

# Index

## AMALGAMATIONS

See also FUNDAMENTAL CHANGES  
Generally, **49:1**  
Amalgamation procedure  
    long-form amalgamation, **49:5 to 49:9**  
    short-form amalgamation, **49:10 to 49:12**  
Appraisal right, **49:9**  
Post-amalgamation, **49:20 to 49:22**

## AMENDMENTS

See also FUNDAMENTAL CHANGES  
Amendments restricting issue, transfer or ownership of shares, **47:14**  
Articles of amendment generally, **47:3**  
Change of corporate name, **47:15**  
Changing restrictions on business, **47:13**  
Date of certificate of amendment, **47:10**  
Other amendments to articles, **47:15**  
Procedure, **47:4**  
Separate class or series vote, **47:12**

## ARRANGEMENTS

See also FUNDAMENTAL CHANGES  
Appraisal rights, extension to shareholders, **50:14**  
Approval orders  
    BCE framework, **50:21**  
    burden of proof, **50:22**  
    compliance with statutory procedures (prong 1), **50:23**  
    demise of the intelligent businessperson test, **50:27**  
    fair balancing of rights (prong 3b), **50:26**  
    good faith requirement (prong 2), **50:24**  
    valid business purpose (prong 3a), **50:25**  
Approval thresholds, setting, **50:11**  
Counsel for shareholders, appointing, **50:12**  
Fairness hearing, notice, **50:15**  
Insolvent corporations, **53:1 et seq.**  
    generally, **53:51**

## ARRANGEMENTS—Cont'd

Insolvent corporations, **53:1 et seq.**  
    —Cont'd  
        adjunct or stand-alone arrangement, **53:10**  
        appeal of approval, **53:51**  
        approving plan of arrangement, **53:23**  
        challenging plan, **53:46**  
        compromise of debt obligations and other creditor claims, **53:13**  
        fairness hearing, **53:39**  
        interim order, **53:24**  
        key elements, **53:2**  
        prerequisites, **53:15**  
        reorganizations vs arrangements, **53:8**  
        section 186, **53:8**  
Interim orders, **50:7 to 50:15**  
Introduction, **50:1**  
Meaning of arrangement, **50:2, 53:14**  
Obtaining certificate of arrangement, **50:28**  
Prerequisites, **50:5**  
    complying with statutory procedures, **50:23**  
    inapplicable CBCA requirements, **50:5**  
    OBCA corporate applicant, **50:5**  
Rights subject to arrangement, **50:6, 53:18**  
    debt obligations, **50:3, 53:18**  
    other creditors, **53:18**  
    shareholder rights, **50:6, 53:18**  
    warrants, **50:3, 53:18**  
Stakeholder approval  
    generally, **50:16**  
    fairness opinion, **50:18**  
    management information circular, **50:17**  
    separate vote tabulation, **50:20**  
Stakeholder meetings  
    ordering, **50:13**  
    procedure, **50:19**  
Steps, overview, **50:4**  
Voting  
    class identification, **50:9**

## **ARRANGEMENTS—Cont'd**

- Voting—Cont'd
  - right, **50:8**
  - separate vote tabulations, **50:10**
- Whose rights can be arranged, **50:3**

## **AUDITS**

See also AUDITS AND MEETINGS OF SHAREHOLDERS

Audit committees

- composition (corporate law), **57:2**
- composition (securities law), **57:3**
- independence, **57:6**
- non-venture issuers, **57:4**
- venture issuers, **57:5**

overview, **57:1**

powers and duties (corporate law), **57:7**

powers and duties (securities law), **57:8**

Auditor

- annual audit process, **56:10**
- appointment, **56:5**
- audit report, **56:11**
- audit restatements, **56:12**
- duties and liabilities, **56:4**
- procedural matters, **57:9**
- qualification, corporate law, **56:2**
- qualification, securities law, **56:3**
- remuneration, **56:8**
- resignation, removal and replacement (corporate law), **56:6**
- resignation and replacement (securities law), **56:7**
- shareholder meetings, attendance at, **56:9**

Audit requirement, exemption from, **56:1**

## **AUDITS AND MEETINGS OF SHAREHOLDERS**

Audits, see AUDITS

Extra-provincial corporate licenses and registrations, see EXTRA-PROVINCIAL CORPORATE LICENSES AND REGISTRATIONS

Filings, see FILINGS

Financial statements, **56:1**

OBCA exemptions, see OBCA EXEMPTIONS

Proxy solicitation, see PROXY SOLICITATION

Records, see RECORDS

Registered office, see REGISTERED OFFICE

## **AUDITS AND MEETINGS OF SHAREHOLDERS—Cont'd**

Shareholder meetings, see SHAREHOLDER MEETINGS

## **BANKRUPTCY AND INSOLVENCY ACT RESTRUCTURING**

See RESTRUCTURING COMPANIES UNDER INSOLVENCY LAW

## **BOARD FUNCTIONS, COMPOSITION AND PROCESS**

See also CORPORATE GOVERNANCE

Background, **28:1**

Board composition, **28:8**

election, **28:10, 92:19 to 92:22**

number, **28:8**

qualification and disqualification, **28:9**

quorum, **28:13, 93:4**

removal, **28:12**

termination, **28:11**

Board meetings, **28:14, 92:23, 93:3, 93:4, 93:21**

Committees, **28:16**

General board functions, **28:7**

Governance models, **28:2**

implicit OBCA governance model, **28:2**

OBCA governance pillars, **28:3**

summary, **28:4**

non-offering corporations, **28:5**

offering corporations, **28:6**

Officers, **28:17**

chair, **28:18**

controller, **28:23**

general, **28:17**

manager, **28:22**

managing director, **28:19**

president, **28:20**

secretary, **28:23**

treasurer, **28:23**

vice-president, **28:21**

Remuneration, **28:15**

## **BOARDS OF TRADE**

Generally, **10A:6**

## **BUSINESS CORPORATIONS**

Cooperatives, **8:11**

Financial institutions, **8:11**

Incorporation, other Canadian jurisdictions, **8:8**

**BUSINESS CORPORATIONS—Cont'd**

- Jurisdiction shopping, **8:2**
  - incorporations, other Canadian jurisdictions, **8:8**
- OBCA vs. CBCA, **8:3**
  - CBCA incorporation, advantages, **8:5**
  - factors, practical analysis, **8:4**
  - OBCA incorporation, advantages, **8:6**
  - pros and cons, practical applications, **8:7**
  - technical differences, **8:3**
- Legal characteristics, **8:1**
- Mutual fund corporations, **8:9**
  - LSIF, **8:10**
  - non-LSIF, **8:11**

**BUSINESS NAMES REGISTRATION**

- Generally, **2:1**
- Civil remedy, **2:4**
- Corporations
  - generally, **2:16, 2:19**
  - new business name registration, **2:17**
  - personal liability for non-compliance, **2:18**
  - use of business name requirements, **2:18**
- Non-compliance, effect of, **2:2**
- Partnerships
  - generally, **2:10, 2:15**
  - firm name amendment, renewal and cancellation, **2:12**
  - firm name registration, **2:11**
  - partnership record, **2:13**
  - registration other than firm name, **2:14**
- Prohibited and restricted names, **2:3**
- Registration of trademarks vs business names, **2:20**
- Sole proprietorship
  - generally, **2:5**
  - amendment, renewal and cancellation, **2:7**
  - corrections, updates and cancellations, **2:9**
  - new business name registration, **2:6**
  - registration and renewal fees, **2:8**

**BUSINESS NAMES REGISTRATION, EXTRA-PROVINCIAL**

- Alberta, **67:3 et seq.**
- Northwest Territories, **72:21**

**BUSINESS NAMES REGISTRATION, EXTRA-PROVINCIAL—Cont'd**

- Nova Scotia, **73:14**
- Nunavut, **72:21**
- Prince Edward Island, **75:12**
- Saskatchewan, **77:24**
- Yukon, **78:20**

**CANADA CORPORATIONS OPERATING IN**

- Alberta, **67:18**
- British Columbia, **68:17**
- Manitoba, **69:16**
- New Brunswick, **70:11**
- Newfoundland and Labrador, **71:11**
- Northwest Territories, **72:18**
- Nova Scotia, **73:11**
- Nunavut, **72:18**
- Prince Edward Island, **75:10**
- Quebec, **76:11**
- Saskatchewan, **77:17**
- Yukon, **78:18**

**CANADA NOT-FOR-PROFIT CORPORATIONS**

- Corporate law, modernized framework, **12:7**
  - borrowing, **12:13**
  - by-laws, **12:12**
  - directors and officers, **12:10**
  - fundamental changes, **12:14**
  - incorporation, **12:8**
  - membership, rights and remedies, **12:11**
  - ultra vires doctrine, abolition of, **12:9**
- Federal NFP corporations, types of, **12:2**
  - non-soliciting corporations, **12:3**
    - regulation of, **12:5, 12:17**
  - religious corporations, **12:4**
  - soliciting corporations, **12:3**
    - regulation of, **12:5, 12:17, 12:18**
- Introduction, **12:1**
- Problems and solutions with Act, **12:15**
  - accidental or unintentional members, **12:19**
  - by-laws, **12:26**
  - closed memberships, **12:27**
  - ex officio directors, **12:28**
  - liability of directors and officers, **12:29**
  - membership privileges, **12:23, 12:24**
  - remedies, **12:25**

**CANADA NOT-FOR-PROFIT  
CORPORATIONS—Cont'd**

- Problems and solutions with Act, **12:15**  
—Cont'd
  - minority veto power, **12:20 to 12:22**
  - ultra vires doctrine, **12:16**
- Public accountants and audits, **12:6**
- Special act corporations, **12:30**

**CANADA NOT-FOR-PROFIT  
CORPORATIONS ACT**

- Import continuance
  - advance review of articles, **13:21 to 13:23**
  - by-laws, **13:26 to 13:29**
  - filing articles, **13:24**
  - filing certificates, **13:25**
  - outline of steps, **13:2**
  - steps, **13:3 to 13:20**
- Incorporation
  - by-laws, **13:26, 13:27, 13:29**
  - filing articles, **13:24**
  - outline of steps, **13:1**
  - steps, **13:3 to 13:20**

**CIVIL LIABILITY OF DIRECTORS  
AND OFFICERS**

- See also ENFORCEMENT OF  
LIABILITIES OF DIRECTORS  
AND OFFICERS, LIABILITY  
INSURANCE, PROTECTING  
DIRECTORS AND OFFICERS  
FROM LIABILITY
- Generally, **34:1, 34:83**
  - board committees, **34:6**
  - definitions
    - director, **34:4**
    - officer, **34:5**
  - incorporation jurisdiction, significance  
of, **34:2**
  - place of business, **34:3**
- Corporation, liability to
  - duty of care, **34:11**
  - duty of loyalty, **34:9**
  - duty to disclose conflicting interests,  
**34:10**
  - improper indemnification, **34:19**
  - insider trading and tipping, **30:3, 30:13,**  
**34:12**
  - issuing shares for inadequate non-cash  
consideration, **34:14**

**CIVIL LIABILITY OF DIRECTORS  
AND OFFICERS—Cont'd**

- Corporation, liability to—Cont'd
  - non-compliance with OBCA or constating  
documents, **34:13**
  - oppression, **34:21**
  - payment of dividends by insolvent  
corporation, **34:15**
  - payments to dissenting or oppressed  
shareholder by insolvent corpora-  
tion, **34:20**
  - reacquisition of shares by insolvent  
corporation, **34:16**
  - severance payments, incentive benefits  
and other benefits, **34:18**
  - unreasonable commission, **34:17**
- Customers, liability to, **34:45**
- Employees, liability to
  - employee use of corporate law reme-  
dies, **31:6**
  - employment standards legislation,  
**31:14**
  - OBCA/CBCA, **31:6, 31:12**
  - pension remittances, **31:41, 34:36**
- Franchisees, liability to, **34:46**
- Holders of debt obligations, liability to  
duty of care: negligent misstatement,  
**34:35**
  - insider trading, **34:32**
  - liability for secondary market  
disclosure, **34:34**
  - misleading prospectus, **34:33**
  - oppression, **34:31**
- Involuntary creditors of corporation,  
liability to, **34:47**
- Shareholders, liability to
  - assumption of de facto fiduciary duty or  
other special duty, **34:29**
  - duty of care, **34:30**
  - insider trading, **34:24**
  - issuing misleading prospectus, **34:26**
  - issuing misleading take-over bid  
circular, **34:27**
  - liability for secondary market  
disclosure, **34:28**
  - non-compliance with incorporation  
statute or constating documents,  
**34:25**
  - oppression, **34:23**
- Suppliers of goods and services, liability  
to
  - construction trust claims, **34:42**

**CIVIL LIABILITY OF DIRECTORS  
AND OFFICERS—Cont'd**

- Suppliers of goods and services, liability to—Cont'd
  - contractual trust funds, **34:41**
  - oppression, **34:44**
  - other statutory trust claims, **34:43**
- Tax and other governmental authorities, liability to
  - corporate law remedies, **34:39**
  - distribution of property on dissolution or winding-up, **34:38**
- Trustee in bankruptcy or monitor acting for corporation under CCAA, liability to
  - corporate law remedies, **34:49**
  - payments to shareholders, directors and top management within 12 months before bankruptcy, **34:48**
- Who can sue, **34:8**

**COLLATERAL**

- See also SECURED TRANSACTIONS
- Accounts, **42:19**
- Chattel paper, **42:20**
  - electronic chattel paper, **42:22**
  - tangible chattel paper, **42:21**
- Equipment, **42:24**
- Insurance
  - property damage and business risk, **42:29**
  - refunds of unearned premiums, **42:30**
- Intellectual property, **42:31**
- Inventory, **42:23**
- Mobile goods
  - motor vehicles, **42:25**
  - vessels, aircraft and rolling stock, **42:26**
- Real property
  - leasehold, **42:28**
  - owned, **42:27**

**COMPANIES' CREDITORS  
ARRANGEMENT ACT  
RESTRUCTURING**

- See RESTRUCTURING COMPANIES UNDER INSOLVENCY LAW

**COMPLIANCE AND RESTRAINING  
ORDERS**

- See also SHAREHOLDER REMEDIES
- Complainant or creditor initiated, **27:10**

**COMPLIANCE AND RESTRAINING  
ORDERS—Cont'd**

- OSC initiated, **27:11**

**CONDOMINIUM CORPORATIONS**

- Audits, annual financial statements, **10A:5**
- By-laws, **10A:5**
- Directors and officers, **10A:5**
- Liens, in favour of, **10A:5**
- Nature and type, **10A:5**
- Objects, duties, powers of, **10A:5**
- Owners
  - meetings of, **10A:5**
  - common expenses, obligations of, **10A:5**
- Remedies, corporate, **10A:5**
- Termination, **10A:5**

**CONFIDENTIALITY AGREEMENTS**

- See: NON-DISCLOSURE AGREEMENTS; STANDSTILL AGREEMENTS

**CONSTITUTIONAL DIVISION OF  
CORPORATE LEGISLATIVE  
POWER AND CORPORATIONS**

- Federal corporations
  - Conclusion on the constitutionality of the CBCA, **6A:22**
  - Constitutional underpinning of the CBCA, **6A:2**
  - Essential powers and capacities of a federal corporation impaired by provincial or territorial law, **6A:23**
  - extra-provincial registration requirements, **6A:24**
  - federal law paramount to provincial law, **6A:26**
  - use of federal corporate names in the province, **6A:25**
- Examination of the constitutional validity of certain specific provisions of the CBCA, **6A:3**
  - appeals of court orders, **6A:10**
  - appointment of receiver or receiver-manager, **6A:4**
  - assumption of board powers by shareholders under a USA, **6A:20**
  - certificate of director, **6A:11**
  - compulsory acquisitions, **6A:8**
  - constitutionality of certain untested CBCA provisions, **6A:12**

**CONSTITUTIONAL DIVISION OF  
CORPORATE LEGISLATIVE  
POWER AND CORPORATIONS  
—Cont'd**

Federal corporations—Cont'd

- Examination of the constitutional validity of certain specific provisions of the CBCA, **6A:3**—Cont'd
  - constructive delivery and exchange transactions, **6A:13**
  - debt obligations, **6A:19**
  - definition of purchaser, **6A:14**
  - dividends and paragraph 118(2)(c) (liability of directors for improper dividends), **6A:5**
  - insider liability, **6A:7**
  - liability of directors to employees, **6A:6**
  - oppression remedies, **6A:9**
  - proportionate liability for financial loss, **6A:21**
  - securities as negotiable instruments, **6A:15**
  - security certificates, registers and transfers, **6A:16**
  - seizure of security, **6A:17**
  - trust indentures, **6A:18**
- Federal law paramount to provincial law, **6A:26**
- Provincial regulation of general application, **6A:27**
  - business name registration, **6A:33**
  - director liability for unpaid employee wages and vacation pay, **6A:34**
  - expropriation, **6A:32**
  - interests in real property, **6A:28**
  - provincial labour and employment laws, **6A:31**
  - securities regulation, **6A:29**
  - succession duty, **6A:30**
- Summary of the effect of provincial and territorial laws of general application on federal corporations, **6A:35**
- Ontario Corporations
  - Conclusion on the constitutionality of the OBCA, **6A:42**
  - Constitutional underpinning of the OBCA, **6A:36**
  - Examination of the constitutionality of select provisions of the OBCA, **6A:37**
    - arrangement, **6A:40**

**CONSTITUTIONAL DIVISION OF  
CORPORATE LEGISLATIVE  
POWER AND CORPORATIONS  
—Cont'd**

Ontario Corporations—Cont'd

- Examination of the constitutionality of select provisions of the OBCA, **6A:37**—Cont'd
  - assumption of board liabilities by shareholders under a USA, **6A:41**
  - liquidation and dissolution, **6A:38**
  - reorganization, **6A:39**
- Subjection of Ontario corporations to federal law, **6A:43**
- Subjection of Ontario corporations to the laws of sister, **6A:44**
  - extra-provincial capacity of OBCA corporations, **6A:45**
  - extra-provincial registrations, **6A:46**
  - other provincial laws not having extra-provincial application, **6A:47**

**CONTINUANCES**

- See also CANADA NOT-FOR-PROFIT CORPORATIONS ACT, FUNDAMENTAL CHANGES
- Continuances as co-operative corporation, **48:16**
- Export continuance, **48:11 to 48:16**
- Import continuance, **48:1 to 48:10**

**COOPERATIVES**

- Federal, **10A:2**
- Ontario, **10A:3**
- Overview, **10:A1**

**CORPORATE AND SHAREHOLDER  
TAXATION**

- Buy-sell provisions, **11:38**
  - buyout, selecting parties, **11:38**
  - funding with life insurance, **11:39**
  - negotiating specific buyouts, **11:41**
  - vendor funding, **11:40**
- Capitalizing corporation, **11:11 to 11:17**
  - thin capitalization, **11:11**
    - implications for separate share classes
      - ACB, **11:13**
      - paid-up capital, **11:12**
      - income splitting
        - dividend sprinkling, **11:15**



