought confirm the termination of the membership

(a) in the case of a membership in an association other than a housing cooperative,

(i) if the membership is terminated for any of the reasons referred to in section 34 (4) (b) or (c), by a resolution requiring a simple majority or, if provided by the association's rules, a greater majority, or

(ii) if the membership is terminated for the reason referred to in section 34 (4) (a), by a special resolution, or

(b) in the case of a membership in a housing cooperative,

(i) if the membership is terminated for a reason referred to in section 35 (3) (b) (ii), by a resolution requiring a simple majority or, if provided by the housing cooperative's rules, a greater majority, or

(ii) if the membership is terminated for the reason referred to in section 35 (4), by a special resolution.

(2.1) If the members of a housing cooperative confirm the termination of a person's membership under subsection (2) (b), the housing cooperative must

(a) promptly serve the person with

(i) a notice that the resolution or special resolution confirming the termination was passed by the members, and

(ii) a notice in the prescribed form of the person's right to appeal the termination under subsection (3), and

(b) comply with other prescribed conditions.

(3) If a person's membership in a housing cooperative is terminated, the person may appeal the termination to the court

(a) within the following time period:

(i) if the membership was terminated for non-payment of rent, occupancy charges or other money due by the member to the housing cooperative in respect of residential premises, within 30 days after the date on which the notice referred to in section 36 (2) (e) was served on the person;

(ii) if the membership was terminated for any other reason, within 30 days after the date on which the notice referred to in subsection (2.1) (a) (i) of this section was served on the person, and

(b) on any one or more of the following grounds:

(i) the housing cooperative failed to observe the principles of natural justice in terminating the membership;

(ii) the decision of the housing cooperative is not reasonably supported by the facts;

(iii) the decision of the housing cooperative is not authorized by section 35.

(3.1) Despite section 171, a person who has commenced an appeal in accordance with subsection (4) of this section continues to be a member of the association for the purposes of an application under section 172.1, and may include with the appeal an application under section 172.1 for an order of possession.

(4) An appeal to the court under subsection (3) must be commenced in accordance with Rule 18-3 of the Supreme Court Civil Rules by notice of appeal in Form 73 or 74, as the case may be,

(a) filed in a registry of the court before expiry of the 30 day period referred to in subsection (3), and

(b) served on the housing cooperative before expiry of the 14 day period beginning on the day after the notice of appeal is filed in the registry of the court.

(4.1) If a person commences an appeal under subsection (3) from a decision of a housing cooperative to terminate that person's membership, the housing cooperative may file an application under section 172 (1) with its notice of interest under Rule 18-3 (8) of the Supreme Court Civil Rules.

(4.2) If an appeal is commenced under this section,

(a) any application by the housing cooperative for an order under section 172 (1) must be filed with the appearance, and

(b) any application by the member under section 172.1 must be filed with the notice of appeal

so that the court may determine at the same time all the issues between the parties relating to the termination.

(5) An appeal to the court under subsection (3) may be a new hearing and the court may hear all the evidence the court considers relevant, including, but not limited to, the evidence of the housing cooperative and of the person, and the court

(a) must do one of the following:

(i) despite section 39, restore the membership in the housing cooperative of the person whose membership was terminated, with the restoration to be effective on and after a date specified by the court, and, if an application has been made under section 172.1, make an order of possession in favour of the member;

(ii) confirm the resolution by which the termination was effected or confirmed, and, if an application has been made under section 172, make an order of possession in favour of the housing cooperative, and

(b) may make any other order that the court considers appropriate.

(6) An appeal from a decision of the court under subsection (5) lies to the Court of Appeal with leave of a justice of the Court of Appeal.

Requirement to redeem shares on membership withdrawal or termination

38 (1) A person who withdraws from membership in an association is entitled, subject to section 66 (2), to require the association to redeem

(a) the person's membership shares, and

(b) any of the person's investment shares in classes restricted for distribution to members only

within a period and on conditions the association may establish under its rules, or immediately and unconditionally, if the association's rules do not establish any period or conditions.

(2) A person whose membership in an association is terminated under this Division is entitled, subject to section 66 (2), to require the association to redeem

(a) the person's membership shares, and

(b) any of the person's investment shares in classes restricted for distribution to members only.

(3) The entitlement, described in subsections (1) and (2), of a person who withdraws from membership in a housing cooperative or whose membership in a housing cooperative is terminated, is postponed until the person has given up the actual possession and occupancy of any residential premises in which the person had a right to possession or occupancy dependent on the person's membership.

(4) In the case of

(a) a community service cooperative, or

(b) an association to which section 173 or 196 (2) applies,

the refund on account of membership shares must not exceed the amount paid up on the member's membership shares.

Special resolution for readmission

39 A member whose membership is terminated under this Division must not be again admitted to membership except by special resolution of the association.

## Division 2 — Voting by Members

### Right to vote

40 (1) Subject to this Division and to Division 3 of this Part, a member has one vote on all matters to be decided by the members.

(2) A member's right to vote derives from membership and not membership shares.

(3) An association may provide in its rules that on an equality of votes, the chair at any meeting of members has a casting or second vote.

(4) A member in arrears with a call on the member's membership shares may not exercise any right to vote on the member's own behalf or on behalf of any other person.

### Special voting rights for classes of membership

41 An association with more than one class of membership may provide in its rules that a special resolution that pertains to a matter specified by the association's rules does not pass unless in

addition to receiving the majority for passage required under paragraph (b) (i) of the definition of "special resolution", the percentage of votes cast in favour of the resolution by the members of each class is at least the percentage, if any, specified in the association's rules for that class on that matter.

#### Joint members

42 (1) Joint members of an association are together entitled to only one vote unless the association's rules provide for each of the joint members to have one vote.

(2) An association may provide in its rules for the exercise by joint members of their voting right under subsection (1).

(3) Subject to any rules of an association under subsection (2), if 2 or more persons are joint members of an association who are entitled to one vote between or among them, the joint member whose name appears as the first of 2 or more joint members on the association's register of members is entitled to cast the vote, but if that joint member does not do so, the joint member whose name next appears on the register is entitled to cast the vote, and so on if there are more than 2 joint members.

(4) Joint members of an association are jointly and separately liable for all assessments, levies, dues, fees, payments and other charges imposed or payable in respect of the membership.

(5) If membership shares are held jointly by more than one person,

(a) an association is not required to issue more than one share certificate in respect of those membership shares, and

(b) delivery of a share certificate to one of the joint owners is sufficient delivery to them all.

#### Proxy voting

43 (1) Except as permitted under this section,

(a) an association may not permit its members to vote by proxy at meetings of the members, and

(b) the members may not vote by proxy at meetings of the members.

(2) Subject to subsection (3), a member of an association may vote by proxy at a meeting of the association or any adjournment of that meeting if the member's residence, as determined from the register of members of the association, is more than 80 km, or more than a distance specified in the association's rules,

(a) from the place of the meeting, if there is only one meeting place, or

(b) from the place of the meeting closest to the member's residence, if there are 2 or more meeting places.

(3) An association in its rules may

(a) specify the distance for the purpose of subsection (2),

(b) further restrict proxy voting permitted under this section,

(c) provide for the form and manner of proxy voting permitted under subsection (2), or

(d) entirely prohibit membership proxy voting.

(4) A proxy is invalid if

(a) it does not specify a particular meeting at which the proxy may be exercised, or

(b) it is given for more than one meeting and any adjournment of that meeting.

(5) A proxy is valid only at the meeting specified in the proxy or any adjournment of that meeting.

(6) Proxies under this section may be given only to a member of the association and the member to whom the proxy is given may not vote the proxy except in person at the meeting specified in the proxy or any adjournment of that meeting.

(7) A member may not vote more than 3 membership proxies.

Voting choices for a member

44 An association may provide in its rules to allow its members to vote in an election of directors and on special resolutions and ordinary resolutions by voting in person at a general meeting or voting by mail ballot, whichever method the member chooses.

Corporate membership — equitable voting

45 If the members of an association are corporate bodies organized on a cooperative basis, the association may provide in its rules for an equitable system of voting that will give representation in relation to the number of persons who are members of each member body and to the patronage of the association by its members.

Division 3 — Delegate System of Voting

Rules may provide for a delegate system

46 (1) Despite any other provision of this Act, an association may provide in its rules for a system of delegate voting by members including the following or similar provisions:

(a) division of the territory in which the association has members into districts, and the formation in each district of

(i) a local organization comprising all members of the association resident within the district, or

(ii) 2 or more local organizations comprising the members of the association resident within the area of each of the local organizations;

(b) number of directors to be elected from each district, and the election of those directors either directly by the members of the local organizations or by district delegates;

(c) election of district delegates by each local organization to attend general meetings of the association as delegates from the district, and the number to be so elected by each local organization;

(d) delegation to the district delegates of all or any of the powers that may be exercised by the members of the association at a general meeting;

(e) method of forming new districts, either as additions to or substitutions for the existing districts, and redetermining the number of directors and local organizations;

(f) method of summoning district delegates to attend general meetings of the association, the number of delegates to constitute a quorum and the persons who may call meetings, including a provision for the calling of special general meetings at any time at the request of at least 25% of the district delegates;

(g) obtaining the opinion of the members of the association on any question of general concern to the members, and the mode of obtaining that opinion by a vote of the members.

(2) Each member of an association that has a delegate system of voting may vote

(a) only at the meetings of the local organization of which he or she is a member, and

(b) only on questions submitted to the vote of the members under the provisions of rules made under subsection (1) (g).

(3) Only the district delegates are entitled to attend and vote at general meetings of the association, each delegate having one vote.

Executive committee

47 An association that has a delegate system of voting may provide in its rules for

(a) the formation of an executive committee and the exercise by that committee of all or any of the functions and powers of the directors, and

(b) the remuneration of district delegates and of members of the executive committee.

## Part 4 — Finance

### Division 1 — Share Capital Structure

#### Capital — membership and investment shares

48 (1) The authorized share capital of an association consists of

(a) a single class of membership shares, with or without par value, regardless of whether or not the association has more than one class of membership, and

(b) if authorized by the association's memorandum, one or more classes of investment shares, with or without par value.

(2) If the authorized investment share capital of an association consists of investment shares both with and without par value, the investment shares with par value must be a class or classes of shares distinct from the shares without par value.

(3) Every investment share of a class of investment shares without par value must be equal to every other investment share of that class, and are subject to special rights or restrictions attached to the investment shares of that class.

(4) A share in an association is personal estate.

#### Investment shares — provisions in memorandum and rules

49 An association may provide in its memorandum for the association to issue investment shares, and if the memorandum so provides, the memorandum of the association must be consistent with the requirements for investment shares in section 48, and

(a) the memorandum must set out for every class of investment shares

(i) whether the number of investment shares that may be issued is unlimited and, if not, the maximum number of investment shares that may be issued, and

(ii) the par value of the shares or a statement that the shares are without par value, and

(b) the rules must set out

(i) the designation of each class of investment shares and the special rights and restrictions attached to each class, and

(ii) if applicable, that investment shares may be issued to non-members.

Repealed

50 [Repealed 2000-5-14.]

Consideration for membership and investment shares

51 (1) The consideration for a share with par value issued or allotted by an association, whether it is a membership share or investment share, must be equal to or greater than the par value of the share.

(2) The consideration for a share without par value issued or allotted by an association, whether it is a membership share or investment share, must be set

(a) in the manner required by the association's rules, or

(b) by special resolution of the association if its rules do not set out the manner in which the consideration is to be set.

(3) All membership shares and investment shares in an association must be paid for in money, except as permitted by subsection (4), and must not be issued at a discount.

(4) An association may issue membership shares or investment shares in consideration or partial consideration for the acquisition of

(a) shares or other securities of an association having a purpose similar to its own,

(b) assets to be used in its business, or

(c) all or part of the business of another person if the business is consistent with the association's own purpose.

Issue of membership and investment shares

52 (1) An association must not issue or allot membership shares or investment shares until the shares are fully paid, except, in the case of membership shares with par value, as permitted by the association's rules under subsection (2).

(2) An association whose membership shares are shares with par value may provide in its rules for either or both of the following:

(a) that the membership shares in the association may be payable on call;

(b) that the membership shares may be forfeited for default in payment.

Payments to joint shareholders

53 Unless otherwise agreed between an association and its joint membership shareholders or joint investment shareholders, as the case may be,

(a) payments, including redemption amounts and interest and dividends, must be made to the shareholders jointly, and

(b) payment by an association in accordance with this section is an effective discharge of the association, with respect to a demand by a person against it, up to the amount so paid.

Member share dividends or interest

54 A member must not receive any dividend or interest on membership shares, except in proportion to the amount paid up on them, if they are membership shares with par value.

Liability of members and investment shareholders

55 (1) The liability of a member or investment shareholder of an association for the debts, obligations and acts of the association is limited to the amount, if any, unpaid on the shares held by the member or investment shareholder.

(2) Money payable by a member or investment shareholder to an association under its memorandum or rules is a debt due from the member or investment shareholder to the association of the nature of a debt due by instrument under seal.

Association's lien on membership or investment shares

56 An association has a lien on the membership shares or investment shares of the person who holds the shares for a debt due to the association by that person, and the lien extends to any dividend or interest credited to that person for the membership shares or investment shares, as the case may be.

Membership or investment share certificates

57 (1) A person whose name is entered in an association's register of investment shareholders or in the association's register of members is entitled, without payment, to a certificate of the association, specifying the investment shares of each class or the membership shares that are held by the person and the amount paid up on them.

(2) A certificate referred to in subsection (1) is evidence of the person's title to the membership shares or investment shares described in the certificate.

(3) Despite subsection (1), an association's rules may require that the association not issue membership share certificates.

#### Particulars of issue on investment share certificates

58 (1) If an association has more than one class of investment shares, the association must ensure that

(a) a full text of the special rights or restrictions attached to any class of investment shares is contained in or permanently attached to every share certificate representing that class of investment shares, or

(b) every share certificate representing investment shares of a particular class of investment shares includes a statement on it that

(i) there are special rights or restrictions attached to that class of investment shares, and

(ii) a free copy of the full text of the special rights or restrictions may be obtained at the registered office of the association.

(2) An association must

(a) keep at its registered office a copy of the full text of the special rights or restrictions attached to any class of investment shares, and

(b) provide a free copy of that text to any person who requests one.

#### Division 2 — Voting by Investment Shareholders

##### Investment shareholder voting rights and restrictions

59 (1) Subject to this section, no right to vote on a matter that is the subject of a special or ordinary resolution of the members of an association attaches to an investment share in the association.

(2) The rules of an association may provide that investment shares, or if there are classes of investment shares, investment shares of a specified class, confer on their holders the right

(a) to vote on an election of directors because of the occurrence of a contingency that has occurred and is continuing, or

(b) to elect a set number or a percentage of the directors.

(3) A right referred to in subsection (2) is exercisable at a separate meeting of the investment shareholders or of the holders of the investment shares of the specified class, as the case may be.

(4) Despite subsection (2) of this section, the rules must not provide

(a) contrary to section 72, or

(b) that the investment shareholders have the right to elect more than 20% of the directors.

Separate resolution rights not affected

60 Section 59 does not affect the right of investment shareholders of an association to vote on any separate resolution under this Act.

One investment share, one vote

61 (1) If holders of investment shares have the rights referred to in section 59 or the right in accordance with this Act to vote on a separate resolution,

(a) each investment share entitles the holder to only one vote, and

(b) each investment share held jointly by 2 or more holders entitles the holders considered together to only one vote.

(2) An association may provide in its rules that on an equality of votes, the chair at any meeting of investment shareholders has a casting or second vote.

Proxy voting by investment shareholders

62 (1) If holders of investment shares have the rights referred to in section 59 or the right in accordance with this Act to vote on a separate resolution, a holder of any of the investment shares may vote by proxy, and the proxy may be any person appointed by the investment shareholder.

(2) An association may provide in its rules for proxy voting by investment shareholders.

(3) Rules referred to in subsection (2) are subject to subsection (1).

Members holding investment shares

63 Despite section 40, a member who holds an investment share in an association may exercise any voting rights attached to that investment share.

Division 3 — Joint Investment Shares

Joint investment shares

64 (1) Unless an association's rules provide otherwise, if 2 or more persons are joint holders of investment shares in an association, the joint shareholder whose name appears as the first of 2 or

more joint shareholders on the share certificate for the investment share or investment shares held by the joint shareholders is entitled to cast the vote.

(2) If a joint holder of an investment share in an association entitled under subsection (1) to cast the vote does not do so, the joint shareholder whose name next appears on the share certificate is entitled to cast the vote, and so on if there are more than 2 joint shareholders.

(3) If investment shares are held jointly by more than one person,

(a) an association is not required to issue more than one share certificate in respect of those investment shares, and

(b) delivery of a share certificate to one of the joint shareholders is sufficient delivery to them all.

Joint tenancy or tenancy in common

65 A joint investment share in an association may be held in joint tenancy or tenancy in common, and if the joint shareholders do not specify which to the association, the joint investment share is deemed to be held in joint tenancy.

#### Division 4 — Share Capital Redemption and Reduction

Redeeming shares, loans to members, paying dividends

66 (1) Subject to its memorandum or its rules, an association

(a) may redeem and reissue its own membership shares or investment shares,

(b) on the security of property, may advance money to or guarantee the contracts of its members,

(c) may pay dividends at rates not exceeding 8% yearly, or higher limits that the association may set out in its rules, on membership shares that are paid up, and

(d) may pay dividends on investment shares that are paid up.

(2) An association must not exercise its powers to redeem membership shares or investment shares, prepay loans made to the association by its members or pay dividends if there are reasonable grounds for believing that

(a) the association is unable to pay its liabilities as they become due in the ordinary course of business, or

(b) exercising one or more of the association's powers to redeem membership shares or investment shares, to prepay loans made to the association by its members or to pay dividends would

(i) render the association unable to pay its liabilities as they become due in the ordinary course of business, or

(ii) cause the realizable value of the association's assets to be less than its liabilities.

(3) The court, on the application of a director of an association, may declare that, in view of all the circumstances, there are reasonable grounds for believing that

(a) the association is unable to pay its liabilities as they become due in the ordinary course of business, or

(b) exercising one or more of the association's powers to redeem membership shares or investment shares, to prepay loans made to the association by its members or to pay dividends would

(i) render the association unable to pay its liabilities as they become due in the ordinary course of business, or

(ii) cause the realizable value of the association's assets to be less than its liabilities.

#### Reduction of capital

67 (1) An association may reduce its membership share capital or investment share capital, whether issued or unissued, in any way by special resolution confirmed by the court and, without limiting this, may

(a) extinguish or reduce the liability on any of its partly paid shares in respect of capital not paid up,

(b) either with or without extinguishing or reducing the liability on any of its partly paid shares, cancel any paid up capital that is lost or unrepresented by available assets, or

(c) either with or without extinguishing or reducing the liability on any of its partly paid shares, pay off any paid up capital that is in excess of the needs of the association.

(2) The court may confirm the resolution referred to in subsection (1), in whole or in part and on terms and conditions the court considers appropriate, if the court is satisfied that

(a) every creditor of the association who the court considers is entitled to object to the reduction has consented to it, or

(b) the debt or claim

(i) has been discharged,

(ii) has determined, or

(iii) has been secured.

(3) A resolution under subsection (1) does not take effect until certified copies of the resolution and the court order have been filed with the registrar.

(4) If a resolution under subsection (1) has the effect of diminishing the authorized share capital of an association,

(a) the resolution must alter the memorandum accordingly, and

(b) the association must file a copy of its memorandum, as altered, with any material required by the registrar under subsection (3).

(5) If the association making application for confirmation of a resolution referred to in subsection (1) is an association registered under Part 2 of the Employee Investment Act, the court must not confirm the resolution until the association has presented satisfactory proof that any amount payable to the Minister of Finance under section 31 or 32 of that Act has been paid.

## Division 5 — Debentures

### Enforcement of contract to take debentures

67.1 A contract with an association to take up and pay for a debenture of the association may be enforced by an order for specific performance.

### Validity of perpetual debenture

67.2 Despite any rule of equity to the contrary, no condition contained in a debenture, or in a deed for securing a debenture, is invalid merely because the debenture is made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long.

