

Table of Contents

<i>Acknowledgements and Dedication</i>	iii
<i>Preface</i>	v
<i>Acknowledgement to Dye & Durham</i>	xix
<i>Table of Cases</i>	xxi
Chapter 1: Introduction	1
1.0 Overview	1
1.1 Introduction	2
1.2 What is Corporate Law?	2
1.3 Finding Corporate Statutes — the <i>OBCA</i>	3
1.4 Finding Corporate Statutes — the <i>CBCA</i>	4
1.5 <i>Business Corporations Act</i>	5
1.6 <i>Canada Business Corporations Act</i>	6
1.7 Why Do We Need Corporate Law?	7
1.8 Business in Ontario	8
1.9 Role of Legal Professionals	9
1.10 Our Clients	9
Chapter 2: Sole Proprietorships	11
2.0 Overview	11
2.1 What is a Sole Proprietorship?	12
2.2 Advantages and Disadvantages of a Sole Proprietorship	12
2.3 Registering a Sole Proprietorship	17
(a) <i>Business Names Act</i>	17
(b) Restrictions Regarding the Business Name	20
(c) How to Register Under the <i>Business Names</i> <i>Act</i>	22
(i) Registering through the Ontario Business Registry	22

Corporate Law for Ontario Businesses

(ii) Registering through Authorized Service Providers	23
(iii) Registering through Email or Mail	24
(d) Certificate of Registration and Other Documents	25
(e) Other Issues	26
APPENDIX A:	
<i>Business Names Act</i> , R.S.O. 1990, c. B.17	29
APPENDIX B:	
<i>Business Names Act — General</i> , O. Reg. 399/21	45

Chapter 3: Partnerships and Other Forms of Business

Organization	59
3.0 Overview	59
3.1 General Partnerships	61
(a) The Nature of a Partnership	61
(b) Advantages and Disadvantages	65
(c) The Relationship between Partners and Others	66
(d) The Relationship of Partners to One Another	70
(e) Dissolution of the Partnership	72
3.2 Limited Liability Partnerships	73
3.3 Limited Partnerships	75
(a) What is a Limited Partnership?	75
(b) Filing a Declaration	80
(c) Extra-Provincial Limited Partnerships	81
3.4 Other Considerations	84
3.5 Other Types of Business Associations	84
(a) Joint Ventures	84
(b) Franchises	85
(c) Licences	86
(d) Co-ownership	87
(e) Business Trusts	87
(f) Not-for-Profit Organizations	87
APPENDIX A:	
<i>Partnerships Act</i> , R.S.O. 1990, c. P.5	89

Table of Contents

APPENDIX B:	
Partnership Agreement Checklist	105
Chapter 4: Corporations	113
4.0 Overview	113
4.1 Corporate Law	114
4.2 <i>Business Corporations Act</i>	114
4.3 Separate Legal Entity	115
4.4 Advantages and Disadvantages of Incorporation	121
4.5 Corporate Name	122
4.6 Numbered Company	125
4.7 Types of Corporations	127
(a) Provincial and Federal Corporations	127
(b) Offering and Non-Offering Corporations	130
(c) Professional Corporations	132
(d) Extra-Provincial Corporations	135
(e) Not-for-Profit Corporations	137
(f) Incorporation Questionnaire	139
Chapter 5: The Incorporation Process	141
5.0 Overview	141
5.1 Ontario Government Structure and Resources	142
5.2 Federal Government Structure and Resources	143
5.3 Incorporating an Ontario Company	144
(a) Incorporating an Ontario Company Online	145
(b) Incorporating an Ontario Company by Email or Mail	146
(c) After Filing Articles of Incorporation	146
5.4 Incorporating a Federal Company	147
(a) Incorporating a Federal Company Online	147
(b) Incorporating a Federal Company By Mail or Email	149
(c) After Filing Articles of Incorporation	149
5.5 NUANS Search	149
(a) NUANS Report for an Ontario Company	150
(b) NUANS Report for a Federal Company	152

Corporate Law for Ontario Businesses

5.6	Articles of Incorporation	154
(a)	Articles of Incorporation for an Ontario Company	154
(b)	Articles of Incorporation for a Federal Company	164
(c)	Form 2, <i>CBCA</i> for Federal Incorporation	168
(d)	Other Registrations for a Federal Company	170
APPENDIX A:		
	NUANS — Ontario Reservation Report	173
APPENDIX B:		
	Articles of Incorporation — Multiple Classes of Shares	180
APPENDIX C:		
	Articles of Incorporation — Common Shares	192
APPENDIX D:		
	Ontario Business Registry — Sample Certificate of Incorporation	194
Chapter 6: The “Corporate Players”		195
6.0	Overview	195
6.1	The “Corporate Players”	196
6.2	Directors	197
(a)	The Role and Power of Directors	197
(b)	Directors’ Duties and Liability	203
(c)	Conflicts of Interest	215
6.3	Officers	219
(a)	The Roles and Responsibilities of Officers	219
(b)	Officers’ Duties and Liability	221
6.4	Related Issues	223
(a)	Indoor Management Rule	223
(b)	Insider Liability	229
(c)	Diversity	230
Chapter 7: The “Corporate Players” — Shareholders		235
7.0	Overview	235
7.1	Who are Shareholders?	236