**CORPORATE AND SHAREHOLDER TAXATION—Cont'd**

- Capitalizing corporation, **11:11 to 11:17**
  - Cont'd
  - thin capitalization, **11:11**—Cont'd
  - income splitting—Cont'd
  - remuneration and other payments, **11:17**
  - rollover transaction
  - preferred shares, **11:14**
- Dividends, **11:18**
  - capital, **11:20**
  - deemed, **11:23**
    - issued shares, redemption,
    - repurchase, cancellation, **11:26**
  - PUC increases, **11:24**
  - PUC reductions, **11:25**
  - PUC reductions, public corporation, **11:28**
  - winding-up, distribution, **11:27**
  - eligible and non-eligible, **11:19**
  - share splits, **11:22**
  - stock, **11:21**
- Financial year, **11:42**
- Incorporation, advantages and disadvantages, **11:3**
  - Canadian Controlled Private Corporation (CCPC)
  - carrying on active business in Canada, **11:4**
  - passive income, **11:6**
  - Canadian subsidiary of non-resident, **11:8**
- Introduction, **11:1**
- Ownership configuration, **11:10**
- Shareholder agreements, **11:32**
  - corporate control, **11:33**
    - deemed control, **11:36**
    - deemed ownership, **11:37**
    - de facto control, **11:35**
    - de jure control, **11:34**
- Shareholder benefits, **11:29**
  - other, **11:31**
  - shareholder indebtedness, **11:29**
    - imputed interest, **11:30**
    - principal, **11:29**
- Tax planning, fundamental tools, **11:2**

**CORPORATE GOVERNANCE**

- Board functions, composition and process, see **BOARD FUNCTIONS**,

**CORPORATE GOVERNANCE—Cont'd**  
**COMPOSITION AND PROCESS**

- Duties of directors and officers, see **DUTIES OF DIRECTORS AND OFFICERS**
- Liabilities of directors and officers, see **LIABILITIES OF DIRECTORS AND OFFICERS**
- Ontario Not-for-Profit Corporations Act, 2010, see **ONTARIO NOT-FOR-PROFIT CORPORATIONS ACT**, 2010

**CORPORATE LIABILITY**

- See **CORPORATE PERSONALITY AND LIABILITY**

**CORPORATE NAME DISPUTES**

- See also **NAMES**
- Appeal to Court of Appeal, **20:33**
- Corporate name regulation, **20:6**
  - compulsory name change, **20:7**
  - Director's Regulatory Roles, **20:6**
  - judicial review of Director's name decision, **20:8**
- Elements of a corporate name, **20:5**
- Introduction, **20:1**
  - rationale for minimizing incidence of corporate name confusion, **20:2**
  - self-selected corporate names, **20:4**
- Likelihood of deception, **20:9**
  - case law summaries, **20:13**
    - ordering corporation to change name, **20:14**
    - refusing to order change, **20:15**
  - likelihood of deception, **20:12**
  - parallel to trade-mark confusion analysis, **20:11**
  - statutory framework, **20:9**
  - synthesis of principles and factors, **20:16**
    - actual use, **20:17**
    - class of persons dealing with corporation and objector, **20:29**
    - degree of similarity, **20:20**
    - degree of similarity and inherent distinctiveness, **20:19**
    - distinctiveness, **20:27**
    - exercise of discretion, **20:31**
    - family names, **20:24**
    - identical arbitrary words, **20:25**

## **CORPORATE NAME DISPUTES**

### **—Cont'd**

- Likelihood of deception, **20:9**—Cont'd
  - synthesis of principles and factors, **20:16**—Cont'd
    - identical coined element, with similar or no descriptive elements, **20:23**
    - identical geographical elements, **20:26**
    - identical names, **20:21**
    - identical suggestive names, **20:24**
    - length of time objector's name or trade-Mark in use, **20:28**
    - meaning of "deception," **20:18**
    - other factors, **20:30**
    - public v. private interests, **20:16**
    - similar names, **20:22**

## **CORPORATE PERSONALITY AND LIABILITY**

- Constitutional jurisdiction, **7:13**
  - federal authority, **7:15**
  - provincial authority, **7:14**
- Corporate liability
  - civil liability, vicarious liability, tort, **7:14**
  - contract, **7:11**
    - corporation, failure to name, **7:12**
    - immunity of
      - directors, **7:13**
      - employees, **7:13**
      - officers, **7:13**
    - criminal liability, **7:15**
  - Corporate personality, **7:3**
    - corporate identity, separate, **7:3**
    - equitable subordination, **7:5**
    - insurable interest, **7:4**
    - rule in, *Foss v. Harbottle*, **7:10**
    - substantive consolidation, **7:9**
    - veil piercing, **7:6**
      - jurisprudence, **7:8**
      - statutory framework, **7:7**
  - Corporate veil, piercing, **7:6**
    - jurisprudence, **7:8**
    - statutory framework, **7:7**
  - Corporation
    - ends of the, **7:2**
    - juridical nature of, **7:1**
    - personality, **7:3**

## **CORPORATE PERSONALITY AND LIABILITY—Cont'd**

- Piercing corporate veil, **7:6**
  - jurisprudence, **7:8**
  - statutory framework, **7:7**

## **CORPORATIONS**

- Business corporations, see **BUSINESS CORPORATIONS**
- Constitutional jurisdiction, see **CONSTITUTIONAL JURISDICTION**
- Continuance under Canada Not-for-Profit Corporations Act, see **CONTINUANCE UNDER CANADA NOT-FOR-PROFIT CORPORATIONS ACT**
- Corporate liability, see **CORPORATE LIABILITY**
- Corporate personality, see **CORPORATE PERSONALITY**
- Non-share capital corporations, see **NON-SHARE CAPITAL CORPORATIONS**
- Not-for-profit corporations, see **NOT-FOR-PROFIT CORPORATIONS**
- Unlimited liability companies, see **UNLIMITED LIABILITY COMPANIES**

## **CORPORATIONS OPERATING EXTRA-PROVINCIALY IN**

- Alberta, **67:3**
- Newfoundland and Labrador, **71:3**
- Northwest Territories, **72:3**
- Nova Scotia, **73:3**
- Nunavut, **72:3**
- Prince Edward Island, **75:3**
- Quebec, **76:3**
- Saskatchewan, **77:3**
- Yukon, **78:3**

## **CREDIT FACILITIES**

- See also **SECURED TRANSACTIONS**
- Operating loan
  - currency, **42:3**
  - financial covenants, **42:5**
  - interest, **42:4**
  - negative pledge, **42:6**
  - overview, **42:2**
- Other credit facilities
  - bankers' acceptances and other commercial paper, **42:14**



**CREDIT FACILITIES—Cont'd**

- Other credit facilities—Cont'd
  - consignments, **42:17**
  - foreign exchange, **42:15**
  - letters of credit and bank guarantees, **42:12**
  - notes, **42:13**
  - swaps, **42:16**
  - tax-assisted debt obligations and government financial assistance programs, **42:18**
- Term loans
  - capex (capital expenditure) facilities, **42:10**
  - collateral, **42:8**
  - equipment leasing, **42:11**
  - financial, positive, and negative covenants, **42:9**
  - overview, **42:7**

**CREDIT UNIONS AND CAISSE POPULAIRES**

- Co-operative basis, meaning, **10A:4**
- Corporate matters, other, **10A:4**
- Deposits and loans, **10A:4**
- Directors and officers, **10A:4**
- Name, **10A:4**
- Nature of, **10A:4**
- Securities, **10A:4**

**CRIMINAL LIABILITY OF DIRECTORS AND OFFICERS**

- See also ENFORCEMENT OF LIABILITIES OF DIRECTORS AND OFFICERS, PROTECTING DIRECTORS AND OFFICERS FROM LIABILITY
- Federal offences
  - Bankruptcy and Insolvency Act, **33:3**
  - Canadian Environmental Protection Act, **33:4, 1999**
  - Competition Act
    - bid-rigging, **33:7**
    - conspiracy/cartels, **33:6**
    - false or misleading advertising, **33:8**
  - Corruption of Foreign Public Officials Act, **33:9**
  - Criminal Code
    - aiding, abetting and conspiracy to commit offence, **33:11**
    - defective stores, **33:18**
    - false prospectus, **33:17**

**CRIMINAL LIABILITY OF DIRECTORS AND OFFICERS—Cont'd**

- Federal offences—Cont'd
  - Criminal Code—Cont'd
    - falsification of records, **33:16**
    - fraud, **33:12**
    - insider trading and tipping, **33:15**
    - manipulation of public markets, **33:13**
    - money laundering, **33:21**
    - secret commissions, **33:20**
    - wash trading, **33:14**
    - whistleblower protection, **33:19**
  - federal fiscal statutes, **33:22**
  - other federal statutes, **33:24**
  - Proceeds of Crime (Money Laundering) and Terrorist Financing Act, **33:23**
- Ontario offences
  - environmental offences, **33:28**
  - Ontario Business Corporations Act, **33:26**
  - other corporate and business statutes, **33:30**
  - other statutes, **33:31**
  - provincial tax offences, **33:29**
  - Securities Act, **33:27**
  - Scope and types of offences, **33:1**

**DEBT OBLIGATIONS**

- Banking resolutions, **41:5**
- Borrowing, **41:1**
- Borrowing powers, exercise of, **41:4**
- Collateral security, **41:2**
- Guarantees, **41:3**
- Perfection, **41:16**
- Purchase-money security
  - consumer goods, **41:15**
  - equipment
    - PMSI creation, **41:11**
    - PMSI perfection, **41:12**
    - PMSI status, significance of, **41:13**
  - introduction, **41:10**
  - inventory, **41:14**
- Searches
  - Bank Act, **41:22**
  - BIA and CCAA, **41:23**
  - corporate searches - CBCA, **41:19**
  - corporate searches - OBCA, **41:18**
  - Execution Act, **41:24**

## **DEBT OBLIGATIONS—Cont'd**

- Searches—Cont'd
  - introduction, **41:17**
  - other searches, **41:26**
  - partnership name search, **41:20**
  - PPSA searches, **41:21**
  - real property, **41:25**
- Types of
  - bonds, debentures, notes, **41:7, 41:8**
  - registered or bearer form, **41:9**
  - financial institutions, borrowing from, **41:6**

## **DERIVATIVE ACTION**

- See also SHAREHOLDER REMEDIES
- Complainants, **27:2**
- Enforcement of civil liabilities of directors and officers, **34:51**
- Leave requirements, **27:3**
- Nature of statutory remedy, **27:1**
- Specific powers of court, **27:4**

## **DIRECTORS, LIABILITIES TO EMPLOYEE**

- See LIABILITIES OF DIRECTORS TO EMPLOYEES

## **DISCLOSURE OBLIGATIONS, REPORTING ISSUER**

- Disclosure documents, **62:5**
  - annual information form, **62:7**
  - business acquisition reports, **62:10**
  - certification requirements, **62:11**
  - financial statements, **62:6**
  - industry-specific disclosure requirements, **62:15**
  - information circular, **62:8**
  - material change reports, **62:9**
  - material contracts, **62:12**
  - news releases, **62:9**
  - NI 51-102, additional requirements, **62:13**
  - rights of security holders, documents affecting, **62:12**
  - stock exchange requirements, **62:14**
- Disclosure reviews and staff notices, **62:22**
- Disclosure rules, standards and principles, **62:18**
- Diversity disclosure, CBCA distributing corporations, **62:23**
- Early warning disclosure, **62:21**

## **DISCLOSURE OBLIGATIONS, REPORTING ISSUER—Cont'd**

- Introduction, **62:1**
- Regulatory framework, **62:2**
  - reporting issuer, definition, **62:3**
  - securities laws, **62:2**
  - stock exchange requirements, **62:4**
- Reporting obligations for insiders, **62:20**
- Secondary market liability, **62:16**
  - failure to make timely disclosure, **62:16**
  - forward looking information, **62:17**
  - misrepresentation, **62:16**
- Venture issuers, **62:19**

## **DISSENT AND APPRAISAL RIGHTS**

- See also SHAREHOLDERS
- Fair value determination, **24:17**
  - evidentiary burden of proof, **24:19**
  - interest and costs, **24:25**
  - judicial approach to share valuation, **24:20**
    - asset-value approach, **24:22**
    - combination of approaches, **24:24**
    - earnings approach, **24:23**
    - market value approach, **24:21**
  - partial summary judgment, **24:18**
  - procedural aspects, **24:17**
- Introduction, **24:1**
- Procedure, **24:14**
  - section 185 of OBCA, **24:14**
  - section 188 of OBCA, **24:15**
  - section 189 of OBCA, **24:16**
- Standing to dissent, **24:2**
  - unregistered shareholders, **24:3**
- Triggering events, **24:4**
  - amalgamation and export continuances, **24:5**
  - articles of amendment, **24:4**
  - compelled acquisitions of minority interests, **24:12**
  - compulsory acquisitions, **24:11**
  - going-private transactions, **24:13**
  - remedy for undisclosed unanimous shareholder agreement, **24:9**
  - sale of substantially all of corporation's property, **24:6**
  - statutory arrangements, **24:7**
  - voluntary extensions, **24:8**

## **DISSOLUTION**

- See also FUNDAMENTAL CHANGES

## INDEX

### **DISSOLUTION—Cont'd**

- Forfeiture of corporate property, **52:37**
- Introduction, **52:33**
- Legislative developments, **92:34**
- Liability of shareholders, **52:35**
- Preservation of actions against corporation, **52:38**
- Property undisposed of at dissolution, **52:36**
- Termination of existence of corporations not incorporated by articles or letters patent, **52:39**
- Voluntary dissolution, **52:34**

### **DIVIDENDS**

- Declaration of, **40:24**
- Director liability, **40:28**
- Double solvency tests, application of, **40:19**
- General, **40:18**
- Payment, **40:26**
- Record date, **40:25**
- Reserves, **40:23**
- Right to compel, **40:27**
- Types of
  - cash, **40:20**
  - in specie dividends, **40:22**
  - stock dividends, **40:21**

### **DUTIES OF DIRECTORS AND OFFICERS**

- See also CORPORATE GOVERNANCE
- Business judgment rule, **29:3**
  - lower courts, **29:8**
  - Supreme Court of Canada, **29:3**
    - BCE Inc., Re, **29:6**
    - Kerr v. Danier Leather, **29:5**
    - lessons from S.C.C. trilogy, **29:7**
    - People's Department Stores (1992) Inc., Re, **29:4**
- Contracts in which directors or officers are interested, **29:2**
- Corporate opportunity doctrine, **29:9**
- Duties generally, **29:1**
- Duty of care, **34:11**
- Duty of loyalty, **34:9**
- Duty to disclose conflicting interests, **34:10**
- Insider reporting, **29:10**
  - exemptions, **29:13**
  - insider reports, **29:10**

### **DUTIES OF DIRECTORS AND OFFICERS—Cont'd**

- Insider reporting, **29:10**—Cont'd
  - issuer filings, **29:11**
  - mutual funds, **29:12**
  - penalties, **29:14**

### **EARN-OUTS**

- See also ESCROWS; NEGOTIATION OF ASSET OR SHARE PURCHASE AGREEMENTS; PRICE ADJUSTMENTS; PURCHASE AGREEMENTS
- Acceleration, **83:36**
- Advantages, **83:27**
- Avoiding characterization as a security, **83:32**
- Background, **83:25**
- Cash payment terms, **83:31**
- Disadvantages, **83:27**
- Earn-out agreements, **83:28**
- Earn-out periods, **83:30**
- Earn-outs vs. reverse earn-outs, **83:26**
- Payment with shares in purchaser, **83:34**
- Performance targets, measurement, **83:29**
- Prepayment or buyout Option, **83:35**
- Purpose, **83:25**
- Restrictive operating covenants, **83:37**
- Security for earn-out payments, **83:33**

### **ENFORCEMENT OF LIABILITIES OF DIRECTORS AND OFFICERS**

- Class actions, **34:55**
- Compliance and restraining orders, **34:53**
- CRA assessments, **34:57**
- Derivative action, **34:51**
- Employment standards branch orders, **34:56**
- Oppression remedy, **34:52**
- OSC initiatives, **34:54**

### **EQUITY FINANCING**

- Debt obligations and trust indentures, see DEBT OBLIGATIONS
- Issue and ownership of shares, see SECURITIES OFFERINGS, REGULATION
- Secured transactions, see SECURED TRANSACTIONS
- Securities transfers, see SECURITIES TRANSFERS, PLEDGES AND TRANSMISSIONS

## ESCROWS

See also EARN-OUTS; NEGOTIATION OF ASSET OR SHARE PURCHASE AGREEMENTS; PRICE ADJUSTMENTS; PURCHASE AGREEMENTS

Agent fees, **83:15**  
 Amount, **83:17**  
 Distributions, **83:23**  
 Duration, **83:22**  
 Escrow funds, ownership of, **83:19**  
 General terms, **83:16**  
 Income Tax Act, s. 116, **83:24**  
 Investments, **83:21**  
 Purposes, **83:14**  
 Security interests, **83:20**  
 Selection of agent, **83:15**  
 Single vs. Separate Accounts, **83:18**

## EXCLUSIVITY AGREEMENTS

See also: LETTERS OF INTENT; NO-SHOPS  
 Enforceability, **80:32**  
 No-shops, exceptions in Public M&A transactions, **80:29**  
 Public M&A considerations, **80:26**  
     content, **80:27**  
     exceptions in Public M&A transactions, **80:28, 80:30, 80:31**  
 Purchaser, why sought, **80:23**  
 Use in private M&A transactions, **80:24**  
     content, **80:25**

## EXTRA-PROVINCIAL CORPORATE LICENSES AND REGISTRATIONS

See also AUDITS AND MEETINGS OF SHAREHOLDERS

Business names registration, extra-provincial  
     Alberta, **67:3 et seq.**  
     Northwest Territories, **72:21**  
     Nova Scotia, **73:14**  
     Nunavut, **72:21**  
     Prince Edward Island, **75:12**  
     Saskatchewan, **77:24**  
     Yukon, **78:20**  
 Canada Corporations operating in  
     Alberta, **67:18**  
     British Columbia, **68:17**  
     Manitoba, **69:16**  
     New Brunswick, **70:11**

## EXTRA-PROVINCIAL CORPORATE LICENSES AND REGISTRATIONS —Cont'd

Canada Corporations operating in  
     —Cont'd  
     Newfoundland and Labrador, **71:11**  
     Northwest Territories, **72:18**  
     Nova Scotia, **73:11**  
     Nunavut, **72:18**  
     Prince Edward Island, **75:10**  
     Quebec, **76:11**  
     Saskatchewan, **77:17**  
     Yukon, **78:18**