### Issue of redeemed debenture

67.3 (1) If an association redeems a debenture that was previously issued as one of a series,

(a) unless an express or implied provision to the contrary is contained in

(i) the debenture,

(ii) the rules, or

(iii) a contract entered into by the association, or

(b) unless the association has, by a resolution of the members, manifested its intention that the debenture be cancelled,

the association has, and is deemed always to have had, power to reissue the debenture, either by reissuing the same debenture or by issuing another debenture in its place, and

(c) if the debenture so states, or

(d) if the debenture was first issued before January 1, 1977,

on the reissue, the person entitled to the debenture has, and is deemed always to have had, the same priority as if the debenture had never been redeemed.

(2) If an association redeems a debenture and has the power to reissue that debenture, particulars of that debenture must be included in the balance sheet of the association.

(3) If an association has issued or deposited a debenture created by it to secure advances on current account or otherwise, the debenture is not deemed to have been redeemed merely because any of the advances are repaid, or that the account of the association ceases to be in debit, while the debenture remains issued or deposited.

(4) The reissue of a debenture or the issue of another debenture in its place under this section is deemed not to be the issue of a new debenture for the purpose of a provision limiting the amount or number of debentures to be issued.

Evidence of old register of debentureholders

67.4 A register of debentureholders prepared under the Company Act, 1996, or an earlier Companies Act, as it applied for the purposes of a former Act, is evidence of any matters directed or authorized under the applicable Act to be inserted in it.

## Part 5 — Association Alterations

### Division 1 — Amendments to Memorandum and Rules

Amendment of memorandum and rules

68 (1) Subject to subsection (2) of this section and to sections 70, 173, 178.1 and 196 (2), an association may amend its memorandum and rules to do any of the following:

(a) change its name to a name approved by the registrar;

(b) add, alter or remove any restriction on

(i) the business that the association may carry on, or

(ii) the powers of the association;

(c) create a class or classes of investment shares;

- (d) alter the name or designation of all or any of its shares;
- (e) create, define and attach special rights or restrictions to investment shares of any class, whether issued or unissued;
- (f) vary or abrogate any special rights or restrictions attached to investment shares of any class, whether issued or unissued;
- (g) divide the members into classes of membership with rights, obligations and limitations that may be different for the different classes;
- (h) create new classes of membership with rights, obligations and limitations for each new class that may be different from those for the other classes of membership;
- (i) redefine the rights, obligations and limitations applicable to a class of membership;
- (j) establish a maximum number of
  - (i) membership shares, or
  - (ii) investment shares in a class of investment shares;
- (k) subdivide its membership shares without par value or its investment shares of any class without par value into membership shares or investment shares, as the case may be, so that the number of those shares is increased;
- (l) subdivide its membership shares with par value or its investment shares of any class with par value into membership shares or investment shares, as the case may be, with lesser par value;
- (m) consolidate all or any of its shares with par value into shares of greater par value;
- (n) consolidate all or any of its shares without par value so that the number of those shares is reduced;
- (o) change all or any of its shares with par value into shares without par value;
- (p) change all or any of its shares without par value into shares with par value;
- (q) extend, reduce or eliminate the maximum number of membership shares that the association is permitted to issue;
- (r) extend, reduce or eliminate the maximum number of investment shares of any class of investment shares that the association is permitted to issue;
- (s) eliminate a class of investment shares if
  - (i) none of the shares of that class have been allotted or issued, or
  - (ii) none of the shares allotted or issued out of that class remain outstanding;
- (t) eliminate a class of membership if

(i) no persons have become members of the association in that class of membership, or

(ii) no members of the association remain in that class of membership;

(u) add, alter or remove any other provision of the memorandum or rules.

(2) An amendment under subsection (1) must be authorized by special resolution.

(3) The proportion between the amounts paid and unpaid on any issued shares must be the same after an amendment described in subsection (1) (k) to (p) as before the amendment.

#### Effective date of amendment

69 (1) A special resolution for a purpose referred to in section 68 (1) does not take effect until a certified copy of it has been filed with the registrar.

(2) On the registrar filing a certified copy of a special resolution changing the name of an association, the registrar must issue a certificate showing the change of name and the date the change is effective.

(3) The registrar must publish, in the Gazette or in any other prescribed manner, notice of a change of name.

(4) A change of the name of an association does not affect any of its rights or obligations, or render defective any legal proceedings by or against it, and any legal proceedings that may have been continued or commenced against it under its former name may be continued or commenced against it under its new name.

(5) A certificate of the registrar under subsection (2) is conclusive evidence of compliance with this Act in relation to the change of name.

#### No interference with class rights without consent

70 (1) A right or special right attached to issued investment shares of any class must not be prejudiced or interfered with under the association's memorandum or rules unless investment shareholders holding investment shares of that class consent by a separate resolution.

(2) The rights, obligations and limitations applicable to a class of membership in an association with more than one class of membership must not be prejudiced or interfered with under the association's memorandum or rules unless members of that class of membership, in a separate vote of those members, consent by the majority required for a special resolution of the association.

#### Division 2 — Substantial Disposition of Association's Undertaking

#### No pledge or disposition of association's undertaking without consent

71 (1) Unless the association's rules otherwise provide, an association, unless authorized to do so by a special resolution of the members, must not secure the repayment of money borrowed by the association by means of a charge on the whole or substantially the whole of the undertaking of the association.

(2) An association must not dispose of the whole or substantially the whole of the undertaking of the association unless

(a) the disposition is authorized by a special resolution of the members, and

(b) if there are outstanding investment shares in the association of one or more classes, the investment shareholders of each class of investment shares approve the disposition by a separate resolution.

## Part 6 — Management

### Division 1 — Directors Generally

#### Directors

72 (1) An association must have at least 3 directors and

(a) a majority of the directors of the association must be individuals ordinarily resident in Canada, and

(b) one of the directors of the association must be an individual ordinarily resident in British Columbia.

(2) Subject to subsections (3) and (4) of this section, all of the directors of the association must be members of the association or individuals authorized under section 32.

(3) An association may provide in its rules for the election or appointment of directors who are neither members nor individuals authorized under section 32.

(4) The number of the directors described in subsection (3) must not exceed 1/5 of the total number of directors provided for in the association's rules.

(5) If 2 or more persons are joint members of an association, only one of the joint members may be a director of the association at any time unless the association's rules otherwise provide.

#### First directors

73 (1) The first directors of an association must be appointed in writing by a majority of the subscribers.

(2) The first directors hold office until the first general meeting.

#### Election or appointment of directors

74 (1) An association must provide in its rules for the election or appointment of the directors of the association other than the first directors.

(2) Subject to the association's rules under subsection (1), if investment shareholders have a right to elect one or more directors, they meet separately from the members for the purpose of the election or appointment of the directors.

(3) No election or appointment of a person as a director is valid unless

(a) the person consented to act as a director in writing before the election or appointment, or

(b) if elected or appointed at a meeting, the person was present and did not refuse at the meeting to act as a director.

(4) A consent in writing given under subsection (3) (a) is only effective until the next following annual election or appointment of directors unless the consent states it is effective until

(a) revoked, or

(b) a date or time stated in it.

#### Remuneration of directors

75 The association in general meeting must determine the remuneration of the directors, and what will be allowed to them for expenses.

#### Directors' responsibility to manage association

76 (1) The directors must manage or supervise the management of the business of the association and may exercise all the powers of the association.

(2) The directors may delegate any of their powers to committees of the directors and set terms of reference for the committees that are binding on them in exercising the delegated powers.

(3) No limitation or restriction on the powers or functions of the directors is effective against a person who does not have knowledge of the limitation or restriction.

#### Meetings of directors

77 (1) A director of an association may participate in and vote at a meeting of directors

(a) in person, or

(b) unless the association's rules provide otherwise, by telephone or other communications medium if all directors participating in the meeting, whether by telephone, other communications medium or in person, are able to communicate with each other.

(2) A director who participates in a meeting in a manner contemplated by subsection (1) (b) is deemed for all purposes of this Act and the association's rules to be present at the meeting.

(3) Unless the association's rules provide otherwise, a resolution of the directors may be passed without a meeting if each of the directors entitled to vote on the resolution consents to the resolution in writing.

(4) The consents referred to in subsection (3) must be kept with the minutes of proceedings of directors.

Association to file notice as to directors

78 (1) Every association, within 15 days after the appointment or election of a director, must file with the registrar a notice, in a form established by the registrar, of the appointment or election.

(2) A filing under subsection (1) is unnecessary if a director ceases to be a director and is re-elected or reappointed on the same day.

Persons disqualified as directors

79 (1) A person must not become or act as a director of an association unless that person is an individual who is qualified to do so.

(2) An association may provide in its rules for qualifications or disqualifications of directors in addition to those in this section.

(3) An individual who is not a member of an association or an individual authorized under section 32 is not qualified to become or act as a director of an association other than as a non-member director of the association, if the association's rules allow non-member directors in accordance with section 72.

(4) An individual is not qualified to become or act as a director of an association if that individual is

(a) under the age of 18 years,

(b) found by a court, in Canada or elsewhere, to be incapable of managing the individual's own affairs,

(c) an undischarged bankrupt, or

(d) convicted in or out of British Columbia of an offence in connection with the promotion, formation or management of a corporation or of an offence involving fraud, unless

(i) the court orders that the individual continues to be qualified to become or act as a director of an association,

(ii) 5 years have elapsed since the last to occur of

(A) the expiration of the period set for suspension of the passing of sentence without a sentence having been passed or without a fine having been imposed,

(B) the conclusion of the term of any imprisonment, and

(C) the conclusion of the term of any probation imposed, or

(iii) a pardon was granted or issued, or a record suspension was ordered, under the Criminal Records Act (Canada) and the pardon or record suspension, as the case may be, has not been revoked or ceased to have effect.

Director ceasing to hold office

80 A director of an association ceases to hold office if

(a) the term of office of that director expires in accordance with the association's rules or this Act,

(b) the director dies or resigns,

(c) the director is removed in accordance with

(i) section 82, or

(ii) the association's rules, or

(d) the director ceases to be qualified under section 79 to be or act as a director.

Effective date of director's resignation

81 A resignation of a director becomes effective as follows:

(a) subject to paragraphs (b) to (d), the time that a resignation record is received by the association by being received

(i) at the registered office of the association, or

(ii) by a director or officer of the association or a lawyer acting for the association;

(b) if a date but no time is specified in the resignation record, the beginning of the day on the date specified;

(c) if a time, whether by reference to an event or otherwise, but no date is specified, the time specified;

(d) if both a date and time are specified, the date and time specified.

#### Removal of director

82 (1) Subject to the association's rules, a director of an association may be removed before the expiration of the director's term of office by a special resolution, one or more separate resolutions or a combination of both, depending on whether the persons who would be entitled to vote if an election of that director were being held comprise, at the time of removal, only the members, only holders of one or more classes of investment shares, or a combination of both the members and those holders of investment shares.

(2) Subject to the association's rules, a vacancy on the board of directors because of the removal of a director under subsection (1) may be filled by a resolution or resolutions of the members or holders of investment shares described in subsection (1), requiring a simple majority for passage.

#### Notice of cessation

83 (1) Every association, within 15 days after the resignation or removal of a director or the association becoming aware of a director of the association not being qualified, must file with the registrar a notice, in a form established by the registrar, of a director ceasing to hold office.

(2) No filing is necessary for a director who ceases to be a director and is re-elected or reappointed the same day.

#### Duties of directors

84 (1) Every director of an association, in exercising the director's powers and performing the director's functions, must

(a) act honestly and in good faith with a view to the best interests of the association,

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances,

(c) act in accordance with this Act and the regulations, and

(d) subject to paragraphs (a) to (c), act in accordance with the association's memorandum and rules.

(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of directors of corporations.

(3) No provision in a contract or in an association's rules or memorandum relieves a director of the association from

(a) the duty to act in accordance with this Act and the regulations, or

(b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that director in respect of any negligence, default, breach of duty or breach of trust of which the director may be guilty in relation to the association.

(4) A director of an association who receives or has charge of money of the association must give security before entering on his or her duties, as may be considered necessary by the directors.

#### Validity of acts of directors

85 Every act of a director of an association is valid, despite any defect in the director's appointment, election or qualification.

### Division 2 — Disclosure and Conflict of Interest Rules — Directors and Officers

#### Disclosable interest

86 (1) For the purposes of this Division, a director or officer of an association holds a disclosable interest in a contract or transaction if

(a) the contract is a material contract, or the transaction is a material transaction, to the association,

(b) the association is or proposes to become a party to the contract or has entered into or proposes to enter into the transaction, and

(c) one of the following applies to the director or officer:

(i) the director or officer has a material interest in the contract or transaction;

(ii) the director or officer is a director or officer of, or has a material interest in, a person who has a material interest in the contract or transaction.

(2) For the purposes of subsection (1) and this Division, a director or officer of an association does not hold a disclosable interest in a contract or transaction if the interest referred to in subsection (1)

(c) arose before the coming into force of this Act and was not one for which disclosure was required under

(a) a former Act, or

(b) the Company Act, 1996, or an earlier Companies Act, as it applied for the purposes of a former Act.

(3) For the purposes of subsection (1) and this Division, a director or officer of an association does not hold a disclosable interest in a contract or transaction merely because

(a) the contract or transaction is an arrangement by way of security for money loaned to, or obligations undertaken by, the director or officer, or a person in whom the director or officer has a material interest, for the benefit of the association or an affiliate of the association,

(b) the contract or transaction relates to an indemnity under section 98 or to insurance under section 103,

(c) the contract or transaction relates to the remuneration of the director or officer in that person's capacity as director, officer, employee or agent of the association or of an affiliate of the association,

(d) the contract or transaction relates to a loan to the association, and the director or officer, or a person in whom the director or officer has a material interest, has guaranteed or joined in guaranteeing the repayment of the loan or any part of the loan,

(e) the contract or transaction has been or will be made with or for the benefit of a corporation that is affiliated with the association and the director or officer is also a director or officer of that corporation,

(f) the contract or transaction is between the association and its wholly owned subsidiary,

(g) the contract or transaction benefits the director or officer on the same terms and conditions as any other member, or any other member in the membership class to which the director or officer belongs, or

(h) the contract or transaction is between the association and another association in which the association is a member and of which the director or officer is a director or officer.

Director and officer to disclose interest

87 (1) A director or officer of an association, in accordance with section 88, must disclose the nature and extent of any disclosable interest held by that person in a contract or transaction unless, before the coming into force of this Act, the disclosable interest was disclosed in the manner and within the time required under

(a) a former Act, or

(b) the Company Act, 1996, or an earlier Companies Act, as it applied for the purposes of a former Act.

(2) The disclosure required from a director or officer under subsection (1) must be made promptly after the last to occur of

(a) the date on which he or she becomes a director or officer,

(b) the date on which he or she becomes aware of having the disclosable interest, and

(c) the date on which he or she becomes aware of any of the following:

(i) the contract or transaction is to be considered at a meeting of the directors or is to be the subject of a consent directors' resolution;

(ii) the association is to become a party to the contract or is to enter into the transaction;

(iii) the contract or transaction has been considered at a meeting of the directors or has been the subject of a consent directors' resolution;

(iv) the association has become a party to the contract or has entered into the transaction.

Means of making disclosure

88 (1) The disclosure required by section 87 is sufficiently given if

(a) it is entered in the minutes of a directors' meeting or of a general meeting,

(b) it appears in a resolution that under this Act is permitted to be passed without a meeting,

(c) it is contained in a record of disclosure provided to the association in relation to the particular contract or transaction, or

(d) it is made in a general notice given in accordance with subsection (2) of this section.

(2) A general written notice given by a director or officer of an association to the directors of the association is a sufficient disclosure of a disclosable interest for the purpose of this Division in relation to any contract or transaction that the association has entered into or proposes to enter into with a person if

(a) the notice

(i) declares that the director or officer giving the notice

(A) is a director or officer of, or has a material interest in, the person with whom the association has entered, or proposes to enter, into a contract or transaction, and

(B) is to be regarded as interested in any contract or transaction entered into or to be entered into by the association with that person, and

(ii) states the nature and extent of that interest, and

(b) at the time disclosure would otherwise be required under section 87, the extent of the director's or officer's interest in the person is not materially greater than that stated in the notice.

(3) Deviations in facts or circumstances from those set out in a general written notice given by a director or officer under subsection (2) that do not affect its substance or are not calculated to mislead do not invalidate the notice.

Obligation to account for profits

89 (1) Subject to this section and unless the court declares otherwise under section 93, a director or officer is liable to account to the association for any profit that accrues to the director or officer under or as a result of a contract or transaction in which the director or officer holds a disclosable interest.

(2) A director or officer is not obliged to account for and may retain the profit referred to in subsection (1) if

(a) the disclosable interest was disclosed before the coming into force of this Act in the manner and within the time required, at the time of the disclosure, under

(i) a former Act, or

(ii) the Company Act, 1996, or an earlier Companies Act, as it applied for the purposes of a former Act,

and the contract or transaction was approved

(iii) in the manner and within the time required under the applicable Act, or

(iv) in accordance with section 90 of this Act,

(b) the disclosable interest is disclosed in the manner and within the time required by this Act and the contract or transaction is approved in accordance with section 90,

(c) whether or not the contract or transaction is approved in accordance with section 90,

(i) the disclosable interest is disclosed in the manner and within the time required by this Act,

(ii) the association entered into the contract or transaction before the director or officer became a director or officer of the association, and

(iii) the director or officer does not participate in, and, in the case of a director, vote as a director on, any decision or resolution touching on the contract or transaction, or

(d) whether or not the disclosable interest is disclosed, or the contract or transaction is approved, in accordance with this Division, the contract or transaction is determined by the court or by the members, by special resolution, to be fair and reasonable to the association.

(3) Unless the court declares otherwise under section 93, if the contract or transaction referred to in subsection (1) of this section is not one to which subsection (2) applies, a director or officer who holds a disclosable interest in the contract or transaction may retain, if the contract or transaction, after the coming into force of this subsection, is approved in accordance with section 90, that part of the profit referred to in subsection (1) of this section that accrues after the date of approval.

(4) A director or officer is liable to account to the association for that part of the profit referred to in subsection (1) that the director or officer is not expressly permitted to retain by subsection (2) or (3) or by a declaration under section 93.

## Approval of contracts and transactions

90 (1) For the purposes of section 89 (2) and (3), a contract or transaction may be approved by the directors of an association or by a special resolution of the members of the association.

(2) The directors may approve a contract or transaction by

(a) a resolution passed at a meeting of the directors in which the director who has a disclosable interest in the contract or transaction abstains from voting on the approval, or

(b) a consent resolution signed by all of the directors except the director who has disclosed a disclosable interest in the contract or transaction.

(3) Unless the rules provide otherwise, a director of the association who has a disclosable interest in a contract or transaction and who is present at the meeting of the directors referred to in subsection (2) may be counted in the quorum at the meeting even though the director does not vote on any or all of the resolutions considered at the meeting.

(4) Despite any other provision of this Act, or the rules of an association, the members, by a special resolution, may approve the contract or transaction or determine that the contract or transaction is fair and reasonable to the association, even though the directors have voted not to approve the contract or transaction.

(5) Despite this section, the directors have no authority to approve a contract or transaction if the members, in a properly constituted general meeting, have voted not to approve the contract or transaction.

## Disclosure to members and investment shareholders

91 (1) This section does not apply to associations that under the Securities Act are reporting issuers.

(2) Subject to subsection (4), if the contract or transaction in which a director or officer holds a disclosable interest is approved by the directors under section 90 (1), the directors, in accordance with subsection (3) of this section, must provide a brief description of the interest held by that person, including the nature and extent of the interest.

(3) The information required under subsection (2) must be provided,

(a) if an annual general meeting of the association is held after the date on which approval was given, but in the financial year in which that date falls,

(i) at that annual general meeting, and

(ii) in the minutes of that meeting, or

(b) if no such annual general meeting is held,

(i) as an attachment to the association's financial statements issued for that financial year, or

(ii) in a record deposited in the registered office of the association.

(c) [Repealed 2000-5-18.]

(4) Despite subsections (2) and (3), the information referred to in subsection (2)

(a) need not be disclosed in accordance with this section

(i) if disclosure is waived by the court under subsection (5), or

(ii) if, in the opinion of the directors acting reasonably, the disclosure of that information would be harmful to the business of the association or its subsidiaries, and

(b) must be disclosed in accordance with any order of the court under subsection (5) deferring disclosure.

(5) The court may make an order waiving or deferring disclosure

(a) on application by an association or by a director or officer of the association, and

(b) if the court is satisfied that

(i) the contract or transaction is fair and reasonable to the association, and

(ii) disclosure would be harmful to the association or to the director or officer.