Table of Contents

7.2	Duties, Liabilities and General Powers	237
7.3	Unanimous Shareholder Agreement	241
7.4	Oppression Remedy	245
7.5	Derivative Actions	254
	(a) Overview	254
	(b) Comparing the Derivative Action to the Oppression Remedy	259
7.6	Right of Dissent	261
7.7	Shareholder Agreements	266
APPENDIX:		
	Checklist for Comprehensive Shareholder Agreement	267
Chapter 8: How Does a Corporation Raise Money?		269
8.0	Overview	269
8.1	Raising Money	270
8.2	Loans	271
8.3	Equity Financing	273
8.4	Shares	274
	(a) What are Shares?	274
	(b) Types of Shares	279
	(i) Common and Preferred Shares	280
	(ii) Dividends	282
	(iii) Additional Rights	285
	(iv) Lien on Shares	289
	(v) Subscription for Shares	290
8.5	Bonds and Other Securities	290
Chapter 9: Preparing a Minute Book — Part 1		295
9.0	Overview	295
9.1	Statutory Requirements	296
9.2	The Minute Book	298
	(a) Articles of Incorporation and Related Documents	298
	(b) By-laws	299
	(c) Minutes and Resolutions	303
	(i) Directors' Organizational	

Corporate Law for Ontario Businesses	
Resolutions	304
(ii) Shareholders' Organizational	
Resolutions	306
(iii) Recent Changes to Written Shareholders'	
Resolutions	306
APPENDIX A:	
By-law No. 1	309
APPENDIX B:	
By-Law No. 2	329
APPENDIX C:	
Resolutions of the Directors of	
Entertainment Group Ltd.	331
APPENDIX D:	
Resolution of the Shareholders of Entertainment	
Group Ltd.	336
APPENDIX E:	
Special Resolution of	
Entertainment Group Ltd.	337
APPENDIX F:	
Resolutions of the Shareholders of Entertainment	
Group Ltd.	339
APPENDIX G:	
Resolution of the Shareholders of Entertainment	
Group Ltd.	341
Chapter 10: Preparing a Minute Book — Part 2	343
10.0 Overview	343
10.1 Statutory Requirements	344
(a) Register of Ownership Interests in Land	344
(b) Register of Individuals with Significant Control	346
10.2 Registers	348
10.3 Ledgers	351
10.4 Shares	352
10.5 Change in Directors'	353
APPENDIX A:	
Directors' Register	355
APPENDIX B:	

Table of Contents

Officers' Register	356
APPENDIX C:	
Shareholders' Register	357
APPENDIX D:	
Share Transfer Register	358
APPENDIX E:	
Register of Ownership Interests in Land	359
APPENDIX F:	
Individuals with Significant Control (ISC) Register	360
APPENDIX G:	
Shareholders' Ledger	361
APPENDIX H:	
Share Subscription Form	363
APPENDIX I:	
Sample Share Certificates — Common and Preferred	364
APPENDIX J:	
Shareholders' Resolutions Regarding Resignation of Director	366
APPENDIX K:	
Director's Letter of Resignation	367
APPENDIX L:	
Director's Letter of Consent	368
 Chapter 11: After the Minute Book	 369
11.0 Overview	369
11.1 Reports	370
(a) Reporting Letter to the Client	370
(b) Reporting Letter to the Accountant	371
11.2 Corporate Bank Account	372
11.3 <i>Corporations Information Act</i>	373
(a) Initial Return	373
(b) Annual Return	376
11.4 Corporate Tax	376
(a) Introduction	376
(b) T2 Corporation Income Tax Return	377
11.5 Annual Meetings	378

Corporate Law for Ontario Businesses

11.6	Auditors and Financial Statements	383
APPENDIX A:		
	Reporting Letter to the Client	385
APPENDIX B:		
	Minutes of a Meeting of the Board of Directors of Entertainment Group Ltd.	392
APPENDIX C:		
	Minutes of a Meeting of the Shareholders of Entertainment Group Ltd.	394
APPENDIX D:		
	Consent of Shareholders to Exemption From Audit — Entertainment Group Ltd.	397
Chapter 12: Changes in Corporate Structure		
12.0	Overview	399
12.1	Introduction	400
12.2	Amendments	400
12.3	Amalgamation	403
12.4	Continuance	414
12.5	Arrangement and Reorganization	416
12.6	Dissolution and Winding Up	417
	(a) Voluntary Winding Up	417
	(b) Winding Up by Court Order	418
	(c) Voluntary Dissolution	421
	(d) Cancellation by Director of <i>OBCA</i>	423
APPENDIX A:		
	Articles of Amendment	425
APPENDIX B:		
	Articles of Amalgamation	428
APPENDIX C:		
	Statement of Director	433
APPENDIX D:		
	Articles of Dissolution	434
Chapter 13: Strategies for Corporate Growth		
13.0	Overview	437
13.1	How do Corporations Grow?	439