Corporations operating extra-provincially in  
     Alberta, **67:3**  
     British Columbia, **68:3, 68:6**  
     Newfoundland and Labrador, **71:3**  
     Northwest Territories, **72:3**  
     Nova Scotia, **73:3**  
     Nunavut, **72:3**  
     Prince Edward Island, **75:3**  
     Quebec, **76:3**  
     Saskatchewan, **77:3**  
     Yukon, **78:3**

Corporations other than Canada and Ontario corporations operating in  
     Alberta, **67:15 et seq., 67:19 et seq.**  
     New Brunswick, **70:12**  
     Newfoundland and Labrador, **71:12**  
     Northwest Territories, **72:19**  
     Nova Scotia, **73:12**  
     Nunavut, **72:19**  
     Ontario, **74:2**  
     Prince Edward Island, **75:11**  
     Quebec, **76:12**  
     Saskatchewan, **77:18, 77:19**  
     Yukon, **78:19**

Jurisdiction for regulating extra-provincial business entities  
     Alberta, **67:1**  
     Manitoba, **69:1**  
     New Brunswick, **70:1**  
     Newfoundland and Labrador, **71:1**  
     Northwest Territories, **72:1**  
     Nova Scotia, **73:1**  
     Nunavut, **72:1**  
     Ontario, **74:1**  
     Prince Edward Island, **75:1**  
     Quebec, **76:1**

**EXTRA-PROVINCIAL CORPORATE  
LICENSES AND REGISTRATIONS  
—Cont'd**

- Jurisdiction for regulating extra-provincial business entities—Cont'd
  - Saskatchewan, **77:1**
  - Yukon, **78:1**
- Limited Liability Companies operating extra-provincially
  - British Columbia, **68:18**
  - Northwest Territories, **72:19**
  - Nunavut, **72:19**
  - Ontario, **74:22**
  - Yukon, **78:19**
- Partnerships operating extra-provincially in
  - Alberta, **67:21**
  - Newfoundland and Labrador, **71:14**
  - Northwest Territories, **72:22**
  - Nova Scotia, **73:15**
  - Nunavut, **72:22**
  - Prince Edward Island, **75:13**
  - Quebec, **76:21**
  - Saskatchewan, **77:31**
  - Yukon, **78:23**

**EXTRA-PROVINCIAL ENTITIES,  
REGULATION OF**

- Application use of federal corporate names in the province, **66:7**
- Conclusion, **66:8 to 66:9**
  - future of extra-provincial registrations, **66:9**
  - present status, **66:8**
- Extra-provincial capacity, provincial and territorial corporations, **66:2**
- Extra-provincial registrations, **66:3**
- Federal corporations, registration requirements, **62:5 to 66:6**
  - constitutional dimensions, **66:5**
  - current exemptions, **66:6**
- Introduction, **66:1**
- Provincial laws not having extra-provincial application, **66:4**

**EXTRA-PROVINCIAL  
REGISTRATIONS, ALBERTA**

- Jurisdiction, **67:1**
- Registration in Alberta, BC, MB, SK corporations, **67:15 to 67:17**
  - filing annual returns, **67:17**
  - initial Registration, **67:16**

**EXTRA-PROVINCIAL  
REGISTRATIONS, ALBERTA  
—Cont'd**

- Registration in Alberta, BC, MB, SK corporations, **67:15 to 67:17**
  - Cont'd
  - NWPTA overarching principles, **67:15**
  - updating information, **67:17**
- Registration in Alberta, extra-provincial corporations, **67:3 to 67:7**
  - assumed names, **67:6**
  - corporate names, **67:5**
  - failing to register, consequences of, **67:4**
  - initial registration, **67:7**
  - initial registration, attorney, **67:7**
  - requirement to register, **67:3**
- Registration in Alberta, NB, NL, NW, NS, NU, ON, PE, QC, YK corporations, **67:8 to 67:14**
  - cancellation, **67:14**
  - initial registration, **67:8**
    - charter, **67:10**
    - forms and registration requirements, **67:8**
    - issue and effective date of registrar's certificate, **67:11**
    - NUANS report, **67:9**
  - ongoing maintenance, **67:12**
    - annual filings, **67:12**
    - notifiable changes, **67:13**
  - reinstatement, **67:14**
  - revocation, **67:14**
  - suspension, **67:14**
- Registration in Alberta, other, **67:18 to 67:29**
  - business names, **67:20**
  - Canada corporations, **67:18**
  - extra-provincial partnerships, **67:21**
  - foreign corporations, **67:19**
  - limited liability partnerships, **67:26**
    - cancellation of LLP registration, **67:28**
    - initial registration, **67:26**
    - limited liability companies and other extra-provincial entities, **67:29**
    - ongoing compliance requirements, **67:27**
  - limited partnerships, **67:23**
    - initial registration, **67:23**

**EXTRA-PROVINCIAL  
REGISTRATIONS, ALBERTA  
—Cont'd**

Registration in Alberta, other, **67:18 to 67:29**—Cont'd  
     limited partnerships, **67:23**—Cont'd  
     limited partnership certificate, **67:24, 67:25**  
         amendment, **67:24**  
         cancellation, **67:25**  
     ordinary partnerships, **67:22**  
     registry fees, **67:30**  
     Regulatory framework, **67:2**

**EXTRA-PROVINCIAL  
REGISTRATIONS, BRITISH  
COLUMBIA**

Extra-provincial regulatory framework, overview, **68:2**  
     Fees, **68:31**  
     Jurisdiction, **68:1**  
     Registration, **68:3, 68:6**  
         cancellation, extraprovincial company's Registration, **68:10**  
         consequences of failing to register, **68:5**  
         corporate name, and assumed name, **68:6**  
             appointment of attorney, **68:8**  
             name to be displayed, **68:7**  
             notification of changes, **68:9**  
             ongoing maintenance, **68:9**  
         key definitions, BCBCA, **68:3**  
         reinstatement, extraprovincial company's registration, **68:10**  
         requirement to register, carrying on business in BC, **68:4**  
         scope of legislation, BCBCA, **68:3**  
     Registration, AB, MB and SK Corporations, **68:14**  
         filing annual returns, **68:16**  
         initial registration, **68:15**  
         NWTPA overarching principles, **68:14**  
         updating information, **68:16**  
     Registration, CBCA Corporations, **68:17**  
     Registration, extraprovincial partnerships, **68:25**  
         general partnerships, **68:26**  
         limited liability partnership, **68:28**  
         cancellation of LLP registration, **68:30**

**EXTRA-PROVINCIAL  
REGISTRATIONS, BRITISH  
COLUMBIA—Cont'd**

Registration, extraprovincial partnerships, **68:25**—Cont'd  
     limited liability partnership, **68:28**—Cont'd  
         initial registration, **68:28**  
         ongoing compliance requirements, **68:29**  
     limited partnerships, **68:27**  
     Registration, LLCs, **68:18**  
     Registration, NB, NL, NT, NS, NU, ON, PE, QC and YK corporations, **68:12**  
         annual Reports, **68:12**  
         amalgamation, **68:13**  
     Registration, NB, NL, NT, NS, NU, ON, PE, QC and YK extraprovincial companies, **68:11**  
         procedure for registering, **68:11**  
     Registration, non-Canadian entities, **68:18**  
     Registration, non-share corporations, **68:19**  
         annual report, **68:22**  
         applicable legislation, **68:19**  
         appointment of attorney, **68:21**  
         cancellation of registration, **68:23**  
         key definitions, Society Act, **68:19**  
         notification of changes, **68:22**  
         registration, **68:20**  
     Registration, proprietorship business names, **68:24**

**EXTRA-PROVINCIAL  
REGISTRATIONS, MANITOBA**

Extra-provincial registration fees, **69:26**  
     Extra-provincial regulatory framework, Manitoba, overview, **69:2**  
     Jurisdiction, **69:1**  
     Other registrations, **69:16 to 69:26**  
         federal Corporations, **69:16**  
         LLCs, **69:17**  
         non-Canadian entities, **69:17**  
         partnerships, extra-provincial registration, **69:20**  
             limited liability partnerships, initial registration, **69:23**  
             cancellation, limited liability partnership registration, **69:25**  
             ongoing compliance requirements, **69:24**



**EXTRA-PROVINCIAL  
REGISTRATIONS, MANITOBA  
—Cont'd**

- Other registrations, **69:16 to 69:26**
  - Cont'd
  - partnerships, extra-provincial registration, **69:20**—Cont'd
    - limited partnerships, **69:22**
    - ordinary partnerships, **69:21**
  - proprietorship business names, **69:18**
  - regulation, business names, **69:19**
  - regulation, partnership names, **69:19**
- Registration, AB, BC and SK business corporations in Manitoba, **69:13 to 69:15**
  - exemption, filing annual returns, **69:15**
  - initial registration, **69:14**
  - NWTPA overarching principles, **69:13**
  - updating information, **69:15**
- Registration, extra-provincial bodies corporate, **69:3 to 69:7**
  - consequences of failing to register, **69:4**
  - corporate names, **69:5**
  - real property, **69:7**
  - requirement to register if carrying on business in Manitoba, **69:3**
  - service of process, **69:6**
- Registration, extra-provincial bodies corporate other than AB, BC or SK business corporations, **69:8 to 69:12**
  - annual Returns, **69:10**
  - cancellation of rights, **69:12**
  - corporate changes, **69:11**
  - power of attorney, appointment of, Manitoba resident, **69:9**
  - registration requirements, **69:8**
  - restoration of registration, **69:12**

**EXTRA-PROVINCIAL  
REGISTRATIONS, NEW  
BRUNSWICK**

- Extra-provincial regulatory framework, overview, **70:2**
- Jurisdiction, **70:1**
- Other registrations, **70:11 to 70:19**
  - extra-provincial registration, federal corporations, **70:11**
  - extra-provincial registration, partnerships, **70:15**
  - limited liability partnerships, **70:18**
  - limited partnerships, **70:17**

**EXTRA-PROVINCIAL  
REGISTRATIONS, NEW  
BRUNSWICK—Cont'd**

- Other registrations, **70:11 to 70:19**
  - Cont'd
  - extra-provincial registration, partnerships, **70:15**—Cont'd
    - ordinary partnerships, **70:16**
  - partnership names, **70:14**
  - registration, LLCs, **70:12**
  - registration, non-Canadian entities, **70:12**
  - registration, proprietorship business names, **70:13**
  - regulation of business names, **70:14**
- Registration fees, **70:19**
- Registration of extra-provincial corporations, **70:3 to 70:10**
  - cancellation of registration and reinstatement, **70:10**
  - consequences of failing to register, **70:4**
  - corporate names, **70:5**
  - ongoing maintenance, **70:8**
    - annual returns, **70:8**
    - corporate changes, **70:9**
  - registration, **70:6**
    - attorney for service, **70:7**
    - initial registration requirements, **70:6**
  - requirement to register if carrying on business in New Brunswick, **70:3**

**EXTRA-PROVINCIAL  
REGISTRATIONS,  
NEWFOUNDLAND AND  
LABRADOR**

- Extra-Provincial regulatory framework, overview, **71:2**
- Jurisdiction, **71:1**
- Other registrations, **71:11 to 71:20**
  - business names, registration of, **71:13**
  - federal companies, extra-provincial, **71:11**
  - LLCs, extra-provincial, **71:12**
  - other non-Canadian entities, extra-provincial registration, **71:12**
  - partnerships, extra-provincial, **71:14**
    - limited liability partnerships, **71:17**
    - cancellation of registration, **71:19**
    - initial registration, **71:17**

**EXTRA-PROVINCIAL  
REGISTRATIONS,  
NEWFOUNDLAND AND  
LABRADOR—Cont'd**

Other registrations, **71:11 to 71:20**

—Cont'd

partnerships, extra-provincial, **71:14**

—Cont'd

limited liability partnerships, **71:17**

—Cont'd

ongoing compliance requirements,  
**71:18**

limited partnerships, **71:16**

ordinary partnerships, **71:15**

Registration, extra-provincial companies,  
**71:3 to 71:10**

cancellation, registration, **71:10**

corporate names, **71:5**

failing to register, consequences, **71:4**

ongoing maintenance, **71:8**

annual returns, **71:8**

corporate changes, **71:9**

registration, **71:6**

initial registration requirements, **71:6**

power of attorney, **71:7**

requirement to register if carrying on  
business in Newfoundland and  
Labrador, **71:3**

revival, registration, **71:10**

Registration fees, **71:20**

**EXTRA-PROVINCIAL  
REGISTRATIONS, NOVA SCOTIA**

Fees, **73:21**

Framework, **73:2**

Jurisdiction, **73:1**

Registration, corporations, **73:3**

corporate names, **73:5**

failing to register, consequences, **73:4**

registration, **73:6**

annual statement, **73:8**

cancellation or registration, **73:10**

corporate changes, **73:9**

initial registration requirements, **73:6**

recognized agent, **73:7**

requirement to register, **73:3**

Registration, dominion corporations,  
**73:11**

Registration, limited liability companies,  
**73:13**

**EXTRA-PROVINCIAL  
REGISTRATIONS, NOVA SCOTIA  
—Cont'd**

Registration, other foreign corporations,  
**73:12**

Registration, other non-Canadian entities,  
**73:13**

Registration, partnerships, **73:15**

limited liability partnerships, **73:18**

cancellation, **73:20**

initial registration, **73:18**

ongoing compliance requirements,  
**73:19**

limited partnerships, **73:17**

ordinary partnerships, **73:16**

**EXTRA-PROVINCIAL  
REGISTRATIONS, ONTARIO**

Business Names Act, **74:21 to 74:22**

application to non-Ontario corpora-  
tions, **74:21**

limited liability companies, **74:22**

Corporations Information Act, **74:3 to  
74:10**

administration, **74:9**

annual return, **74:5**

enforcement and restriction on ability  
to sue in Ontario, **74:10**

exemptions to filing requirements,  
**73:A3**

filing requirements, **74:3**

initial return, **74:4**

notice of change, **74:6**

notices and access to corporate infor-  
mation, **74:7**

public access, **74:9**

special filings, **74:8**

verification of returns, **74:7**

Extra-Provincial Corporations Act, **74:11  
to 73:A20**

amended licence, **74:16**

application for licence, **74:16**

foreign corporation interests in land,  
**74:20**

inability of foreign corporation to  
maintain an action, **74:19**

licence requirement, **74:13**

agent for service, **74:17**

carrying on business in Ontario,  
**74:14**

exemptions, **74:15**

**EXTRA-PROVINCIAL REGISTRATIONS, ONTARIO**  
**—Cont'd**  
 Extra-Provincial Corporations Act, **74:11**  
     to **73:A20**—Cont'd  
     name requirements, **74:12**  
     overview, **74:11**  
     penalty, non-compliance, **74:18**  
     termination of licence, **74:16**  
 Jurisdiction, **74:1**  
 Registration Fees, **74:23**  
 Regulatory framework, overview of, **74:2**

**EXTRA-PROVINCIAL REGISTRATIONS, PRINCE EDWARD ISLAND**  
 Business names, registration, **75:12**  
 Cancellation, **75:9**  
 Fees, **75:22**  
 Jurisdiction, **75:1**  
 Ongoing maintenance, **75:7**  
     annual renewal, **75:7**  
     corporate changes, **75:8**  
 Overview of framework, **75:2**  
 Registration, Canada corporations, **75:10**  
 Registration, extra-provincial corporations, **75:3**  
     corporate names, **75:5**  
     failing to register, consequences, **75:4**  
     initial registration requirements, **75:6**  
 Registration, limited liability companies, **75:11**  
 Registration, other extra-provincial corporations, **75:11**  
 Registration, partnerships, **75:13**  
     general partnerships, **75:14**  
     LLPs, **75:21**  
     LPs, **75:15**  
         cancellation, **75:19**  
         conflict of laws, **75:20**  
         failing to file, consequences, **75:16**  
         initial filing of declaration, **75:17**  
         ongoing compliance requirements, **75:18**  
         when filing is required, **75:15**  
 Reinstatement, **75:9**

**EXTRA-PROVINCIAL REGISTRATIONS, QUEBEC**  
 Jurisdiction, **76:1**  
 Overview, **76:2**

**EXTRA-PROVINCIAL REGISTRATIONS, QUEBEC**  
**—Cont'd**  
 Registration, extra-provincial corporations, **76:3**  
     failing to register, consequences, **76:4**  
     name requirements, **76:5**  
     registration, **76:6**  
         annual registration fee, **76:8**  
         annual updating declaration, **76:8**  
         attorney for service, **76:7**  
         changes, **76:9**  
         initial registration declaration, **76:6**  
         requirement to register, **76:3**  
 Registration, federal corporations, **76:11**  
 Registration, other extra-provincial corporations, **76:12**  
 Registration, partnerships, **76:21**  
     failing to register, consequences, **76:22**  
     name requirements, **76:23**  
     registration, **76:24**  
         annual registration fee, **76:26**  
         annual updating declaration, **76:26**  
         attorney for service, **76:25**  
         cancellation of registration and revocation, **76:28**  
         changes, **76:27**  
         initial registration declaration, **76:24**  
         requirement to register, **76:21**  
 Registration, sole proprietorships, **76:13**  
     failing to register, consequences, **76:14**  
     name requirements, **76:15**  
     registration, **76:16**  
         annual registration fee, **76:18**  
         annual updating declaration, **76:18**  
         attorney for service, **76:17**  
         cancellation of registration and revocation, **76:20**  
         changes, **76:19**  
         requirement to register, **76:13**

**EXTRAPROVINCIAL REGISTRATIONS, SASKATCHEWAN**  
 Fees, **77:44**  
 Jurisdiction, **77:1**  
 Overview of framework, **77:2**  
 Registration, extraprovincial corporations, **77:3**  
     Alberta, British Columbia, Manitoba, Quebec and Canada business

**EXTRAPROVINCIAL  
REGISTRATIONS,  
SASKATCHEWAN—Cont'd**

- Registration, extraprovincial corporations, **77:3**—Cont'd
  - corporations, **77:14**
  - annual returns, exemption from filing, **77:16**
  - initial registration, **77:15**
  - overarching principles, NWTPA, **77:14**
  - updating information, **77:16**
- alternative names, **77:5**
- corporate names, **77:5**
- failing to register, consequences of, **77:4**
- non-Alberta, British Columbia, Manitoba, Quebec or Canada business corporations, **77:6**
- initial registration, **77:6**
  - application for registration, **77:6**
  - power of attorney, **77:7**
  - registration, **77:8**
- ongoing maintenance, **77:9**
  - annual returns, **77:9**
  - change of attorney, **77:11**
  - change of attorney's address, **77:11**
  - changes to articles, **77:10**
  - notice of change, **77:12**
- restoration of registration, **77:13**
- termination of registration, **77:13**
- requirement to register, **77:3**
- Registration, partnerships, **77:31**
  - limited liability partnerships, **77:41**
    - cancellation, **77:43**
    - initial registration, **77:41**
    - ongoing compliance, **77:42**
  - limited partnerships, **77:35**
    - cancellation, **77:40**
  - failing to register, consequences of, **77:36**
  - initial registration, **77:37**
  - notice of change, **77:39**
  - power of attorney, **77:38**
  - registration requirement, **77:35**
- ordinary partnerships, **77:32**
  - change in membership, **77:33**
  - dissolution, **77:34**
  - registration requirements, **77:32**