Powers of court

92 (1) If a person who is a director or officer of an association holds a disclosable interest in a contract or transaction and fails to make the disclosure required by section 87 or if, after the disclosure is made, the contract or transaction is not approved under section 90, then, unless the members by special resolution determine or the court determines that the contract is fair and reasonable to the association, on the application of any member or investment shareholder of the association the court may

(a) enjoin the association from entering into the proposed contract or transaction,

(b) order the director or officer to account for any profit for which the director or officer is liable to account under section 89, or

(c) make any other or further order that the court considers appropriate.

(2) In an application brought under subsection (1), the court must take into account the interests and rights of any persons involved in or affected by the contract or transaction in question.

Court may make declaration

93 On the application of any director or officer of an association, the court may make one or more of the following declarations:

- (a) whether a contract or transaction in which the director or officer has a disclosable interest is fair and reasonable to the association;
- (b) whether the director or officer is obliged to account for any profit that accrues to the director or officer under or as a result of the contract or transaction in which the director or officer has a disclosable interest;
- (c) whether the director or officer may retain any or all of the profit referred to in paragraph (b).

Validity of contracts and transactions

94 A contract or transaction with an association is not invalid merely because

- (a) a director or officer of the association has an interest, direct or indirect, in the contract or transaction,
- (b) a director or officer of the association has not disclosed an interest he or she has in the contract or transaction, or
- (c) the directors or members of the association have not approved a contract or transaction in which a director or officer of the association has an interest.

Disclosure of conflict of office or property

95 (1) If a director or officer of an association holds any office or possesses any property, right or interest that could result, directly or indirectly, in the creation of a duty or interest that materially conflicts with that individual's duty or interest as a director or officer, as the case may be, of the association, the director or officer must disclose, in accordance with this section, the nature and extent of the conflict.

(2) Section 88 applies to the disclosure required from a director or officer under subsection (1) of this section and, in addition, a director may make the disclosure required by this section by declaring at a meeting of the directors of the association the nature and extent of the conflict.

(3) The disclosure required from a director or officer under subsection (1) must be made promptly

- (a) after that individual becomes a director or officer, or
- (b) if that individual is already a director or officer, after that individual begins to hold the office or possess the property, right or interest for which disclosure is required.

Limitation of obligations of directors and officers

96 Except as is provided in this Division, a director or officer of an association has no obligation to

(a) disclose any direct or indirect interest that the director or officer has in a contract or transaction, or

(b) account for any profit that accrues to the director or officer under or as a result of a contract or transaction in which the director or officer has a disclosable interest.

### Division 3 — Indemnification of Directors and Payment of Expenses

#### Definitions

97 In this Division:

"associated corporation" means a corporation or entity referred to in paragraph (b) or (c) of the definition of "eligible party";

"eligible party", in relation to an association, means an individual who is or was a director or officer of, or who holds or held a position equivalent to that of a director or officer of,

(a) the association,

(b) another corporation if

(i) the corporation is or was an affiliate of the association, or

(ii) the individual acts or acted as a director or officer of the corporation at the request of the association, or

(c) a partnership, trust, joint venture or other unincorporated entity if the individual acts or acted as or holds or held a position equivalent to that of a director or officer of that entity at the request of the association,

and includes, except in the definition of "eligible proceeding" and except in sections 101 (1) (c) and (d) and 103, the heirs and personal or other legal representatives of that individual;

"eligible penalty" means a judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of, an eligible proceeding;

"eligible proceeding" means a proceeding in which an eligible party or any of the heirs and personal or other legal representatives of the eligible party, because of the eligible party being or having been a director or officer of, or holding or having held a position equivalent to that of a director or officer of, the association or an associated corporation

(a) is or may be joined as a party, or

(b) is or may be liable for or in respect of a judgment, penalty or fine in, or expenses related to, the proceeding;

"expenses" includes costs, charges and expenses, including legal and other fees, but does not include judgments, penalties, fines or amounts paid in settlement of a proceeding;

"proceeding" includes any legal proceeding or investigative action, whether current, threatened, pending or completed.

#### Indemnification and payment permitted

98 Subject to section 101, an association may do one or both of the following:

(a) indemnify an eligible party against all eligible penalties to which the eligible party is or may be liable;

(b) after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by an eligible party in respect of that proceeding.

#### Mandatory payment of expenses

99 Subject to section 101, an association, after the final disposition of an eligible proceeding, must pay the expenses actually and reasonably incurred by the eligible party in respect of that proceeding if the eligible party

(a) has not been reimbursed for those expenses, and

(b) is wholly successful, on the merits or otherwise, in the outcome of the proceeding or is substantially successful on the merits in the outcome of the proceeding.

#### Authority to advance expenses

100 (1) Subject to subsection (2), an association may pay, as they are incurred in advance of the final disposition of an eligible proceeding, the expenses actually and reasonably incurred by an eligible party in respect of that proceeding.

(2) An association must not make the payments referred to in subsection (1) unless the association first receives from the eligible party a written undertaking that, if it is ultimately determined that the payment of expenses is prohibited by section 101, the eligible party will repay the amounts advanced.

#### Indemnification prohibited

101 (1) An association must not indemnify an eligible party under section 98 (a) or pay the expenses of an eligible party under section 98 (b), 99 or 100 if any of the following circumstances apply:

(a) if the indemnity is made or proposed in accordance with an earlier agreement to indemnify and, at the time that the agreement to indemnify was made, the association was prohibited by its memorandum or rules from giving the indemnity;

(b) if the indemnity is made or proposed otherwise than in accordance with an earlier agreement to indemnify and, at the time that the indemnity is made or proposed, the association is prohibited by its memorandum or rules from giving the indemnity;

(c) if, in relation to the subject matter of the eligible proceeding, the eligible party did not act honestly and in good faith with a view to the best interests of the association or the associated corporation, as the case may be;

(d) in the case of an eligible proceeding other than a civil proceeding, if the eligible party did not have reasonable grounds for believing that the eligible party's conduct in respect of which the proceeding was brought was lawful.

(2) If an eligible proceeding is brought against an eligible party by or on behalf of the association or by or on behalf of an associated corporation,

(a) the association must not indemnify the eligible party under section 98 (a) in respect of the proceeding, and

(b) the association must not, unless the court orders otherwise, pay the expenses of the eligible party under section 98 (b), 99 or 100 in respect of the proceeding.

#### Court ordered indemnification

102 Despite any other provision of this Division and whether or not payment of expenses or indemnification has been sought, authorized or declined under this Division, on an application by an association or an eligible party, the court may do one or more of the following:

(a) order an association to indemnify an eligible party against any liability incurred by the eligible party in respect of an eligible proceeding other than an eligible proceeding referred to in section 101 (2);

(b) order an association to pay some or all of the expenses incurred by an eligible party in respect of an eligible proceeding;

(c) order the enforcement of, or any payment under, an agreement of indemnification entered into by an association;

(d) order an association to pay some or all of the expenses actually and reasonably incurred by any person in obtaining an order under this section;

(e) make any other order the court considers appropriate.

#### Insurance

103 An association may purchase and maintain insurance for the benefit of an eligible party or the heirs and personal or other legal representatives of the eligible party against any liability that may be incurred by reason of the eligible party being or having been a director or officer of, or holding or having held a position equivalent to that of a director or officer of, the association or an associated corporation.

#### Division 4 — Officers

##### Security by officers

104 An officer of an association who receives or has charge of money of the association must give security before entering on his or her duties, as may be considered necessary by the directors.

##### Duties of officers

105 (1) Every officer of an association, in exercising the officer's powers and performing the officer's functions, must

(a) act honestly and in good faith with a view to the best interests of the association,

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances,

(c) act in accordance with this Act and the regulations, and

(d) subject to paragraphs (a) to (c), act in accordance with the association's memorandum and rules.

(2) This section is in addition to, and not in derogation of, any enactment or rule of law or equity relating to the duties or liabilities of officers of corporations.

(3) No provision in a contract or in the rules or the memorandum of an association relieves an officer of the association from

(a) the duty to act in accordance with this Act and the regulations, or

(b) liability that by virtue of any enactment or rule of law or equity would otherwise attach to that officer in respect of any negligence, default, breach of duty or breach of trust of which the officer may be guilty in relation to the association.

Validity of acts of officers

106 Every act of an officer of an association is valid, despite any defect in the officer's appointment or qualification.

## Part 7 — Auditors

### Division 1 — Appointment of Auditor

Repealed

107 [Repealed 2007-7-50.]

### Auditors

108 (1) Subject to section 109 (1), every association must have an auditor.

(2) The directors of an association may appoint the first auditor of the association to hold office until the close of the first annual general meeting.

(3) Subject to section 109 (1), an association, at each annual general meeting, must appoint an auditor by ordinary resolution to hold office until the close of the next annual general meeting, but if an appointment is not made at that meeting, the auditor in office continues as auditor until a successor is appointed.

(4) The directors may fill any casual vacancy in the office of auditor.

(5) If an association that has not waived the appointment of an auditor under section 109 does not have an auditor, the court, on the application of a member, investment shareholder or creditor of the association, may

(a) appoint a qualified person as auditor of the association until the close of the next annual general meeting, and

- (b) fix the remuneration to be paid by the association for the person's services as auditor.
- (6) The association must promptly give written notice to an auditor of the auditor's appointment.

#### Exception

109 (1) An association that is not a reporting association may waive the appointment of an auditor

- (a) by a special resolution of members, and
  - (b) if the association has issued investment shares, by separate resolutions of investment shareholders of each class of issued investment shares.
- (2) A resolution referred to in subsection (1) is effective for one financial year of the association.

#### Qualifications

110 (1) A person is qualified to act as an auditor of an association if not disqualified under section 111 and only if

- (a) the person is a member of, or is a partnership whose partners are members of, a provincial or territorial institute or ordre of chartered accountants, or a provincial or territorial organization of chartered professional accountants, within Canada,
  - (b) the person is certified by the Auditor Certification Board under the Business Corporations Act,
  - (c) the person is a federation and acts as auditor only
- (i) for its member associations that are not operated on a not for profit basis, and
  - (ii) through persons who are qualified under paragraph (a) or (b) or who perform auditing functions under the supervision of persons who are so qualified, or
- (d) in the case of an association that is a reporting issuer, the person is
- (i) a person referred to in paragraph (a) or (b), or
  - (ii) authorized under the Securities Act to perform the audit.
- (2) An interested person may apply to the court for an order exempting an auditor from disqualification under section 111, and the court, if satisfied that an exemption would not unfairly prejudice the association's members and investment shareholders, may make an exemption order on the terms the court considers appropriate.
- (3) An order under subsection (2) may have retrospective effect.

#### Persons not qualified as auditors

111 (1) A person other than a federation must not be the auditor of an association if the person is not independent of the association, its affiliates and its directors and officers.

(2) For the purposes of this section, independence is a question of fact, but

(a) a person is not independent if the person is a director, officer or employee of the association or of an affiliate of the association, or if the person is a partner, employer or employee of that director, officer or employee or if the person is a member of the immediate family of that director or officer,

(b) a person is not independent if the person, a member of the person's immediate family, the person's partner or a member of the immediate family of the person's partner beneficially owns or controls, directly or indirectly, any interest in a share or a debt obligation of the association or of any of its affiliates, and

(c) a person is not independent if the person is appointed a trustee of the estate of the association under the Bankruptcy Act (Canada) or if the person is a partner, employer of, employee of or member of the immediate family of, that trustee.

(3) For the purposes of subsection (2),

(a) the immediate family of the person referred to includes

(i) his or her spouse, parent and child, and

(ii) any relative of the person, or his or her spouse, who resides with the person, and

(b) a partner of the person referred to means any person with whom the person carries on in partnership the profession of public accounting.

(4) Every auditor, within 90 days after becoming aware that the auditor's appointment as auditor contravenes this section, must either

(a) eliminate the circumstances that cause the auditor to be in contravention, or

(b) resign as auditor.

(5) If an auditor contravenes this section, any interested party may apply to the court, whether or not the period referred to in subsection (4) has expired, for an order that the auditor be removed on terms and conditions the court considers appropriate.

#### Remuneration

112 The remuneration of the auditor of an association must be set by ordinary resolution or, if the association so resolves, by the directors, but the remuneration of an auditor appointed before the first annual general meeting or to fill any casual vacancy may be set by the directors.

## Removal of auditor

113 (1) Every association, by ordinary resolution passed at a general meeting called for the purpose, may remove an auditor before the expiration of the auditor's term of office, and must by ordinary resolution at that meeting appoint another auditor in the removed auditor's place for the remainder of the removed auditor's term.

(2) Every association, before calling a general meeting for the purpose specified in subsection (1), but at least 14 days before the mailing of the notice of the meeting, must give to the auditor

(a) written notice of the intention to call the meeting, specifying the date on which the notice of the meeting is proposed to be mailed, and

(b) a copy of all material proposed to be sent to members in connection with the meeting.

(3) Every auditor has the right to make to the association, at least 5 days before the mailing of the notice of the meeting, representations in writing respecting the auditor's proposed removal as auditor, and the association, at its expense, must forward with the notice of the meeting a copy of those representations to each member entitled to receive notice of the meeting.

## Notice of proposed change

113.1 (1) The directors of a reporting association must not, unless notice is contained in the notice of the meeting, propose at an annual general meeting the appointment of an auditor other than the appointment of the incumbent auditor.

(2) If the notice of the meeting contains the notice referred to in subsection (1),

(a) the association must, at least 14 days before the mailing of the notice of the meeting, give to the incumbent auditor written notice of the intention of the directors not to recommend the auditor's reappointment at the annual general meeting, specifying in it the date on which the notice of the meeting is proposed to be mailed, and

(b) the incumbent auditor has the right to make to the association, at least 3 days before the mailing of the notice of the meeting, representations in writing respecting the proposal not to reappoint the incumbent as auditor, and the association, at its expense, must forward, with the notice of the meeting, a copy of those representations to every member entitled to receive notice of the meeting.

## Division 1.1 — Audit Committee

### Appointment and procedures

113.2 (1) The directors of a reporting association, from among their number, must elect at their first meeting following each annual general meeting a committee, to be known as the audit committee,

composed of at least 3 directors, of whom a majority must not be officers or employees of the association or of an affiliate of the association, to hold office until the next annual general meeting.

(2) At every meeting of the audit committee, a quorum consists of a majority of those members of the committee who are not officers or employees of the association or of an affiliate of the association.

(3) The members of the audit committee must elect a chair from among their number and, subject to subsection (2), may determine their own procedures.

(4) Before a financial statement that is to be submitted to an annual general meeting is considered by the directors, it must be submitted to the audit committee for review with the auditor, and, after that, the report of the audit committee on the financial statement must be submitted to the directors.

(5) The auditor must be given notice of, and has the right to appear before and to be heard at, every meeting of the audit committee, and must appear before the audit committee when requested to do so by the committee.

(6) On the request of the auditor, the chair of the audit committee must convene a meeting of the audit committee to consider any matters the auditor believes should be brought to the attention of the directors, members or investment shareholders.

## Division 2 — Duties and Rights of Auditors

### Annual audit

114 (1) The auditor of an association must make an examination that will enable the auditor to report to the association's members as required under subsection (2).

(2) The auditor must make a report to the members on the financial statement, other than the part that relates to the period referred to in section 153 (1) (b) (ii), that is to be placed before the association at any annual general meeting during the auditor's term of office, and must state in the report whether, in the auditor's opinion,

(a) the financial statement presents fairly the financial position of the association and the results of its operations for the period under review, and

(b) the financial statement is in accordance with generally accepted accounting principles.

(3) If the financial statement contains a statement of changes in net assets or a statement of cash flows, the auditor must state in the auditor's report whether, in the auditor's opinion, the statement of changes in net assets or the statement of cash flows presents fairly that information.

### Negative audit report

115 If the report of the auditor under section 114 does not contain the unqualified opinion required by it, the auditor must state the reasons in the report.

### Audited statements of subsidiaries

116 Whether or not the assets and liabilities and income and expenses of any one or more subsidiaries of a holding corporation are included in the financial statement of the holding corporation, the report of the auditor of the holding corporation required by this Part may refer to the reports of the auditors of one or more of the subsidiaries, but the reference does not derogate from the duty of the auditor of the holding corporation to comply with section 114 (1).

### Auditor's attendance

117 Every member or investment shareholder of an association, whether or not entitled to vote at a meeting of the association, by written notice to the association given at least 5 days before a meeting at which the financial statements of the association are to be considered or the auditor is to be appointed or removed, may require the attendance of the auditor at the meeting at the expense of the association and, in that event, the auditor must attend the meeting.

### Procedure

118 (1) At any general meeting the auditor, if present, must answer inquiries directed to the auditor concerning the financial statements of the association and the opinion on them stated in the auditor's report.

(2) At the request of any member attending the annual general meeting, the report of the auditor must be read to the meeting.

### Amendment of financial statements and report

119 (1) If facts come to the attention of the officers or directors,

(a) that could reasonably have been determined before the date of the last annual general meeting, and

(b) that, if known before the date of the last annual general meeting, would have required a material adjustment to the financial statement presented to the meeting,

the officers or directors must communicate the facts to the auditor who reported to the members under this Part, and the directors must promptly amend the financial statement and send it to the auditor.

(2) If facts described in subsection (1) come to the attention of the auditor and, in the auditor's opinion necessitate amendment to the auditor's report, the auditor must amend the report in respect of the financial statement presented to the last annual general meeting so that it complies with this Part, and the directors must deliver to the members a copy of the amended report and a statement explaining the effect of the amendment on the financial position and results of the operations of the association.

#### Access to records

120 The auditor of an association is entitled to access at all times to every record, document, instrument, account and voucher of the association and its subsidiaries, and is entitled to require from the directors, officers and employees of the association and its subsidiaries information and explanations necessary, in the auditor's opinion, to enable the auditor to report as required by this Part.

#### Information as to foreign subsidiaries

121 If a subsidiary referred to in section 120 is a corporation to which this Act does not apply, the holding corporation must make available to the auditor of the holding corporation the records, documents, instruments, accounts and vouchers of that subsidiary and must require the directors, officers and employees of that subsidiary to make available to the auditor of the holding corporation the information and explanations required by section 120.

#### Auditor's attendance at meetings

122 (1) The auditor of an association is entitled to attend any general meeting of the association and to receive every notice and other communication relating to the meeting that a member or investment shareholder is entitled to receive, and is entitled to be heard at any general meeting that the auditor attends on any part of the business of the meeting that concerns the auditor in that capacity, or that concerns the financial statements of the association.

(2) At the request of the directors, and subject to receiving adequate notice, the auditor of an association must attend a meeting of the directors specified by the directors in making the request.

#### Qualified privilege

123 An oral or written statement or report made under this Act by the auditor or former auditor of an association has qualified privilege.

## Part 8 — Records

### Division 1 — Registers

#### Register of members and investment shareholders

124 (1) An association must keep and maintain a register of members, and a separate register of investment shareholders, and must enter the following in the appropriate register:

- (a) the names and addresses of the members and investment shareholders, the number of shares held by each member and investment shareholder and the amount paid on each membership share and investment share;
  - (b) the date on which the name of any person was entered in the register as a member or investment shareholder;
  - (c) the date on which any person ceased to be a member or investment shareholder.
- (2) Entry of the information referred to in subsection (1) in the register of members or register of investment shareholders is evidence of the facts stated.

#### Register of directors

125 (1) An association must keep a register of directors

- (a) containing the names and addresses of its directors, and
  - (b) showing the dates on which the directors started and ceased to act.
- (2) On the request of the registrar at any time, an association must provide the registrar with particulars of its directors.

### Division 2 — Records Filed With the Registrar

#### Annual report

126 (1) Subject to subsection (1.1), the association must file with the registrar an annual report, current to the end of the most recently completed financial year of the association, within 2 months after an association's annual general meeting, in a form established by the registrar.

(1.1) An annual report must be filed with the registrar once in each calendar year.

(2) Within 2 months after each anniversary of the date of an extraprovincial association's registration in British Columbia, the extraprovincial association must file with the registrar an annual report in a form established by the registrar.

Repealed

127 [Repealed 2000-5-27.]