Table of Contents

(a)	Achieving Synergy	440
(b)	Acquiring an Under-Priced Business	440
(c)	Tax Efficiencies	441
(d)	Financial Sellers	441
13.2	Private Company Acquisitions —	
	Asset/Share Purchase Transactions	443
13.3	Basic Agreement Structure	447
(a)	Basic Sale Terms	448
(b)	Representations and Warranties	448
(c)	Pre-closing Covenants	449
(d)	Conditions	449
(e)	Indemnities	450
(f)	General/Boilerplate Provisions and Disclosure Schedules	450
(g)	Conveyancing Documents	451
13.4	Other Documentation	451
(a)	Term Sheet (Letter of Intent/ Memorandum of Understanding)	452
(b)	Non-Disclosure (Confidentiality) Agreement	453
(c)	Exclusivity Agreement	453
13.5	Price	453
13.6	Tax Issues and Relationship to Price	455
13.7	Methods of Business Valuation	459
(a)	Earnings	459
(b)	Assets	459
(c)	Other Valuation Methods	460
13.8	Negotiating Risk	460
13.9	Consents/Approvals Required in an Asset Purchase Transaction	462
(a)	Corporate Approvals	462
(b)	Regulatory Approvals	463
(c)	Contractual Approvals	466
13.10	Consents/Approvals Required in a Share Purchase Transaction	466
13.11	Acquisitions by Foreign Companies	467
13.12	Other Considerations	469

Corporate Law for Ontario Businesses

APPENDIX A:	
Checklist for Asset and Share Purchase Agreements	473
APPENDIX B:	
Sample Asset Purchase Agreement	478
APPENDIX C:	
Sample Share Purchase Agreement	505
Chapter 14: Public Companies	515
14.0 Overview	515
14.1 Securities Law	517
(a) Ontario Securities Commission	518
(b) Canadian Securities Administrators	520
(c) Fundamental Principles of Securities Regulation in Ontario	520
(d) Capital Markets	522
(e) General Framework of Securities Legislation in Ontario	524
(i) Private Issuer Exemption	530
(ii) Employee, Executive Officer, Director and Consultant Exemption	531
(iii) Accredited Investor Exemption	531
(iv) Substantial Purchase Exemption (Minimum Investment of \$150,000)	532
(v) Family, Friends and Business Associates Exemption	532
(vi) Offering Memorandum Exemption	533
(vii) Crowdfunding Exemption	534
(f) Continuous Disclosure	535
(g) Timely Disclosure	539
(h) Enforcement	541
14.2 Mergers and Acquisitions of Public Companies	545
(a) Takeover Bid	545
(b) Arrangement or Amalgamation	547
(c) Negotiated Acquisitions	547
(d) Hostile Acquisitions	548
(e) Early Warning System	549

Table of Contents

(f) Protection of Minority Shareholders	550
Chapter 15: Due Diligence	553
15.0 Overview	553
15.1 Introduction — What is Due Diligence?	555
15.2 Due Diligence in an Acquisition Transaction	557
15.3 Due Diligence in a Securities Transaction (Public Company)	558
15.4 Due Diligence Checklist	560
(a) Business Due Diligence Checklist — Private Acquisition	560
(b) Legal Due Diligence Checklist — Private Acquisition	563
15.5 Corporate Due Diligence Searches	569
15.6 Due Diligence Support	574
(a) ecore (Dye & Durham)	574
(b) ESC Corporate Services Ltd.	575
(c) Ontario Business Registry (ServiceOntario)	576
(d) Corporations Canada	577
15.7 <i>Personal Property Security Act</i>	578
15.8 Due Diligence Memorandum	580
APPENDIX A:	
Due Diligence Checklist to Summarize Material Agreements	583
APPENDIX B:	
Due Diligence Checklist to Summarize Real Property Leases	585
APPENDIX C:	
Ontario Business Registry — Certificate of Status	587
APPENDIX D:	
Ontario Business Registry — Certificate of Incorporation	588
APPENDIX E:	
Ontario Business Registry — Corporation Profile Report	589

Corporate Law for Ontario Businesses

APPENDIX F:	
<i>PPSA</i> Search Report	596
APPENDIX G:	
Writs of Execution — Clear Certificate	598
APPENDIX H:	
Bankruptcy and Insolvency Records	
Search — <i>BIA</i>	599
APPENDIX I:	
<i>Bank Act</i> Security	600
APPENDIX J:	
Litigation Pre-Search Report	601
APPENDIX K:	
Corporations Canada — Corporate	
Profile Report	602
<i>Index</i>	605