**EXTRAPROVINCIAL  
REGISTRATIONS,  
SASKATCHEWAN—Cont'd**

- Registrations, other entities
  - business names, **77:24**
    - application for registration, **77:25**
    - cancellation, **77:30**
    - mandatory use of name, **77:29**
    - name regulation, **77:27**
    - power of attorney, **77:26**
    - renewal, **77:28**
    - scope of registration requirement, **77:24**
  - Canada corporations, **77:17**
  - foreign corporations, **77:18**
  - limited liability companies, **77:18**
  - non-Canadian entities, **77:18**
  - non-share corporations, **77:19**
    - annual report, **77:22**
    - applicable legislation, **77:19**
    - cancellation, **77:23**
    - notification of changes, **77:22**
    - power of attorney, **77:21**
    - registration, **77:20**
- EXTRA-TERRITORIAL  
REGISTRATIONS, NORTHWEST  
TERRITORIES AND NUNAVUT**
- Fees, **72:35**
- Jurisdiction, **72:1**
- Overview, **72:2**
- Proprietorship business names, Northwest Territories, **72:20**
- Proprietorship business names, Nunavut, **72:29**
- Registration, Canada corporations, **72:18**
- Registration, extra-territorial corporations, **72:3**
  - cancellation and reinstatement, **72:15**
    - cancellation by Registrar, **72:16**
    - cancellation by corporation, **72:15**
    - reinstatement, **72:17**
  - corporate names (and assumed names), **72:5**
  - failing to register, consequences, **72:4**
  - ongoing maintenance, **72:11**
    - amalgamation, **72:14**
    - annual filings, **72:11**
    - change of registered office address, **72:13**
    - changes to charter documents, **72:12**

**EXTRA-TERRITORIAL**

**REGISTRATIONS, NORTHWEST TERRITORIES AND NUNAVUT**

**—Cont'd**

- Registration, extra-territorial corporations, **72:3**—Cont'd
  - registration, initial, **72:6**
    - charter, **72:8**
    - forms and requirements, **72:6**
    - NUANS search report, **72:7**
    - registered office in territory, **72:10**
    - Registrar's certificate, issue and effective date, **72:9**
    - requirement to register, **72:3**
- Registration, limited liability companies, **72:19**
- Registration, other extra-territorial corporations, **72:19**
- Registration, partnerships, in Northwest Territories, **72:22**
  - limited liability partnerships, **72:26**
    - cancellation, **72:28**
    - initial registration, **72:26**
    - ongoing compliance requirements, **72:27**
  - limited partnerships, **72:24**
    - amendment, **72:25**
    - cancellation, **72:25**
    - initial registration, **72:24**
  - ordinary partnerships, **72:23**
- Registration, partnerships, in Nunavut
  - limited liability partnerships, **72:26**
    - cancellation, **72:28**
    - initial registration, **72:26**
    - ongoing compliance, **72:27**
  - limited partnerships, **72:32**
    - amendment, **72:33**
    - cancellation, **72:33**
    - initial registration, **72:32**
  - ordinary partnerships, **72:31**

**EXTRA-TERRITORIAL**

**REGISTRATIONS, YUKON**

- Fees, **78:30**
- Jurisdiction, **78:1**
- Overview of framework, **78:2**
- Registration, extra-territorial corporations, **78:3**
  - assumed names, **78:5**
  - cancellation and reinstatement, **78:15**
  - by registrar, **78:16**

**EXTRA-TERRITORIAL**

**REGISTRATIONS, YUKON**

**—Cont'd**

- Registration, extra-territorial corporations, **78:3**—Cont'd
  - cancellation and reinstatement, **78:15**
    - Cont'd
    - cy corporation, **78:15**
    - reinstatement, **78:17**
  - corporate names, **78:5**
  - failing to register, consequences of, **78:4**
  - initial Registration, **78:6**
    - alternative attorney, **78:9**
    - attorney for service, **78:9**
    - charter, **78:8**
    - corporate name and NUANS report, **78:7**
    - forms, **78:6**
    - registrar's certificate, issue and effective date, **78:10**
    - registration requirements, **78:6**
  - ongoing maintenance, **78:11**
    - amalgamation, **78:14**
    - annual filings, **78:11**
    - change of alternative attorney, **78:13**
    - change of attorney for service, **78:13**
    - changes to charter, **78:12**
    - requirement to register, **78:3**
- Registration, other entities, **78:18**
  - business names, **78:20**
    - declaration of business name, **78:22**
    - prohibited names, **78:21**
    - requirement to register, **78:20**
  - Canada corporations, **78:18**
  - limited liability companies, **78:19**
  - other entities, **78:19**
  - partnerships, **78:23**
    - general partnerships, **78:24**
      - declaration, **78:25**
      - requirement to register, **78:24**
    - limited liability partnerships, **78:27**
      - cancellation, **78:29**
      - initial registration, **78:27**
      - ongoing compliance, **78:28**
    - limited partnerships, **78:26**
    - overview, **78:23**

**FILINGS**

- See also AUDITS AND MEETINGS OF SHAREHOLDERS

## **FILINGS—Cont'd**

- Business names, **64:8 to 64:13**
  - corporations, **64:9**
  - limited liability companies, **64:12**
  - name restrictions, **64:13**
  - partnerships, **64:10**
  - sole proprietors, **64:11**
- Corporations Information Act, **64:2 to 64:7**
  - access to information, **64:5**
  - administrative matters, **64:7**
  - annual returns, **64:3**
  - notices of change, **64:4**
  - special filings, **64:6**
  - verification of information, **64:5**
- Corporations Returns Act, **64:16, 65:1 et seq.**
  - application, **65:2**
  - enforcement and offences, **65:8**
  - exemptions, **65:3**
  - general, **65:9**
  - returns, **65:4**
    - financial information, **65:5**
    - general information, **65:7**
    - ownership returns, **65:4**
    - transfer of technology returns, **65:6**
- Other, **64:18**
- Returns generally, **64:1**
- Securities Act, **64:17**
- Tax, **64:15**

## **FINANCIAL STATEMENTS**

- Analysis of
  - balance sheet ratios, **58:30**
  - earnings statement ratios, **58:31**
- Audited financial statements,
  - shareholder's right to, **58:3**
- Audit inquiries and responses
  - claim and possible claim, definition, **58:22**
  - general, **58:20**
  - inquiry letter, **58:27**
  - joint policy statement, **58:21**
  - legal professional privilege, maintaining, **58:23**
  - management, law firm, and auditor, role of, **58:26**
  - response letter, **58:28**
  - response letters, **58:25**
  - solicitor client privilege, **58:24**
- Board approval and reliance, **58:6**

## **FINANCIAL STATEMENTS—Cont'd**

- Contents of, non-offering corporations, **58:5**
- Interim financial report, components of, **58:15**
- Interim financial statements (corporate law), **58:14**
- Non-offering corporations, **58:1**
- Offering corporations
  - annual financial statements (NI 51-102), **58:9**
  - financial disclosure (OSA), **58:8**
  - requirements (corporate law), **58:7**
- Offering vs non-offering corporations, **58:2**
- Subsidiaries, **58:4**

## **FINANCING OPTIONS**

- Assumptions
  - generally, **44:19**
- Conclusion, **44:59**
- Date and addresses
  - addresses, **44:5**
  - date, **44:4**
- Introduction, **44:1**
- Negotiation principles, **44:3**
- Opinions
  - carry on business, qualification to, **44:23**
  - corporate organizations, **44:22**
  - corporate power and capacity, **44:25**
  - corporate status, **44:21**
  - creation of a security interest, **44:36**
  - due authorization, **44:26**
  - enforceability, **44:35**
  - execution and delivery, **44:27 to 44:29**
  - good standing, **44:24**
  - introduction, **44:20**
  - no breach of default, **44:30 to 44:33**
  - perfection by registration, **44:37**
  - regulatory approvals, **44:34**
- Pending litigation confirmation
  - generally, **44:38**
- Practice limitation
  - generally, **44:18**
- Purpose, **44:2**
- Qualifications
  - assignment of federal crown debts, **44:48**
  - bankruptcy and insolvency, **44:40**
  - criminal rate of interest, **44:52**



## INDEX

### FINANCING OPTIONS—Cont'd

#### Qualifications—Cont'd

Currency Act (Canada), **44:55**

guarantor's defences, general waiver, **44:42**

indemnities, **44:43**

intellectual property, **44:49**

Interest Act (Canada)

annual rate of interest, **44:53**

loans secured by real property, **44:54**

introduction, **44:39**

penalties, **44:51**

proceeds, **44:45**

rarely required, **44:56**

real property and fixtures, **44:47**

reasonable time to pay, **44:44**

receivers as agents, **44:50**

remedies, equitable principles, **44:41**

special types of property, **44:46**

Reliance and signature

reliance, **44:57**

signature, **44:58**

Retainer and nature of transaction, **44:6 to 44:8**

Scope of examination

investigations, searches and registrations, **44:10 to 44:13**

knowledge qualification, **44:15**

opinion documents, **44:9**

public searches, **44:17**

registrations, **44:16**

Standard language, **44:3**

### FORMATION

Incorporation, see INCORPORATION

Names, see NAMES

Organization, see ORGANIZATION

### FUNDAMENTAL CHANGES

Amalgamations, see AMALGAMATIONS

Amendments, see AMENDMENTS

Arrangements, see ARRANGEMENTS

Continuances, see CONTINUANCES

Dissolution, see DISSOLUTION

Going-private transactions, see GOING-PRIVATE TRANSACTIONS

Liquidation, see LIQUIDATION

Reorganizations, see REORGANIZATIONS

Restated articles, **47:16**

### FUNDAMENTAL CHANGES—Cont'd

Revival, **52:40**

### GENERAL PARTNERSHIPS

See also NON-CORPORATE

ORGANIZATIONS

Choosing to Become a British Columbia

LLP, **3:38**

availability filings and restrictions, **3:40**

LLP liability regime under the BC Act, **3:39**

Dissolution, **3:16**

court ordered dissolution, **3:18**

dissolution triggering events, **3:17**

distribution of partnership property and liability for deficiency, **3:23, 3:24**

procedure, **3:22**

External relations and liability of partners

to third parties, **3:8**

agency of partners, **3:8**

firm liability for wrongs, **3:9**

partner liability regime, **3:10**

Formation and registration requirements, **3:25**

General, **3:41**

partnership authorization, **3:45**

scope of examination, **3:42**

Joint venture and co-ownership, **3:35**

contractual joint venture, **3:35**

co-ownership, **3:36**

some key tax factors in choosing

between a partnership and either a JV or co-ownership, **3:37**

Nature of partnership, **3:1**

indicia of partnership, **3:6**

meaning of "partnership," **3:1**

sales of goodwill providing for share of profits, **3:7**

subordination of certain loan agreements, **3:7**

Ownership of land, **3:15**

Registration requirements, **3:25**

Relations among partners inter se, **3:11**

default rules, **3:11**

fidelity, **3:13**

limited rights of assignees, **3:14**

partnership property, **3:12**

Selected provisions of partnership agreements, **3:26**

allocation of net profits and losses, **3:32**

capital and current accounts, **3:27**

**GENERAL PARTNERSHIPS—Cont'd**

- Selected provisions of partnership agreements, **3:26**—Cont'd
  - dispute resolution, **3:34**
  - draws, **3:33**
  - financial period, **3:30**
  - financial statements, **3:31**
- Transaction opinions involving general partnerships or LLPs, **3:41**
  - enforceability, **3:47**
  - execution and delivery, **3:46**
  - formation and existence of partnership, **3:43**
  - partner power and capacity, **3:44**

**GOING-PRIVATE TRANSACTIONS**

- See also **FUNDAMENTAL CHANGES**
- Background, **51:1**
- Regulation of
  - judicial, **51:3**
  - section 190 of OBCA, **51:2**

**INCORPORATION**

- See also **FORMATION**
- Abolition of constructive notice doctrine, **17:29**
- Corporate capacity and powers, **17:26**
  - capacity of OBCA corporation, **17:27**
  - restricted businesses or powers, **17:28**
  - ultra vires doctrine, **17:26**
- Incorporation under OBCA, **17:8**
  - application of Act, **17:8**
  - articles of incorporation, **17:14**
  - corporate name, **17:14**
  - corporation number, **17:12**
  - documentary requirements, **17:10**
  - fees, **17:13**
  - incorporation date, **17:11**
  - incorporation procedure, **17:9**
  - incorporators and first directors, **17:17**
  - mandatory provisions, **17:18**
  - optional provisions, **17:19**
  - registered office, **17:15**
  - share capital, **17:16**
- Indoor management rule, **17:30**
- Methods of incorporation, **17:3**
  - filing articles of incorporation, **17:3**
  - letters patent, **17:5**
  - registration of memorandum of association, **17:4**
  - special act, **17:6**

**INCORPORATION—Cont'd**

- Methods of incorporation, differences in, **17:7**
- Pre-incorporation checklist, **17:1**
- Pre-incorporation contracts, **17:20**
  - case law on reformed pre-incorporation contract regime, **17:22**
  - corporation's adoption of contract, **17:23**
  - judicial apportionment of liability, **17:25**
  - OBCA solution, **17:21**
  - problem at common law, **17:20**
  - promoter's express disclaimer, **17:24**
  - promoter's personal liability, **17:22**

**INSIDERS, LIABILITY OF**

- See **LIABILITY OF INSIDERS**

**INSIDER TRADING**

- See **LIABILITY OF INSIDERS**

**INSOLVENCY LAW, RESTRUCTURING COMPANIES UNDER**

- See **RESTRUCTURING COMPANIES UNDER INSOLVENCY LAW**

**INSOLVENT CORPORATIONS**

- Arrangements, **53:10**
  - generally, **53:51**
  - adjunct or stand-alone, **53:10**
  - appeal of approval, **53:50**
  - approving plan of, **53:23**
  - challenging plan, **53:46**
  - compromise of debt obligations and other creditor claims, **53:13**
  - fairness hearing, **53:39**
  - interim order, **53:24**
  - meaning of, **53:14**
  - prerequisites, **53:15**
  - reorganizations vs arrangements, **53:8**
  - rights subject to, **53:1**
  - section 186, **53:8**
  - stakeholder approval of, **53:31**
- Reorganizations, **53:4**
  - arrangements vs reorganizations, **53:8**
  - case law, **53:6**
  - gap-filling nature of, **53:5**
  - scope of, **53:4**
  - section 186, **53:8**
- Restated capital structure, **53:3**

## INVESTIGATION

See also SHAREHOLDER REMEDIES  
Background, **27:6**  
Oppression remedy and, **26:40**  
Overview, **27:5**  
Statutory provisions, **27:7**  
Usage, **27:8**

## INVESTMENT PROPERTY

See also SECURITIES TRANSFERS,  
PLEDGES AND TRANSMISSIONS  
Futures accounts and contracts  
generally, **43:26**  
Pledge of securities (direct holding  
system)  
attachment, **77:2**  
buyers of securities, cut-off rule, **76:11**  
perfection, **77:3**  
pledgee as purchaser and protected  
purchaser, **76:3**  
priority, **76:10**  
scope, **76:2**  
Pledge of securities entitlements (indirect  
holding system)  
attachment, **76:4**  
cut-off rule for securities entitlements,  
**76:11**  
perfection, **77:3**  
pledge, **77:1**  
priority, **77:4**  
scope, **76:12**  
securities account control agreements,  
**77:6 to 77:13**  
Securities pledge agreements  
attachment, **43:27**  
default and enforcement, **43:32**  
priority, **43:31**  
scope of pledged collateral, **43:29**  
secured obligations, **43:30**  
toxic securities, potentially, **43:33 to**  
**43:35**  
transactional settings, **43:28**  
Security in, **76:1**

## JURISDICTION FOR REGULATING EXTRA-PROVINCIAL BUSINESS ENTITIES

Alberta, **67:1**  
Manitoba, **69:1**  
New Brunswick, **70:1**  
Newfoundland and Labrador, **71:1**

## JURISDICTION FOR REGULATING EXTRA-PROVINCIAL BUSINESS ENTITIES—Cont'd

Northwest Territories, **72:1**  
Nova Scotia, **73:1**  
Nunavut, **72:1**  
Ontario, **74:1**  
Prince Edward Island, **75:1**  
Quebec, **76:1**  
Saskatchewan, **77:1**  
Yukon, **78:1**

## LETTERS OF INTENT

See also: EXCLUSIVITY AGREE-  
MENTS; NO-SHOPS  
Advantages, **80:3**  
Content, **80:6**  
Disadvantages, **80:4**  
Exclusivity agreements, nature of, **80:22**  
see Exclusivity Agreements  
General Format, **80:2**  
Negotiating guidelines, **80:7**  
Remedies for breach, **80:21**  
Reporting issuer disclosure obligations,  
**80:8**  
Strategic considerations, **80:5**  
Unintended enforceability of business  
terms, **80:9 to 80:20**  
common law duty to negotiate in good  
faith, **80:18**  
contemplation of a definitive agree-  
ment, **80:14**  
express contractual obligation to  
negotiate in good faith, **80:19**  
gap-filling, **80:17**  
intention to form contractual relations,  
**80:11**  
language of LOI, **80:15**  
legal principles, **80:10**  
presumption to be bound, **80:12**  
Quebec law, **80:20**  
status of essential terms, **80:13**  
subsequent conduct of parties, **80:16**

## LIABILITIES OF DIRECTORS TO EMPLOYEES

Business Corporations Act (Ontario), sec-  
tion 131, **31:6**  
class certification, **31:9**  
conditions precedent to liability, **31:10**  
employee v. independent contractor,  
**31:8**

## **LIABILITIES OF DIRECTORS TO EMPLOYEES—Cont'd**

Business Corporations Act (Ontario), section 131, **31:6**—Cont'd  
 oppression remedies, **31:13**  
 overview, **31:6**  
 resignation, **31:11**  
 scope, **31:7**  
 Canada Business Corporations Act, s. 119, **31:12**  
 oppression remedies, **31:13**  
 Canada Labour Code, **31:26**  
 conditions precedent to liability, **31:31**  
 covered employees, **31:27**  
 enforcement, **31:36**  
 good faith reliance defence, **31:35**  
 holiday pay, **31:30**  
 liability, extent of, **31:28**  
 right to indemnity and contribution, **31:33**  
 stale claims, **31:32**  
 vacation pay, **31:29**  
 Director, definition of, **31:4**  
 Employment Standards Act, 2000 (Ontario), **31:14**  
 application of, **31:14**  
 conditions precedent to liability, **31:20**  
 covered employees, **31:15**  
 director, extended meaning, **31:19**  
 enforcement, **31:25**  
 excluded corporate employees, **31:16**  
 excluded corporate employers, **31:16**  
 good faith reliance defence, **31:24**  
 liability, extent of, **31:17**  
 limitation period, **31:21**  
 right to indemnity and contribution, **31:22**  
 vacation pay, **31:18**  
 Incorporation jurisdiction, significance of, **31:2**  
 Introduction, **31:1**  
 Overview, **31:5**  
 Place of business, **31:3**  
 Priority claims, **31:37**  
 pension, **31:41**  
 pre-bankruptcy liens, **31:46**  
 preferred claims, **31:44**  
 unpaid wages, **31:38**  
 Wage Earner Protection Program Act (Canada), **31:50**