### Division 3 — General

#### Records to be kept at registered office

128 (1) An association must keep each of the following records at its registered office, and, subject to section 141, must make the records available at that office for inspection during the association's normal business hours by any person:

- (a) its certificate of incorporation;
- (b) a copy of its memorandum, including every amendment of it;
- (c) a copy of its rules, including every amendment of them;
- (d) its register of members;
- (e) its register of investment shareholders;
- (f) [Repealed 2007-7-55.]
- (g) its register of directors;
- (h) each of the following that was prepared before the coming into force of this paragraph:
  - (i) its register of transfers;
  - (ii) its register of debentureholders;
  - (iii) its register of debentures;
  - (iv) its register of indebtedness;
  - (v) its register of allotments;
- (i) to (k) [Repealed 2007-7-55.]
- (l) a copy of every document or other record filed with the registrar relating to the association;
- (m) a copy of every certificate issued to it by the registrar;

- (n) a copy of every order of the registrar relating to the association;
- (o) a copy of every written contract under which the association has allotted any shares for a consideration other than cash;
- (p) if the association is being wound up, the minutes of every meeting of its creditors;
- (q) a copy of every prospectus and takeover bid circular issued in the preceding 10 years by the association or any subsidiary;
- (r) a copy of every information circular issued in the preceding 10 years by the association or any subsidiary;
- (s) a copy of the instrument of continuation under section 183, if any;
- (t) if a receiver or receiver manager is appointed under an instrument filed with the registrar, the name and address of the receiver or receiver manager, the date of the appointment of the receiver or receiver manager and the date the receiver or receiver manager ceases to act or completes the duties of that office;
- (u) if the association is an amalgamated association, every record, document or instrument described in paragraphs (a) to (t), of each of the amalgamating associations.

(2) An association must keep each of the following records at its registered office, and, subject to section 141, must make the records available at that office for inspection during the association's normal business hours by a former director of the association, if the records relate to the time when the former director was a director, by a director, a member, investment shareholder or debentureholder, and if the association is a reporting association, by any person:

- (a) the minutes of every general meeting and class meeting of the association;
- (b) a copy of
  - (i) every audited financial statement of the association and its subsidiaries, whether or not consolidated with the financial statement of the association, including the auditor's report, and
  - (ii) if the appointment of an auditor has been waived under section 109 for any financial years, the unaudited annual financial statements of the association and its subsidiaries, whether or not consolidated with the financial statement of the association, for those years;
- (c) if the association is an amalgamated association, every record, document or instrument described in paragraphs (a) and (b) of this section, of each of the amalgamating associations.

(3) Despite subsection (1), an association may keep its register of members and its register of investment shareholders at a place other than the association's registered office if it first receives the written approval of the registrar to keep it at that place.

(4) An association that receives the approval of the registrar under subsection (3)

(a) must keep its register of members and its register of investment shareholders at the place that is the subject of the approval or, subject to receiving the further approval of the registrar, at another place, and

(b) must make the registers available at that place for inspection during the association's normal business hours by any person.

#### Records available to directors and former directors

129 An association must keep each of the following records at its registered office, and, subject to section 141, must make the records available at that office for inspection during the association's normal business hours by a former director of the association, if the records relate to the time when the former director was a director, or by a director:

(a) the minutes of every meeting of the association's directors;

(b) a copy of every other document and instrument approved in the preceding 10 years by the association's directors;

(c) a copy of every mortgage created or assumed by the association, whether or not required to be registered;

(d) if the association is an amalgamated association every record, document or instrument described in paragraphs (a) to (c), of each of the amalgamating associations.

#### Examination of records

130 (1) Every director of an association may examine and take extracts from the association's records referred to in sections 128 and 129, without charge, and every former director may examine and take extracts from the records referred to in sections 128 and 129 that relate to the time when he or she was a director, without charge.

(2) Every member, investment shareholder or debentureholder of an association may examine and take extracts from the association's records referred to in section 128, without charge.

(3) If an association is a reporting association, any person may examine and take extracts from the association's records referred to in section 128 (1) or (2), without charge.

(4) If an association is not a reporting association, any person may examine and take extracts from the association's records referred to in section 128 (1), without charge.

(5) If the directors consider it appropriate in the circumstances they may allow a person to examine the minutes of the meetings of the directors, subject to any conditions or restrictions specified by the directors.

#### Reasonable restrictions

131 For an examination of the records of an association by any person other than a director of the association, the association, by ordinary resolution, may impose reasonable restrictions.

#### Copies

132 Every person entitled to examine a record, document or instrument of an association under section 130 is entitled to require the association to provide the person with a copy of the record on payment to the association of a reasonable charge not exceeding the amount prescribed by the Lieutenant Governor in Council for every page copied.

#### Lists of members, investment shareholders and debentureholders

133 (1) Subject to fulfillment of the conditions in subsection (2), a person may obtain one or both of the following lists:

(a) a membership list, setting out the names and addresses of the association's members and the number of membership shares held by each;

(b) an investment shareholder list, setting out the names and addresses of the association's investment shareholders and the number and class of investment shares held by each.

(c) [Repealed 2012-12-52.]

(2) The following are the conditions for the purpose of subsection (1):

(a) that the person delivers a written application to the association or its agent, requesting the list or lists the person wishes to obtain and an affidavit of the person, or if the person is a corporation, an affidavit of a director or officer of the corporation authorized by its directors, stating in the affidavit

(i) the name and address of the person making the application,

(ii) if the person is a corporation, the name and address for service of the corporation, and

(iii) that the list is required and will be used only for corporate purposes pertaining to that association;

(b) that the person pays a reasonable fee to the association or its agent.

#### Prohibition against improper use of list

134 A person must not use an association's membership list or investment shareholder list for other than corporate purposes pertaining to that association.

#### Association must give access to certain records

135 (1) In accordance with sections 128 to 133 an association must

(a) permit a person to examine or take extracts from any record to which the person has access under sections 128 to 132, or

(b) provide a person who complies with the conditions under section 133 with a membership list or investment shareholder list requested under that section by the person, made up to a date not more than 14 days before the date of delivery of the written application under section 133 (2) to the association or its agent.

(2) If an association contravenes subsection (1), a court may order that an examination or extract be permitted or a copy provided within a time the court considers appropriate.

#### Form of records

136 (1) Records and registers that are required by this Act to be prepared and maintained by or on behalf of an association may be in a bound or looseleaf form, or entered or recorded by any system of mechanical or electronic data processing, or by any other information storage device from which the association is capable of reproducing, in a reasonable time, any required information in intelligible form.

(2) Minutes that are required by this Act to be kept by an association must be kept in a bound or looseleaf book.

(3) An association and its agents must take adequate precautions with respect to the records and registers required by this Act to be prepared and maintained so as to

(a) avoid loss, mutilation or destruction,

(b) avoid falsification of entries, and

(c) provide simple, reliable and prompt access.

#### Minutes

137 (1) The directors must cause minutes of the following to be made in books provided for the purpose:

(a) all appointments of officers made by the directors;

(b) the names of the directors present at each meeting of directors or of any committee of directors;

(c) all resolutions and proceedings at all meetings of the association, the directors or any committee of directors.

(2) A director who is present at a meeting of directors or of a committee of directors must sign his or her name in a book kept for that purpose.

(3) A failure to sign under subsection (2) does not invalidate any meeting.

#### Accounts at registered office

138 (1) The directors must cause true accounts to be kept of

(a) all money received and spent, and the matter in respect of which receipt and expenditure takes place, and

(b) the assets and liabilities of the association.

(2) The books of account must be kept at the registered office of the association or at another place the registrar approves in writing or, if the association's rules permit, may be kept for temporary purposes at a place or places the directors think fit.

(3) The accounting records of an association must be open to the inspection of any director during the normal business hours of the association.

(4) Subject to the rules, the directors may determine to what extent, at which times and places and under what conditions the accounting records of the association must be open to the inspection of members and investment shareholders.

#### Special resolutions to be filed

139 (1) An association must file with the registrar 2 copies of every special resolution required by sections 68 (2), 71 (2), 191 (3) (a) and 197 (1) (a).

(2) The registrar must retain one copy of a special resolution referred to in subsection (1) that has been filed with the registrar and return the other copy, certified as having been filed with the registrar, to the association.

(3) An association must retain at its registered office a copy of every special resolution passed for any purpose under this Act.

#### Authentication

140 A notice, return or resolution required to be filed with the registrar must be authenticated by a director, officer or the solicitor of the association.

#### Confidentiality

141 (1) Subject to subsection (2), an association that has on record any financial information pertaining to a member, prospective member or tenant must not disclose that information to any person.

(2) Subsection (1) does not prohibit disclosure of information by an association

(a) to directors, officers or committees of the association for use only in connection with their official duties,

(b) to a person legally entitled to the information other than under sections 128 to 133, or

(c) at a general meeting at which a member is appealing a decision of the directors of an association to terminate the member's membership and a ground of termination is the failure to pay money due to the association or a breach of a material condition relating to financial information to be provided to the association.

#### Copies of memorandum and rules

142 (1) An association must provide to a member or investment shareholder, on request and without charge, but not more than once annually, a copy of the association's memorandum and rules.

(2) A member or investment shareholder of an association is entitled to additional copies of the association's memorandum and rules on payment of an amount for each copy not exceeding the prescribed maximum per page.

### Part 8.1 — Meetings

#### General meetings

143 (1) The first general meeting of members of an association must be held within 3 months after the date of incorporation or within a later period that may be approved by the registrar.

(2) A general meeting of every association must be held at least once in every calendar year within 4 months after the end of its financial year but the registrar may approve of the meeting being held on a suitable date close to the date when the meeting ought to have been held.

#### Provision for 2 or more general meetings for same matters

144 (1) If, due to circumstances prevailing among the membership, it is not possible to hold any general meeting at a time when or place where a large portion of the membership is able to attend, an association may make provision in its rules to hold 2 or more meetings of members and to count

the total vote taken by secret ballot at the meetings after the last of the meetings has been held to ascertain whether any resolution submitted to the meetings has been adopted or rejected.

(2) Any resolution

(a) that is not a special resolution and that is approved by a majority of the members present at the meetings referred to in subsection (1), or

(b) that is a special resolution and that

(i) the requisite majority under this Act of the members present at the meetings referred to in subsection (1) approves, and

(ii) in the case of an association that has provided in its rules as set out in section 41, also receives at least the specified percentage or percentages of favourable votes referred to in section 41,

is of the same effect as if passed at a general meeting or special general meeting of the association, if due notice has been given.

Semi-annual or other periodic meetings

145 The rules of an association may provide for semi-annual or other periodic meetings.

Notice of meetings to be given

146 (1) At least 14 days' notice of every annual general meeting of an association and of every general meeting of an association at which a special resolution is to be proposed must be given to each member.

(2) In the case of a general meeting other than one referred to in subsection (1), at least 7 days' notice, or any longer notice that the association may provide in its rules must be given to each member.

(3) At least 14 days' notice of every meeting of an association's investment shareholders or of an association's investment shareholders in any class of investment shareholders must be given to each investment shareholder or to each of them in that class, as the case may be.

(4) The notices under this section must specify

(a) the place, the day and the hour of the meeting, and

(b) in the case of special business, the general nature of that business.

Manner of giving notice

147 (1) An association may give a notice required under section 146 by post, service or delivery or another manner set out in the association's rules.

(2) A notice required under section 146 that is given by post

(a) is deemed to be effected by properly addressing, prepaying and mailing the notice, and

(b) unless the association's rules provide for a longer period, is deemed to have been effected on the second day, Saturdays, Sundays and holidays excepted, after the date of mailing.

(3) If mail service is not available, a notice required under section 146

(a) may be given by advertising on 2 separate occasions at least 5 days apart, inclusive of the day of publication, in a newspaper circulating in the area or areas in which the association carries on its operations, and

(b) is deemed to have been received by the member or investment shareholder on the day of last publication.

(4) An association may give a member or investment shareholder of the association any other notice required or permitted under this Act by post, service, delivery or another manner set out in the association's rules, and subsection (2) applies in respect of such a notice given by post under this subsection.

Place of meeting is British Columbia, or as registrar approves

148 A meeting of members or investment shareholders of an association must be held

(a) in British Columbia, or

(b) in a location outside of British Columbia if the location is approved in writing by the registrar after an application is made by the association before the meeting.

Voting, in person at meeting or other form of communication

149 (1) A member or investment shareholder of an association who is entitled to participate in and vote at a meeting of the members or investment shareholders may participate and vote

(a) in person, or

(b) unless the association's rules provide otherwise, by telephone or other communications medium if all members or investment shareholders participating in the meeting, whether by telephone, other communications medium or in person, are able to communicate with each other.

(2) Nothing in subsection (1) obligates an association to take any action or provide any facility or permit or facilitate the use of any communications medium at a meeting of members or investment shareholders.

(3) If a meeting of members or investment shareholders is held in the manner contemplated by subsection (1) (b),

(a) a member or investment shareholder who participates in the meeting, whether in person, by telephone or by other communications medium, is deemed, for the purposes of this Act, to be present at the meeting, and

(b) the meeting is deemed to be held at the location specified in the notice of the meeting.

#### Holding of special general meetings

150 (1) The directors of an association may call a special general meeting when they think fit.

(2) Subject to section 151 (2) (b), the directors must call a special general meeting on receipt of a written requisition signed by,

(a) if there are 100 or fewer members of the association, at least 20% of the members,

(b) if there are more than 100 but fewer than 5 000 members of the association, at least the greater of

(i) 20 members, and

(ii) 10% of the members, or

(c) if there are 5 000 or more members of the association, at least the greater of

(i) 500 members, and

(ii) 5% of the members.

#### Member requisitioned special general meetings

151 (1) A requisition under section 150 (2) for a special general meeting must

(a) state the object of the meeting,

(b) state the name and address of the representative of the requisitioning members,

(c) if applicable, set out the resolution to be submitted to the meeting, and

(d) be served on the association.

(2) If the directors receive a requisition that complies with subsection (1), then, within 7 days after the date the requisition is served on the association, the directors must

(a) call the requisitioned general meeting, or

(b) refuse to call the requisitioned general meeting on one or more of the following grounds:

(i) it clearly appears that the proposal is submitted by the members for the purposes of enforcing a personal claim or redressing a personal grievance against the association or its officers, or primarily for the purpose of promoting causes that are extraneous to the purposes of the association;

(ii) substantially the same proposal was considered and defeated by the membership within 3 years immediately before the date the requisition containing the proposal was delivered to the registered office;

(iii) the business of the requisitioned general meeting as stated in the requisition includes a matter outside the powers of the members.

Directors' decision whether to call requisitioned meeting

152 (1) The directors must give to the representative of the requisitioning members prompt notice of a decision under section 151 to call or refuse to call the requisitioned special general meeting, and if the directors refuse to call the meeting, they must include in the notice their reasons for the refusal.

(2) Any member of the association may appeal the directors' decision under section 151 (2) (b) at the next meeting of the association by delivering a notice of appeal to the association within 14 days after the representative of the requisitioning members receives the notice referred to in subsection (1) of this section.

(3) Unless, by a resolution requiring a simple majority, the members at the general meeting to which the appeal is brought forward confirm the decision of the directors to refuse to call the requisitioned special general meeting, the directors must call the requisitioned general meeting.

(4) The requisitioning members themselves may convene a meeting if the directors

(a) do not give the notice referred to in subsection (1) to the representative of the requisitioning members within 14 days after the delivery of the requisition under section 151 (1) (d), or

(b) do not call the requisitioned special general meeting within 7 days after a meeting under subsection (3) does not confirm the decision of the directors.

Information for annual general meeting

153 (1) The directors of an association must place before each annual general meeting of its members,

(a) in the case of an association other than a reporting association, a financial statement for the period that began on the date of incorporation and ended as of the close of the association's first

financial year or, if it has completed a financial year, the latest completed financial year, as the case may be, the statement to be current to a date not more than 4 months before the annual general meeting before which it is placed, made up of

(i) a statement of profit and loss for that period,

(ii) a statement of surplus for that period, and

(iii) a balance sheet as at the end of that period,

and, unless a resolution has been passed under section 109, the report of the auditor,

(b) in the case of a reporting association, a comparative financial statement relating separately to

(i) the period that began on the date of incorporation and ended as of the close of the association's first financial year or, if it has completed a financial year, the latest completed financial year, as the case may be, the statement to be current to a date not more than 4 months before the annual general meeting before which it is placed, and

(ii) the period, if any, that is the financial year next preceding the latest completed financial year,

made up of

(iii) a statement of profit and loss for each period,

(iv) a statement of surplus for each period,

(v) in the case of an association, other than a British Columbia investment fund as defined in the Securities Act, a statement of cash flows for each period,

(vi) in the case of a British Columbia investment fund as defined in the Securities Act, a statement of changes in net assets for each period, and

(vii) a balance sheet as at the end of each period,

and the report of the auditor,

(c) the report of the directors to the members, and

(d) any further information respecting the association that its rules require or that the Lieutenant Governor in Council may prescribe.

(2) The statements referred to in subsection (1) need not be designated as a statement of profit and loss, statement of surplus, statement of changes in net assets, statement of cash flows or balance sheet.

(3) Despite paragraph (b) of subsection (1), the financial statement referred to in that paragraph may relate only to a period ending not more than 4 months before the annual general meeting, if the reason for the omission of the statement in respect of the period covered by the previous financial statement is set out in the financial statement to be laid before that meeting.

(4) Despite subsection (1) (b) (v), the statement of cash flows may be omitted if the reason for the omission is set out in the financial statement.

(5) For the purposes of subsection (1), "British Columbia investment fund" means

(a) an investment fund that is a reporting issuer, or

(b) an investment fund that is organized under the laws of British Columbia,

but does not include a private mutual fund.

(6) For the purpose of subsection (5), "investment fund", "private mutual fund" and "reporting issuer" have the same meanings as in the Securities Act.

## Part 9 — Court Proceedings and Investigations

### Interpretation

154 For the purposes of this Part, "member" and "investment shareholder" both include

(a) any person aggrieved who has ceased to be a member or investment shareholder, as the case may be, within the immediately preceding 6 month period, and

(b) any person claiming through a member, investment shareholder or person aggrieved, or claiming under the rules of the association.

### Repealed

155 [Repealed 2007-7-56.]

## Division 1 — Court Proceedings

### Court proceedings on member's or investment shareholder's application

156 (1) Despite the rules of an association, but subject to subsection (2), a member or investment shareholder of the association may apply to the court for an order on the ground that

(a) the affairs of the association are being conducted, or the powers of the directors of the association are being exercised, in a manner oppressive to one or more of the members or investment shareholders, including the applicant, or

(b) an act of the association has been done, or is threatened, or a resolution of the members has been passed or is proposed, that is unfairly prejudicial to one or more of the members or investment shareholders, including the applicant.

(2) A member or investment shareholder is not entitled to bring proceedings under this section in respect of any matter that is the same or substantially the same as a dispute in which the member or investment shareholder has an interest, if the dispute

(a) has been decided by arbitration under section 208, or

(b) is the subject of arbitration proceedings under section 208, unless the court otherwise orders on the grounds of undue delay to which the applicant has not contributed.

(3) On an application under subsection (1), the court may, with a view to bringing to an end or to remedying the matters complained of, make an interim or final order it considers appropriate, and, without limiting this, the court may

(a) direct or prohibit any act or cancel or vary any transaction or resolution,

(b) regulate the conduct of the association's affairs in future,

(c) provide for the purchase of the shares of any member or investment shareholder of the association by another member or investment shareholder of the association, or by the association,

(d) in the case of a purchase by the association, reduce the association's capital or otherwise,

(e) appoint a receiver or receiver manager,

(f) order that the association be wound up under Part 14,

(g) authorize or direct that proceedings be commenced in the name of the association against any party on the terms the court directs,

(h) require the association to produce financial statements,

(i) order the association to compensate an aggrieved person, and

(j) direct rectification of any record of the association.

(4) An association referred to in subsection (1) must file with the registrar a certified copy of an order made by the court under this section, or on appeal from it, within 14 days after the entry of that order in the court registry.

(5) For the purposes of this section, a reference to a "member" or an "investment shareholder" must be read as including

(a) a beneficial owner of a membership share or an investment share in the association, and

(b) any other person who, in the discretion of the court, is a proper person to make an application under this section.

Court's power to restrain breach or require compliance

157 (1) In this section, "complainant" means

(a) in relation to a matter other than compliance with section 8, a member, investment shareholder or other person the court considers a proper person to make an application under this section, and

(b) in relation to compliance with section 8, a member, investment shareholder or association.