## **LIABILITY INSURANCE**

See also **PROTECTING DIRECTORS AND OFFICERS FROM LIABILITY**

Disclosure, **34:82**

Limitations and exclusions  
 caps/policy limits, **34:76**  
 co-insurance, **34:78**  
 coverage period, **34:79**  
 deductibles, **34:77**  
 exclusions, **34:80**

Procedural requirements, **34:81**

Statutory authorization, **34:74**

## **LIABILITY OF DIRECTORS FOR STATUTORY REMITTANCES**

Air Travellers Security Charge Act, **32:10**

Canada Pension Plan Act, **32:7**

Deemed trusts, **32:43**

Air travellers Security Charge Act, **32:48**

Canada Pension Plan Act, **32:45**

Employment Insurance Act, **32:46**

goods and services tax, **32:47**

harmonized sales tax, **32:47**

Income Tax Act, **32:44**

Softwood Lumber Export Charge Act, 2006, **32:49**

Director, definition, **32:12**

deemed directors, **32:13**

de facto directors, **32:13**

de jure director, **32:12**

Due diligence defence, **32:15**

standard of care, **32:16, 32:20**

successful arguments, **32:28**

amounts determined after reassessment, **32:28**

dishonesty perpetuated on director, **32:32**

dominance situations, **32:31**

intervening events, **32:33**

misinformation, **32:29**

not in control of remittance payments, **32:30**

reasonable belief in overpayment, **32:34**

serious health issue, **32:35**

unawareness, **32:29**

summary, **32:42**

**LIABILITY OF DIRECTORS FOR  
STATUTORY REMITTANCES**

**—Cont'd**

- Due diligence defence, **32:15**—Cont'd
  - unsuccessful arguments, **32:36**
    - abdication of director's oversight responsibility, **32:36**
    - inexperience, **32:37**
    - personal shortcomings, **32:37**
    - subjective belief in positive credit balance, **32:38**
    - subjective belief one is not director, **32:39**
- Employment Insurance Act, **32:8**
- Excise Tax Act, **32:9**
- Goods and services tax, **32:9**
- Harmonized sales tax, **32:9**
- Income Tax Act, **32:2**
  - conditions for liability, **32:6**
  - defences, **32:6**
  - non-resident withholding taxes, **32:4**
  - patronage dividends, **32:5**
  - payroll taxes, **32:3**
- Introduction, **32:1**
- Limitation period defence, **32:14**
- Softwood Lumber Export Charge Act, 2006, **32:11**

**LIABILITY OF INSIDERS**

- Business Corporations Act (Ontario), Part X, **30:11**
  - breach of fiduciary duty, **30:12**
  - insider liability, **30:11**
    - "benefit or advantage," **30:11**
    - closed corporation, **30:11**
    - "direct loss," **30:11**
    - "exercise of reasonable diligence," **30:11**
    - "generally known," **30:11**
    - insiders, definition, **30:11**
    - "makes use of," **30:11**
    - "materially," **30:11**
    - measurement of damages, **30:11**
    - non-offering corporation, **30:11**
    - "specific confidential information," **30:11**
    - "transaction in a security," **30:11**
    - oppression remedy, **30:12**
- Canadian Business Corporations Act
  - breach of fiduciary duty, Part X, **30:14**
  - insider trading, Part XI, **30:13**

**LIABILITY OF INSIDERS—Cont'd**

- Canadian Business Corporations Act
  - Cont'd
    - oppression remedy, **30:14**
- Criminal Code, **30:2**
- Overview, **30:1**
- Securities Act (Ontario), **30:3**
  - civil liability, **30:6**
    - accounting to insurer, **30:8**
    - damages, **30:10**
    - defences, **30:9**
    - exemptions, **30:9**
    - tipper, definition of, **30:7**
    - tipping to opposite party, **30:7**
    - trading to opposite party, **30:6**
  - criminal liability, **30:5**
  - defences, **30:4**
  - exemptions, **30:4**
  - prohibitions, **30:3**

**LIMITED LIABILITY COMPANIES**

**OPERATING**

**EXTRA-PROVINCIAL**

- British Columbia, **68:18**
- Northwest Territories, **72:19**
- Nunavut, **72:19**
- Ontario, **74:22**
- Yukon, **78:19**

**LIMITED LIABILITY COMPANY**

- Generally, **1:10**
  - See also UNINCORPORATED BUSINESS ORGANIZATIONS

**LIMITED LIABILITY PARTNERSHIPS**

- See also GENERAL PARTNERSHIPS
- British Columbia LLP, **3:34**
  - availability to professional firms and others, **3:34**
  - filings and restrictions, **3:36**
  - LLP liability regime under the BC Act, **3:35**
- Comparison of LLPs vs. professional corporations, **4:28**
- Extra-provincial LLP, **4:6**
- Formation, **4:3**
  - LLP firm name, **4:5**
  - requirement for an agreement in writing, **4:3**
  - restrictions on business activities, **4:3**
- LLP liability shield, **4:2**
- Overview and application, **4:1**

## **LIMITED LIABILITY PARTNERSHIPS—Cont'd**

- Registration under the Business Names Act (Ontario), **4:7**
- Selected provisions of LLP agreements, **4:8**
  - confidentiality, **4:27**
  - continuity of the firm, **4:14**
  - death, incapacity, withdrawal or expulsion of a partner, **4:26**
  - decisions requiring a super-majority decision, **4:22**
  - duration and Dissolution, **4:10**
  - duties of partners and outside remuneration, **4:16**
  - firm name and change of name, **4:13**
  - firm vs. partner property, **4:15**
  - insurance, **4:12**
  - LLP Status, **4:9**
  - managing partner, **4:25**
  - negative covenants of partners, **4:18**
  - partnership meetings, **4:19**
  - personal liability, **4:11**

## **LIMITED PARTNERSHIPS**

- See also NON-CORPORATE ORGANIZATIONS
- Dissolution, **5:13**
  - distributions on dissolution, **5:14**
  - triggering dissolution, **5:13**
- Inbound extra-provincial limited partnerships
  - consequences of non-compliance, **5:41**
  - record of limited partners, **5:42**
- LP provisions, **5:15**
  - advisory committees, **5:22**
  - capital commitments, contributions, calls and remedies, **5:24**
  - consequences of non-compliance, **5:17**
  - distributions, **5:28**
  - power of attorney, **5:33**
  - record of limited partners, **5:18**
  - registration requirements, **5:16**
  - some must-have provisions for specific investors, **5:34**
  - super-majority approval requirements, **5:23**
- Overview, **5:1**
- Rights, liabilities and immunities of limited partners, **5:9**
  - assignment of limited partner's interest, **5:11**

## **LIMITED PARTNERSHIPS—Cont'd**

- Rights, liabilities and immunities of limited partners, **5:9—Cont'd**
  - limitation of liability, **5:9**
  - other rights of limited partners, **5:12**
  - return of contribution, **5:10**
- Rights, obligations and immunities of general partners, **5:8**
- Structure, **5:2**
  - basic requirements, **5:2**
  - consequences of non-compliance, **5:4**
  - declarations (and declarations of change), **5:3**
  - documents, **5:6**
  - name requirements, **5:5**
  - other documents and rights of inspection, **5:7**
  - record of limited partners, **5:6**
- Transaction opinions involving limited corporate status of GP, **5:47**
  - enforceability, **5:51**
  - execution and delivery, **5:50**
  - formation and existence of LP, **5:46**
  - GP's corporate power and capacity, **5:48**
  - LP and GP authorization, **5:49**
  - partnerships, **5:44**
  - scope of examination, **5:45**
- Use of Manitoba limited partnerships in other provinces, **5:43**

## **LIQUIDATION**

- See also FUNDAMENTAL CHANGES
- Cancellation of certificate of incorporation, **52:32**
- Involuntary liquidation, **52:21**
  - corporation being operated solely for benefit of debenture-holders, **52:28**
  - deadlock, **52:27**
  - fraudulent scheme, **52:24**
  - justifiable lack of confidence in conduct of corporation's affairs, **52:22**
  - loss of substratum, **52:25**
  - management being involved in suspicious transactions including transfer of assets to another corporation without retaining voting control, **52:29**
  - misapplication of corporation's property by majority shareholder, **52:23**



## LIQUIDATION—Cont'd

- Involuntary liquidation, **52:21**—Cont'd
  - outvoted in domestic policy, **52:30**
  - partnership analogy, **52:26**
- Overview, **52:1**
- Procedure for involuntary liquidation, **52:31**
- Voluntary liquidation, **52:2**
  - arrangements with creditors, **52:12**
  - arrangement with creditors re power of liquidators, **52:6**
  - assets, **52:7**
  - bank account, **52:8**
  - compromises with debtors and contributories, **52:12**
  - contributories, **52:9**
  - disposal of records, **52:19**
  - dissolution, **52:17**
  - distribution of assets, **52:10**
  - filling vacancies in office of liquidator, **52:11**
  - final meeting, **52:16**
  - inspectors, **52:5**
  - meetings, **52:15**
  - notice, **52:4**
  - obtaining directions and examinations, **52:14**
  - sale of property for shares, etc., **52:13**
  - special resolution, **52:3**
  - stay of proceedings against corporation, **52:20**
  - unclaimed assets, **52:18**

## MERGERS AND ACQUISITIONS

- Competition Act considerations
  - general, **90:1**
- merger review process
  - merger enforcement guidelines, **App. 90B**
- notification
  - exemptions
    - general exemptions
      - advance ruling certificate, **90:20**
      - asset securitizations, **90:23**
      - minister of Finance, **90:22**
      - no-action letter, **90:21**
      - transaction among affiliates, **90:19**
    - overview, **90:18**
    - specific exemptions

## MERGERS AND ACQUISITIONS

### —Cont'd

- Competition Act considerations—Cont'd
  - merger review process—Cont'd
    - notification—Cont'd
      - exemptions—Cont'd
        - acquisitions in ordinary course of business, **90:24**
        - creditor acquisitions, **90:27**
        - exploration/development of Canadian resource properties, **90:28**
        - gift/intestate succession/testamentary disposition, **90:26**
        - underwriting, **90:25**
  - is pre-merger notification required
    - general, **90:2**, **90:3**, **App. 90A**
  - types of transaction subject to notification
    - acquisition of interest in combination, **90:9**
    - combination, **90:8**
    - corporate amalgamation, **90:7**
    - share acquisition, **90: 6**
  - operating business, **90:10**
  - other considerations, **90:30**
  - s pre-merger notification required
    - types of transaction subject to notification
      - asset acquisition, **90:5**
  - thresholds
    - calculating assets/revenues, **90:15 to 90:17**
    - general, **90:11**
    - ownership thresholds, **90:14**
    - party size, **90:12**
    - transaction size, **90:13**
  - pre-merger filing
    - confidentiality, **90:33**
    - filing fee, **90:32**
    - general, **90:31**
    - preparing request for ARC/NAL, **90:35**
    - preparing section 114 notification form, **90:34**
    - voluntary filing, **90:36**

**MERGERS AND ACQUISITIONS****—Cont'd**

Competition Act considerations—Cont'd  
 merger review process—Cont'd  
 remedies  
   final orders  
     consent agreements, **90:74**,  
       **App. 90C**  
     general, **90:73**  
     in contested proceedings, **90:75**  
   general, **90:68**  
   interim orders  
     general, **90:69**  
     pending injunction application,  
       **90:72**  
     section 100 order, **90:70**  
     section 104 order, **90:71**  
   waiting period  
     avoiding gun-jumping, **40:41**  
     General, **90:37**, **90:38**  
     other information requests, **90:40**  
     service standard time periods,  
       **90:42**  
     SIR, **90:39**  
 substantive merger review  
   definition of merger  
     business, **90:47**  
     control, **90:45**  
     general, **90:44**  
     significant interest, **90:46**  
 efficiency exception  
   anti-competitive effects  
     deadweight loss, **90:60**  
     general, **90:59**  
     other quantified effects, **90:62**  
     wealth transfer, **90:61**  
   efficiency gains, **90:58**  
   general, **90:57**  
 other exceptions/limitations  
   application under ss. 45, 49, 79,  
     90.1, **90:67**  
   financial sector merger, **90:63**  
   joint ventures, **90:65**  
   limitation period, **90:66**  
   transport sector merger, **90:64**  
 substantial prevention/lessening of  
   competition  
     general, **90:48**  
     market definition, **90:49**  
     market share/concentration, **90:50**

**MERGERS AND ACQUISITIONS****—Cont'd**

Competition Act considerations—Cont'd  
 substantive merger review—Cont'd  
   substantial prevention/lessening of  
     competition—Cont'd  
     non-horizontal merger, **90:56**  
   section 93 factors  
     barrier to entry, **90:52**  
     effective remaining competi-  
       tion, **90:53**  
     failing firm, **90:55**  
     general, **90:51**  
     removal of effective competi-  
       tion, **90:54**  
 Investment Canada Act  
   general, **91:1**  
   national security review  
     examples of rejected investments,  
       **91:53**  
     guidelines, **91:51**  
     “injurious to national security,”  
       **91:50**  
     overview, **91:47**  
     process/timing, **91:49**  
     scope, **91:48**  
     statistics on reviews, **91:53**  
     voluntary notification, **App. 91D**  
 net benefit review  
   acquisitions, net benefit test not met,  
     **91:45**  
   application for review, information  
     required  
       canadian business, **91:34**  
       investment, **91:33**  
       investor, **91:32**  
       investor's plans, **91:35**  
       overview, **91:31**, **App. 91C**  
   application for review, timing of,  
     **91:30**  
   cultural businesses, **91:46**  
 test  
   factors  
     canadian participation, **91:39**  
     compatibility with national/  
       provincial policies, **91:41**  
     economic activity, **91:38**  
     effect on participation, **91:40**  
     state-owned enterprises, **91:42**,  
       **91:43**  
   undertakings, **91:44**

## MERGERS AND ACQUISITIONS

### —Cont'd

- Investment Canada Act—Cont'd
  - net benefit review—Cont'd
    - waiting periods, **91:36**
  - notification, **91:28, 91:29, App 91A, App 91B**
  - scope of act
    - Canadian business, **91:10**
  - control
    - control in fact, **91:9**
    - determining acquisition of control, **91:7**
    - general, **91:5**
    - ministerial override, **91:8**
    - types of acquisition of control, **91:6**
  - exemptions
    - general, **91:25, 91:26**
    - national security provisions, **91:27**
  - non-Canadian, **91:2 to 91:4**
  - thresholds for net benefit review
    - calculating value of assets, **91:22 to 91:24**
    - cultural business, **91:15, 91:21**
    - general, **91:11, 91:20**
    - state-owned enterprise, **91:14, 91:18**
    - trade agreement investor, **91:12, 91:16**
    - WTO investor, **91:13, 91:17 to 91:19**
- Issuer bids
  - bids under NI 62-104
    - disclosure obligations, **89:25**
    - exemption from formal valuation/independent committee
      - general, **89:28**
      - liquid market, **89:30**
      - non-equity securities, **89:29**
    - formal valuation, **89:26**
    - independent committee, **89:27**
    - overview of requirements, **89:24**
  - dissenting shareholders, **89:31 to 89:33**
  - exempt bids
    - de minimis, **89:22**
    - discretionary exemptions, **89:23**
    - employees/executive officers/directors/consultants, **89:19**
    - foreign issuer bid, **89:21**
    - issuer acquisition/redemption, **89:18**

## MERGERS AND ACQUISITIONS

### —Cont'd

- Issuer bids—Cont'd
  - exempt bids—Cont'd
    - non-reporting issuer, **89:17**
    - normal course purchase, **89:20**
  - general, **89:1**
  - issuer obligations
    - meaning of, **89:3**
  - permitted bids
    - certification of bid circular, **89:7**
    - contents of bid circular, **89:6**
    - overview, **89:5**
  - rationale, **89:2**
  - regulation of bids
    - acquisition of securities during bid, **89:15**
    - issuer's obligations, **89:8**
    - minimum deposit periods, **89:12**
    - obligation to take up/pay for deposited securities, **89:14**
    - restrictions on acquisitions during/after bid, **89:9, 89:10**
    - restrictions on sales during bid, **89:11**
    - restrictions on take-up, **89:12**
    - withdrawal by security holders, **89:13**
    - restrictions on, **89:4**
- Legal opinions
  - dates/addresses, **87:4, 87:5**
  - defined terms, **87:8**
  - nature of transaction, **87:7**
  - principles informing negotiation of transaction opinion, **87:2**
  - purpose of transaction opinion, **87:1**
  - retainer, **87:6**
  - standard language, **87:3**
- Takeover bids
  - dissenting shareholders, **88:39, 88:40**
  - exempt take-over bids
    - de minimis, **88:21**
    - foreign take-over, **88:20**
    - non-reporting issuer, **88:17**
    - normal course purchase, **88:18**
    - private agreement, **88:19**
  - obligations of bidder
    - permitted bid, **88:3**
    - contents of bid circular, **88:4**
    - offeror's obligations, **88:5**

## MERGERS AND ACQUISITIONS

### —Cont'd

- Takeover bids—Cont'd
  - obligations of bidder—Cont'd
    - regulation of bids
      - early warning system, **88:15**
      - mandatory 10 day extension period, **88:11**
      - minimum deposit periods, **88:9**
      - obligation to take up/pay for deposited securities, **88:12**
      - offeror's filing obligations, **88:13**
      - restrictions on acquisitions before/after bid, **88:7**
      - restrictions on acquisitions during bid, **88:6**
      - restrictions on sales, **88:8**
      - take-over bid circular, certification of, **88:14**
      - withdrawal by security holders, **88:10**
    - restrictions on making bid, **88:2**
    - "take over bid," **88:1**
  - obligations of target/its board
    - board duty of loyalty, **88:24**
    - deal protection for white knights, **88:25**
    - defensive tactics, **88:26**
    - mandatory considerations
      - directors' circular, **88:22**
      - provision of list of shareholders, **88:23**
    - opportunistic considerations for board, **88:27**
    - application to capital markets tribunal/court, **88:34**
    - attacking hostile take-over bid circular, **88:33**
    - competition review, **88:38**
    - confidentiality obligations, bidder/advisors, **88:36, 88:37**
    - dilutive issuance of shares/warrants to acquire shares
      - cancelled, **88:30**
      - factors to assess, **88:31**
      - upheld, **88:29**
    - other transactions outside ordinary course of business, **88:32**
    - shareholder rights plan, **88:28**
    - standstill covenants, **88:35**