(2) The court, on application of a complainant and on being satisfied that there is or will likely be

(a) a contravention by an association or any other person, of this Act or the regulations or of an association's memorandum or rules, or

(b) a failure by an association to fulfill its obligations under this Act or the association's memorandum or rules,

may make an interim or final order it considers appropriate and, without limiting the generality of that power, the court may grant an injunction

(c) restraining the association or any other person from continuing or committing the contravention, or

(d) requiring the association to fulfill its obligations.

Relief

157.1 In any proceeding against a person who is a director, officer, receiver, receiver manager or liquidator of an association, if it appears to the court that the person is or may be liable in respect of negligence, default, breach of duty or breach of trust but has acted honestly and reasonably and ought fairly to be excused, the court must take into consideration all the circumstances of the case, including those connected with the person's appointment, and may relieve the person, either wholly or partly, from liability, on the terms the court considers necessary.

Applications to court

157.2 (1) An application to the court under this Act

(a) must be made by motion, and

(b) unless notice is specifically required by this Act, may be brought without notice to any other person.

(2) Despite subsection (1), the court may direct that notice of an application under this Act be served on those persons the court requires.

Division 2 — Investigations

## Court may order investigation

158 (1) On the application of at least 20% of the members or one or more investment shareholders holding in the aggregate at least 20% of the issued investment shares of any class of investment share, the court may appoint a person as an inspector to investigate the affairs and management of an association and any of its affiliates, and may determine the manner and extent of the investigation.

(2) Notice of an application under this section must be given to the registrar, and, if the court makes an order appointing an inspector, the inspector must, within 7 days after the date of the order, file a certified copy of the order with the registrar.

(3) The court may

(a) before appointing an inspector, require the applicant to give security for payment of the costs and expenses of the investigation, and

(b) at any time,

(i) set the amount of the costs and expenses, and

(ii) order by whom and in what proportion they must be paid.

(4) A person who is a receiver of property of an association or who is a director, receiver manager, officer, employee, banker, auditor or agent of the association or of any of the association's affiliates must

(a) produce, for the examination of an inspector appointed under this section, every record, including every document, instrument and accounting record, relating to the association and any of its affiliates in the person's custody or control, and

(b) give to the inspector every assistance in connection with the investigation that the person is reasonably able to give.

(5) An inspector appointed under this section may examine on oath any person who is or was a receiver of property of an association, or a director, receiver manager, officer, employee, banker, auditor or agent of the association or of any of its affiliates, in relation to their affairs, management, accounts and records, and the inspector may administer the oath.

(6) A person examined under subsection (5) must answer any question that is

(a) within the scope of the investigation, and

(b) put to that person by the inspector.

(7) On the conclusion of an investigation under this section, the inspector must

(a) report to the court, and

(b) send a copy of the report to the registrar, the association and any other persons the court or the registrar orders.

#### Association may require investigation

159 (1) An association may appoint an inspector by special resolution to investigate the affairs and management of the association and any of its affiliates, and to report in the manner and to the persons the resolution directs.

(2) An inspector appointed under subsection (1) has the same powers as an inspector appointed by the court under section 158.

(3) If an inspector is appointed under this section, a person who is or was a receiver of property of the association, and each director, receiver manager, officer, employee, banker, auditor and agent of the association or of any of its affiliates, must comply with section 158 (4) to (6) as if the inspector had been appointed by the court.

#### Exemption

159.1 An inspector appointed under this Part must not require a lawyer to disclose any privileged communication made to him or her in that capacity, except as to the name and address of his or her clients.

#### Report as evidence

159.2 A copy of the report of an inspector appointed under section 158 or 159, signed by the inspector, is admissible in any legal proceeding as evidence of the opinion of the inspector.

### Division 3 — Corporate Mistakes

#### Remedying corporate mistakes

159.3 (1) In this section, "corporate mistake" means an omission, defect, error or irregularity that has occurred in the conduct of the business or affairs of an association as a result of which

(a) a breach of a provision of this Act or the regulations has occurred,

(b) there has been default in compliance with the memorandum or rules of the association,

(c) proceedings at or in connection with any of the following have been rendered ineffective:

- (i) a meeting of members or investment shareholders;
- (ii) a meeting of the directors or a committee of directors, or of an executive committee within the meaning of section 47;
- (iii) any assembly purporting to be a meeting referred to in subparagraph (i) or (ii), or
- (d) a resolution that is, or a record that purports to be, one of the following has been rendered ineffective:
  - (i) a resolution of the members of an association referred to in
    - (A) paragraph (a) of the definition of "ordinary resolution", or
    - (B) paragraph (a) of the definition of "special resolution";
  - (ii) a resolution of the investment shareholders referred to in paragraph (c) of the definition of "separate resolution";
  - (iii) a resolution of directors passed in accordance with section 77 (3).

(2) Despite any other provision of this Act, the court, either on its own motion or on the application of any interested person, may make an order to correct or cause to be corrected, to negative or to modify or cause to be modified the consequences in law of a corporate mistake or to validate any act, matter or thing rendered or alleged to have been rendered invalid by or as a result of the corporate mistake, and may give ancillary or consequential directions the court considers necessary.

(3) The court must, before making an order under this section, consider the effect that the order might have on the association and on its directors, officers, creditors, members and investment shareholders. and on beneficial owners of membership shares or investment shares of the association.

(4) Unless the court orders otherwise, an order made under subsection (2) does not prejudice the rights of any third party who acquired those rights

(a) for valuable consideration, and

(b) without notice of the corporate mistake that is the subject of the order.

## Part 10 — Dissent

### Definitions

160 In this Part:

"dissenter" means a person who, being entitled to do so, gives written notice of dissent when and as required by section 164;

"dissenter's shares" means all of the shares in respect of which a dissenter must dissent under section 161 (3) or (4) and "dissenters' shares" has a corresponding meaning in relation to the dissenters to whom it refers;

"reasonable value" means the value of a dissenter's shares immediately before the date of the resolution authorizing or effecting the corporate action in respect of which the dissenter dissented, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable, but in respect of membership shares of a community service cooperative or an association to which section 173 or 196 (2) applies, must not exceed the amount paid up on those member's membership shares.

#### Right to dissent

161 (1) A member of an association is entitled to dissent in respect of the following:

(a) a resolution to amend the association's rules to authorize the association to issue investment shares to non-members;

(b) a resolution to amend the association's rules to divide the membership into classes;

(c) a resolution to approve the association continuing into a jurisdiction other than British Columbia;

(d) a resolution to dispose of the whole or substantially the whole of the undertaking;

(e) a resolution passed under section 70 (2);

(f) a resolution to amend the association's memorandum to become a community service cooperative.

(2) An investment shareholder of an association is entitled to dissent in respect of the following:

(a) a resolution approving an amalgamation of the association with another or other associations;

(b) a resolution to approve the association continuing into a jurisdiction other than British Columbia;

(c) a resolution to dispose of the whole or substantially the whole of the undertaking;

(d) a resolution passed under section 70 (1).

(3) A member who wishes to exercise a right of dissent must dissent in respect of all of the membership shares and investment shares that are limited to ownership only by members of the association and that are owned by the member.

(4) An investment shareholder who wishes to exercise a right of dissent must dissent in respect of all of the investment shares in the association that are owned by the investment shareholder.

#### Loss of right to dissent

162 (1) The right of a dissenter to obtain payment of the reasonable value of the dissenter's shares terminates on the occurrence of any one of the following events:

(a) the corporate action in respect of which the dissenter dissented is abandoned or the resolution authorizing the corporate action is revoked;

(b) a court of competent jurisdiction permanently enjoins or sets aside the corporate action in respect of which the dissenter dissented;

(c) the notice of dissent given to the association under section 164 is withdrawn with the written consent of the association;

(d) the amalgamation in respect of which a notice of dissent was given is not adopted by one or more of the amalgamating associations with the result that the amalgamation is not effected;

(e) the dissenter, after giving notice of dissent, acts inconsistently with that dissent;

(f) the dissenter consents to, or votes in favour of, the resolution to which he or she is dissenting, unless the vote is given solely as a proxy holder for a person whose proxy required an affirmative vote.

(2) Despite subsection (1) (e), a dissenter who makes a request to withdraw a notice of dissent, or a response to an offer made under section 165 (a), retains the right to obtain payment of the reasonable value of the dissenter's shares unless that request is accepted by the association.

#### Notice of resolution

163 (1) If a resolution that might give rise to a notice of dissent is to be considered at a general meeting or a class meeting, the association must give notice to each of its members or investment shareholders, as the case may be, in the same manner as set out in section 147, accompanied by

(a) a copy of the proposed resolution, and

(b) a statement, in the prescribed form, advising members or investment shareholders, as the case may be, of their right to give and the consequences of giving a notice of dissent.

(2) Notice under subsection (1) must be given at least 14 days before the date of the proposed meeting.

(3) Any member or investment shareholder who receives a notice under subsection (1) (b) may give a notice of dissent to the association in respect of the resolution referred to in subsection (1).

## Notice of dissent

164 (1) A member or investment shareholder who is entitled to exercise dissent rights in respect of a resolution may do so by giving to the association written notice of dissent in respect of the resolution,

(a) at or by the time specified by the resolution,

(b) if the resolution that gives rise to the right of dissent does not specify a time for the giving of notice of dissent, at least 2 days before the date of the meeting at which the resolution in respect of which dissent may be exercised is to be passed, or

(c) if the member or investment shareholder does not receive the notice required under section 163, within 21 days after learning that the resolution has been passed.

(2) Within 30 days after giving a notice of dissent, the dissenter must deliver to the association the dissenter's share certificates, unless the dissenter is a member of an association whose rules require in accordance with section 57 that it not issue membership share certificates.

(3) Unless the court otherwise orders, the right of a dissenter to obtain payment of the reasonable value of the dissenter's shares terminates if the dissenter fails to comply with subsection (2).

(4) A dissenter who has complied with subsections (1) and (2)

(a) may not vote, or exercise or assert any rights of a member or investment shareholder, as the case may be, in respect of the dissenter's shares, other than under this Part, and

(b) until the dissenter is paid in full for the dissenter's shares, may exercise and assert all the rights of a creditor of the association.

## Association's response to dissent

165 An association that has authorized or effected a corporate action by a resolution in respect of which dissent was made must send to each member or investment shareholder who gave a notice of dissent in respect of the resolution,

(a) a written offer by which the association offers to pay to the dissenter the amount estimated by the association to be the reasonable value of the dissenter's shares, and

(b) an explanation, in sufficient detail to permit the dissenter to form a reasoned judgment concerning the matter, as to how the association estimated the reasonable value of the dissenter's shares.

## Application to court

166 (1) Subject to section 167, if the dissenter accepts the offer made under section 165, the association must pay the offered amount to the dissenter promptly after its receipt of the dissenter's acceptance of the offer.

(2) Within 50 days after the action approved by the resolution is effective or within such further period as the court may allow, an association may apply to the court to fix the reasonable value for the shares of the dissenters if

(a) the association fails to make an offer under section 165, or

(b) a dissenter fails to accept an offer made under that section.

(3) If an association fails to apply to the court under subsection (2), a dissenter may apply to the court for the same purposes within a further period of 20 days or within the further period that the court may allow.

(4) On an application under this section, the court may make any order it considers appropriate and, without limitation, may

(a) grant judgment to a dissenter for the reasonable value of the dissenter's shares, as determined by the court, plus any interest the court considers appropriate,

(b) fix the price and terms of the purchase and sale of the dissenter's shares, or order that the price and terms be established by arbitration, in either case having due regard for the rights of creditors,

(c) join in the application any dissenter who has not accepted an offer under section 165 and any other person the court considers appropriate, and

(d) make consequential orders and give directions it considers appropriate.

(5) Subject to section 167, if the court or an arbitrator determines the amount that is to be paid by the association to a dissenter, the association must promptly pay that amount to the dissenter.

#### Prohibition against payment

167 (1) An association must pay the amount to which a dissenter is entitled under section 166 unless there are reasonable grounds for believing that

(a) the association is unable to pay its liabilities as they become due in the ordinary course of business,

(b) making the payments due to all dissenters who, at the time that the payment is due, have complied with their obligations under this Part, in respect of the same resolution, would render the association unable to pay its liabilities as they become due in the ordinary course of business, or

(c) the realizable value of the association's assets would, after making the payments due to all dissenters referred to in paragraph (b) of this subsection, be less than the association's liabilities.

(2) If reasonable grounds exist for believing that payment in full of the amount referred to in subsection (1) would have one or more of the results set out in paragraphs (a), (b) and (c) of that subsection,

(a) the association is prohibited from paying the dissenter the full amount to which the dissenter is entitled,

(b) the association must pay to the dissenter and to all other dissenters to whom payment is required as much of the amount that is payable to them as is possible without causing one or more of the circumstances set out in subsection (1) (a), (b) and (c) to occur, and that payment must be made ratably among all of those dissenters, and

(c) the association remains obligated to pay the balance of the required amount and, as soon as the association is able to do so without causing one or more of the circumstances set out in subsection (1) (a), (b) and (c) to occur, must make that payment along with interest on the amount of that payment calculated

(i) from the date that the association becomes obligated to pay that amount until the date that the amount is paid, and

(ii) at the rate of interest that is used to calculate interest added to a pecuniary judgment under the Court Order Interest Act.

(3) Within 10 days after determining that subsection (2) applies, the association must notify each dissenter

(a) that the association is unable lawfully to pay dissenters the whole amount payable for the dissenters' shares, and

(b) of the rights of dissenters under this section.

(4) If subsection (2) applies, a dissenter, by written notice delivered to the association within 30 days after receiving a notice under subsection (3), may

(a) withdraw the notice of dissent, in which event the association is deemed to consent to the withdrawal, or

(b) retain status as a claimant against the association, to be paid as soon as the association is lawfully able to do so or, in liquidation, to be ranked subordinate to the rights of creditors of the association but in priority to its members and investment shareholders.

Dissenter entitled to return of shares and rights

168 The association must return to a dissenter each of the share certificates, if any, delivered under section 164 (2), and the dissenter regains the ability to exercise all of the rights and special rights or restrictions attached to the shares of that dissenter and, if applicable, all of the rights, obligations and limitations attached to that dissenter's membership, if

(a) the right of the dissenter to obtain payment of the reasonable value of the dissenter's shares terminates under section 162 or 164 (3), or

(b) the dissenter withdraws the notice of dissent under section 167 (4) (a).

#### Disposition of shares

169 A dissenter is deemed to have disposed of all of the dissenter's right, title and interest in and to the dissenter's shares to the association and the association is deemed to have purchased those shares at the time the association pays to the dissenter the amount to which the dissenter is entitled under section 166.

### Part 11 — Special Purpose Associations

#### Division 1 — Housing Cooperatives

##### Application

170 (1) This Division applies only to housing cooperatives.

(2) Unless a provision in this Division conflicts with or is inconsistent with the other provisions of this Act, those other provisions also apply.

##### Right to possession terminated

171 Any right of a member to possession or occupancy of residential premises that is dependent on his or her membership in a housing cooperative is terminated on the termination or other cessation of the membership.

##### Court order of possession — application by housing cooperative

172 (1) After termination under section 171 of a person's right to possession or occupancy of residential premises, the housing cooperative in which the person was a member may apply to the court for an order of possession of the residential premises.

(2) On an application under subsection (1), if an appeal has not been commenced under section 37 and the application relates to a termination under section 35, the court must first determine, on evidence the court considers relevant, whether the person's membership was terminated in accordance with the principles of natural justice.

(3) If the court determines under subsection (2) that the person's membership was terminated in accordance with the principles of natural justice, the court must make an order of possession in favour of the housing cooperative.

#### Court order of possession — application by member

172.1 A member of a housing cooperative who has a right to possession or occupancy of residential premises that is dependent on his or her membership may apply to the court for an order of possession of the residential premises.

#### Special provisions on dissolution or winding up of a housing cooperative

173 (1) This section applies only to a housing cooperative that

(a) provides in its memorandum that this section applies to the housing cooperative,

(b) on June 30, 1988, had in its memorandum or rules, or both, a provision to the effect that, on a dissolution or winding up, the property of the housing cooperative, after satisfaction of its liabilities and the costs, charges and expenses properly incurred in the dissolution or winding up, must not be disposed of or distributed among the members, or

(c) on June 30, 1988, had in its memorandum or rules, or both, a provision to the effect that, on a dissolution or winding up, the property of the housing cooperative, after satisfaction of its liabilities and the costs, charges and expenses properly incurred in the dissolution or winding up, must not be disposed of or distributed among the members and, by that provision or another provision in its memorandum or rules, or both, established another manner for the disposition or distribution.

(2) If a housing cooperative to which this section applies is dissolved or wound up, its property, after satisfaction of its liabilities and the costs, charges and expenses properly incurred in the dissolution or winding up, must be dealt with as follows:

(a) if it is a housing cooperative described in subsection (1) (a) or (b), the property must be transferred to or distributed among one or more other organizations that are housing cooperatives to which this section applies;

(b) if it is a housing cooperative described in subsection (1) (c), the property must be disposed of in accordance with the applicable provision in its memorandum or rules, or both, referred to in that paragraph.

(3) Except as provided in this section, no part of the property of a housing cooperative to which this section applies is to be paid or distributed to the members during its existence or on its dissolution or winding up.

(4) A housing cooperative to which this section applies must not alter its memorandum or rules, or both, to amend or repeal a provision referred to in subsection (1).

(5) A provision of the memorandum or rules of a housing cooperative to which this section applies that is inconsistent with the applicable provision referred to in subsection (1) is without effect to the extent of the inconsistency.

(6) Nothing in this section prohibits a housing cooperative to which this section applies

(a) from doing anything permitted under section 9 or 66,

(b) subject to its rules, from repaying to a member an amount not exceeding the value of contributions or improvements by the member, in addition to amounts paid by the member for shares, to the property of the housing cooperative, or

(c) from paying money the housing cooperative owes to a member.

(7) A housing cooperative to which this section applies must not issue

(a) investment shares, or

(b) membership shares other than membership shares with a par value.

(8) As an exception to subsection (1), this section does not apply to a housing cooperative that was dissolved, or for which winding up was commenced as referred to in section 293 or 297 of the Company Act, R.S.B.C. 1979, c. 59, before June 5, 1995.

(9) If, between June 30, 1988 and June 8, 1995, a housing cooperative to which this section applies altered its memorandum or rules, or both, to amend or repeal a provision referred to in subsection (1), the amendment or repeal is void, and the memorandum or rules, or both, as applicable, are conclusively deemed to be as they were before the amendment or repeal.

(10) The registrar must note in the filed memorandum or rules, or both, of a housing cooperative any changes that are effected by subsection (9).

## Division 2 — Certain Producer Associations (Cooperative Marketing)

### Definitions

174 In this Division:

"cooperative marketing contract" means a contract entered into by a person with an association to deliver to or sell through the association any thing caught, grown, made or produced by the person, or on the person's behalf, or in which the person has an interest, that person being one of a number of persons with whom the association has entered into contracts of a similar nature;

"producer" means a person who has entered into a cooperative marketing contract with an association.

## Breach of contract

175 (1) A cooperative marketing contract may set, as liquidated damages, that must not be regarded as penalties, specific sums to be paid by the producer to the association on the breach of any provision of the cooperative marketing contract in respect of the sale or delivery of any product, and may provide that the producer who breaks his or her contract must pay all costs, expenses and fees if any action in respect of the breach is brought by the association.

(2) In the event of a breach or threatened breach of a provision of a cooperative marketing contract by a producer in respect of the sale or delivery of any product, the association is entitled to

(a) an injunction to restrain the producer and the producer's agents and servants from selling or delivering the product otherwise than in accordance with the contract, and

(b) an order for specific performance of the contract by the producer.

(3) Pending the adjudication of any action brought by the association under this section, and on application, by one party only, to the court showing the breach or threatened breach, and on giving an undertaking or security approved by the court, the association is entitled to an interim injunction.

## Exception for fishing industry

176 A person who uses or is employed on a fishing or fish packing vessel owned, chartered, hired or otherwise controlled by a person engaged in the fishing industry, if the vessel is used to catch, produce, collect or transport fish or other marine products,

(a) is not bound by a cooperative marketing contract with respect to the sale, delivery or other disposal of any fish or marine products caught, produced, collected or transported from, by or in the vessel, and

(b) section 175 does not apply to the sale, delivery or other disposal of the fish or marine products unless the person who owns or controls the fishing vessel is, or if the fishing vessel is separately owned and controlled then, unless both persons are also bound by a cooperative marketing contract with the same cooperative association.