## MERGERS AND ACQUISITIONS

### —Cont'd

- Tax aspects
  - asset or share transactions
    - capital gains reserve, **81:31**
    - earn-outs/reverse earn-outs, **81:33**
    - interest on deferred purchase price, **81:32**
    - non-resident vendors, **81:36**
    - post-closing employment/consulting services, **81:35**
    - purchaser's interest deduction, **81:37**
    - purchaser's other financing expenses, **81:38**
    - restrictive covenants, **81:34**
    - retiring allowances, **81:30**
  - asset transactions
    - accounts receivable, **81:6**
    - allocation of purchase price, **81:16**
    - depreciable property, **81:11**
    - distribution of net after-tax proceeds, **81:18**
    - goodwill and other class 14.1 depreciable property, **81:12**
    - GST/HST/PST, **81:17**
    - improved real property, **81:15**
    - intellectual property/software, **81:13**
    - inventory, **81:7**
    - leasehold interests, **81:14**
    - non-depreciable capital, **81:10**
    - prepaid expenses, **81:8**
    - unearned revenue, **81:9**
  - general, **81:1, 81:2**
  - share transactions
    - acquisition of control, **81:23**
    - amalgamations and arrangements, **81:27**
    - capital losses, **81:24**
    - exchangeable share transactions, **81:28**
    - lifetime capital gains exemption, **81:20**
    - non-capital losses, **81:25**
    - non-depreciable capital property, **81:22**
    - non-resident purchaser, **81:29**
    - pre-sale distribution of safe income, **81:21**
    - share for share exchanges, **81:26**
    - share purchase agreement, **81:19**
    - structural preferences, **81:3 to 81:5**

## MERGERS AND ACQUISITIONS

### —Cont'd

- Transition services agreement
  - access to premises/information systems, **86:10**
  - boilerplate provisions, **86:17**
  - breach, **86:13**
  - common types, **86:2**
  - confidentiality, **86:14**
  - dispute resolution, **86:16**
  - duration, **86:6**
  - general, **86:1**
  - limitation of liability/indemnification, **86:15**
  - negotiation, **86:3**
  - parties, **86:4**
  - provision of service, **86:5**
  - service fees, **86:11**
  - standard of service, **86:8**
  - termination/extension, **86:12**
  - third-party service providers, **86:9**
  - voluntary reduction in required service, **86:7**
- Vendor take-back financing
  - see VENDOR TAKE-BACK FINANCING

## NAME RESTRICTIONS

- See also NAMES
- Absolute prohibitions, **19:9**
  - identical names, **19:10**
  - misdescriptive names, **19:13**
  - obscene names, **19:12**
  - punctuation marks, **19:11**
  - words, **19:9**
- Conditional prohibitions, **19:14**
  - affiliated body corporate, **19:14**
  - amalgamated corporation, **19:18**
  - foreign parent, **19:15**
  - long usage, **19:16**
  - names restricted by statute, **19:17**
  - numerals, **19:20**
  - words, **19:19**
- Deceptive names, **19:30**
- Descriptive names, **19:31**
- Distinctive names, **19:30**
- General names, **19:31**
- Geographic names, **19:31**
- Individual names, **19:31**
- Political party, **19:21**

## NAME RESTRICTIONS—Cont'd

- Prohibitions without consent or undertaking, **19:22**
  - differentiated corporate names, **19:25**
  - engineer and architect, **19:27**
  - family names, **19:26**
  - names implying government, university, professional or financial intermediary status, **19:28**
  - successor business, **19:24**
  - successor corporation, **19:23**
- Proposed names, **19:29**

## NAMES

- See also FORMATION
- Business names, **19:34**
- Change of corporate name, **19:39**
  - compulsory name change, **19:41**
  - judicial review of director's name decision, **19:42**
  - voluntary name change, **19:40**
- Domain names, **19:44**
  - cyber-squatting, **19:45**
  - registration of domain names, **19:44**
- Introduction, **19:1**
- Number names, **19:33**
- Protecting corporate name, **19:35**
  - general, **19:35**
  - passing-off actions, nature and limits of, **19:37**
  - scope and limits, **19:36**
- Searching proposed corporate name, **19:32**
- Selecting corporate name, **19:2**
  - elements of corporate name, **19:3**
  - foreign language name, **19:7**
  - format of name, **19:5**
  - French form of name, **19:6**
  - unauthorized use of legal elements, **19:4**
- Trade-marks, **19:43**

## NEGOTIATION OF ASSET OR SHARE PURCHASE AGREEMENTS

- See also PURCHASE AGREEMENTS
- Generally, **82:1**
- Consulting agreements, **82:43**
- Employment agreements, **82:43**
- Preliminaries to transaction agreement, **82:2 to 82:11**
  - authorization, **82:3**

## NEGOTIATION OF ASSET OR SHARE PURCHASE AGREEMENTS

### —Cont'd

- Preliminaries to transaction agreement,  
82:2 to 82:11—Cont'd
  - capacity, 82:3
  - Competition Act, 82:6, 82:7
    - general merger provisions, 82:6
    - notifiable transactions, 82:7
  - early due diligence, preliminaries to  
transaction agreement, 82:2
  - employees, 82:9
  - Investment Canada Act, 82:5
  - securities legislation, 82:11
  - specific regulatory approvals, 82:8
  - tax considerations, 82:4
  - third party consents, 82:10
- Transitional services agreements, 82:44

## NFP CORPORATIONS GOVERNANCE FRAMEWORK

- Committees, 14:17
  - audit committee, 14:17
  - compensation committee, 14:18
  - other committees, 14:19
- Conflicts of interest, 14:12
  - charity law rules, 14:13
  - corporate law rules, 14:12
- Constituting documents, 14:15
- Corporate policies and protocols, 14:16
- Directors and counsel, ethical and stan-  
dards issues, 14:30
- Directors and officers, duties of, 14:3
  - business judgment rule, 14:5
  - duty of care, 14:4
  - fiduciary duty, 14:6
    - appropriating corporate property,  
information, or opportunities,  
14:9
    - arbitrariness, 14:7
    - conflicts of interest, 14:8
    - departing fiduciary employees, 14:10
    - fettering of board discretion, 14:11
  - general, 14:3
- Directors and officers, protection, 14:20
  - D & O insurance, 14:26
  - indemnification, 14:20
- Governance action plans, 14:31
  - closed memberships for charitable  
corporations, 14:33
  - governance litigation, avoiding, 14:32

## NFP CORPORATIONS GOVERNANCE FRAMEWORK—Cont'd

- Governance action plans, 14:31—Cont'd
  - governance quality, 14:31
- Introduction, 14:1
- Legal governance framework, overview,  
14:2
- Lines of authority, 14:14

## NON-CORPORATE ORGANIZATIONS

- General partnerships, see GENERAL  
PARTNERSHIPS AND LLPs
- Limited liability partnerships, see  
LIMITED LIABILITY PARTNER-  
SHIPS
- Limited partnerships, see LIMITED  
PARTNERSHIPS
- Unincorporated business organizations,  
see UNINCORPORATED BUSI-  
NESS ORGANIZATIONS
- Unincorporated non-profit organizations,  
see UNINCORPORATED NON-  
PROFIT ORGANIZATIONS

## NON-DISCLOSURE AGREEMENTS

- See also: STANDSTILL AGREEMENTS
- Generally, 79:1
- Content, 79:7 to 79:24
  - additional provisions, 79:23
  - announcements, 79:15
  - anti-clubbing and lock-ups, 79:20
  - boilerplate provisions, 79:24
  - choice of law, 79:14
  - common exceptions, 79:10
  - contractual remedies, 79:13
  - definition of confidential information  
and exceptions, 58a:9
  - destruction of confidential information,  
79:12
  - disclaimer of obligation to negotiate  
definitive agreement, 79:17
  - disclaimer of representations and war-  
ranties, 79:18
  - exclusivity, 79:16
  - forum selection, 79:14
  - non-solicitation, 79:19, 85:5
  - parties, 58a:8
  - permitted use, 79:10
  - personal information, 79:21
  - protecting the legislation privilege,  
79:22
  - residual rights, 79:23



## NON-DISCLOSURE AGREEMENTS

### —Cont'd

- Content, **79:7 to 79:24**—Cont'd
  - restrictions on disclosure, **79:10**
  - return of confidential information, **79:12**
  - term, **79:11**
- Disclosure process, **79:6**
- Form, structure, timing, **79:4**
- Information exchanges between competitors, **79:26**
- Interpretation, **79:29 to 79:32**
  - Certicom Corp. v. Research in Motion Ltd., **79:29**
  - Husky Injection Molding Systems Ltd. v. Schad, **79:30**
  - Martin Marietta Materials, Inc. v. Vulcan Materials Co., **79:31**
  - RAA Management, LLC v. Savage Sports Holdings, Inc., **79:32**
- Limitations, **79:3**
- Rationale for, **79:2**
- Remedies, **79:33, 79:34**
  - Equitable compensation, **79:34**
  - Injunctive relief, **79:33**
- Reporting issuers, **79:25**
- Risks, **79:3**
- Standstill agreements and non-disclosure agreements, **79:28**
  - contract interpretation principles, **79:28**
- Unilateral versus mutual, **79:5**

## NON-SHARE CAPITAL CORPORATIONS, ONTARIO

- Directors, **92:29**
- Members, **92:31, 92:32**

## NO-SHOPS

- See also: LETTERS OF INTENT;  
EXCLUSIVITY AGREEMENTS
- Exceptions in public M&A transactions, **80:29**
  - fiduciary outs, **80:29**
  - go-shops, **80:31**
  - window-shops, **80:30**

## NOT-FOR-PROFIT CORPORATIONS

- By-laws, **15:14**
- Charitable corporations, **15:34**
- Decision to incorporate, **15:2 to 15:6**
  - advantages, **15:5**

## NOT-FOR-PROFIT CORPORATIONS

### —Cont'd

- Decision to incorporate, **15:2 to 15:6**
  - Cont'd
  - choice of Ontario or federal incorporation, **15:6**
  - whether to incorporate with or without share capital, tax status, **15:4**
  - with or without share capital, advantages of nfp corporations, **15:2**
  - with or without share capital, disadvantages of nfp corporations, **15:3**
- Derivative actions, **15:33**
- Directors, **15:15**
- Dissolution, **15:27 to 15:29**
  - involuntary, **15:28**
  - rights of creditors, **15:29**
  - voluntary, **15:27**
- Financial statements, **15:20**
- Fundamental changes, **15:21 to 15:25**
  - amalgamation, **15:24**
  - amendment of articles, **15:21**
  - export continuance, **15:23**
  - extraordinary sale of all or substantially all property, **15:25**
  - import continuance, **15:22**
- Incorporation, **15:8**
  - application for, **15:8**
  - corporate capacity, **15:12**
  - corporate name, **15:10**
  - name search report, **15:9**
  - registered office, **15:11**
  - restrictions, **15:13**
- Introduction, **15:1**
- Liquidation, **15:26**
- Members, **15:16**
- Non-profit characteristics, **15:17, 15:18**
  - distribution constraints, **15:18**
  - non-profit to members and directors, **15:17**
- Ontario Not-for-Profit Corporations Act, 2010, structure of, **15:7**
- Records, **15:19**
- Revival, **15:30**
- Transition of OCA Part III corporations to the ONCA, **15:35**
- Unfair prejudice, **15:31, 15:32**
  - grounds for relief, **15:31**
  - remedies, **15:32**

**NOT-FOR-PROFIT CORPORATIONS,  
FEDERAL**

See also CORPORATIONS, ONTARIO  
NOT-FOR-PROFIT CORPORA-  
TIONS ACT, 2010

**OBCA EXEMPTIONS**

See also AUDITS AND MEETINGS OF  
SHAREHOLDERS

Administrative, **64:20**

Court applications, **64:19**

Exempted corporations, **93:19**

Judicial, **64:21**

**OBLIGATIONS AND RIGHTS OF  
CORPORATIONS UNDER THE  
CANADIAN CHARTER**

Charter obligations, **6B:2**

delegated governmental decision-mak-  
ing, **6B:3**

private rights and interests, **6B:5**

state agents, **6B:4**

Charter rights —reasonable limits

prescribed by law (s. 1), **6B:7**

cruel and unusual punishment (s. 12),  
**6B:20**

equality rights (s. 15), **6B:22**

freedom of association (s. 2(d)), **6B:10**

freedom of expression (s. 2(b)), **6B:9**

freedom of religion (s. 2(a)), **6B:8**

life, liberty and security of the person  
(s. 7), **6B:12**

mobility rights (ss. 6(2)(b) and (3)),  
**6B:11**

non-retroactivity of offence (s. 11(g)),  
double jeopardy (s. 11(h)) and  
benefit of lesser sentence (s. 11(i)),  
**6B:19**

presumption of innocence (s. 11(d)),  
**6B:17**

right against self-incrimination (s.  
11(c)), **6B:16**

rights to reasonable bail (s. 11(e)) and  
to trial by jury (s. 11(f)), **6B:18**

right to be informed without reasonable  
delay (s. 11(a)), **6B:14**

trial within a reasonable time (s. 11(b)),  
**6B:15**

unreasonable search or seizure (s. 8),  
**6B:13**

use immunity (s. 13), **6B:21**

Conclusion, **6B:23**

**OBLIGATIONS AND RIGHTS OF  
CORPORATIONS UNDER THE  
CANADIAN CHARTER—Cont'd**

Standing under the Charter, **6B:6**

**OPPRESSION REMEDY**

See also SHAREHOLDERS

Applicants, **25:7**

discretionary complainants, **25:9**

joint retainers and conflict of interest,  
**25:10**

OSC, **25:7**

per se complainants, **25:8**

Background, **25:1**

Common scenarios, **25:6**

Contracting out  
arbitration, **25:23**

Direct and indirect routes to oppression  
remedy, **25:11**

alternative to court-ordered liquidation,  
**25:15**

determining complainant's reasonable  
expectations, **25:13**

oppressive or unfairly prejudicial  
conduct, **25:14**

test for oppression under subsection  
248(2), **25:12**

Directors' liabilities to employees, **5.3B**

Enforcement of civil liabilities of direc-  
tors and officers, **34:52**

Indicia of oppression, **25:16**

oppression found, **25:17**

oppression not found, **25:18**

Insider trading, **30:11**

Canada Business Corporation Act,  
**30:14**

Ontario Business Corporation Act,  
**30:12**

Introduction, **25:1**

Investigation and, **26:40**

Overview, **25:2**

applicants, **25:3**

court-ordered relief, **25:5**

grounds, **25:4**

Remedies, **26:1 et seq.**

amending articles, by-laws or unani-  
mous shareholder agreement,  
**26:29**

appointing or replacing directors, **26:31**

appointment of receiver-manager,  
**26:38**

## INDEX

### **OPPRESSION REMEDY—Cont'd**

- Remedies, **26:1 et seq.**—Cont'd
  - buyout, **26:3**
    - circumstances justifying buyout remedy, **26:4**
    - circumstances unfavourable to buyout remedy, **26:6**
    - elements of price determination, **26:9**
    - purpose and reasonable expectations, **26:3**
    - structuring the buyout remedy, **26:7**
    - valuation information and process, **26:22**
    - valuation methodologies, **26:18**
    - vendor financing and restrictive covenants, **26:24**
  - compensating aggrieved person, **26:34**
  - injunctive relief, **26:28, 26:37**
  - interim costs, **26:42**
  - investigation, **26:40**
  - issuing or exchanging securities, **26:30**
  - liquidation, **26:36**
  - other relief, **26:43**
  - overview, **26:1**
  - production of financial statements, **26:33**
  - rectification, **26:35**
  - remedial principles, **26:2**
  - repayment, **26:26**
  - requiring trial, **26:41**
  - rescission, **26:32**
  - unavailable remedies, **26:54**
- Substantive and procedural defences, **25:19**
  - arbitration, **25:23**
  - causation and loss, **25:20**
  - clean hands, **25:19**
  - derivative rather than oppression claim, **25:24**
  - estoppel and acquiescence, **25:21**
  - limitations periods, laches, and other time-based defences, **25:22**

### **ORGANIZATION**

- See also **FORMATION**
- By-laws, **18:15**
  - analysis of common provisions, **18:18**
  - making, amending or repealing by-laws, **18:16**

### **ORGANIZATION—Cont'd**

- By-laws, **18:15**—Cont'd
  - optional by-law provision in OBCA, **18:17**
  - purpose of by-laws, **18:15**
- Duties and powers of first directors, **18:3**
- General, **18:1**
- Information required, **18:2**
- Procedure, **18:4**
  - appointment of officers, **18:8**
  - appointment of permanent directors, **18:7**
  - banking and signing officers, **18:11**
  - corporate seal, **18:12**
  - forms of share certificates, **18:10**
  - issue or transfer of shares to permanent shareholders, **18:9**
  - minute book and corporate registers, **18:13**
  - organizational meeting of first directors, **18:5**
  - organizational meeting of shareholders, **18:6**

### **PARTNERSHIPS OPERATING EXTRA-PROVINCIAL IN**

- Alberta, **67:21**
- Newfoundland and Labrador, **71:14**
- Northwest Territories, **72:22**
- Nova Scotia, **73:15**
- Nunavut, **72:22**
- Prince Edward Island, **75:13**
- Quebec, **76:21**
- Saskatchewan, **77:31**
- Yukon, **78:23**

### **PARTNERSHIP TAXATION**

- At-risk rules, **6:22**
- Co-ownership, **6:24**
- Dissolutions, tax-deferred, **6:18**
  - conversion of partnership to co-ownership, **6:21**
  - conversion of partnership to corporation, **6:19**
  - conversion of partnership to sole proprietorship, **6:20**
- Introduction, **6:1**
- Joint ventures, contractual, **6:24**
- Overview, **6:4**
- Partnership agreements, income tax aspects, **6:5**
- continuance of partnership, **6:16**

**PARTNERSHIP TAXATION—Cont'd**

Partnership agreements, income tax aspects, **6:5**—Cont'd  
dispositions of partnership interests, **6:13**  
dissolution, **6:15**  
distributions, **6:12**  
financial statements, **6:7**  
fiscal period, **6:6**  
non-cash capital contributions, **6:11**  
partnership eligibility requirements, **6:8**  
restrictive covenants, **6:14**  
super-majority approvals, **6:17**  
tax allocations, **6:10**  
tax information returns, **6:9**  
tax-related representations, **6:8**  
transfer restrictions, **6:8**  
Partnership income, specified, **6:23**  
Sole proprietorships, taxation, **6:2**  
Summary, **6:25**  
Tax-deferred dissolutions, **6:18**  
conversion of partnership to co-ownership, **6:21**  
conversion of partnership to corporation, **6:19**  
conversion of partnership to sole proprietorship, **6:20**