## Termination of marketing contract after notice

177 (1) Despite any other provisions of this Act or any rule of law to the contrary, a producer may, before the end of any calendar year, give notice of termination of any cooperative marketing contract, to deliver, sell or otherwise deal with fish or other marine products, to which the producer is a party.

(2) The notice referred to in subsection (1) must be in writing, and must be served on the association by forwarding the notice by prepaid mail to the association, addressed to its office or place of business.

(3) If a notice is served in accordance with subsection (2), the marketing contract referred to in the notice terminates on December 31 following the date of service of the notice.

#### Requirement to respect cooperative marketing contract

178 A person who has knowledge or notice of the existence of a cooperative marketing contract between a producer and an association must not

(a) solicit, persuade or aid or abet the producer to sell or deliver any product otherwise than in accordance with the terms of the cooperative marketing contract,

(b) receive for sale or other disposal any product of the producer delivered by the producer otherwise than in accordance with the terms of the cooperative marketing contract, or

(c) acquire any product of the producer other than in accordance with the terms of the cooperative marketing contract.

#### Division 3 — Community Service Cooperatives

##### Community service cooperative

178.1 (1) An association is a community service cooperative if

(a) the association includes, in its memorandum, a provision that the association is a community service cooperative,

(b) the association's memorandum does not authorize the issuance of investment shares,

(c) the purpose of the association, as set out in its memorandum under section 12 (d), is a charitable purpose or is otherwise to provide health, social, educational or other community services, and

(d) the association is not a housing cooperative.

(2) An association must not include in its memorandum a provision that the association is a community service cooperative unless it is an association to which subsection (1) (b) to (d) applies.

(3) A community service cooperative must not alter its memorandum to

(a) amend or repeal a provision referred to in subsection (1) (a),

(b) authorize the issuance of investment shares, or

(c) set out for the association a purpose other than a purpose referred to in subsection (1) (c).

(4) If a community service cooperative is dissolved or wound up, its property, after satisfaction of its liabilities and the costs, charges and expenses properly incurred in the dissolution or winding up, must be transferred to or distributed among one or more of the following organizations:

(a) a community service cooperative;

(b) a charitable organization registered under the Income Tax Act (Canada).

(5) Except as provided in this section, no part of the property of a community service cooperative is to be paid or distributed to the members during its existence or on its dissolution or winding up.

(6) Neither this section nor a provision included in the memorandum of a community service cooperative under subsection (1) (a) prohibits the association

(a) subject to its rules, from repaying to a member amounts paid by the member for the member's membership shares, or

(b) from paying money it owes to a member.

(7) A community service cooperative must not issue, or have outstanding, any investment shares.

#### Reporting associations

178.2 (1) The registrar, having regard to

(a) the number of members of a community service cooperative,

(b) the nature of its assets and liabilities,

(c) the manner in which it is pursuing its purpose, or

(d) any special circumstance, including the receipt by it of government funding,

may order, on the conditions the registrar considers appropriate, that the community service cooperative is a reporting association.

(2) The registrar may vary an order made under subsection (1) if there is a change in circumstance.

#### Part 11.1 — Designated Provinces and Extraprovincial Associations from Designated Provinces

#### Definitions

178.3 In this Part:

"designated province" means a province designated by the Lieutenant Governor in Council for the purposes of this Part under section 178.4 (1);

"extraprovincial registrar" means a person in a designated province who holds a position that is equivalent to the registrar.

#### Power to make regulations

178.4 (1) The Lieutenant Governor in Council may by regulation designate a province for the purposes of this Part.

(2) Without limiting any other authority of the Lieutenant Governor in Council to make regulations under this Act, the Lieutenant Governor in Council may, in relation to extraprovincial corporations from a designated province or extraprovincial corporations from a designated province that are registered as extraprovincial associations, make regulations as follows:

- (a) respecting the filings that must be made by extraprovincial corporations or extraprovincial associations;
  - (b) respecting registration of extraprovincial corporations as extraprovincial associations or as amalgamated extraprovincial associations and cancellation of registration of extraprovincial corporations as extraprovincial associations;
  - (c) respecting liquidation and dissolution of extraprovincial corporations registered as extraprovincial associations;
  - (d) setting out procedures that the registrar must follow before cancelling the registration of extraprovincial corporations as extraprovincial associations;
  - (e) respecting changes to filed information that relates to extraprovincial associations;
  - (f) setting out the duties of a liquidator of an extraprovincial corporation registered as an extraprovincial association;
  - (g) respecting changes of name of extraprovincial corporations registered as extraprovincial associations;
  - (h) respecting the appointment of or change in attorneys of extraprovincial associations;
  - (i) respecting the form or manner in which the registrar may accept records, filings, applications, information, forms, notices and fees
- (i) in matters governed under this section,
- (ii) in respect of extraprovincial corporations from a designated province, and

(iii) in respect of extraprovincial corporations from a designated province that are registered as extraprovincial associations;

(j) exempting extraprovincial corporations or extraprovincial associations from a provision of this Act or from a provision of a regulation made under another section of this Act;

(k) disapplying a provision of this Act or a provision of a regulation made under another section of this Act in respect of extraprovincial corporations or extraprovincial associations.

(3) Without limiting any other authority of the Lieutenant Governor in Council to make regulations under this Act, the Lieutenant Governor in Council may make regulations as follows:

(a) setting out the powers and duties of the registrar in relation to

(i) matters governed by regulations made under this section,

(ii) extraprovincial corporations from a designated province, and

(iii) extraprovincial corporations from a designated province that are registered as extraprovincial associations;

(b) in relation to associations or persons or eligible organizations, respecting the form or manner in which the registrar may collect and transmit records, filings, applications, information, forms, notices and fees to or for an extraprovincial registrar.

(4) A regulation under subsection (2) or (3) may

(a) require that a form be one established by the registrar or allow a form to be one established by the registrar, and

(b) confer a discretion on, or delegate a matter to, the registrar.

(5) If there is a conflict or an inconsistency between a regulation made under this section and a provision of this Act or a provision of a regulation made under another section of this Act, the regulation made under this section prevails.

Registrar may enter into agreement

178.5 The registrar may enter into an agreement with an extraprovincial registrar in relation to associations incorporated or continued under this Act, extraprovincial corporations from the designated province and extraprovincial corporations from the designated province that are registered as extraprovincial associations, to address the following matters:

(a) the collection by the extraprovincial registrar of records, filings, applications, forms, notices, fees or information required under this Act;

(b) the collection by the registrar of records, filings, applications, forms, notices, fees or information required under an enactment similar to this Act;

(c) the transmission of the matters referred to in paragraphs (a) and (b) from the extraprovincial registrar to the registrar and from the registrar to the extraprovincial registrar;

(d) the powers and duties of the registrar and the extraprovincial registrar in relation to a matter referred to in paragraph (a), (b), (c) or (e);

(e) any related matter that the registrar determines is appropriately included in the agreement.

## Part 12 — Extraprovincial Associations

### Repealed

179 [Repealed 2007-7-65.]

### Division 1 — Interpretation

#### Definition

179.1 In this Part, "charter", in relation to an extraprovincial corporation that is or may be registered as an extraprovincial association under this Act, means

(a) the memorandum and rules of the extraprovincial corporation, or

(b) if the extraprovincial corporation does not have a memorandum and rules, any other of the extraprovincial corporation's records that are similar in nature and effect to those records.

### Division 2 — Registration

Registration under this Act of extraprovincial corporations organized on a cooperative basis

180 (1) An extraprovincial corporation that carries on business that can lawfully be carried on by an association under authority of this Act must not carry on business in British Columbia, after the elapse of 2 months after starting to carry on that business in British Columbia, under a name that includes the word "cooperative" or any expression, word or abbreviation that indicates or implies that the extraprovincial corporation is an association or cooperative, or is organized on a cooperative basis, unless the extraprovincial corporation

(a) has a name that fulfills the requirements of section 23 (1) to (3),

(b) has provided evidence to the satisfaction of the registrar that the extraprovincial corporation is organized and operated and carries on business on a cooperative basis,

(c) continues to be organized and operated and to carry on business on a cooperative basis, and

(d) is registered under section 181 or under regulations made in accordance with Part 11.1.

(2) A person must not act as an agent or representative of, or in any other capacity, for an extraprovincial corporation that is not registered as required by subsection (1).

(3) A person who acts for an extraprovincial corporation, contrary to subsection (2), is personally liable for the debts and obligations incurred by the person as agent.

(4) If the registration of an extraprovincial corporation as an extraprovincial association is cancelled under this Act, the extraprovincial corporation must cease carrying on business in British Columbia under a name that includes the word "cooperative" or any expression, word or abbreviation that indicates or implies that the extraprovincial corporation is an association or cooperative, or is organized on a cooperative basis.

#### Registration as an extraprovincial association

181 The registrar may register an extraprovincial corporation under this section or under regulations made in accordance with Part 11.1 as an extraprovincial association if

(a) the extraprovincial corporation has a name that fulfills the requirements of section 23 (1) to (3), and

(b) the registrar is satisfied on the basis of the evidence provided under section 180 (1) (b) that the extraprovincial corporation is organized, operated and carries on business on a cooperative basis.

#### Application for registration

181.1 (1) An extraprovincial corporation that is required to be registered under this Act must

(a) file with the registrar a statement in a form established by the registrar, and

(b) furnish the registrar with other information the registrar requires.

(2) The statement referred to in subsection (1) (a) must be accompanied by a copy of the charter of the extraprovincial corporation verified in a manner satisfactory to the registrar.

#### Registration

181.11 (1) On an extraprovincial corporation complying with section 181.1 to the satisfaction of the registrar and paying the prescribed fees, the registrar, subject to section 181.21, must register the extraprovincial corporation and issue a certificate showing that the extraprovincial corporation is registered as an extraprovincial association under this Act.

(2) On the registration of an extraprovincial association, the registrar must publish, in the Gazette or in any other prescribed manner, notice of that registration.

#### Effect of registration

181.2 (1) Subject to this Act and the laws of British Columbia, an extraprovincial association registered under this Act may, for the purpose of carrying on business in British Columbia, exercise in British Columbia the powers contained in or permitted by the extraprovincial corporation's charter.

(2) An extraprovincial association must not

(a) carry on any business that its charter restricts it from carrying on, or

(b) carry on any business in a manner inconsistent with its charter.

(3) An extraprovincial association must not carry on any business that would be beyond the capacity of an association.

(4) No act of an extraprovincial association, including any transfer of property to, or by, an extraprovincial association, is invalid merely because the act contravenes subsection (2).

#### Refusal of registration

181.21 The registrar may refuse to register an extraprovincial corporation.

#### Exemption

181.3 Sections 181.2 (2) and (3) and 181.21 do not apply to a federal corporation.

### Division 3 — Duties of Extraprovincial Associations

#### Attorney to be appointed for certain purposes

181.4 (1) An extraprovincial association, unless under its charter its head office is in British Columbia, must have an attorney who is

(a) resident in British Columbia, and

(b) authorized by the association to

(i) accept service of process in every suit and proceeding by or against the association in British Columbia, and

(ii) receive every notice to the association.

(2) The first attorney referred to in subsection (1) must be appointed by an extraprovincial association in the statement filed by it under section 181.1.

(3) If the attorney referred to in subsection (1) resigns, is removed from office or for any other reason ceases to act,

(a) the association must promptly file with the registrar 2 copies of a notice in a form established by the registrar, stating the full name and address of the new attorney appointed by it, and

(b) the registrar must retain one copy and forward the other copy, certified as having been filed with the registrar, to the address of the previous attorney.

(4) An extraprovincial association may appoint more than one attorney, and in that case

(a) every attorney must be authorized to perform the acts mentioned in subsection (1) (b), and

(b) the name and address of every attorney must be shown on the statement required by section 181.1, or in the notice required by subsection (3) of this section.

(5) An attorney must in the presence of a witness sign the statement referred to in section 181.1 (1), or the notice required by subsection (3) of this section, as evidence of consent to act as attorney.

Notices of change to be filed

181.41 (1) An extraprovincial association must promptly give notice to the registrar of any change

(a) in the address of its head office in or out of British Columbia,

(b) in the address of any attorney of the association in British Columbia, and

(c) of its directors.

(2) There must be filed with the registrar 2 copies of a notice of change in the address of the head office in British Columbia of an extraprovincial association, and the registrar must retain one copy of the notice and forward the other copy, certified as having been filed with the registrar, to the previous head office in British Columbia.

Amalgamation of extraprovincial association

181.5 (1) An extraprovincial association registered under this Act must file with the registrar a copy, verified in a manner satisfactory to the registrar, of any amalgamation agreement to which it is a party within one month after the date the agreement takes effect.

(2) The registrar must issue a supplementary certificate of registration in respect of any amalgamation of an extraprovincial association and must publish a notice of it in the Gazette or in any other prescribed manner.

(3) From the date of a supplementary certificate referred to in subsection (2), the amalgamated extraprovincial association is seized of and holds and possesses all the land located in British Columbia of the amalgamating entities to the extent expressed in the amalgamation agreement.

#### Amendments to charter to be filed

181.51 (1) An extraprovincial association registered under this Act must file with the registrar a copy, verified in a manner satisfactory to the registrar, of an amendment to its charter within one month after the date of the amendment.

(2) The registrar may issue a supplementary certificate of registration in respect of any amendment to the charter of an extraprovincial association and may publish a notice of it in the Gazette or in any other prescribed manner.

#### Change of name

181.6 (1) An extraprovincial association registered under this Act must not change its name to a name identical to that by which another corporation is incorporated or registered in British Columbia, or to a name so nearly resembling that name as, in the opinion of the registrar, is likely to confuse or mislead, or to a name of which the registrar for any other reason disapproves, unless

(a) the other corporation is in the course of being dissolved and signifies its consent in the manner the registrar requires, or

(b) the other corporation has filed with the registrar a notice under section 197.1 (1) of this Act or section 397 (b) of the Business Corporations Act.

(2) If an extraprovincial association registered under this Act changes its name to a name identical to that by which another corporation has previously been incorporated or registered in British Columbia, or to a name so nearly resembling that name as, in the opinion of the registrar, is likely to confuse or mislead, the registrar may order the extraprovincial association to change its name to one that the registrar approves.

(3) This section does not apply to a federal corporation.

#### Records to be kept in British Columbia

181.61 (1) An extraprovincial association must keep, at its head office in British Columbia,

(a) a register of its directors that includes the following information:

- (i) the full names and residential addresses of the directors;
  - (ii) the date on which each director was elected or appointed;
  - (iii) the date on which each former director ceased to hold office as a director;
  - (iv) the name of any office in the association held by a director, the date of his or her appointment to the office and the date on which he or she ceases to hold office, and
- (b) a copy of its charter.

(2) The register of directors referred to in subsection (1) (a) must include information relating to matters occurring after the extraprovincial registration of the association.

(3) The records, documents and instruments referred to in subsection (1) (b) are those relating to matters occurring since the incorporation or amalgamation of the extraprovincial association.

#### Maintenance of and access to records

181.7 Any person may examine and take extracts from the records mentioned in section 181.61, and sections 131, 132, 135 and 136 apply to those records.

#### Division 4 — Disabilities and Penalties

##### Unregistered extraprovincial association

181.8 (1) An extraprovincial association that is not registered as required by this Act is not capable of

(a) maintaining an action, suit or other proceeding in any court in British Columbia in respect of any contract made in whole or in part in British Columbia in the course of or in connection with its business, or

(b) acquiring or holding land or an interest in it in British Columbia or registering any title to it under the Land Title Act.

(2) If

(a) the registration of an extraprovincial association is cancelled, or

(b) an extraprovincial association has been struck off the register in accordance with any former Act,

and the association is subsequently restored to the register, subsection (1) and any prohibition having a similar effect formerly in force must be read and construed as if no disability under subsection (1) or under that prohibition had ever attached to the association, even if any contract was made or proceeding in respect of it was instituted, or any land or interest in it was acquired or

held by the association, before the date on which the association was restored, subject to the terms of any order made by the court.

(3) Subsections (1) and (2) do not apply to a federal corporation.

Onus of proof

181.9 In any prosecution, the onus of proving that an extraprovincial association

(a) is registered,

(b) is not required to be registered, or

(c) has otherwise complied with this Act

is on the defendant.

Part 13 — Continuation, Amalgamation

Division 1 — Continuation of Cooperative Associations into or out of British Columbia

Definitions

182 In this Division:

"charter" includes an Act, statute, ordinance, letters patent, certificate, declaration or other instrument or provision of law by or under which a foreign cooperative has been incorporated, amalgamated or continued, and also includes the foreign cooperative's constitution, memorandum, rules, articles, regulations or bylaws, agreement or deed of settlement;

"foreign cooperative" means a corporation that has been incorporated as a cooperative association and that

(a) [Repealed 2007-7-69.]

(b) has been incorporated other than by or under an Act, or

(c) is otherwise subject to the laws of a jurisdiction other than British Columbia;

"foreign cooperative's jurisdiction" means, in respect of a foreign cooperative, the jurisdiction in which it was incorporated or, if it has been continued into a jurisdiction other than British Columbia, that jurisdiction.

#### Continuation into British Columbia

183 A foreign cooperative, if it appears to the registrar to be authorized by the laws of the foreign cooperative's jurisdiction, may file with the registrar 2 copies of an instrument of continuation continuing the foreign cooperative as if it had been incorporated under this Act.

#### Instrument of continuation

184 (1) The instrument of continuation under section 183 must

(a) set out the following:

(i) the name of the foreign cooperative;

(ii) the date and jurisdiction of the incorporation of the foreign cooperative;

(iii) the full address of the registered office that the foreign cooperative will have in British Columbia;

(iv) the classes and denominations of shares authorized by the foreign cooperative;

(v) the full names and addresses of all directors and officers of the foreign cooperative;

(vi) any other material that may be prescribed,

(b) contain a statement verifying that foreign cooperative has made the amendments referred to in subsection (2),

(c) be executed by the foreign cooperative and verified by a signed statement of the person signing the instrument of continuation, and

(d) be accompanied by the following:

(i) the charter of the foreign cooperative;

(ii) a memorandum that complies with section 12;

(iii) rules that comply with section 13;

(iv) any other material required by the registrar.

(2) The foreign cooperative must make the amendments to its charter that are necessary to make the memorandum and rules referred to in subsection (1) (d) conform to the laws of British Columbia.

## Certificate of continuation into British Columbia

185 (1) On filing the instrument of continuation of a foreign cooperative into British Columbia, the registrar must issue a certificate of continuation into British Columbia.

(2) The registrar must publish, in the Gazette or in any other prescribed manner, notice of the continuation of the foreign cooperative into British Columbia.

## Consequences of continuation into British Columbia

186 (1) At the time that a foreign cooperative is continued into British Columbia as an association under section 185,

(a) the association becomes an association to which this Act applies and this Act applies to the association as if it had been incorporated under this Act,

(b) the memorandum and rules that accompanied the instrument of continuation on its filing with the registrar become the memorandum and rules of the association,

(c) the certificate of continuation into British Columbia is deemed to be the certificate of incorporation of the association,

(d) the property of the foreign cooperative continues to be the property of the association,

(e) the association continues to be liable for the obligations of the foreign cooperative,

(f) an existing cause of action, claim or liability to prosecution is unaffected,

(g) a civil, criminal, quasi criminal, administrative or regulatory action or proceeding being prosecuted or pending by or against the foreign cooperative may be prosecuted or its prosecution may be continued, as the case may be, by or against the continued association, and

(h) a conviction against, or ruling, order or judgment in favour of or against, the foreign cooperative may be enforced by or against the association.

(2) A certificate of continuation into British Columbia is conclusive proof for the purposes of this Act and for all other purposes that the foreign cooperative has been continued under this Act as of the date and, if applicable, the time shown in the certificate of continuation.

(3) A share of a foreign cooperative continued under this Act that was issued in compliance with the laws of the foreign cooperative's jurisdiction and with the foreign cooperative's charter is deemed to have been issued in compliance with this Act and with the provisions of the rules referred to in section 184 (1) (d) (iii).

(4) Continuation of a foreign cooperative as an association under this section does not

- (a) deprive a member of any right or privilege that the member claims under an issued membership share,
- (b) deprive an investment shareholder of any right or privilege that the investment shareholder claims under an issued investment share,
- (c) relieve a member of any liability with respect to an issued membership share, or
- (d) relieve an investment shareholder of any liability with respect to an issued investment share.