**PENSION FUND SOCIETIES**

Generally, **10A:7**

**PPSA SYSTEM**

See also SECURED TRANSACTIONS  
Attachment, **42:35**  
debtor's rights in collateral, **42:37**  
no postponement of attachment, **42:39**  
value, **42:36**  
written security agreement or secured party in possession, **42:38**  
Intercreditor arrangements  
estoppel arrangements, **42:46**  
subordinations and postponements, **42:45**  
Overview, **42:32**  
Perfection  
maintaining perfection, **42:41**  
registration, **42:40**  
Priorities, **42:42**  
general priority rules, **42:43**  
specific internal priority rules, **42:44**

**PPSA SYSTEM—Cont'd**

Scope  
application, **42:33**  
exclusions, **42:34**

**PRICE ADJUSTMENTS**

See also EARN-OUTS; ESCROWS;  
NEGOTIATION OF ASSET OR  
SHARE PURCHASE AGREEMENTS;  
PRICE ADJUSTMENTS  
Generally, **83:3**  
Debt, **83:12**  
Holdbacks, **82:23, 83:13**  
Inventory, **83:11**  
Working Capital, **83:4 to 50A:10**  
generally, **83:4**  
closing date working capital, mechanics of determining, **83:8**  
definitions, **83:5**  
dispute resolution, **83:9**  
post-closing adjustment, payment of, **83:10**  
pre-closing estimate, **83:7**  
working capital variation, effect of, **83:6**

**PROFESSIONAL CORPORATIONS**

Advantages of, **10:3**  
capital gains splitting, **10:3**  
income-splitting, **10:3**  
tax deferral on professional income, **10:3**  
Agreements, USAs, Proxies, Voting, **10:11**  
Articles, restrictions in, **10:10**  
Background, **10:1**  
Certificate of authorization  
annual renewal  
HPCs, **10:17**  
other, **10:16**  
issuance  
HPCs, **10:15**  
other, **10:14**  
Corporate name  
HPCs, **10:9**  
other, **10:8**  
Directors and Officers, **10:7**  
Formation of, **10:4**  
professionals, types of, **10:4**  
Information change of, **10:18**

## PROFESSIONAL CORPORATIONS

### —Cont'd

- Liability
  - professional, **10:12**
- Obligations,
  - ethical, fiduciary, professional, **10:13**
- PC or LLP, **10:19**
- Shareholders
  - dentists, **10:6**
  - other, **10:5**
  - physicians, **10:6**
- Types of, **10:2**

## PROTECTING DIRECTORS AND OFFICERS FROM LIABILITY

- Generally, **34:58**
- Conflict of interest, disclosure, **34:60**
- Corporate indemnification
  - advancement of defence costs, **34:71**
  - mandatory indemnification, **34:68**
  - permitted indemnification, **34:70**
  - practical limitation, **34:72**
  - prohibited indemnification, **34:69**
  - shareholder indemnification, **34:73**
- Dissenting from certain board resolutions, **34:61**
- Protective orders in insolvency proceedings
  - BIA orders, **34:65**
  - CCAA orders, **34:64**
- Resignation, **34:66**
- Shareholder ratification, **34:59**
- Unanimous shareholder agreement, **34:62**

## PROXY SOLICITATION

- See also AUDITS AND MEETINGS OF SHAREHOLDERS
- Corporate governance disclosure, **60:11**
- Delivery of proxy-related material, **60:2**
- Form of proxy, **60:7**
- General, **60:5**
- Information circulars, **60:8**
  - content for annual meeting, **60:9**
  - of dissident, **60:12**
- Procedures at meeting of shareholders, **60:11**
- Revocation of proxies, **60:13**
- Scope of “solicitation” and exclusions, **60:6**
- Securityholder instructions to intermediaries, **60:3**

## PROXY SOLICITATION—Cont'd

- Shareholder communications under NI 54-101, **60:1**
- Shareholder proposals, **60:14**
- Statement of executive compensation, **60:10**
- Voting shares registered in name of registrant or intermediary, **60:4**

## PURCHASE AGREEMENTS

- See also ESCROWS; NEGOTIATION OF ASSET OR SHARE PURCHASE AGREEMENTS; PRICE ADJUSTMENTS; RESTRICTIVE COVENANTS
- Generally, **82:12, 83:1**
- Assignment of contracts, **82:25**
- Assumption of liabilities, **82:17**
- Conditions, **82:36 to 82:38**
  - generally, **82:36**
  - closing conditions, **82:38**
  - pre-closing, **82:37**
- Covenants, **82:35, 82:39**
- Indemnification, **82:33**
- Other provisions, **82:42**
- Purchased assets, **82:13 to 82:16**
  - generally, **82:13**
  - accounts receivable, **82:14**
  - inventory, **82:15**
  - prepaid expenses, **82:16**
- Purchase price, **82:18 to 82: 21, 83:2**
  - generally, **82:18**
  - adjustments, **82:19, 83:3 to 83:12**
  - earn-outs, **82:20, 83:25 to 83:37**
  - price allocation, **82:21**
- Purchase price, payment of, **82:22 to 82:24**
  - escrow, **82:24, 83:14 to 83:24**
  - holdbacks, **82:23, 83:13**
- Representations and warranties, **82:26 to 82:32**
  - legal characterization, **82:27**
  - negotiating, **82:30**
  - purposes, **82:26**
  - specific, **82:32**
  - survival of, **82:31**
  - typical purchaser, **82:29**
  - typical vendor, **82:28**
- Restrictive covenants, **82:40, 85:1 to 85:23**
- Risk of loss and insurance, **82:34**

## **PURCHASE AGREEMENTS—Cont'd**

Termination, **82:41**

## **RECEIVERSHIPS**

Generally, **46:1**

Court-appointed

authority to appointment receiver or  
RM, **46:22**

discharge, **46:38**

duties, **46:23**

powers, **46:24**

receiver's charge, **46:24**

receiver's environmental liability,  
**46:27**

receiver's liability as successor  
employer, **46:26**

Private receiverships

advance notice (Section 248 Notice),  
**46:4**

CBCA corporations, **46:20**

discharge, **46:21**

notice of appointment and security for  
RM, **46:7**

receiver's duty (BIA)

court directions and review powers,  
**46:19**

good faith, **46:16**

notice of appointment, **46:17**

reporting obligations, **46:18**

receiver's duty (Ontario PPSA), **46:9**

care of collateral, **46:10**

collection rights, **46:11**

disposition of collateral, **46:12**,  
**46:13**

security instrument, **46:3**

Private vs. court appointments, **46:2**

Realization of assets

generally, **46:39**

court approval, **46:44**

standard of care, **46:45**

methods of assets sales, **46:40 to 46:43**

## **RECENT AND PROSPECTIVE CBCA AMENDMENTS**

Amendments to CBCA

introduction, **92:1**

shareholder proposals, **92:24**

unproclaimed amendments, **92:25**

Appointment of additional directors,  
**92:23**

Audit and financial reporting obligations,  
**92:28**

## **RECENT AND PROSPECTIVE CBCA AMENDMENTS—Cont'd**

Best interests of the corporations, **92:3**

Board of directors, **92:29**

Classes of memberships, **92:31**

Continuing obligations, **92:9**

Decision-making, hybrid and virtual,  
**92:30**

Disclosure

compensation, **92:26**

disclosure of individuals with signifi-  
cant control of non-distributing  
corporations, **92:4**

disclosure of information to investiga-  
tive bodies, **92:10**

Diversity disclosure, **92:14**

annual disclosure, **92:18**

designated groups, **92:17**

disclosure among directors and senior  
management, **92:16**

requirements, **92:15**

Election of directors, **92:19**

annual elections of directors, **92:2**

director voting, **92:21**

majority voting, **92:22**

Exempted corporations, **92:11**

Introduction, **92:1**

Members' rights, **92:32**

Pending amendments, **92:12**

Permitted distribution of assets, **92:33**

Provinces and territories, **92:13**

Recent developments in business corpora-  
tions, **92:34**

Register

individuals that must be recorded in the  
register, **92:8**

information content of the register,  
**92:7**

register of individuals with significant  
control, **92:6**

2021 statutory review of the CNCA,  
**92:27**

Technical amendments, **92:2**

## **RECENT AND PROSPECTIVE OBCA AMENDMENTS**

Board meetings, location of, **93:3**

Board meetings, minimum quorum, **93:4**

Canadian residency requirement, repeal of  
the board, **93:7**

Conversion into ONCA corporation, **93:5**



**RECENT AND PROSPECTIVE OBCA  
AMENDMENTS—Cont'd**

- Correction of certificates, **93:6**
- Disclosure of beneficial ownership of shares in non-offering corporations, **93:9**
- Exempted corporations, **93:19**
- Hybrid and virtual meetings during the pandemic, **93:21**
- Introduction, **93:1**
- Obligations
  - corporation's continuing obligations, **93:14**
  - shareholder obligations, **93:17**
- Other provinces and territories, **93:20**
- Proclamation of the Ontario Not-for-Profit Corporations Act, **93:22**
- Reduction in requirement to approve ordinary resolutions in writing, **93:8**
- Register
  - disclosure of information in register, law enforcement, **93:15**
  - disclosure of information in register—enforcement, **93:18**
  - information content of the register, **93:12**
  - register of individuals with significant control, **93:11**
  - which individuals must be recorded in the register, **93:13**
- Shareholder proposals, **93:2**
- Social companies, **93:23**

**RECORDS**

- See also AUDITS AND MEETINGS OF SHAREHOLDERS
- Business Records Protection Act, **63:18**
- CBCA, **63:15**
  - register of individuals with significant control, **63:16**
- Inspection of records, **63:13**
- Lists of holders of debt obligations, **63:12**
- Lists of shareholders, **63:11**
- Location of records, **63:14**
- Minute books, **63:8**
- OBCA, **63:17**
  - register of individuals with significant control, **63:17**
- Records as evidence, **63:10**
- Rectifying records, **63:9**
- Register of ownership interests in land, **63:7**

**RECORDS—Cont'd**

- Securities registers, **63:6**

**REGISTERED OFFICE**

- See also AUDITS AND MEETINGS OF SHAREHOLDERS
- CBCA, **63:4**
- Change of registered office, **63:2**
- Functions of registered office, **63:3**
- OBCA, **63:1**

**REORGANIZATIONS**

- See also FUNDAMENTAL CHANGES
- Insolvent corporations, **53:1 et seq.**
  - arrangements vs reorganizations, **53:8**
  - case law, **53:6**
  - gap-filling nature, **53:5**
  - scope, **53:4**
  - section 186, **53:8**

**REPORTING ISSUER**

- Continuous disclosure obligations, **62:1 et seq.**

**RESTATED ARTICLES**

- Generally, **47:16**
- See also FUNDAMENTAL CHANGES

**RESTRICTIVE COVENANTS**

- Generally, **85:1**
- Legal Analysis, **85:6 to 85:23**
  - contract interpretation, **85:7**
  - disgorgement, **85:23**
  - employment vs. commercial, characterization, **85:10**
  - enforceability, case law, **85:16**
  - enforceability, Employment Standards Act, 2000 (Ontario), **85:11**
  - enforceability, legitimate interest to protect, rebuttable presumption of, **85:12**
  - enforceability, not contrary to public interest, **85:15**
  - enforceability, reasonableness, **85:13, 85:14**
  - injunctions, **85:18 to 85:20**
  - liquidated damages clauses, **85:21**
  - measuring unliquidated damages, **85:22**
  - overview, **85:6**
  - remedies, overview, **85:17**
  - severance, blue pencil, **85:8**
  - severance, notional, **85:9**

## **RESTRICTIVE COVENANTS—Cont'd**

Types of, **85:2 to 85:5**

non-competes, **85:3**

non-dealing covenants, **85:4**

non-solicitation covenants, **50A:19, 85:5**

overview, **85:2**

## **RESTRUCTURING COMPANIES UNDER INSOLVENCY LAW**

Generally, **54:1**

Bankruptcy and Insolvency Act

court-ordered priming charges, **54:16**

disclaimer of contracts and leases

generally, **54:13**

contracts other than leases of commercial real property, **54:14**

leases of commercial real property, **54:15**

eligibility to make non-consumer proposal, **54:3**

notice of intention to make proposal, **54:4**

Part III, **54:2**

proposals

annulment, **54:27**

compromise of claims against directors, **54:21**

court approval, **54:25, 54:26**

creditor approval, **54:22**

creditor classes, **54:18**

filing deadlines and extensions, **54:17**

mandatory terms, **54:20**

types of compromises, **54:19**

Companies' Creditors Arrangement Act

compromises of claims against directors and third parties

claims against directors, **54:45**

claims against third parties generally, **54:46**

court approval

generally, **54:52**

approved plan, effect, **54:67**

steps authorized by CCAA, **54:54**

strict compliance with statutory requirements, **54:53**

whether plan is fair and reasonable, **54:55**

court-ordered priming charges generally, **54:40**

## **RESTRUCTURING COMPANIES UNDER INSOLVENCY LAW**

—Cont'd

Companies' Creditors Arrangement Act

—Cont'd

court-ordered priming charges—Cont'd

administrative charge, **54:41**

critical supplier's charge, **54:44**

D&O indemnification and D&O charge, **54:43**

interim financing, **54:42**

creditor approval

aim of CCAA plans, **54:47**

equity claims, **54:50**

meetings of creditors, **54:48**

super-priority claims, **54:51**

voting classes, **54:49**

initial application and initial order

initial application, **54:29**

initial order, **54:30**

monitor, **54:31**

scope, **54:28**

stay of proceedings, **54:34**

Pros and cons: BIA vs CCAA restructuring, **54:68**

## **REVIVAL**

Generally, **52:40**

See also FUNDAMENTAL  
CHANGES

## **SECURED TRANSACTIONS**

See also EQUITY FINANCING

Overview, **42:1**

## **SECURITIES DIRECT HOLDING SYSTEM**

See SECURITIES TRANSFERS,  
PLEDGES AND TRANSMISSIONS

## **SECURITIES INDIRECT HOLDING SYSTEM**

See SECURITIES TRANSFERS,  
PLEDGES AND TRANSMISSIONS

## **SECURITIES OFFERINGS, REGULATION**

Exempt offerings

prospectus exemptions, **40:7**

accredited investor exemption, **37:8**

crowdfunding exemption, **40:14**

existing security holder exemption, **40:12**

**SECURITIES OFFERINGS,  
REGULATION—Cont'd**

- Exempt offerings—Cont'd
  - prospectus exemptions, **40:7**—Cont'd
    - friends, family, and business associates exemption, **40:10**
    - minimum amount exemption, **40:11**
    - offering memorandum exemption, **40:15**
    - other exemptions, **40:16**
    - private issuer exemption, **40:9**
    - rights offering exemption, **40:13**
  - resale of securities
    - control person, sale by, **40:18**
    - NI 45-102, Resale of Securities, **40:17**
    - other matters, **40:19**
- Introduction, **40:1**
- Key terms/provisions (OSA), **40:3**
  - distribution, **40:6**
  - security, **40:4**
  - trade, **40:5**
- Offering documents, **40:20**
- Prospectus offerings
  - initial public offering
    - content, **40:23**
    - investor protections, **40:28**
    - market and selling restrictions, **40:25**
    - other matters, **40:29**
    - pricing and closing the IPO, **40:26**
    - process, **40:22**
    - regulatory review process, **40:24**
    - stock exchange listing, **40:27**
  - introduction, **40:21**
  - subsequent offerings, **40:30**
    - MJDS prospectus, **40:34**
    - shelf prospectus, **40:32**
    - short-form prospectus, **40:31**
- Regulatory framework, **40:2**
- Resale of securities, NI 45-102, **40:17**

**SECURITIES TRANSFERS, PLEDGES  
AND TRANSMISSIONS**

- Direct holding system
  - issuance of securities
    - certificated or uncertificated securities, **69:3**
    - conflict of law rules, **69:2**
    - defences of issuer, **69:4**
    - enforcement of securities, **69:4**
    - share certificates, **69:5**

**SECURITIES TRANSFERS, PLEDGES  
AND TRANSMISSIONS—Cont'd**

- Direct holding system—Cont'd
  - transfer of securities
    - adverse claim, notice of, **69:8**
    - conflict of law rules, **69:6**
    - delivery, **69:10**
    - lost or stolen security certificates, **69:15**
    - other requisites, purchaser's right, **69:13**
    - purchaser, protected, **69:7**
    - registration of transfer, **69:14**
    - security certificate, endorsement of, **69:9**
    - signature guarantees, **69:12**
    - warranties on transfer, **69:11**
- Execution against securities
  - overview, **69:26**
- Indirect holding system
  - application, **69:16**
  - conflict of law rules, **69:18**
  - entitlement holders
    - cut off rules, **69:22**
    - in personam rights, **69:21**
    - in rem rights, **69:20**
    - rights, **69:19**
    - security entitlements, disposition of, **69:23**
    - security entitlement, nature of, **69:17**
- Investment property, security in, see **INVESTMENT PROPERTY**
- Overview, **69:1**
- Transmission of securities
  - rights of successors, **69:25**
  - transmissions, **69:24**

**SECURITY AGREEMENTS**

- See also **SECURED TRANSACTIONS**
- Assignment of accounts, **42:50**
  - general assignment of book debts, **42:51**
  - specific accounts, **42:52**
- Bank Act security
  - attachment and perfection, **42:56**
  - priorities, **42:57**
  - scope, **42:55**
- Debenture
  - nature, **42:47**
  - perfection, **42:48**

## SECURITY AGREEMENTS—Cont'd

- Equipment leases and consignment agreements
  - consignments, **42:54**
  - equipment leases, **42:53**
- General security agreement, **42:49**
- Guarantees, **42:58**
- Real property security
  - assignment of rents, **42:60**
  - charge/mortgage of land, **42:59**
  - leasehold mortgage, **42:61**

## SHARE CAPITAL, COMMON AND PREFERRED

- Authorized capital
  - capital clause in articles, **38:2**
  - common shares, **38:5**
    - exempt offering, **38:7**
    - public offering, **38:6**
  - designation of classes and series, **38:3**
  - multiple share classes, **38:8**
  - preferred shares, **38:9**
  - series, **38:10**
  - single share class, **38:4**
  - warrants and rights, **38:11**
- Introduction, **38:1**
- Share provisions
  - anti-dilution protection, **38:27**
  - conversion rights, **38:26**
  - dividend rights
    - cumulative and non-cumulative dividends, **38:15**
    - dividend sprinkling, **38:17**
    - fixed or participating dividends, **38:13**
    - partially cumulative, **38:16**
    - preferential dividends, **38:14**
  - general, **38:12**
  - preferential features, **38:34**
  - redemption of shares by corporation, **38:19**
    - background, **38:20**
    - mechanics, **38:22**
    - purchase by corporation, **38:25**
    - retraction, **38:24**
    - sinking fund, **38:23**
    - triggers, **38:21**
  - return of capital and rights on dissolution, **38:18**
  - tracking shares, **38:28**