#### Continuation from British Columbia

187 (1) Subject to subsections (2) and (3), an association, if authorized by its members and the registrar in accordance with this section, may make an application to the appropriate official or public body of another jurisdiction, requesting that the association be continued as if it had been incorporated under the laws of that other jurisdiction.

(2) Subsection (1) does not apply to

- (a) an association that has included in its memorandum a provision described in section 196 (2),
- (b) a housing cooperative that provides in its memorandum that section 173 applies to it, or
- (c) a community service cooperative.

(3) An association must not apply under subsection (1) to be continued as a foreign cooperative under the laws of another jurisdiction unless those laws provide that

- (a) the property of the association continues to be the property of the foreign cooperative,
- (b) the foreign cooperative continues to be liable for the obligations of the association,
- (c) an existing cause of action, claim or liability to prosecution is unaffected,
- (d) a civil, criminal, quasi criminal, administrative or regulatory action or proceeding being prosecuted or pending by or against the association may be prosecuted or its prosecution may be continued, as the case may be, by or against the foreign cooperative, and
- (e) a conviction against or ruling, order or judgment in favour of or against the association may be enforced by or against the foreign cooperative.

(4) An association is authorized by the members to apply for continuation into a jurisdiction other than British Columbia

- (a) if the members approve the continuation by a special resolution, and
- (b) if the association has investment shares outstanding, the investment shareholders of each class of investment shares approve the continuation by separate resolutions, or if the association has outstanding shares of only a single class of investment shares, the investment shareholders of that class approve the continuation by a separate resolution.

(5) An association seeking an authorization under subsection (4) may submit the application to the registrar for approval, and the registrar must approve the application if the registrar is satisfied that the application is not prohibited by subsection (3).

(6) An association is authorized by the registrar to apply for continuation into a jurisdiction other than British Columbia when, after receipt from the association of an application in a form satisfactory to the registrar, the registrar approves the application.

(7) The authorization under subsection (5) expires 6 months after the date on which the registrar approves the application unless, within that period, the association is continued under the laws of the other jurisdiction.

#### Abandonment of continuation application

188 At any time before an association is continued from British Columbia into another jurisdiction under the laws of the other jurisdiction, the directors of the association, if authorized by the resolutions referred to in section 187 (4), may abandon an application under section 187 without further approval of the members or investment shareholders.

#### Filing requirements and registrar's certificate

189 (1) An association that, under this section, has been continued from British Columbia into another jurisdiction under the laws of the other jurisdiction must file with the registrar a copy of the instrument of continuation issued to it by the other jurisdiction within 60 days after the date of its issue.

(2) On receiving a notice satisfactory to the registrar that an association has been continued from British Columbia into another jurisdiction under the laws of the other jurisdiction, the registrar, if the registrar had approved the application for continuation under section 187 (5), must file the notice.

(3) The registrar must publish, in the Gazette or in any other prescribed manner, notice of the continuation of the association from British Columbia into another jurisdiction.

#### When Act ceases to apply to association continued out of British Columbia

190 An association ceases to be an association under this Act on and after the date on which the association is continued under the laws of the other jurisdiction.

## Division 2 — Amalgamation of Associations

### Amalgamation

191 (1) In this section, "amalgamating associations" means the associations that amalgamate and continue as an amalgamated association under subsection (2).

(2) Any 2 or more associations may amalgamate and continue as an amalgamated association by passing the resolutions required by subsection (3) of this section that authorize their respective directors, or some of them, to subscribe jointly to a memorandum according to the form referred to in section 11 (a), and to comply in other respects with section 11, and, for that purpose the associations may authorize alterations to name, objects and share capital as necessary.

(3) The following resolutions are required for the purpose of subsection (2):

(a) a special resolution of each of the amalgamating associations;

(b) if any of the amalgamating associations has investment shares outstanding, a separate resolution of the investment shareholders of each class of investment shares, or if that amalgamating association has outstanding shares of only a single class of investment shares, separate resolutions of the investment shareholders of that class.

#### Consequences of amalgamation

192 On the registrar issuing a certificate of amalgamation,

(a) each member of the amalgamating associations becomes a member of the amalgamated association until that membership is terminated in accordance with this Act and the memorandum and rules of the amalgamated association,

(b) each investment shareholder in the amalgamating associations who has not given notice of dissent under section 164 becomes an investment shareholder in the amalgamated association,

(c) all property and rights of each amalgamating association are transferred to and vested in the amalgamated association without any further act or deed,

(d) the amalgamated association becomes liable for all the debts and obligations of each amalgamating association, and

(e) the rights of creditors of each amalgamating association continue and are enforceable against the amalgamated association.

#### Exceptions to amalgamation

193 An association to which

(a) section 173 applies may not amalgamate with another association unless that section also applies to the other association,

(a.1) section 178.1 applies may not amalgamate with another association unless that section also applies to the other association, and

(b) section 196 (2) applies may not amalgamate with another association unless that section also applies to the other association.

#### Part 14 — Winding up, Dissolution and Restoration

Repealed

194 [Repealed 2007-7-73.]

#### Division 1 — Winding up

##### Voluntary winding up

194.1 Subject to section 194.11, an association may be wound up voluntarily if the association so resolves by special resolution.

##### Solvency of association

194.11 (1) If it is proposed to wind up an association voluntarily, the majority of the directors, before calling the general meeting at which the resolution for the winding up of the association is to be proposed, must make an affidavit declaring that

(a) they have made a full inquiry into the affairs of the association, and

(b) they are of the opinion that the association will be able to pay its debts in full within the period, not exceeding 12 months from the start of the winding up, specified in the affidavit.

(2) An affidavit referred to in subsection (1) must

(a) be made within 5 weeks before the date on which the members pass the resolution for the voluntary winding up of the association, and

(b) contain a statement of the assets and liabilities of the association as at the latest practicable date.

(3) A copy of the affidavit must be

(a) filed with the registrar before the meeting, and

(b) presented to the meeting at which the resolution for the voluntary winding up of the association is to be proposed.

(4) If an association is wound up in accordance with a resolution passed within 5 weeks after the making of the affidavit, but its debts are not paid or provided for in full within the period stated in the affidavit, it is presumed, until the contrary is shown, that the declarant did not have reasonable grounds for the declarant's opinion.

#### Start of voluntary winding up

194.12 A voluntary winding up starts at the time of the passing of the special resolution to wind up.

#### Appointment of liquidator

194.13 An association must, at the general meeting at which the special resolution to wind up is passed, appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the association.

#### Winding up by court order

194.14 (1) An association may be wound up by court order on the application of the association, a member, an investment shareholder, a director, a creditor, a trustee for debentureholders or a receiver manager of the association.

(2) Before hearing an application by a creditor to wind up an association by court order, the court may require the creditor to give security for the costs of the application.

(3) The court may order that an association be wound up

(a) if the court thinks it just and equitable to do so, or

(b) when an event occurs on the occurrence of which the memorandum or rules provide that the association is to be dissolved.

(4) For the purposes of this section, a reference to a "member" or an "investment shareholder" must be read as including

(a) a beneficial owner of a membership share or an investment share in the association, and

(b) any other person who, in the discretion of the court, is a proper person to make an application.

#### Powers of court

194.15 If an application for an order to wind up an association is made by a member or investment shareholder on the ground that it is just and equitable that the association be wound up, the court,

if it is of the opinion that the applicant is entitled to relief either by winding up the association or under section 156, may

(a) make an order for winding up, or

(b) make an order under section 156

as the court considers appropriate.

Start of winding up by court order

194.16 The start of a winding up by court order is the date of the order.

Court must appoint liquidator

194.17 If the court makes an order that an association be wound up, the court, by the same or a subsequent order, must appoint one or more liquidators for the purpose of winding up the affairs and distributing the assets of the association.

Qualification of liquidator

194.18 (1) A person not qualified to become or act as a receiver or receiver manager under section 64 of the Personal Property Security Act is not qualified to become or act as a liquidator, except that, with the consent in writing of all the members, a person mentioned in section 64 (2) (e) of the Personal Property Security Act who is licensed as a trustee under the Bankruptcy and Insolvency Act (Canada) is qualified to become or act as a liquidator.

(2) A person who has been appointed a liquidator and who is not, or who ceases to be, qualified to act as a liquidator must,

(a) in a voluntary winding up, promptly call a general meeting to replace the person in accordance with section 194.21 (a), or

(b) in a winding up by court order, promptly bring the disqualification to the attention of the court and the person on whose application the liquidator was appointed.

Resignation and removal of liquidator

194.19 (1) A liquidator appointed in a voluntary winding up may resign the office of liquidator.

(2) A liquidator appointed in a voluntary winding up may be removed as liquidator by a special resolution passed at a general meeting of the members of the association, notice of which has been given to the liquidator and the creditors of the association.

#### Liquidator ceasing to act to file notice

194.2 A liquidator who resigns, is removed from office or, for any other reason, ceases to act must, within 7 days afterwards, file with the registrar a notice in the form established by the registrar.

#### Filling vacancy in office of liquidator

194.21 If a vacancy in the office of liquidator occurs by death, resignation or otherwise,

(a) in a voluntary winding up, the association in general meeting may fill the vacancy, and, for that purpose, a general meeting

(i) may be called by any member or, if there were more liquidators than one, by any continuing liquidator, and

(ii) must be held in the manner required by the rules, or

(b) in a winding up by court order, the court may fill the vacancy on application of any person mentioned in section 194.14 (1).

#### Remuneration of liquidator

194.22 (1) The remuneration of a liquidator,

(a) in a voluntary winding up, may be set by the association in general meeting, or

(b) in a winding up by court order, must be set by the court.

(2) If the remuneration referred to in subsection (1) (a) is not set within 30 days after the liquidator's appointment, or if the liquidator is dissatisfied with the amount, the liquidator may apply to the court to set or review the liquidator's remuneration, and the court may make any order it considers appropriate.

#### Validity of acts of liquidator

194.23 An act of a liquidator is valid, despite any defect in the liquidator's appointment or qualifications.

#### Effect of resolution or order for winding up

194.24 (1) If an association is being wound up,

(a) the association, from the start of the winding up, must cease to carry on its business except so far as, in the opinion of the liquidator, is required for its beneficial winding up, but the corporate status and corporate powers and capacity of the association continue until it is dissolved,

(b) on the appointment of the liquidator, the powers of the directors cease, except so far as the liquidator approves their continuance,

(c) any transfer of shares made after the winding up, except a transfer made to or with the approval of the liquidator, is void, and

(d) subject to subsection (2), the property of the association, after satisfaction of its liabilities and the costs, charges and expenses properly incurred in the dissolution or winding up, including the remuneration of the liquidator, must be distributed among the members or investment shareholders according to their rights and interests in the association.

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

(a) a housing cooperative to which section 173 applies,

(b) a community service cooperative, or

(c) an association to which section 196 applies.

Filing and publication of notice of appointment

194.25 (1) A liquidator must, within 10 days after his or her appointment as liquidator, file with the registrar a notice of the appointment in a form established by the registrar and, if not already filed,

(a) if the winding up is a voluntary winding up, a copy of the special resolution to so wind up, or

(b) if the winding up is by court order, a certified copy of the order.

(2) A liquidator must, within 7 days after changing his or her address, file with the registrar notice of the new address.

(3) At the start of the winding up, the liquidator must publish, in the Gazette or in any other prescribed manner, a notice that the association has resolved to wind up voluntarily or that the court has made an order that the association be wound up by court order, as the case may be.

Meeting of creditors

194.26 (1) A liquidator must, within 14 days after his or her appointment as liquidator,

(a) mail to every person who appears to the liquidator to be a creditor of the association a notice that a meeting of the creditors of the association will be held on a date, being not less than 21 days and not more than 28 days after the appointment, at an hour and at a place in British Columbia specified in the notice, and

(b) advertise notice of the meeting

(i) in the Gazette or in any other prescribed manner, and

(ii) in a local newspaper circulating in the district where the registered office is located or where the principal place of business of the association in British Columbia was located.

(2) The liquidator must present to the meeting of creditors referred to in subsection (1) a full statement of the position of the affairs of the association, including a list of the creditors of the association and the estimated amount of their claims, and the creditors are at liberty to discuss any matter arising out of the statement.

#### Limitation

194.27 If the liquidator gives notice in writing by registered letter to a creditor of the association that the debt or claim of the creditor is disputed or rejected, the creditor may commence an action in respect of the debt or claim within 3 months after the notice is given, and, in default of the commencement of the action within that time, the debt or claim of the creditor is forever barred.

#### Custody of property

194.28 (1) The liquidator of an association, subject to any restrictions or directions imposed or given by the court, must

(a) take into the liquidator's custody or under the liquidator's control all the property and things in action to which the association is or appears to be entitled, and all the association's records, documents and instruments,

(b) subject to this Act, use the liquidator's own discretion in realizing the assets of the association and distributing them among the creditors and members or investment shareholders,

(c) keep proper accounting records,

(d) keep proper minutes of proceedings at meetings and of other matters relating to the winding up,

(e) cause to be stated on every invoice, order for goods and business letter,

(i) issued by the liquidator or on the liquidator's behalf, and

(ii) on or in which the name of the association appears,

that the association is in liquidation, and

(f) describe himself or herself as the liquidator of the association.

(2) If a winding up continues for more than one year, the liquidator must

(a) call a general meeting of the association at the end of the first year and of each succeeding year after the start of the winding up, or as soon as may be convenient,

(b) present to the general meeting an account of the liquidator's acts and dealings and of the conduct of the winding up during the preceding year, and

(c) file with the registrar, within 7 days after the date on which the meeting is held, a verified summary of the liquidator's receipts and payments during that year.

(3) A liquidator must comply with Part 8 in respect of the records, documents and instruments of the association.

#### Powers of liquidator

194.29 (1) Subject to this section, a liquidator, so far as may be necessary for the beneficial winding up of the affairs and distribution of the assets of an association, has the powers of the directors and officers, and may exercise the powers of the association that are not required by this Act to be exercised by the association in general meeting.

(2) In a voluntary winding up, the association, by ordinary resolution, may direct that the liquidator not do certain specified things without

(a) the approval of a general meeting of the association,

(b) the written consent of certain specified members, or

(c) the written consent of a certain specified number of members.

(3) In any winding up, the court may impose, either generally or with respect to certain matters, restrictions on the exercise of the powers of a liquidator.

(4) Until required for distribution, cash balances held by the liquidator may be invested as follows:

(a) in an interest bearing account with any savings institution;

(b) as permitted under the provisions of the Trustee Act respecting the investment of trust property by a trustee,

and any dividends or interest received from the investments form part of the assets of the association.

(5) If several liquidators are appointed, every power given to a liquidator may be exercised by the one or more of them that may be determined at the time of their appointment or subsequently, or, in the absence of any determination, by any 2 or more liquidators.

#### Sale of association for shares or debentures

194.3 (1) Subject to subsection (2), if an association is being wound up and it is proposed to transfer or sell the whole or part of its business or property to a corporation, the liquidator of the association being wound up may, with the approval of a special resolution of that association that confers on the liquidator either a general authority or an authority in respect of a particular arrangement, in compensation or part compensation for the transfer or sale,

(a) receive shares, debentures or other similar interests in the corporation for distribution among the members or investment shareholders of the association being wound up, or

(b) enter into any other arrangement by which the members or investment shareholders of the association being wound up may, instead of receiving cash, shares, debentures or other similar interests, or in addition to them, participate in the profits of or receive any other benefit from the corporation.

(2) Subsection (1) does not apply to

(a) a housing cooperative to which section 173 applies,

(b) a community service cooperative, or

(c) an association to which section 196 applies.

(3) If any transfer, sale or arrangement in accordance with this section involves the payment, or any liability for payment, of money by the members or investment shareholders of the association being wound up, whether to that association, the liquidator or otherwise, a member or investment shareholder may, not more than 7 days after the passing of the resolution, give a notice of dissent to the liquidator, in which event Part 10 applies.

(4) No special resolution referred to in subsection (1) is invalid for the purposes of this section merely because it is passed before or concurrently with a resolution for winding up the association or for appointing its liquidator.

#### Powers of court

194.31 If an association is being wound up, the court may

(a) on application by a member or director of the association, order a general meeting, class meeting or meeting of the creditors of the association to be held and conducted in the manner the court considers appropriate,

(b) on application by any of the persons mentioned in section 194.14 (1), make an order for the audit or the inspection of the accounts, books and papers of, or in possession of, the liquidator that the court considers appropriate,

(c) on application by the liquidator, set a time within which creditors are to prove their debts or claims or be excluded from the benefit of any distribution to be made by the liquidator,

- (d) in a voluntary winding up, appoint a liquidator on application by a member if
- (i) there is no liquidator acting, and
  - (ii) it is impractical or impossible to hold a general meeting of the association for the purpose of filling the vacancy,
- (e) on cause shown by any of the persons mentioned in section 194.14 (1), remove a liquidator and fill any vacancy in the office of the liquidator,
- (f) release, on terms and conditions the court considers appropriate, a liquidator who has
- (i) resigned,
  - (ii) been removed from office, or
  - (iii) in the liquidator's opinion, fully wound up the affairs of the association,
- (g) on application by any of the persons mentioned in section 194.14 (1), confirm, reverse or modify any act or decision of a liquidator and make any order the court considers appropriate,
- (h) if a liquidator does not faithfully perform the liquidator's duties, inquire into the matter and take the action the court considers appropriate,
- (i) on application by any of the persons mentioned in section 194.14 (1),
- (i) examine into the conduct of any person who has taken part in the formation or promotion of the association or any person who is a past or present director, officer, receiver, receiver manager, liquidator, member or investment shareholder of the association, if it appears that the person
    - (A) has misapplied, retained or become liable or accountable for any money or property in relation to the association, or
    - (B) has become liable or accountable for any breach of trust in relation to the association, and
  - (ii) compel the person to repay or to restore the money, or property, or any part of it, with interest at the rate the court considers appropriate, or to contribute the sum to the assets of the association by way of compensation in respect of the misapplication, retainer or breach of trust as the court considers appropriate,
- and this provision applies even if the conduct complained of is conduct for which the person may be liable to prosecution,
- (j) make an order, on terms and conditions the court considers appropriate, staying the proceedings either absolutely or for a limited time, and
- (k) on application by the liquidator, give directions in relation to any matter arising under the winding up.

Officers' duties

194.32 A person who is a present or former director, receiver manager, officer, employee, banker, auditor, member, investment shareholder or agent of, or receiver of property of, an association that is being wound up or of any affiliate of it must,

(a) on inquiry by the liquidator, fully and truly inform the liquidator, to the best of the person's knowledge and belief, of all the property of the association and how and to whom and for what consideration and when the association disposed of any part of it, except any part disposed of in the ordinary course of business of the association,

(b) on request of the liquidator, deliver to the liquidator, or as the liquidator directs, all the property of the association in the custody or under the control of the person, and

(c) on request of the liquidator, deliver to the liquidator, or as the liquidator directs, every record, including every document, instrument and accounting record, in the custody or under the control of the person and belonging to the association.

Final meeting and dissolution

194.33 (1) As soon as the affairs of an association are fully wound up, the liquidator must

(a) prepare an account of the winding up, showing how it has been conducted and how the property of the association has been disposed of, and

(b) call a final general meeting of the association for the purpose of presenting the account and giving any explanation of it.

(2) The final general meeting referred to in subsection (1) must be called by publishing notice of it in the Gazette or in any other prescribed manner, at least 14 days before the meeting, specifying the date, time, place and object of the meeting, and no other notice is necessary.

(3) If, within 1/2 hour after the time appointed for the final general meeting, a quorum of members is not present, the liquidator must adjourn the meeting to the same day in the next week and, if at the adjourned meeting a quorum is not present within 1/2 hour after the time appointed for the meeting, the meeting must proceed and is deemed to have been properly held.

(4) The liquidator, not more than 7 days after the final general meeting, must file with the registrar a copy of the account and a return in a form established by the registrar.

Dissolution on completion of winding up

194.34 (1) The registrar, on receiving the copy of the account and the return referred to in section 194.33, must file them.

(2) Three months after the filing referred to in subsection (1), the association is dissolved.

(3) On application by the liquidator or any person mentioned in section 194.14 (1), the court may make an order deferring the date at which the dissolution of the association is to take effect for the time the court considers appropriate.

(4) No order made under this section is effective unless a certified copy of the order is filed with the registrar before the association is dissolved under subsection (2).

#### Unclaimed or undistributed assets

194.35 (1) In this section, "administrator" has the same meaning as in the Unclaimed Property Act.

(2) If a liquidator has or controls any unclaimed or undistributed assets or money of the association that have remained unclaimed or undistributed for more than 6 months after the date on which any dividend declared by the liquidator became payable, the liquidator must promptly pay or deliver the same to the administrator with a statement showing the full names and last known addresses of the persons appearing to be entitled to the assets or money and the amounts to which they appear to be respectively entitled, and the administrator must give the liquidator a receipt, which receipt is an effectual discharge to the liquidator.

(3) The administrator, in respect of any money or assets paid or delivered to the administrator under this section, may invest the money or realize the assets and invest the proceeds, and the money so received or realized by the administrator is deemed to be an unclaimed money deposit under the Unclaimed Property Act.

#### Disposal of books and papers of association

194.36 If an association has been dissolved, the liquidator is responsible for the care and custody of its records, including documents, instruments and accounting records, for 2 years after the date of dissolution, but not longer.

#### Discharge by court order

194.37 An order of the court releasing a liquidator discharges the liquidator from all liability in respect of any act done or default made by the liquidator in the administration of the affairs of the association or otherwise in relation to the liquidator's conduct in that capacity, but that order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

### Division 2 — Dissolution of Extraprovincial Associations

#### Notice of appointment and change of address

194.38 (1) The liquidator of an extraprovincial association registered under this Act must,

- (a) within 7 days after his or her appointment, file with the registrar a notice of the appointment in a form established by the registrar, and
  - (b) within 7 days after changing his or her address, file with the registrar notice of the new address.
- (2) The liquidator of an extraprovincial association registered under this Act must promptly publish, in the Gazette or in any other prescribed manner, a notice that the association is being wound up.

Final return of liquidator

194.39 (1) The liquidator of an extraprovincial association registered under this Act must, on completion of the winding up, file with the registrar a copy of the account and a return in a form established by the registrar.

(2) The registration of an extraprovincial association is cancelled 3 months after the filing of the account and return referred to in subsection (1).

Division 3 — Dissolutions and Cancellations

Dissolutions and cancellations of registrations by registrar

194.4 (1) If

- (a) an association or an extraprovincial association has for 2 years failed to file with the registrar the annual report or any other return, notice or document required by this Act to be filed by it,
- (b) the registrar has reasonable cause to believe that an extraprovincial association has ceased to carry on business in British Columbia,
- (c) an association or an extraprovincial association has failed to pay, within 10 days after default in payment of the fine, any fine imposed on it under this Act, or
- (d) an association or an extraprovincial association has failed to comply with an order of the registrar,

the registrar must mail to the association or extraprovincial association a letter notifying it of its failure or of the registrar's belief, and of the registrar's powers under subsection (3).

(2) If an association or an extraprovincial association is being wound up, and

- (a) the registrar has reasonable cause to believe that no liquidator is acting, or that the association is fully wound up, or

(b) the returns required to be made by the liquidator have not been made for a period of 3 consecutive months,

the registrar must mail to the association a letter inquiring whether a liquidator is acting, or the association is fully wound up, or notifying the association of the failure to file returns, or of the registrar's belief and of the registrar's powers under subsection (3).

(3) If, within one month after the registrar mails the letter referred to in subsection (1) or (2), the registrar does not receive a response that

(a) indicates that the failure has been or is being remedied,

(b) notifies the registrar that the extraprovincial association continues to carry on business in British Columbia, or

(c) is otherwise satisfactory to the registrar,

the registrar may publish, in the Gazette or in any other prescribed manner, a notice that, at any time after the expiration of one month after the date of publication of the notice, unless cause is shown to the contrary, the association may be dissolved or, in the case of an extraprovincial association, its registration may be cancelled.

(4) At any time after one month after the date of publication of the notice referred to in subsection (3), the registrar, unless good cause to the contrary is shown to him or her, may dissolve the association or, in the case of an extraprovincial association, cancel its registration.

(5) A letter mailed under this section may be addressed to the association at its registered office or, in the case of an extraprovincial association, at its head office in British Columbia.

#### Cancellation of incorporation

195 The Lieutenant Governor in Council, by order, may cancel the incorporation of an association and declare it to be dissolved.

#### Cancellation of registration of extraprovincial association

195.1 (1) The Lieutenant Governor in Council may cancel the registration of an extraprovincial association.

(2) The Lieutenant Governor in Council may restore the registration of an extraprovincial association that has been cancelled.

(3) This section does not apply to a federal corporation.

#### Dissolution and winding up

196 (1) An association without issued investment shares may provide in its memorandum that, on the dissolution or winding up of the association, its property, after satisfaction of its liabilities and the costs, charges and expenses properly incurred in the dissolution or winding up, must be transferred to or distributed among one or more other organizations that are

(a) associations having a similar purpose to the association being dissolved or wound up, or

(b) charitable organizations registered under the Income Tax Act (Canada).

(2) An association may provide in its memorandum that a provision described in subsection (1) is unalterable, and, if it so provides, the association must not alter its memorandum to amend or repeal that provision or the provision described in subsection (1).

(3) Neither this section nor a provision in the association's memorandum permitted by subsection (1) or (2) prohibits the association

(a) from doing anything permitted under section 9 or 66,

(b) subject to its rules, from repaying to a member amounts paid by the member for the member's membership shares, or

(c) from paying money it owes to a member.

(4) An association that has included in its memorandum a provision described in subsection (2) must not issue any investment shares.

#### Application for voluntary dissolution

197 (1) An association may apply to the registrar, in a form established by the registrar, to be dissolved if the association

(a) is authorized to do so by a special resolution,

(b) has no assets, and

(c) has no liabilities, or has made provision for the payment of each of the association's unpaid liabilities and has obtained the written consent to that provision for payment from each creditor

(i) whose identity is known to the association, and

(ii) who has an unpaid claim against the association that exceeds the prescribed amount.

(2) An association's application under subsection (1) must be accompanied by the association's certificate of incorporation and by an affidavit of one of the directors of the association evidencing to the satisfaction of the registrar that the association has complied with subsection (1).

(3) If the registrar grants an association's application under this section for dissolution, the association is dissolved on the date set by the registrar.

## Defunct extraprovincial association

197.1 (1) If an extraprovincial association files with the registrar a notice that the association has ceased to carry on business in British Columbia, the registrar may cancel its registration.

(2) The registrar must cancel the registration of an extraprovincial association if the registrar receives, from an official having a similar role to the registrar in the jurisdiction in which the extraprovincial association was incorporated, notice that the extraprovincial association has ceased to exist.

## Liabilities survive

197.2 The liability of every director, officer, liquidator, member and investment shareholder of an association that is dissolved, or of an extraprovincial association that has had its registration cancelled, continues and may be enforced as if the association had not been dissolved, or the registration of the extraprovincial association had not been cancelled.

## Publication

197.3 The registrar must publish, in the Gazette or in any other prescribed manner, notice that an association has been dissolved or that the registration of an extraprovincial association has been cancelled, along with the date the action took place.

## Division 4 — Restoration

### Restoration to register

197.4 (1) If an association has been dissolved, or the registration of an extraprovincial association has been cancelled under this Act or any former Act, the court may, if it is satisfied that it is just that the association or extraprovincial association be restored to the register, not more than 10 years after the date of the dissolution or cancellation, on application by a liquidator, a member, an investment shareholder or a creditor of the association or extraprovincial association, or by any other interested person, make an order, subject to the conditions and on the terms the court considers appropriate, restoring the association or extraprovincial association to the register.

(2) If an association or extraprovincial association is restored to the register under subsection (1), the association is deemed to have continued in existence, or the registration of the extraprovincial association is deemed not to have been cancelled, and proceedings may be taken as might have been taken if the association had not been dissolved or the registration of the extraprovincial association had not been cancelled.

(3) The court may make an order under subsection (1) restoring an association or an extraprovincial association to the register for a limited period, and, after the expiration of that period, the association must promptly be dissolved, or, in the case of an extraprovincial association, its registration cancelled, by the registrar.

(4) The court must not make an order under this section

(a) unless notice of the application under subsection (1) and a copy of any document filed in support of it has been sent to the registrar and the registrar has consented, and

(b) until one week after the applicant has published notice of the application under subsection (1) in one issue of the Gazette or in any other prescribed manner, and has mailed notice of that application to the last address shown as the registered office of the association or head office in British Columbia of the extraprovincial association.

#### Power of court

197.5 (1) In an order made under section 197.4, the court may give directions and make provisions it considers appropriate for placing the association or extraprovincial association and every other person in the same position, as nearly as may be, as they would have been had the association not been dissolved or the registration of the extraprovincial association not been cancelled.

(2) Unless the court otherwise orders, an order under subsection (1) is without prejudice to the rights of parties acquired before the date on which the association or extraprovincial association is restored to the register.

#### Change of name on restoration

197.6 In any order made under section 197.4, the court may require that the association or extraprovincial association be restored to the register under a different name that is acceptable to the registrar.

#### Filing and publication

197.7 (1) No order made under section 197.4 is effective until a certified copy has been filed with the registrar.

(2) The registrar must not file any order made under section 197.4 unless

(a) the registrar receives proof to his or her satisfaction that the terms and conditions precedent of the order, if any, have been complied with, and

(b) the registrar's requirements are fulfilled.

(3) After filing an order made under section 197.4, the registrar must

(a) publish, in the Gazette or in any other prescribed manner, notice of the restoration of an association or extraprovincial association, showing the date of restoration, and

(b) issue a certificate of restoration.

#### Escheat

197.8 Despite the provisions of this Act, title to, or any interest in, land that has escheated or that is deemed to have escheated to the government under section 4 of the Escheat Act is not affected in any way by an order made under section 197.4 of this Act, except as provided in section 4 of the Escheat Act.

### Part 15 — Offences and Penalties

#### Offence Act

198 Sections 4 and 5 of the Offence Act do not apply to this Act or the regulations.

#### Offences

199 A person commits an offence who

(a) contravenes section 20 (1) or (2), 23 (3), 25, 26, 27, 58 (1) or (2), 66 (2), 78 (1), 79 (1), 83 (1), 87, 95 (1), 124 (1), 125 (1) or (2), 126 (1), (1.1) or (2), 128 (1) or (2), 129, 135 (1), 136 (3), 138 (1), 139 (1), 141 (1), 156 (4), 178 or 209,

(a.1) contrary to section 158 or 159,

(i) refuses to produce any record, including any document, instrument or accounting record,

(ii) refuses to answer any question, or

(iii) destroys or alters any record, including any document, instrument or accounting record,

or otherwise fails to comply with section 158 or 159,

(a.2) fails to give information required of the person under section 158 or 159,

(a.3) is an extraprovincial association and contravenes any of the provisions of this Act, or of the regulations, that apply to it,

(a.4) is a director of an association and makes an affidavit under section 194.11 without having reasonable grounds for the opinion that the association will be able to pay its debts in full within the period specified in the affidavit,

(a.5) acts as a liquidator and is a person who is not qualified to act as a liquidator,

(a.6) is a liquidator and contravenes any provision of Part 14,

(b) [Repealed 2007-7-74.]

(c) contravenes section 134 or 194.32, or

(d) contravenes section 180 (1), (2) or (4).

#### Misleading statements an offence

200 (1) Subject to subsection (3), a person who, in a record, makes or assists in making a statement required or permitted to be made by or for the purposes of this Act or the regulations commits an offence if the statement

(a) at the time and in the light of the circumstances under which it is made, is false or misleading in respect of any material fact, or

(b) omits any material fact, the omission of which makes the statement false or misleading.

(2) If

(a) a corporation commits an offence under subsection (1), any director or officer of the corporation, or

(b) an association commits an offence under subsection (1), any general manager, any other officer or any director of the association

who authorizes, permits or acquiesces in the commission of the offence also commits an offence and is liable on summary conviction to a fine not exceeding \$5 000 or to imprisonment for a term not exceeding 6 months or to both, whether or not the corporation or the association, as the case may be, is prosecuted or convicted.

(3) A person does not commit an offence under this section if that person

(a) did not know that the statement was false or misleading, and

(b) with the exercise of reasonable diligence, could not have known that the statement was false or misleading.

#### Penalties

201 (1) A person who commits an offence under section 199 (a), (a.1), (a.2), (a.3), (a.4), (a.5) or (a.6) or 200 (1) is liable

(a) in the case of a corporation, to a fine of not more than \$5 000, or

(b) in the case of a person that is not a corporation, to a fine of not more than \$2 000.

(2) A person who commits an offence under section 199 (c) is liable

(a) in the case of a corporation,

(i) on a first conviction, to a fine of not more than \$10 000, and

(ii) on each subsequent conviction, to a fine of not more than \$25 000, or

(b) in the case of a person who is not a corporation,

(i) on a first conviction, to a fine of not more than \$5 000, and

(ii) on each subsequent conviction, to a fine of not more than \$10 000.

(3) A person who commits an offence under section 199 (d) is liable to a fine in a prescribed amount for each day that the offence continues.

#### Additional liabilities

202 (1) A legal proceeding, conviction or penalty for an offence under this Act does not relieve a person from any other liability.

(2) Without limiting subsection (1), if a person is convicted of an offence under this Act, the court may, in addition to any penalty or punishment the court may impose for the offence, order the person to comply with the provisions of this Act.

(3) A person who contravenes an order under subsection (2) commits an offence and is liable on conviction to the penalties or punishments provided for the offence in relation to which the order was made.

#### Limitation period

203 (1) A legal proceeding for an offence under this Act may not be commenced more than 3 years after the commission of the offence.

(2) [Repealed 2015-18-299.]

(3) [Repealed 2007-7-76.]

#### Part 16 — Administration

##### Division 1 — Repealed

Repealed

204 to 206 [Repealed 2012-12-72.]

## Division 2 — Appeals

### Appeal from the registrar's decisions

207 (1) In this section, "decision" means a direction, decision, order or ruling by the registrar under this Act.

(2) A person affected by a decision under this Act may appeal it to the court.

(3) The registrar is a party to an appeal of a decision to the court.

(4) An appeal under subsection (2) is an appeal on the record.

(5) For the purposes of subsection (4), the record consists of the following:

(a) the record of oral evidence, if any, before the registrar;

(b) copies or originals of documentary evidence before the registrar;

(c) other things received as evidence by the registrar;

(d) the registrar's direction, decision, order or ruling;

(e) the written reasons for the decision, if any.

(6) An appeal under subsection (2) must be commenced not more than 30 days after the earlier of the following:

(a) the mailing to the appellant, at the appellant's most recent address known to the registrar, of a notice of the decision to be appealed;

(b) actual notice to the appellant of the decision to be appealed.

## Division 3 — General

### Arbitration of disputes

208 (1) Arbitration may be used to decide a dispute arising out of the affairs of an association, between

(a) a person aggrieved who has for not more than 6 months ceased to be a member, a person claiming through such an aggrieved person, a member, an investment shareholder, a person claiming through a member or an investment shareholder or a person claiming under the association's rules, and

(b) the association or a director of the association.

(2) The decision made is binding on all parties and may be enforced on application to the court.

(3) Unless the association's rules otherwise provide, there is no appeal from a decision made in an arbitration under this section.

(4) Unless the association's rules establish another method, an arbitration under this section must be conducted in accordance with the Arbitration Act.

(5) Any of the parties to a dispute described in subsection (1) may commence arbitration proceedings by giving 7 days' written notice to the other parties to the dispute.

(6) A person is not entitled to bring proceedings under this section in respect of any dispute that is the same or substantially the same as a matter in which the person has an interest, if the matter

(a) has been decided by order of the court under section 156, or

(b) is the subject of court proceedings under section 156, unless the court otherwise orders on the grounds of undue delay to which the applicant has not contributed.

#### Employment as inducement to invest

209 A person must not hold out the prospect of employment for wages or salary as an inducement to invest in the shares or securities of an association.

#### Fees

210 There must be paid to the registrar for the prescribed matters the prescribed fees, and the registrar must pay the fees to the Minister of Finance.

### Part 17 — Regulations

#### Power to make regulations

211 (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the Interpretation Act.

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

- (a) prescribing forms, documents, reports and other records for the purposes of this Act;
- (b) defining any word or expression used but not defined in this Act;
- (c) respecting any matters necessary for more effectively bringing into operation the provisions of this Act and for obviating any transitional difficulties encountered in doing so.

## Part 18 — Transitional Provisions

### Definitions

212 In this Part:

"memorandum" includes a certificate, under an enactment, evidencing the continuation, as an association, as defined in this Act, of a corporation incorporated in another jurisdiction;

"pre-existing association" means an association incorporated or continued under the Cooperative Association Act, R.S.B.C. 1996, c. 71, before the date this section comes into force, and includes an association to which section 74 or 75 of that Act applied before that date.

### Membership shares of pre-existing associations with one class of share

213 If the share capital of a pre-existing association consists of only one class of shares, the association's memorandum is deemed to be amended to provide that

- (a) all the pre-existing association's shares are renamed membership shares, and
- (b) there is no maximum number of membership shares that the pre-existing association is permitted to issue.

### Membership shares of pre-existing associations with 2 or more classes of shares

214 (1) If the share capital of a pre-existing association consists of more than one class of shares and the members of the pre-existing association have been required to purchase the shares of only one class of shares of the pre-existing association, its memorandum is deemed to be amended to provide

- (a) that all the shares of the class of shares of the pre-existing association that members have been required to purchase are renamed membership shares,
- (b) that all the shares of the other class or classes of shares of the pre-existing association are restricted for issue to members only and are renamed as investment shares, and
- (c) that the number of membership shares, and the number of investment shares in each class, that may be issued is unlimited.

(2) If a pre-existing association

(a) has more than one class of shares but members have not been required to purchase shares of any one of those classes of shares, or

(b) has more than one class of shares and members have been required to purchase shares of all or more than one of those classes of shares,

the pre-existing association, by a date prescribed for the purpose of this subsection, must change its memorandum, rules or both to comply with section 12 (f) and (g) and, if applicable, change its memorandum, rules or both to comply with sections 48 and 49.

Application of section 216 to certain pre-existing associations

215 Section 216 applies only to a pre-existing association described in section 214 (2) and continues to apply to that a pre-existing association until it has made the changes required under section 214 (2).

Notice of rights and restrictions

216 (1) A pre-existing association described in section 214 (2) must ensure that

(a) a full text of the special rights or restrictions attached to any class of shares is contained in or permanently attached to every share certificate representing that class of shares, or

(b) every share certificate representing shares of a particular class of shares states that

(i) special rights or restrictions are attached to that class of shares, and

(ii) a free copy of the full text of the special rights or restrictions may be obtained at the registered office of the pre-existing association.

(2) A pre-existing association must

(a) keep at its registered office a copy of the full text of the special rights or restrictions attached to any class of shares, and

(b) provide a free copy of that text to any person who requests one.

## Former Act associations

217 (1) The rules of a subsisting association or society that was incorporated under a former Act, in so far as they are not contrary to this Act, continue in force until altered or rescinded, and if any of those rules have incorporated by reference any provisions of a schedule to a former Act, the appropriate provisions of that schedule are incorporated and are part of the rules of the association.

(2) If a subsisting association or society that was incorporated under a former Act has a nominal capital of a set amount, the part of its memorandum by whatever name called that provides for that nominal capital continues in force until the association or society passes a special resolution altering its memorandum by converting its nominal capital into a share capital consisting of a limited or unlimited number of membership shares with or without par value, as set by the resolution.

## Powers of associations incorporated before June 30, 1988

218 (1) If the words "the objects for which the association is formed are" or words of similar effect are contained in the memorandum of an association incorporated before June 30, 1988, those words are deemed to be struck out and the words "the business that the association is permitted to carry on is restricted to the following:" are deemed to be substituted for them.

(2) If the business that an association is permitted to carry on is restricted under subsection (1), the association may, however, carry on and undertake any business that may be conveniently carried on in connection with the business to which the association is restricted.

## Spent

219–221 [Repeal and consequential amendments. Spent. 1999-28-219 to 221.]

Not in Force. Repealed.

222 [Consequential amendment. Not in force. Repealed 1999-28-222.]

## Spent

223–228 [Consequential amendments. Spent. 1999-28-223 to 228.]

## Commencement

229 (1) This Act, except sections 5 (4) and 222, comes into force by regulation of the Lieutenant Governor in Council.

(2) Section 222 comes into force on the date section 445 of the Company Act, S.B.C. 1999, comes into force.

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