## SHARE CAPITAL, COMMON AND PREFERRED—Cont'd

- Share provisions—Cont'd
  - typical sets of share provisions
    - insolvent corporation, reorganization, **38:37**
    - preferred shares, section 85 rollover or estate freeze, **38:36**
    - private equity investment, **38:35**
  - voting
    - application of equality principle, **38:30**
    - election of directors, **38:32**
    - enfranchisement and separate class votes, **38:33**
    - mandatory governance right, **38:29**
    - multiple and subordinate voting rights, **38:31**

## SHAREHOLDER AGREEMENTS

- See also SHAREHOLDERS
- Common provisions, **22:2**
  - dispute resolution, **22:30**
  - dividends and bonuses, **22:28**
  - employment, **22:25**
  - financing, **23:1, 23:3**
  - liquidity, **23:23**
  - management, **22:15**
  - other, **22:36**
  - parties, **22:12**
- Types of shareholder agreements, **22:1**
- Unanimous shareholder agreement, **22:5**
  - definitions and nature, **22:5**
  - OBCA provisions subject to, **22:10**
  - sample, **App. 1B**
  - section 108 of OBCA, **22:6**

## SHAREHOLDER MEETINGS

- See also AUDITS AND MEETINGS OF SHAREHOLDERS
- Annual information form and management discussion and analysis, **59:14**
- Annual meetings
  - generally, **59:2**
  - example for schedule of offering corporation, **59:3**
- Chair of the Meeting
  - duties, **44:5**
  - who acts as, **44:4**
- Class or series meetings, **59:5**
- Court-ordered meetings, **59:7**

**SHAREHOLDER MEETINGS—Cont'd**

- Disputed meetings, **44:21**
  - enjoining a meeting ex ante, **44:22**
  - setting aside a meeting, **44:23**
- General, **59:1**
- Hybrid meetings, **44:20**
- Legislative developments, **92:24, 93:2**
- Location, **59:8, 44:2**
- Notice of meeting
  - corporate law requirements, **59:12**
  - notice and access, **59:9**
  - regular mail, **59:9**
  - securities law requirements, **59:13**
- Pre-meeting preparations
  - general, **44:1**
  - list of Shareholders, **44:3**
  - location of meeting, **44:2, 59:8**
- Procedure at Meetings
  - adjournment, **44:18**
  - approval thresholds, **44:12**
  - chair's script, **44:8**
  - election of Directors, **44:14 to 44:17**
    - CBCA distributing corporations, **44:16**
    - plurality-plus voting, **44:17**
    - slate elections, **44:15**
  - minutes, **44:19**
  - motions, **44:11**
  - motions to amend, **44:11**
  - notice, proof of service, **44:10**
  - quorum, **44:9**
  - termination, **44:18**
  - voting on motions, **44:13**
  - voting rights, **44:12**
- Record dates
  - generally, **59:11**
  - steps for reporting issuer to take before, **59:10**
- Scrutineers, **44:7**
- Secretary of the meeting, **44:6**
- Shareholder requisitioned meetings, **59:6**
- Special meetings, **59:4**
- Virtual meetings, **44:20**

**SHAREHOLDER REMEDIES**

- See also SHAREHOLDERS
- Compliance and restraining orders, **27:9, 34:53**
- complainant or creditor initiated, **27:10**
- OSC initiated, **27:11**

**SHAREHOLDER REMEDIES—Cont'd**

- Derivative action, **27:1**
  - complainants, **27:2**
  - leave requirements, **27:3**
  - nature of statutory remedy, **27:1**
  - specific powers of court, **27:4**
- Investigation, **27:5**
  - background, **27:6**
  - overview, **27:5**
  - statutory provisions, **27:7**
  - usage, **27:8**
- Other juridical remedies under OBCA, **27:12**
- Security holder remedies under OSA, **27:13**

**SHAREHOLDER RIGHTS**

- See also SHAREHOLDERS
- Decision-making rights, **21:14**
- Dividends, **21:7**
- Information rights, **21:9**
- Liability shield, **21:6**
- Minority rights, **21:16**
- Nature of shareholder, **21:1**
  - beneficial holders, **21:1**
  - entitlement holders, **21:1**
  - joint shareholders, **21:3**
  - shareholders, **21:1**
  - ways to become shareholder, **21:2**
- Overview, **21:5**
- Return of capital, **21:8**
- Shareholder lists, **21:4**
- Voting rights
  - cumulative, **21:13**
  - general, **21:10**
  - majority rule, principle of, **21:11**
  - restrictions, **21:12**

**SHAREHOLDERS**

- Dissent and appraisal rights, see DISSENT AND APPRAISAL RIGHTS
- Oppression remedy, see OPPRESSION REMEDY
- Shareholder agreements, see SHAREHOLDER AGREEMENTS
- Shareholder remedies, see SHAREHOLDER REMEDIES
- Shareholder rights, see SHAREHOLDER RIGHTS
- Voting agreements, see VOTING AGREEMENTS

## SHAREHOLDER TAXATION

See CORPORATE AND  
SHAREHOLDER TAXATION

## SHARES, ISSUE AND OWNERSHIP OF

- Issuances and allotment
  - contract law elements, **38:2**
  - acceptance, **38:8**
  - communication of acceptance, **38:9**
  - consideration, **38:5**
  - formalities, **38:4**
  - offer, **38:7**
  - registration, **38:10**
  - subscription agreement, essential elements, **38:3**
- corporate law elements
  - business judgment rule, application to issuance of shares, **38:14**
  - commission on issuance of shares, **38:16**
  - consideration for shares, **38:11**
  - oppression remedy, application to issuance of shares, **38:13**
  - pre-emptive rights, **38:12**
  - stock dividend, issuance of, **38:15**
- overview, **38:1**
- Lien on shares, **38:29**
  - inter-corporate share holdings
    - options to avoid prohibition, **38:32**
    - scope of the prohibition, **38:30**
    - statutory exceptions, **38:31**
- Share certificates
  - fees, **38:20**
  - fractional and scrip certificates, **38:22**
  - general requirements, **38:17**
  - loss, theft or destruction, **38:21**
  - share conditions, **38:19**
  - transfer restrictions, notation of, **38:18**
- Share corporations, restricted or constrained, **38:28**
- Share transfer restrictions
  - board discretion to approve transfer of shares, exercise of, **38:25**
  - freedom of contract, **38:24**
  - private issuer, **38:23**
  - transfer fees, **38:27**
  - USA, effect of transfer on, **38:26**

## SOCIAL COMPANIES, UNINCORPORATED NON-PROFIT ORGANIZATIONS, TAXATION, REGULATION OF CHARITIES

Abolishment of, social companies, **10A:8**

## SOCIAL COMPANIES, UNINCORPORATED NON-PROFIT ORGANIZATIONS, TAXATION, REGULATION OF CHARITIES—Cont'd

- Charitable trusts, **16:7**
  - charitable purposes, types of, **16:8**
  - distinguished from other trusts, **16:7**
- Regulation of charities, **16:12**
  - Charities Accounting Act, **16:12**
    - charitable trust, variance of, **16:12**
    - complaints, solicitation of gifts, **16:12**
    - conflicting interests, disclosure of, **16:12**
    - enforcement, charitable purpose, **16:12**
    - public guardian and trustee, provision of information to, **16:12**
    - remedial powers, **16:12**
  - O. Reg. 4/01 (Approved Acts of Executors and Trustees), **16:13**
  - D&O insurance coverage, **16:15**
  - exemptions from the general conflict-of-interest rules under charity law, **16:16**
    - affiliate exemption, **16:18**
    - provision of goods, services and facilities by directors and connected persons, **16:17**
  - indemnification of directors and officers, **16:14**
- Social companies, **16:2**
- Taxation of non-profit organizations, **16:9**
- Trustee Act, **16:10**
  - investments, **16:11**
  - land, **16:10**
- Unincorporated clubs, **16:3**
- Unincorporated non-profit organizations, **16:4**
  - trade unions as separate legal persons, **16:5**
  - unincorporated non-profit associations other than trade unions, **16:6**

## SOLE PROPRIETORSHIP

See also UNINCORPORATED BUSINESS ORGANIZATIONS

## STANDSTILL AGREEMENTS

See also: NON-DISCLOSURE AGREEMENTS



## INDEX

### STANDSTILL AGREEMENTS—Cont'd

- Generally, **79:27**
- Certicom Corp. v. Research in Motion Ltd., **79:29**
- Delaware jurisprudence, lessons from, **79:37**
- Delaware jurisprudence, Martin Marietta Materials, Inc. v. Vulcan Materials Co., **79:31**
- Interpretation, **79:35**
- Non-disclosure agreements and, **79:28**
- Remedies, **79:36**

### START-UPS

- Generally, **1:1**
- Available legal forms to carry on business, **1:3**
- Business vehicle, factors in choosing, **1:9**
- Commercial law characteristics of vehicles for carrying on business, **1:4**
- corporations, **1:6**
  - characteristics of a corporation, **1:6**
  - incorporation in other Canadian jurisdictions, **1:8**
  - OBCA vs. CBCA incorporation, **1:7**
  - practical application of OBCA vs. CBCA factors, **1:7**
  - relative advantages of CBCA incorporation, **1:7**
  - relative advantages of OBCA incorporation, **1:7**
- non-corporate vehicles, **1:4**
  - corporate division, **1:4**
  - general partnership, **1:5**
  - limited partnership, **1:5**
  - partnership, **1:5**
  - sole proprietorship, **1:4**
- Lawyer's role in advising fledging business, **1:2**
- Limited liability companies, **1:10**
- Prospecting Syndicate Agreement, **App. 1C**
- Retainer letter, **App. 1A**
- Tax factors in choosing business vehicle, **1:9**
- Unanimous Shareholder Agreement, **App. 1B**

### STATED CAPITAL

- Concept of, **40:1**
- Increase of, **40:3**

### STATED CAPITAL—Cont'd

- Issuer bids
  - definition, **40:11**
  - disclosure obligations, **40:13**
  - formal valuations requirements, **40:14**
  - exemptions from, **40:16**
  - independent committee requirements, **40:15**
  - exemptions from, **40:16**
  - requirements, **40:12**
- Reduction of, **40:4**
- Share purchase or redemption
  - acquired shares, cancellation of, **40:10**
  - calculation of stated capital reduction, **40:9**
  - consequential reduction of stated capital, **40:5**
  - solvency tests, generally applicable, **40:6**
  - director liability, **40:8**
  - exceptions to, **40:7**
- Splitting of PUC between classes or series of shares, **40:17**
- Stated capital account, functions of, **40:2**

### TAKE-OVER BIDS

- See also MERGERS AND ACQUISITIONS

### TAXATION AND REGULATION OF CHARITIES

- See SOCIAL COMPANIES, UNINCORPORATED NON-PROFIT ORGANIZATIONS, TAXATION, REGULATION OF CHARITIES

### TAX-DEFERRED CORPORATE TRANSACTIONS

- Amalgamation, section 87, **55:21**
  - application, **55:22**
  - bump in ACB, subsidiary's non-depreciable capital property, **55:25**
  - corporate law background, **55:21**
  - effect on paid-up capital, **55:27**
  - effect on taxation years, **55:23**
  - rollovers, corporate level, **55:24**
- Butterfly transactions, **55:38**
- Consolidations, **55:16**
- Continuance, **55:18**
  - export, **55:20**
  - import, **55:19**
  - overview, **55:18**

## **TAX-DEFERRED CORPORATE TRANSACTIONS—Cont'd**

- Conversions, debt obligations, section 51.1, **55:15**
- Overview, **55:1**
- Reorganization of capital, section 86, **55:13**
- Rollovers, section 85, **55:2**
  - benefits versus disadvantages, **55:6**
  - boot, **55:3**
  - cost amounts, **55:4**
  - elected amounts, **55:5**
    - allocation of to consideration paid to transferor, **55:8**
    - parameters, **55:7**
  - eligible parties, **55:2**
  - eligible property, **55:2**
  - Form T2057, **55:12**
  - indirect benefits, **55:10**
  - paid-up capital of transferee, **55:9**
  - price adjustment clauses, **55:11**
  - share consideration, **55:3**
- Rollovers, shareholder level, **55:28**
- Settlement, intercorporate debt, **55:26**
- Share conversion, section 51, **55:14**
- Share-for-share exchanges, section 85, **55:17**
- Share splits, **55:16**
- Winding-up, section 88, **55:29**
  - bifurcated winding-up rules, **55:31**
  - corporate law background, **55:29**
  - meaning of, **55:30**
  - of a non- 90% owned subsidiary, **55:37**
  - of a 90% owned subsidiary, **55:32**
    - bump in ACB, subsidiary's non-depreciable capital property, **55:34**
    - cancellation of subsidiary's indebtedness to parent, **55:35**
    - eligibility, **55:32**
    - parent's shares, **55:36**
    - rollover, corporate level, **55:33**

## **TRANSMISSION OF SECURITIES**

See **SECURITIES TRANSFERS, PLEDGES AND TRANSMISSIONS**

## **TRUST INDENTURES**

See also **EQUITY FINANCING and SECURITIES TRANSFERS, PLEDGES AND TRANSMISSIONS**

Financial setting, **45:1**

## **TRUST INDENTURES—Cont'd**

- No-action clauses
  - generally, **45:16**
- OBCA (Part V), overview, **45:4**
  - application, **45:6**
  - bondholders, **45:11**
  - indenture trustee, **45:7**
    - conflict of interest, **45:9**
    - qualification, **45:8**
    - removal of trustee (conflict of interest), **45:10**
  - regulation of trustees and trust indentures, **45:12**
    - compliance, **45:15**
    - duty of disclosure, **45:13**
    - exculpatory clauses, **45:14**
  - trust indenture and trustee, **45:5**
- Overview, **45:3**
- Regulation in Ontario, history of, **45:2**
- Trust indenture, tour of
  - bondholders, meeting of, **45:27**
  - bonds, **45:18**
  - conversion privileges, **45:22**
  - covenants, **45:23**
  - default and enforcement, **45:24**
  - notice, **45:28**
  - redemption and purchase for cancellation, **45:20**
  - registration, transfer, ownership, **45:19**
  - satisfaction and discharge, **45:25**
  - subordination of debentures, **45:21**
  - successors, **45:26**
  - supplemental indentures, **45:30**

## **UNINCORPORATED BUSINESS ORGANIZATIONS**

See also **NON-CORPORATE ORGANIZATIONS**

Limited liability company, **1:10**

## **UNINCORPORATED NON-PROFIT ORGANIZATIONS**

See **SOCIAL COMPANIES, UNINCORPORATED NON-PROFIT ORGANIZATIONS, TAXATION, REGULATION OF CHARITIES**

## **UNLIMITED LIABILITY COMPANIES**

Generally, **9:1**

Background, **9:2**

Concluding observations, **9:9**

Tax changes, under 5th protocol, **9:3**

## UNLIMITED LIABILITY COMPANIES

### —Cont'd

ULC jurisdiction, current determinants, **9:4**

BCULV v. ABULC, **9:8**

NSULC v. ABULC, **9:6**

NSULC v. BCULC, **9:5**

NSULC v. PEI ULC, **9:7**

## VENDOR TAKE-BACK FINANCING

Collateral, **84:18, 84:19, 84:26 to 84:30**

life insurance as, **84:27**

real property collateral, **84:18, 84:19**

leased real property, **84:19**

owned real property, **84:18**

ships as, **84:26**

target shares as, **84:28 to 84:30**

escrow arrangement, **84:30**

pledge agreement, **84:29**

registration of title, **84:28**

Conclusion, **84:34**

Context, **84:1**

Conventional financing, dovetailing VTB financing with, **84:10**

Debt instruments, **84:15**

Dynamics of, VTB financing negotiations, **84:9**

Guarantees, **84:16, 84:17**

corporate, **84:17**

personal, **84:16**

Legal opinions, **84:33**

Loan agreements, **84:15**

Personal property security agreements and registrations, **84:20 to 84:25**

accounts, **84:22**

chattel paper, **84:22**

equipment and machinery, **84:23**

intellectual property, **84:25**

inventory and its proceeds, **84:21**

motor vehicles, **84:24**

negotiable instruments, **84:22**

omnibus collateral (other than hares), **84:20**

Postponement and intercreditor agreements, **84:31, 84:32**

postponement agreements, **84:31**

subordination, priority and intercreditor agreements, **84:32**

Process of, **84:11**

Promissory notes, **84:15**

Rationales, **84:8**

## VENDOR TAKE-BACK FINANCING

### —Cont'd

Securities exemptions, **84:12 to 84:14**

financing asset acquisitions, **84:14**

financing share acquisitions, **84:13**

Sources of Finance, **84:2 to 84:7**

generally, **84:2**

disguised VTB financing, **84:4**

consulting fees, **84:5**

earn-outs, **84:7**

put-call arrangements, **84:6**

issuance of purchaser's shares to vendor, **84:3**

## VOTING AGREEMENTS

See also SHAREHOLDERS

Generally, **22:37**

Pooling agreement, **22:38**

Voting trust, **22:39**

## WARRANTS

Agent

duties, **35.1:45**

evidence of compliance, **35.1:43**

good faith reliance, **35.1:44**

overview, **35.1:41**

protections, **35.1:46**

removal and replacement, **35.1:42**

Anti-dilution adjustments

deep-discounted rights offerings, **35.1:35**

determination of adjustments, **35.1:37**

enforcement and waiver, **35.1:38**

special dividends, **35.1:36**

Authentication by agent, **35.1:32**

Certificates, **35.1:31**

Creation and issuance, **35.1:28**

Fixed-percentage warrants

anti-dilution provisions, **35.1:26**

exercise, **35.1:24**

exercise price, **35.1:23**

number of warrant shares, determination of, **35.1:22**

overview, **35.1:21**

purchase rights, **35.1:25**

FMV exercise price warrants

anti-dilution practices, **35.1:6**

exercise, **35.1:5**

holder's representations, **35.1:17**

legends, **35.1:15**

overview, **35.1:3**

**WARRANTS—Cont'd**

FMV exercise price warrants—Cont'd  
    purchase rights, **35.1:13**  
    term, **35.1:4**  
    Unanimous Shareholder Agreement  
        (USA), **35.1:14**  
Form of, **35.1:30**  
General terms, **35.1:29**  
Indentures, **35.1:27**  
Nature of, **35.1:1**  
Penny warrants  
    anti-dilution provisions, **35.1:20**

**WARRANTS—Cont'd**

Penny warrants—Cont'd  
    exercise, **35.1:19**  
    overview, **35.1:18**  
Transfer of, **35.1:33**  
Warrant holders, meetings of  
Warrant holders, register of, **35.1:48**  
Warrant purchase agreements, **35.1:2**  
    ordinary/extraordinary resolutions,  
        **35.1:39**